

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID E. MCINTIRE
(CRD No. 2743679),

Respondent.

Disciplinary Proceeding
No. 2008014672801

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

March 30, 2010

Respondent is barred from associating with any FINRA member in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2010.

Appearances

Michael A. Gross, Esq., Boca Raton, FL, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On November 2, 2009, the Department of Enforcement (“Enforcement”) filed a Complaint in this proceeding, which is attached to this Decision as Exhibit A. The Complaint alleges that Respondent violated Rules 8210 and 2010 by failing to respond to FINRA Staff (“Staff”) requests for information.

Respondent did not file an Answer or otherwise respond to the Complaint. Consequently, on February 3, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the Declaration of Michael A. Gross, Esq. (“Gross

Decl.”) and three exhibits. Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Jurisdiction

Respondent first became registered with a FINRA member in 1996. Complainant’s Exhibit (“CX”)-1. From July 2007 through June 2008, Respondent was registered with GunnAllen Financial, Inc. (the “Firm”). CX-1; Gross Decl. ¶¶ 7-8. On June 30, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) on Respondent’s behalf, indicating that he was terminated on June 13, 2008 for violating Firm policy regarding review of outgoing correspondence, using personal email for Firm business, and attempting to engage in a prohibited transaction. CX-1; Gross Decl. ¶ 8. Respondent has not been associated or registered with a FINRA member since that time. CX-1.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA’s By-Laws, because (1) the Complaint charges Respondent with failing to comply with requests for information made during the two-year period following the termination of his last registration with FINRA, and (2) the Complaint was filed within that two-year period.

III. Respondent’s Default

On November 2, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at Respondent’s last known residential address shown in FINRA’s Central Registration Depository (“CRD address”). CX-2; Gross Decl. ¶ 13. Neither the certified mailing nor the first-class mailing was returned to Enforcement. Gross

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

Decl. ¶¶ 14-15. Respondent did not file an Answer or otherwise respond to the Complaint.

Gross Decl. ¶ 16.

On December 2, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent in the same manner. CX-3; Gross Decl. ¶ 17. This time, the certified mail receipt was returned, but the signature acknowledging receipt was illegible. CX-3; Gross Decl. ¶ 18. The first-class mailing was not returned. Gross Decl. ¶ 19. Once more, Respondent did not file an Answer or otherwise respond to the Complaint. Gross Decl. ¶ 20.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted.

IV. Violation - Failure to Respond

The Complaint alleges that, in 2008, Staff initiated an investigation regarding: (1) the circumstances surrounding Respondent's termination from the Firm, and (2) a customer complaint regarding an investment in eSuites stock through McIntire Asset Management, a company controlled by Respondent. Complaint ¶ 8. In connection with this investigation, on March 5, 2009, Staff sent Respondent a Rule 8210 request for information. Gross Decl. ¶ 12. Staff sent the request by first-class and certified mail to Respondent's CRD address. *Id.* The certified mail receipt was returned, but the signature acknowledging receipt was illegible. The first-class mailing was not returned. Complaint ¶ 10.

When Respondent did not respond to the request by the March 19, 2009 deadline, Staff sent a second request for the same information, in the same manner, on March 20, 2009. Gross Decl. ¶ 12. Again, the signature acknowledging receipt of the certified mailing was illegible, and

the first-class mailing was not returned. Id. However, on March 24, 2009, Respondent called Staff and represented that he intended to respond to the request. Complaint ¶ 14.

On April 6, 2009, Respondent sent a one-page letter to Staff, responding to the first item of the Staff's request relating to his termination from the Firm. Complaint ¶ 15. Respondent's letter stated that he was attempting to obtain counsel to assist him in responding more completely to Staff's request and that he was "attempting to compile the other information [the Staff] requested." Complaint ¶ 17.

However, Respondent failed to respond to the vast majority of the requests, which related to his compensation, his supervisors, his means of communicating with customers, lawsuits and arbitrations, his outside business activities and participation in private securities transactions, including his involvement with McIntire Asset Management and eSuites, and a customer complaint regarding eSuites stock. Respondent also failed to include any documents with his letter. Complaint ¶ 16; Gross Decl. ¶ 12.

On April 7, 2009, Staff sent Respondent a third request for the same information by first-class and certified mail to his CRD address. Respondent did not respond. Again, the signature acknowledging receipt of the certified mailing was illegible, and the first-class mailing was not returned. Gross Decl. ¶ 12.

On April 27, 2009, an attorney contacted the Staff regarding its investigation of Respondent. The attorney told Staff that he would be representing Respondent, but he had yet to be formally retained. Complaint ¶ 21. During the call, Staff requested that the attorney send Staff a written acknowledgement that he represented Respondent. Id. Staff reiterated this request by email on May 7, 2009, and May 12, 2009. Complaint ¶ 22. However, the attorney did not respond in any manner. Complaint ¶ 23.

Consequently, on May 21, 2009, Staff sent a fourth and final request for information, in the same manner as before. Respondent again did not respond. Gross Decl. ¶ 12.

Staff served the requests in accordance with Rule 8210(d) by mailing them to Respondent at his CRD address. Therefore, Respondent is deemed to have received them. Moreover, Respondent received actual notice of Staff's request, as evidenced by his March 24, 2009 telephone call, his April 6, 2008 response, and the call from the attorney who stated he would be representing Respondent.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.² Here, although Respondent received valid constructive and actual notice of the Staff's requests, he failed to respond.³

Therefore, the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2010.

V. Sanctions

A bar is standard for a complete failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007). While Respondent sent a one-page letter providing information regarding his termination from the firm, he failed to respond to the vast majority of Staff's requests. The Hearing Officer views this as tantamount to a complete failure to respond. Respondent's letter stating that he would attempt to compile the information

² See e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA's] ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for [FINRA] to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

³ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

requested was wholly insufficient. An associated person in receipt of a Rule 8210 request for information "has an obligation beyond a mere statement that the records are unavailable."⁴

There is no evidence of any mitigating circumstances that would justify a lesser sanction.

Therefore, Respondent is barred from associating with any FINRA member in any capacity.

VI. Conclusion

For failing to provide requested information, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity. This bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: David E. McIntire (via overnight courier and first-class mail)
Michael A. Gross, Esq. (via first-class and electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

⁴ CMG Institutional Trading, Exch. Act Rel. No. 59325, 2009 SEC LEXIS 215, at *23 (Jan. 30, 2009) (holding that if a person cannot readily provide the information sought, he or she has an obligation to explain, as completely as possible, his efforts, and his inability to do so).

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vs.

DAVID E. McINTIRE (CRD No. 2743679),

Respondent.

Disciplinary Proceeding
No. 2008014672801

Hearing Officer – TBD

COMPLAINT

The Department of Enforcement alleges:

Summary

1. David E. McIntire failed to fully respond to multiple document and information requests, in violation of FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

2. In July 1996, McIntire registered with FINRA as a General Securities Representative (Series 7 license). He subsequently acquired Series 63 and 65 licenses.

3. Between April 12, 1996 and October 26, 2005 and between January 9, 2006 and June 13, 2008, McIntire was associated with three FINRA members.

4. On July 19, 2007, GunnAllen Financial, Inc. filed a Form U4 for McIntire commencing his association with the firm as of that date.

5. On June 30, 2008, GunnAllen filed a Form U5 for McIntire terminating his association with the firm as of June 13, 2008.

6. McIntire currently is not associated with a FINRA member, but he is still subject to FINRA's jurisdiction under Article V, Section 4 of FINRA's By-Laws.

**CAUSE OF ACTION
FAILURE TO FULLY RESPOND TO DOCUMENT AND INFORMATION REQUESTS
(FINRA Rules 8210 and 2010)**

March 5th Request

7. The Department realleges and incorporates Paragraphs 1 through 6 by reference.

8. In 2008, the staff commenced investigations of the circumstances surrounding McIntire's termination from GunnAllen and of a complaint against him by customer KJ regarding her investment in eSuites stock through McIntire Asset Management, a company controlled by McIntire.

9. In connection with the investigations, on March 5, 2009, the FINRA Florida District Office staff ("Staff") sent a letter to McIntire requesting that by March 19, 2009, he provide it with various documents and information regarding: (a) his termination from GunnAllen; (b) his employment there, including his compensation, the identity of his supervisors, and the means that he used to communicate with customers; (c) any lawsuits or arbitrations against him; (d) his outside business activities and participation in private securities transactions, including McIntire Asset Management and his affiliation, if any, with eSuites; and (e) customer KJ's complaint regarding eSuites stock ("March 5th Request"). The Staff issued the March 5th Request under FINRA Rule 8210 and sent it to McIntire at his last known residential address reflected in the CRD ("CRD Address") by certified and first class mail.

10. The United States Postal Service ("USPS") returned the certified mail receipt for the March 5th Request to the Florida District Office; the signature on the receipt is illegible; and the receipt does not indicate a delivery date, but the USPS's website reflects that the March 5th

Request sent by certified mail was delivered on March 9, 2009. The USPS has not returned the first class mailing of the March 5th Request to the Florida District Office.

11. McIntire did not respond to the March 5th Request by the deadline nor did he request an extension of time to do so.

March 20th Request

12. On March 20, 2009, pursuant to FINRA Rule 8210, the Staff sent a second letter to McIntire requesting that he provide the previously requested documents and information to it by April 6, 2009 ("March 20th Request"). The March 20th Request advised McIntire that "[f]ailure to comply with this request may subject [him] to disciplinary action." The Staff sent the March 20th Request to McIntire at his CRD Address by certified and first class mail.

13. The USPS returned the certified mail receipt for the March 20th Request to the Florida District Office; the signature on the receipt is illegible; and the receipt does not indicate a delivery date, but the USPS's website reflects that the March 20th Request sent by certified mail was delivered on March 26, 2009. The USPS has not returned the first class mailing of the March 20th Request to the Florida District Office.

McIntire's Incomplete Response

14. On March 24, 2009, McIntire called the Staff and said that he would respond to the foregoing requests.

15. On April 6, 2009, McIntire faxed a one-page letter to the Florida District Office wherein he provided a written statement regarding his termination from GunnAllen. The statement was responsive to the first item requested in the March 5th Request and March 20th Request.

16. In his letter, McIntire did not provide any information responsive to any of the 31 other items set forth in the March 5th Request and March 20th Request, including, without limitation, the following subjects: (a) his employment at GunnAllen, including his compensation, the identity of his supervisors, and the means that he used to communicate with customers; (b) any lawsuits or arbitrations against him; (c) his outside business activities and participation in private securities transactions, including McIntire Asset Management and his affiliation, if any, with eSuites; and (d) customer KJ's complaint regarding eSuites stock. McIntire also did not enclose any documents with his letter.

17. In his letter, McIntire represented to the Staff that he was attempting to obtain counsel to assist him in responding more completely to the Staff's requests and that he was "attempting to compile the other information [the Staff] requested."

April 7th Request

18. On April 7, 2009, after receiving McIntire's incomplete response, the Staff sent a third letter to McIntire requesting that he provide the previously requested documents and information to it by April 21, 2009 ("April 7th Request"). The April 7th Request advised McIntire that "[a]lthough he responded with a one page letter on April 6, 2009, [he] did not adequately address all questions posed in prior letters." The April 7th Request further advised McIntire that "[f]ailure to comply with this request may subject [him] to disciplinary action." The Staff issued the April 7th Request pursuant to FINRA Rule 8210 and sent it to McIntire at his CRD Address by certified and first class mail.

19. The USPS returned the certified mail receipt for the April 7th Request to the Florida District Office; the signature on the receipt is illegible; and the receipt does not indicate a delivery date, but the USPS's website reflects that the April 7th Request sent by certified mail

was delivered on April 11, 2009. The USPS has not returned the first class mailing of the April 7th Request to the Florida District Office.

20. McIntire did not respond to the April 7th Request by the deadline nor did he request an extension of time to do so.

Communications with Attorney

21. On April 27, 2009, an attorney called the Staff and questioned it about its investigations of McIntire. The attorney told the Staff that he would be representing McIntire in connection with the investigations but that McIntire had yet to formally retain his services. During the call, the Staff requested that the attorney acknowledge, in writing, that he represents McIntire in connection with the investigations.

22. In e-mails dated May 7, 2009 and May 12, 2009, the Staff again requested that the attorney provide the previously requested written representation.

23. The attorney never provided the Staff with the requested representation letter.

May 21st Request

24. On May 21, 2009, pursuant to FINRA Rule 8210, the Staff sent a fourth and final letter to McIntire requesting that he provide the previously requested documents and information to it by June 4, 2009 ("May 21st Request"). The May 21st Request advised McIntire that the attorney had not provided the Staff with a representation letter. The May 21st Request also advised McIntire that "[f]ailure to comply with this request may subject [him] to disciplinary action." The Staff sent the May 21st Request to McIntire at his CRD Address by certified and first class mail.

25. The Staff also e-mailed the May 21st Request to the attorney, even though he had not provided it with the requested representation letter.

26. The USPS returned the certified mail receipt for the May 21st Request to the Florida District Office; the signature on the receipt is illegible; and the receipt does not indicate a delivery date, but the USPS's website reflects that the May 21st Request sent by certified mail was delivered on May 26, 2009. The USPS has not returned the first class mailing of the May 21st Request to the Florida District Office.

27. McIntire has not responded to the May 21st Request nor has he requested an extension of time to do so.

28. The Staff is unaware of an address for McIntire more current than his CRD Address.

29. By failing to fully respond to the March 5th Request, March 20th Request, April 7th Request, and May 21st Request, McIntire violated FINRA Rules 8210 and 2010.

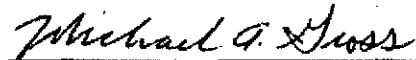
Relief Requested

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- B. Order that McIntire bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: November 2, 2009


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