

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NICHOLAS ALEXANDER LOSKOCINSKI
(CRD No. 4519721),

Respondent.

Disciplinary Proceeding
No. 20090165124-01

Hearing Officer – MAD

DEFAULT DECISION

May 21, 2010

Respondent violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to requests for information. Respondent is barred from associating with any member firm in any capacity.

Appearances

Elissa Meth Kestin, Senior Regional Counsel, New York, NY, for the
Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed a Complaint in this proceeding on January 6, 2010. Enforcement charged Respondent Nicholas Loskocinski (“Loskocinski”) with failing to respond to four requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.¹ Loskocinski did not answer or otherwise respond to the Complaint. Consequently, on March 29, 2010, Enforcement

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57.

000058145 2010

000058110 2011

filed a Motion for Entry of Default Decision, which was supported by the Declaration of Elissa Meth Kestin and 43 exhibits. Loskocinski did not respond to the motion.²

II. Jurisdiction

Loskocinski first became registered with FINRA as a General Securities Representative ("GSR") in August 2002.³ From October 30, 2002, through October 11, 2007, Loskocinski was registered with FINRA as a GSR through his association with National Securities Corporation ("NSC").⁴ Thereafter, he was registered with FINRA as a GSR through consecutive associations with four other FINRA member firms.⁵ His last registration terminated on April 7, 2008.⁶

Loskocinski has not been registered with a FINRA member firm since April 7, 2008. Nevertheless, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) FINRA requested information from Loskocinski when it retained jurisdiction over him, i.e., within two years following his last registration with a FINRA member firm; and (2) the Complaint was filed within two years after Loskocinski's failure to respond to FINRA's requests for information.⁷

III. Origin of the Complaint

In December 2008, NSC received complaints from two of Loskocinski's former customers.⁸ Both customers alleged that Loskocinski failed to follow instructions relating to stop loss orders in their accounts. The Complaint originated from a FINRA

² The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

³ Declaration of Elissa Meth Kestin ("Kestin Decl."), ¶ 5; CX-1.

⁴ Kestin Decl. ¶ 6; CX-1.

⁵ Kestin Decl. ¶ 7; CX-1.

⁶ Kestin Decl. ¶ 8; CX-1; CX-2.

⁷ 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").

⁸ Kestin Decl. ¶¶ 24-26; CX-28; CX-29.

investigation into the two customer complaints it received from NSC.⁹ The FINRA staff sent requests for information to Loskocinski in order to obtain information about the customer complaints.¹⁰

IV. Respondent's Default

On January 6, 2010, Enforcement sent the Complaint and Notice of Complaint to Loskocinski by first-class and certified mail at his residential address as recorded in the Central Registration Depository ("CRD Address").¹¹ By searching LEXIS, Enforcement located three other possible addresses for Loskocinski ("LEXIS Address No. 1," "LEXIS Address No. 2," and "LEXIS Address No. 3"). Enforcement also sent the Complaint and Notice of Complaint by first-class and certified mail to the three LEXIS Addresses.¹² The United States Postal Service ("USPS") returned the first-class mailings sent to LEXIS Addresses Nos. 2 and 3, and all four certified mailings, marked "unclaimed."¹³ The first-class mailings to the CRD Address and LEXIS Address No. 1 were not returned.¹⁴

On February 4, 2010, Enforcement sent the Complaint and Second Notice of Complaint to Loskocinski by first-class and certified mail at his CRD Address and the three LEXIS Addresses.¹⁵ Again, the USPS returned all four certified mailings.¹⁶ The first class mailings to LEXIS Addresses Nos. 2 and 3 were also returned.¹⁷ The first-class mailings to the CRD Address and LEXIS Address No. 1 were not returned.¹⁸

⁹ Kestin Decl. ¶¶ 21-23.

¹⁰ *Id.* ¶¶ 27, 30; CX-30; CX-32.

¹¹ Kestin Decl. ¶¶ 10-11; CX-3-5.

¹² Kestin Decl. ¶ 12; CX-3; CX-6.

¹³ Kestin Decl. ¶ 13; CX-7-12.

¹⁴ *Id.* ¶ 14.

¹⁵ Kestin Decl. ¶ 15; CX-13.

¹⁶ Kestin Decl. ¶ 16; CX-16-19.

¹⁷ Kestin Decl. ¶ 16; CX-14-15.

¹⁸ Kestin Decl. ¶ 17.

On March 2, 2010, Enforcement sent the Complaint and Third Notice of Complaint to Loskocinski by first-class and certified mail at his CRD Address and the three LEXIS Addresses.¹⁹ Enforcement also sent the Complaint and Third Notice of Complaint to an additional address that was on one of the returned mailings from the Second Notice of Complaint ("Alternative Address").²⁰ The USPS returned the certified mailings for the CRD Address and LEXIS Addresses Nos. 2 and 3 to Enforcement.²¹ The USPS also returned unsigned receipts for the certified mailings to LEXIS Address No. 1 and the Alternative Address, and the first-class mailings for LEXIS Addresses Nos. 2 and 3.²² The first-class mailings to the CRD Address, LEXIS Address No. 1, and the Alternative Address were not returned.²³

To date, Loskocinski has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint. By failing to answer the Complaint, Loskocinski defaulted.²⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

V. Violation

The Complaint alleges that Loskocinski violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to four requests for information. The requests

¹⁹ *Id.* ¶ 18.

²⁰ *Id.*; CX-15.

²¹ Kestin Decl. ¶ 19; CX-23-25.

²² Kestin Decl. ¶ 19; CX-21-22; CX-26-27.

²³ Kestin Decl. ¶ 20.

²⁴ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

were made pursuant to Procedural Rule 8210, and asked for information concerning two customer complaints from December 2008.²⁵

On February 24, 2009, FINRA Staff sent the first request for information by first-class mail to Loskocinski at his CRD Address.²⁶ The USPS returned the first-class mailing to FINRA marked, "Attempted-Not Known, Unable to Forward."²⁷

On March 11, 2009, FINRA Staff sent a second request for the same information to Loskocinski at his CRD Address and LEXIS Addresses Nos. 1 and 2 by first-class and certified mail.²⁸ The USPS returned all three certified mailings and the first-class mailing to LEXIS Address No. 2 to Enforcement.²⁹ The first-class mailings to the CRD Address and LEXIS Address No. 1 were not returned. Loskocinski did not respond to the March 11 request.³⁰

On March 27, 2009, FINRA Staff sent a third request for the same information to Loskocinski at his CRD Address and LEXIS Addresses Nos. 1 and 2 by first-class and certified mail.³¹ All three certified mailings were returned to FINRA, and none of the first-class mailings was returned.³² Loskocinski did not respond to the March 27 request.³³

After discovering another possible address on LEXIS, on August 25, 2009, FINRA Staff sent a fourth request for the same information to Loskocinski at his CRD

²⁵ Kestin Decl. ¶¶ 27, 30, 33, 36.

²⁶ *Id.*; CX-30.

²⁷ Kestin Decl. ¶ 28; CX-31.

²⁸ Kestin Decl. ¶ 30; CX-32.

²⁹ Kestin Decl. ¶ 31; CX-32-36.

³⁰ Kestin Decl. ¶ 32.

³¹ Kestin Decl. ¶ 33; CX-37.

³² Kestin Decl. ¶ 34; CX-38-40.

³³ Kestin Decl. ¶ 35.

Address and the three LEXIS Addresses by first-class and certified mail.³⁴ The USPS returned the certified mailing to the CRD Address and a signed certified return receipt card for the mailing sent to LEXIS Address No. 3.³⁵ The signature on the card was illegible.³⁶ The other two certified mailings were not returned.³⁷ None of the first-class mailings was returned.³⁸ Loskocinski did not respond to the August 25 request.³⁹

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Loskocinski failed to respond in any manner to the requests for information. He thereby violated Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.⁴⁰

VI. Sanction

Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁴¹ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.⁴² For these reasons, FINRA Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.⁴³ Loskocinski failed to respond in any manner to the information requests. There is no evidence of any mitigating facts that would justify a sanction of less than a bar.

³⁴ Kestin Decl. ¶ 36; CX-41.

³⁵ Kestin Decl. ¶ 37; CX-42; CX-43.

³⁶ Kestin Decl. ¶ 37; CX-42.

³⁷ Kestin Decl. ¶ 38.

³⁸ *Id.*

³⁹ Kestin Decl. ¶ 39.

⁴⁰ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, *19 n.28 (July 1, 2008) (citations omitted); *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

⁴¹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 1112, at *16 (Jan. 28, 2000).

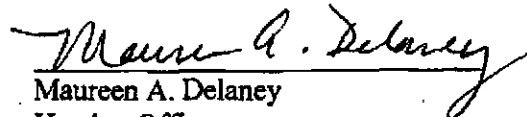
⁴² *Joseph P. Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁴³ *FINRA Sanction Guidelines* 35 (2007), www.finra.org/sanctionguidelines.

Accordingly, the Hearing Officer finds that Loskocinski should be barred from associating with any FINRA member in any capacity for violating Rules 8210 and 2010.

VII. Order

Nicholas Loskocinski is barred from associating with any member firm in any capacity for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Maureen A. Delaney
Hearing Officer

Copies to:

Nicholas Alexander Loskocinski (*via overnight carrier and first-class mail*)
Elissa Meth Kestin, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

Decision becoming FINRA's final disciplinary action in this proceeding.

Maureen A. Delaney
Hearing Officer

via overnight carrier

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**NICHOLAS LOSKOCINSKI (CRD No.
4519721),**

Respondent

**DISCIPLINARY PROCEEDING
No. 20090165124-01**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Nicholas Loskocinski failed to respond to requests for information sent to him pursuant to FINRA Rule 8210 by the staff of FINRA's District 10 office (the "Staff") on February 24, 2009, March 11, 2009, March 27, 2009 and August 25, 2009.
2. The requests sought information about two customer complaints received by member firm National Securities Corporation (BD No. 7569) ("NSC") in December 2008.
3. By not answering FINRA's requests for information about the complaints, Loskocinski violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Enclosure

ST. LOUIS

March 11, 2009

RESPONDENT AND JURISDICTION

4. Loskocinski was first registered with FINRA as a General Securities Representative on August 5, 2002 through an association with a member firm. His employment there ended on April 14, 2004.
5. From October 30, 2002 through September 17, 2007, Loskocinski was registered with FINRA as a GSR through an association with NSC.
6. From September 19, 2007 through December 3, 2007; January 8, 2008 through January 28, 2008; January 30, 2008 through March 6, 2008; and March 31, 2008 through April 4, 2008; Loskocinski was registered with FINRA as a GSR through consecutive associations with four other FINRA member firms.
7. Loskocinski was last registered at a FINRA member firm on April 4, 2008.
8. The events at issue in this Complaint occurred within two years after Loskocinski left his last member firm and relate to his association with NSC.
9. Upon information and belief, Loskocinski is not currently registered with any FINRA member firm. However, pursuant to Article V, Section 4 of the FINRA By-Laws he remains subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION

(Failing to Respond to a Request for Information (Rule 8210))

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. In December 2008, NSC received a complaint from customer DG. Loskocinski had serviced DG's account while Loskocinski was registered at NSC.

12. DG alleged that Loskocinski had failed to follow instructions relating to a stop loss order in DG's account that should have been executed in or around April 2007. On January 2, 2009, NSC amended Loskocinski's Uniform Notice for Securities Industries Registration (Form U5) to reflect DG's complaint.
13. NSC subsequently informed the Staff of another complaint from customer WY. In a December 2008 complaint, WY alleged that Loskocinski had failed to implement a verbal stop loss order in WY's account. WY alleged that the stop loss order should have been executed in or around January, May and/or June 2007.
14. On February 24, 2009, the Staff sent Loskocinski a letter requesting, pursuant to FINRA Rule 8210, that he provide information regarding the customer complaints. The letter requested a response by March 11, 2009. The Staff sent the February 24, 2009 letter via first class mail to Loskocinski's most recent residential address as reflected in the records of the Central Registration Depository: [REDACTED] ("CRD Residential Address"). On or about February 27, 2009, the United States Postal Service returned the February 24, 2009 letter to the Staff with the message "Return to Sender, Attempted -- Not Known Unable to Forward." The Staff did not receive a response to the February 24, 2009 letter.
15. On March 11, 2007, the Staff sent a second request to Loskocinski that contained a copy of the February 24, 2009 letter. The Staff sent the March 11, 2009 second request via certified mail and first class mail to Loskocinski's CRD Residential Address. To be thorough, the Staff also sent the March 11, 2009 second request to two other addresses for Loskocinski that the Staff obtained from LEXIS:
 - a. [REDACTED] ("Fort Hamilton Address"); and

b. [REDACTED] ("1119 Address").

16. The March 11, 2009 second request asked for a response by March 26, 2009.

17. The USPS returned to the Staff the following:

- a. each of the first class mailing receipts and the certified mail receipts for each mailing of the March 11, 2009 second request;
- b. the envelope containing the March 11, 2009 second request sent by certified mail to the 1119 Address; the envelope was marked "Unclaimed Unable to Forward;"
- c. the envelope containing the March 11, 2009 second request sent by certified mail to the Fort Hamilton Address; the envelope was marked "Unclaimed;"
- d. the envelope containing the March 11, 2009 second request sent via certified mail to the CRD address; the envelope was marked "Attempted -Not Known, Unable to Forward;" and
- e. the envelope containing the March 11, 2009 second request sent via first class mail to the 1119 Address; the envelope was marked "Not Deliverable as Addressed, Unable to Forward."

18. The Staff did not receive a response to the March 11, 2009 second request.

19. On March 27, 2009, the Staff sent a third letter to Loskocinski that enclosed the February 24, 2009 letter and the March 11, 2009 second request. The Staff sent the March 27, 2009 third request via first class and certified mail to the CRD, Fort Hamilton and 1119 Addresses. The March 27, 2009 third request asked for a response by April 13, 2009.

The USPS returned to the Staff the following:

- a. each of the first class mailing receipts and the certified mail receipts for each mailing of the March 27, 2009 third request;
 - b. the envelope containing the March 27, 2009 third request sent by certified mail to the Fort Hamilton and 1119 Addresses; the envelopes were marked "Unclaimed Unable to Forward;" and
 - c. the envelope containing the March 27, 2009 third request sent by certified mail to the CRD Address; the envelope noted only "Return to Sender" and some handwritten and printed dates.
20. The Staff did not receive a response to the March 27, 2009 third request.
21. After discovering another address on LEXIS that is not contained in Loskocinski's CRD records, the Staff, on August 25, 2009, sent a fourth and final request to the CRD Address and the newly discovered address: [REDACTED] (the "71st St. Address"). The August 25, 2009 fourth and final request contained a copy of the February 24, 2009 letter, the March 11, 2009 second request and the March 27, 2009 third request. The August 25, 2009 letter requested a response by September 4, 2009.
22. The USPS returned to the Staff the following:
 - a. A signed certified return receipt card from the certified mailing of the August 25, 2009 fourth and final request to the 71st St. Address. The signature on the card is illegible; and

- b. the envelope containing the August 25, 2009 fourth and final request sent by certified mail to the CRD Address; the envelope noted only "Return to Sender" and some handwritten and printed dates.
23. Loskocinski has not responded to any of the above requests for information.
- By reason of the foregoing Loskocinski 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.
- 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: January 6, 2010


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