

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALFONSO FIERO
(CRD No. 4248781),

Respondent.

Disciplinary Proceeding
No. 2008015329001

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 11, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to notify his employer firm that he had a securities account at another FINRA registered firm, and failing to notify the second firm that he was associated with a FINRA member firm, in violation of NASD Conduct Rules 3050 and 2110; and for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Jon Batterman, Esq. and Kathryn M. Wilson, Esq. for the Department of Enforcement.

No appearance by or on behalf of Alfonso Fiero.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on November 29, 2010. The Complaint charges Respondent Alfonso Fiero (“Fiero”) with: (1) failing to disclose to his employer, Wilson-Davis & Co., Inc. (“Wilson-Davis”), that he had a securities account at The Benchmark Company, LLC

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("Benchmark"), another FINRA registered firm, and failing to disclose to Benchmark that he was associated with Wilson-Davis, in violation of NASD Conduct Rules 3050 and 2110; and (2) failing to provide information and documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Fiero did not answer the Complaint. Accordingly, on February 22, 2011, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion"), together with the declaration of Kathryn M. Wilson ("Wilson Decl.") and 20 attached exhibits.² Fiero did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer found Fiero in default and granted Enforcement's Default Motion.

II. Procedural History

On November 29, 2010, Enforcement served the Complaint and the First Notice of Complaint on Fiero by mailing them to his most recent address recorded in the Central Registration Depository ("CRD") by first-class and certified mail.³ The United States Postal Service returned both mailings to FINRA. The first-class mailing was marked "insufficient address"; the certified mailing was unclaimed.⁴ Fiero did not respond to the First Notice of Complaint.⁵

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. In the rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010, which is identical to Rule 2110.

² Enforcement's exhibits are labeled CX-1 through CX-20.

³ Wilson Decl. ¶ 10; CX-3.

⁴ *Id.* ¶¶ 12-13.

⁵ *Id.* ¶ 15.

On January 3, 2011, Enforcement served the Complaint and Second Notice of Complaint on Fiero by mailing it to his CRD address by first-class and certified mail.⁶ FINRA staff did not receive either mailing back from the United States Postal Service.⁷ To date, Fiero has not responded to the Second Notice of Complaint.⁸

Based on Fiero's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Background

Fiero first entered the securities industry with a FINRA registered firm in July 2000, and he registered as a General Securities Representative with FINRA in October 2000.⁹ Fiero was associated with American Capital Markets, LLC between November 2003 and February 27, 2006.¹⁰

After leaving American Capital Markets, Fiero was not associated with a FINRA registered firm until May 1, 2007, when he joined Wilson-Davis. From May 1, 2007, until December 31, 2008, Fiero was registered as a General Securities Representative and a General Securities Principal through Wilson-Davis. He also was registered as an Equity Trader – Limited Representative from June 18, 2007, until December 31, 2008.¹¹ Fiero has not been associated with a FINRA registered firm since he left Wilson-Davis.

⁶ Wilson Decl. ¶ 16; CX-8.

⁷ *Id.* ¶ 17.

⁸ *Id.* ¶ 19.

⁹ *Id.* ¶ 5; CX-1 (CRD record).

¹⁰ CX-1, at 2.

¹¹ *Id.* at 1.

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after FINRA terminated Fiero's registrations, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to Enforcement's requests for information made during the two-year period following the termination of his FINRA registrations.¹²

C. Failure to Disclose an Outside Securities Account

On or about May 4, 2006, approximately three months after Fiero terminated his employment with American Capital Markets, Fiero opened a corporate securities account at Benchmark under the name American Capital Markets. Fiero was the designated control person over this account. Fiero signed account opening documents for the account, including a Corporate Authority Certificate and Trading Authorization for Brokerage Accounts form, dated May 8, 2006, which granted him trading authorization over the account.¹³

Fiero did not disclose the American Capital Markets account to Wilson-Davis.¹⁴ In December 2007, Fiero completed a 2007 Annual Certification form, which he submitted to Wilson-Davis.¹⁵ The 2007 Annual Certification required him to disclose all accounts he held at any other brokerage firm. Fiero only reported his Roth IRA account at OptionsExpress, Inc.¹⁶ He

¹² See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹³ Compl. ¶ 8; CX-10.

¹⁴ Compl. ¶¶ 9-10.

¹⁵ CX-14.

¹⁶ CX-15.

did not report the American Capital Markets account at Benchmark. Fiero also did not inform Benchmark that he was associated with Wilson-Davis.¹⁷

The first cause of action further alleges that the American Capital Markets account, which Fiero controlled and held at Benchmark, engaged in short selling shares of Global Resource Corp. (“GBRC”) while Fiero was a trader of a proprietary account at Wilson-Davis that made a market in GBRC.¹⁸

The Hearing Officer finds that Fiero violated NASD Conduct Rule 3050 by failing to provide written notice to Benchmark that he was a broker associated with Wilson-Davis, and by failing to disclose the American Capital Markets account he held at Benchmark to Wilson-Davis.¹⁹ He also thereby violated NASD Conduct Rule 2110.²⁰

D. Failure to Provide Information and Documents

The second cause of action alleges that Fiero failed to respond to requests for information and documents, which FINRA staff sent to him pursuant to FINRA Rule 8210. Rule 8210 grants FINRA the right to require members and persons subject to FINRA’s jurisdiction “to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA

¹⁷ Compl. ¶ 12.

¹⁸ *Id.* ¶ 13.

¹⁹ NASD Conduct Rule 3050(c) provides,

A person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated.

²⁰ *Department of Enforcement v. Claggett*, No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at *25 (N.A.C. Sept. 28, 2007). Conduct Rule 2110 requires that FINRA members shall, in conducting their business, “observe high standards of commercial honor and just and equitable principles of trade.” NASD Rule 0115 makes all FINRA rules, including NASD Rule 2110, applicable to both FINRA members and all persons associated with FINRA members. Conduct that violates other SEC or FINRA rules is inconsistent with the high standards of commercial honor and just and equitable principles of trade and therefore also violates NASD Rule 2110. *Joseph Abbondante*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23, at *36 (Jan. 6, 2006), *aff’d*, 209 F. App’x 6 (2d Cir. 2006).

staff ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding.”²¹ Rule 8210 enables FINRA to conduct meaningful examinations and investigations. FINRA relies heavily on Rule 8210, and the Securities and Exchange Commission has “repeatedly stressed the importance of cooperation in [FINRA] investigations ... [and] emphasized that the failure to provide information undermines [FINRA’s] ability to carry out its self-regulatory functions.”²² Indeed, Rule 8210 is widely accepted as FINRA’s most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members.²³ FINRA is therefore entitled to the “full and prompt cooperation” of all persons subject to its jurisdiction when investigative requests are made by members of its staff.²⁴

In this case, FINRA staff sent Fiero two requests for information pursuant to Rule 8210. The staff sent the first request to Fiero at his CRD address by first-class and certified mail on June 23, 2010.²⁵ The staff sought information in connection with FINRA’s investigation into the American Capital Markets securities account he opened at Benchmark.²⁶ Fiero did not respond to the request.²⁷

²¹ FINRA Rule 8210(a)(1); *see also* *Michael J Markowski*, Exchange Act Rel. No. 43259, 2000 SEC LEXIS 1860, at *15 (Sept. 7, 2000) (“The NASD has the right to request information and require cooperation from its members and persons associated with them.”), *aff’d*, 2001 U.S. App. LEXIS 27007 (D.C. Cir. Dec. 21, 2001).

²² *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at * 9 (Sept. 14, 1998) (internal citations omitted).

²³ *See John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *57 n.67 (Nov. 12, 2010), *appeal docketed*, No. 10-15918 (11th Cir. Dec. 23, 2010).

²⁴ *Michael David Borth*, Exchange Act Rel. No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

²⁵ CX-17.

²⁶ *Id.*

²⁷ Compl. ¶ 18.

The staff sent Fiero a second request at his CRD address by first-class and certified mail on July 13, 2010, requesting the same information as the first request.²⁸ On July 14, 2010, FINRA staff received the receipt for the certified mailing signed by “E.P. Fiero.”²⁹ Fiero did not respond to the second request for information.³⁰

The Hearing Officer finds that Fiero violated Rules 8210 and 2010 by failing to respond in any manner to the staff’s requests for information.

IV. Sanctions

A. Failure to Disclose Outside Securities Account

The FINRA Sanction Guidelines (“Guidelines”) for failure to comply with NASD Conduct Rule 3050 recommend a fine ranging from \$1,000 to \$25,000 and, in egregious cases, a suspension for up to two years or a bar against an individual respondent.³¹ In addition, the Guidelines direct adjudicators to consider three specific factors, two of which are applicable to this case. First, whether the violative transactions presented real or perceived conflicts of interest for the respondent’s employer firm or customers. Second, whether respondent provided verbal notice of the violative transactions to his employer firm or the executing member firm and whether employer firm verbally acquiesced.³²

The Hearing Officer finds that this was an egregious case, and that a bar is the appropriate remedial sanction. During the relevant period, Fiero was a proprietary trader at Wilson-Davis, and made a market in GBRC stock. Nonetheless, during the same period, Fiero

²⁸ CX-18.

²⁹ Compl. ¶ 20.

³⁰ *Id.* ¶ 21.

³¹ FINRA Sanction Guidelines 16 (2011), available at www.finra.org/oho (then follow “Enforcement” hyperlink to “Sanction Guidelines”).

³² *Id.*

engaged in the short selling of GBRC shares. This activity presented a clear conflict of interest. Moreover, by not notifying Wilson-Davis of his activities, and by not notifying Benchmark of his position at Wilson-Davis, Fiero prevented both firms from overseeing his trading.

The evidence further indicates that Fiero's concealment of his activities was willful. Fiero knew of the requirement to disclose the outside account to Wilson-Davis. He had disclosed two other accounts. There is no evidence of mitigating factors. Accordingly, the Hearing Officer will bar Fiero from associating with any FINRA registered firm in any capacity for violating NASD Conduct Rules 3050 and 2110.

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Guidelines provide that a bar should be "standard" when there is a complete failure to respond.³³ The Guidelines further direct adjudications to consider the "[i]mportance of the information requested as viewed from FINRA's perspective."

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case, including a lack of mitigating factors that would warrant a lesser sanction. The documents and information the staff sought were important to FINRA's investigation of serious misconduct. A bar remedies the risk that Enforcement will not be able to obtain information necessary to the protection of investors and will serve to deter others from failing to provide Enforcement with information requested under Rule 8210 at the time such requests are made. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA member firm in all capacities for violating FINRA Rules 8210 and 2010.

³³ Sanction Guidelines 33.

V. Order

Respondent is barred from associating with any member firm in any capacity for (1) failing to disclose to his employer firm that he had a securities account at another FINRA registered firm, and by failing to disclose to such second firm that he was associated with a FINRA registered firm, in violation of NASD Conduct Rules 3050 and 2110; and (2) failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Alfonso Fiero (*via overnight courier and first-class mail*)
Jon Batterman, Esq. (*via electronic and first-class mail*)
Kathryn M. Wilson, Esq., Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

ALFONSO FIERO (CRD NO. 4248781),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2008015329001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From May 2007 through December 2008, while registered at one FINRA member firm (the employer firm), Respondent Alfonso Fiero (Fiero or Respondent) maintained a corporate brokerage account which he controlled at another FINRA member firm (the executing firm) without disclosing the existence of this account to the employer firm or his association with the employer firm to the executing firm, in violation of NASD Conduct Rules 3050 and 2110.
2. In addition, in June and July 2010, in connection with FINRA's investigation of Fiero's outside brokerage account, Fiero failed to respond to two information requests sent to him by FINRA staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

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3. Fiero first became associated with FINRA through an association with a member firm in July 2000. He became registered as a General Securities Representative (GSR) with that firm in October 2000.
4. From November 2003 through February 2006, Fiero was registered with FINRA as a GSR through an association with American Capital Markets, LLC (ACM) (BD No. 125407).
5. After his termination from ACM in February 2006, Fiero was not associated with any member firm until May 2007 when he became registered as a GSR, General Securities Principal and Equity Trader - Limited Representative at Wilson-Davis & Co., Inc. (Wilson-Davis) (BD No. 3777). He was registered with Wilson-Davis until December 8, 2008.
6. Since his termination from Wilson-Davis, Fiero has not been registered in the securities industry. FINRA retains jurisdiction over Fiero pursuant to Article V, Section 4 of the By-Laws.

FIRST CAUSE OF COMPLAINT

(Failure to Disclose Outside Securities Account)

Violation of NASD Conduct Rules 3050 and 2110

7. Paragraphs 1 through 6 of this Complaint are realleged and incorporated herein by reference.

8. On or about May 4, 2006, approximately three months after Fiero terminated his employment with ACM and at a time when Fiero was not registered with a member firm, Fiero opened a corporate securities account at FINRA member firm The Benchmark Company, LLC ("Benchmark") (BD No. 22982). Fiero opened this corporate account under the name American Capital Markets and was the designated control person over this account. Fiero signed account opening documents for the ACM corporate account at Benchmark, including a Corporate Authority Certificate and Trading Authorization For Brokerage Accounts form, executed on May 8, 2006, granting him trading authorization over the ACM account.
9. Approximately one year later, in May 2007, Fiero returned to the securities industry when he became registered with Wilson-Davis.
10. During his approximate 19 month association with Wilson-Davis, Fiero did not disclose the existence of the American Capital Markets securities account which he controlled and held at Benchmark to his employer firm Wilson-Davis.
11. In December 2007, Wilson-Davis provided an annual certification to Fiero that required that he disclose the existence of any outside securities accounts, including any accounts where he had control over the investments. Fiero did not disclose the American Capital Markets securities account which he controlled and held at Benchmark in this annual certification.
12. In addition, during his approximate 19 month association with Wilson-Davis, Fiero did not inform Benchmark of his association with Wilson-Davis so that Benchmark could amend his account information profile to reflect this association with a member firm.

13. The ACM corporate account, which Fiero controlled and held at Benchmark, engaged in short selling in the shares of Global Resource Corp. (GBRC). Fiero, while associated with Wilson-Davis, was the trader of a proprietary account which made a market in GBRC.
14. By reason of the foregoing, Fiero violated NASD Conduct Rules 3050 and 2110.

SECOND CAUSE OF COMPLAINT

(Failure to Respond)

Violation of FINRA Rules 8210 and 2010

15. Paragraphs 1 through 14 of this Complaint are realleged and incorporated herein by reference.
16. On June 23, 2010, pursuant to FINRA Rule 8210, FINRA Staff investigating the allegations set forth in paragraphs 7-13 above sent an information request letter to Fiero at his address of record on FINRA's Central Registration Depository (CRD), [REDACTED]
[REDACTED] (CRD Address).
17. The request letter was sent via First Class Mail and Certified Mail, return receipt requested, and imposed a response deadline of July 8, 2010. The letter sent via First Class mail was not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested was returned to FINRA, marked "unclaimed."
18. Fiero did not respond to the initial request for information by the stated deadline of July 8, 2010.
19. As a result, on July 13, 2010, again pursuant to FINRA Rule 8210, FINRA Staff sent a second information request to Fiero at his CRD address.

20. The second request letter was again sent via First Class Mail and Certified Mail, return receipt requested, and imposed a response deadline of July 23, 2010. The letter sent via First Class mail was not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested, was not returned to FINRA. The return receipt associated with this letter was returned to FINRA, bearing the signature "E.P. Fiero" and a date stamp of July 14, 2010.
21. Fiero did not respond to this second request for information by the stated deadline of July 23, 2010. To date, Fiero has never provided a response to the initial or second request for information.
22. By reason of the foregoing, Fiero violated FINRA Rules 8210 and 2010.

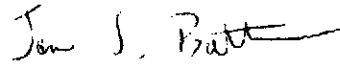
RELIEF REQUESTED

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, specifically restitution and disgorgement, be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 29, 2010



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