

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL A. DAGNAN
(CRD No. 4060750)

Respondent.

Disciplinary Proceeding
No. 2008015585001

Hearing Officer – LBB

DEFAULT DECISION

March 15, 2011

Respondent Michael A. Dagnan is barred from associating with any FINRA member in any capacity for failing to provide information in response to a request from FINRA, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

For the Department of Enforcement: Karen E. Whitaker, Esq., Senior Regional Counsel,
Dallas, Texas.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed a one-cause Complaint in this disciplinary proceeding on November 18, 2010, charging Respondent Michael A. Dagnan ("Respondent") with failing to provide information requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On February 7, 2011, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not file a response. Accordingly, pursuant to FINRA

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Procedural Rules 9215(f) and 9269, Enforcement's motion is granted, and the allegations of the Complaint are deemed admitted.¹

I. Respondent's Default

On November 18, 2010, FINRA staff served the Notice of Complaint and Complaint on Respondent by certified and first-class mail at the address that is listed for him in the Central Registration Depository ("CRD address"). Enforcement also served Respondent at an alternative address that it obtained from the Lexis service. ("Lexis address"). The Postal Service returned both mailings that Enforcement had sent to the CRD address, and the certified mailing it had sent to the Lexis address, but not the first-class mailing to the Lexis address. Decl. ¶¶ 19, 20; CX-1, CX-1A, CX-2. Respondent did not answer or otherwise respond to the Complaint.

FINRA staff served Respondent with the Second Notice of Complaint, and with a copy of the Notice of Complaint and Complaint, on December 17, 2010, at both his CRD address and the Lexis address. All of the mailings were returned by the Postal Service. Decl. ¶¶ 21, 22; CX-3. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration Supporting Motion for Entry of Default Decision, signed by counsel for the Department of Enforcement, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-____."

II. Jurisdiction

Respondent first entered the securities industry in 1999, when he became associated with a FINRA member firm. He was first registered with a FINRA member firm in September 2007, when he was registered with Woodbury Financial Services, Inc. (the "Firm"), and remained registered with the Firm until November 4, 2008. Complaint ¶ 4; Decl. ¶ 5. The Firm filed an amended Form U5 on Respondent's behalf on December 8, 2008. The amended Form U5 disclosed a new customer complaint against Respondent, alleging "unsuitable sale of a variable annuity and variable life insurance, and failure to disclose all information regarding guarantees on the variable life insurance." Complaint ¶ 5; Decl. ¶ 6.

Although Respondent has not been registered with a FINRA member firm since November 4, 2008, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the filing of an amended Form U5 that "discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation ...," and it charges him with failing to respond to Rule 8210 requests for information while he was subject to FINRA's jurisdiction.

III. Failure to Provide Information, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

From January 2007 through January 2008, while associated with two different FINRA member firms, Respondent wrote a total of 28 life insurance policies, including variable universal life, variable life and whole life policies, that later lapsed due to non-payment. Complaint ¶ 2. He collected more than \$318,000 in commissions on the

insurance policy sales, but failed to refund the commissions when the policies lapsed or were cancelled. Complaint ¶ 3.

On July 7, 2009, FINRA staff sent a letter to Respondent by certified and first-class mail, pursuant to FINRA Rule 8210, at his CRD address, requiring Respondent to submit information concerning the sale of the insurance policies and the failure to refund commissions. The return receipt card was returned to the FINRA district office bearing Respondent's signature. The first-class mailing was not returned. Respondent did not respond by the deadline set forth in the letter. Complaint ¶¶ 9-12.

On August 12, 2009, FINRA staff sent a second request for information, pursuant to Rule 8210, to Respondent by certified and first-class mail at his CRD address, directing Respondent to submit the same information as requested in the July 7, 2009 letter. The return receipt card was returned to the FINRA district office bearing Respondent's signature. The first-class mailing was not returned. Respondent has not responded to FINRA staff's request for information. Complaint ¶¶ 13-16.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.²

IV. Sanctions

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³

Where mitigation exists, the Sanction Guidelines recommend consideration of a

² A violation FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010. *Dep't of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

³ *FINRA Sanction Guidelines* 33 (2010).

suspension in all capacities of up to two years. There are no mitigating factors. A bar is the appropriate sanction.

V. Conclusion

Respondent Michael A. Dagnan is barred from associating with any FINRA member firm in any capacity for failing to provide information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Lawrence B. Bernard
Hearing Officer

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