

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LUIS ARGUELLES
(CRD No.4335211),

Respondent.

Disciplinary Proceeding
No. 2009016608201

Hearing Officer -- RSH

DEFAULT DECISION

April 6, 2010

For threatening and unethical conduct, in violation of IM-2110-5 and Conduct Rule 2110, and for failure to appear for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2010, the Respondent was barred from associating in any capacity with any FINRA member.

Appearances

Michael A. Gross, Senior Regional Counsel, Boca Raton, FL, for the FINRA Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Luis Arguelles after Arguelles' member firm filed an amendment to his Uniform Termination Notice for Industry Registration ("Form U5"), indicating that the firm's parent company was investigating Arguelles for unauthorized trading in its proprietary account.

In its Complaint, Enforcement charged Arguelles with violating Conduct Rule 2110 and Membership and Registration Rule Interpretive Material ("IM")-2110-5 by

engaging in threatening and unethical conduct and with violating Procedural Rule 8210 and Conduct Rule 2010 by failing to appear for investigative testimony.¹

Enforcement filed the Complaint with the Office of Hearing Officers on November 3, 2009. Arguelles did not answer or otherwise respond to the Complaint. Consequently, on February 16, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Michael A. Gross and three exhibits. Arguelles did not reply to the motion.²

II. Jurisdiction

In August 2001, Arguelles became registered with FINRA as a General Securities Representative ("Series 7") with member firm Banorte Securities International, Ltd. ("Banorte"). On October 17, 2007, Banorte filed a Form U5 for Arguelles, terminating his association with the firm as of that date.³ Arguelles has not been associated with a FINRA member firm since then.⁴ On November 26, 2008, Banorte filed an amended Form U5 for Arguelles, disclosing that he had been the subject of an internal investigation by Banorte's parent company for possibly making unauthorized trades in the parent company's proprietary account.⁵

Although Arguelles is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4

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. In that process, Conduct Rule 2110 was renumbered to 2010. The two rules are substantially identical. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules.

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 Banorte's Chief Compliance Officer reported to Enforcement that because of a typographical error, the Form U5 incorrectly lists Arguelles' termination date as 2006. Gross Decl., ¶ 8.

⁴ Enforcement Exhibit ("CX")-1.

⁵ CX-1; Gross Decl., ¶ 9.

of FINRA's By-Laws, because the Complaint was filed within two years following his firm's filing of an amended Form U5 disclosing Arguelles' possible misconduct.⁶

III. Respondent's Default

On November 3, 2009, Enforcement sent the Notice of Complaint and Complaint to Arguelles by first-class mail and FedEx at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address") and at a new address provided to Enforcement by Banorte ("New Address").⁷ The first-class mailings were not returned to Enforcement. The FedEx mailing to the CRD Address was not delivered and FedEx's records show that the "recipient moved." FedEx records for the mailing sent to the New Address show that the mailing was "refused by recipient."⁸

On December 2, 2009, Enforcement sent the Second Notice of Complaint and Complaint to Arguelles by first-class mail and FedEx to his CRD Address and his New Address. The first-class mailings were not returned. FedEx records show that the mailing sent to Arguelles' CRD Address was not delivered because the "recipient moved." The FedEx mailing sent to Arguelles' New Address was returned to Enforcement."⁹ FINRA does not have actual knowledge of a more current address for Arguelles than the New Address.¹⁰ The Hearing Officer finds that FINRA served Arguelles in accordance with Rule 9134.

To date, Arguelles has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.¹¹ By failing to answer the Complaint, Arguelles

⁶ 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").

⁷ Gross Decl., fn. 5.

⁸ CX-2; Gross Decl., ¶¶ 17-20.

⁹ CX-3; Gross Decl., ¶¶ 22-25.

¹⁰ Gross Decl., ¶ 27.

¹¹ Gross Decl., ¶ 26.

defaulted.¹² 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.

IV. Violations

A. Threatening and Unethical Conduct

The Complaint's First Cause of Action alleges that from approximately September 2006, through October 2007, Arguelles was a trader for Banorte in Mexico. From August 5, 1996, through May 7, 2007, PJ was associated with FINRA member firm Beta. In 2006 and 2007, Arguelles conducted proprietary trading through an account at Beta with PJ. In September 2006, Arguelles threatened PJ that he was going to take Banorte's lucrative business elsewhere unless PJ gave him money. Between approximately January and April 2007, and as a result of Arguelles' threat, PJ paid approximately \$18,000 to Arguelles and Arguelles' wife so that Arguelles would continue to conduct Banorte's securities transactions through its account at Beta. PJ made the payments by providing Arguelles with cash and by depositing money into Arguelles' wife's bank account at Bank of America. The Complaint alleges that Arguelles' conduct violated Conduct Rule 2110 and IM-2110-5.

FINRA staff records include: CRD records showing that PJ was associated with Beta when Arguelles was registered at Banorte; PJ's investigative testimony about making the payments; a copy of an email from Arguelles to PJ wherein Arguelles gave

¹² *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (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) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

his wife's Bank of America account number to PJ; and copies of deposit slips reflecting deposits to Arguelles' wife's Bank of America account.¹³

Conduct Rule 2110 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade." IM-2110-5 provided¹⁴ that "[i]t is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member...to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member."

The facts alleged in the Complaint establish that Arguelles threatened PJ and engaged in unethical conduct, and thereby violated Conduct Rule 2110 and IM-2110-5.

B. Failure to Provide Investigative Testimony

The Complaint's Second Cause of Action alleges that Arguelles violated Procedural Rule 8210 and Conduct Rule 2010 by *failing to appear for two written requests to appear for testimony, made pursuant to Procedural Rule 8210, for information concerning the payments from PJ.*

On June 29, 2009, FINRA Staff sent the first request for testimony by first-class mail and FedEx to Arguelles at his CRD Address and New Address. The first-class mailings were not returned to Enforcement. FedEx records show that the other mailings were not delivered because the "recipient moved," and the mailings were undeliverable. Arguelles did not respond to the June 29 request for testimony and did not appear at the testimony scheduled for July 16, 2009.¹⁵

¹³ Gross Decl., ¶ 14.

¹⁴ IM-2110-5 has been superseded by FINRA Rule 5240, which is substantially identical.

¹⁵ Gross Decl., ¶¶ 24-27.

On July 17, 2009, FINRA Staff sent a second request for testimony to Arguelles at his CRD Address and New Address by first-class mail and FedEx. The first-class mailings were not returned. The FedEx mailings were not delivered because of a “wrong address,” despite having been addressed exactly as the other mailings had been. Arguelles did not respond to the July 17 request or appear at the testimony scheduled for August 6, 2009.¹⁶

The facts alleged in the Complaint establish that Arguelles failed to respond in any manner to two requests for testimony, thereby violating Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.¹⁷

V. Sanctions

A. Threatening and Unethical Conduct

For violating Conduct Rule 2110 and IM-2110-5 by engaging in the threatening and unethical conduct described above, the *FINRA Sanction Guidelines* (“*Guidelines*”) recommend a suspension of 10 business days to two years, and for egregious violations, direct adjudicators to consider a bar.¹⁸ This is an egregious case. Arguelles engaged in purposefully intimidating conduct for personal monetary gain. For this conduct, Arguelles will be barred from association in any capacity with any member.

B. Failure to Appear to Testify

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA’s oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹⁹ When an individual fails to provide information or testimony,

¹⁶ Gross Decl., ¶¶ 28-31.

¹⁷ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

¹⁸ *FINRA Sanction Guidelines* 50 (2007), www.finra.org/sanctionguidelines.

¹⁹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

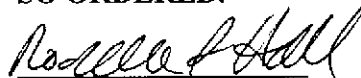
FINRA's ability to perform its regulatory functions is subverted.²⁰ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for testimony issued pursuant to Rule 8210.²¹ Arguelles failed to appear for scheduled testimony. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

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

VI. Order

For threatening a person associated with a FINRA member, in violation of Conduct Rule 2110 and IM-2110-5, and for failing to appear for investigative testimony, in violation of Procedural Rule 8210 and Conduct Rule 2010, Arguelles is barred from associating in any capacity with any FINRA member. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

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

²⁰ Joseph P. Hannan, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²¹ FINRA Sanction Guidelines 35 (2007).

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OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

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vs.

LUIS ARGUELLES (CRD No. 4335211),

Respondent.

Disciplinary Proceeding
No. 2009016608201

Hearing Officer – TBD

COMPLAINT

The Department of Enforcement alleges:

Summary

1. In September 2006, while associated with FINRA member Banorte Securities International, Ltd., respondent Luis Arguelles threatened PJ, a former associated person of FINRA member Beta Capital Management, L.P., that he would no longer conduct Banorte's lucrative business through its account at Beta with PJ, unless PJ gave him money. Between approximately January and April 2007, while associated with Banorte, Arguelles accepted, both directly and indirectly, payments totaling approximately \$18,000 from PJ, as a condition to Arguelles continuing to conduct Banorte's securities transactions through its account at Beta with PJ. As a result of the foregoing, Arguelles violated IM-2110-5 and NASD Conduct Rule 2110.

2. In addition, Arguelles failed to appear for investigative testimony on two occasions in 2009, in violation of FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

3. In August 2001, Arguelles registered with FINRA as a General Securities Representative (Series 7 license). He currently holds Series 3, 4, 7, and 63 licenses.

4. Between March 1, 1996 and October 17, 2007, Arguelles was associated with FINRA member Banorte (f/k/a Afin Securities International, Ltd.).

5. On January 9, 2001, Banorte filed a Form U4 for Arguelles, listing his employment date as of March 1, 1996.

6. On October 17, 2007, Banorte filed a Form U5 for Arguelles, terminating his association with the firm as of that date. Due to a typographical error, the Form U5 incorrectly lists Arguelles' termination date as October 17, 2006.

7. On November 26, 2007, Banorte filed an amended Form U5 for Arguelles, disclosing that he had been the subject of an internal investigation by Banorte's parent company for possibly making unauthorized trades in the parent company's proprietary account in August 2007.

8. Arguelles 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. Jurisdiction over Arguelles expires on November 25, 2009, two years after Banorte filed the amended Form U5 for him.

**FIRST CAUSE OF ACTION
THREATENING AND UNETHICAL CONDUCT
(IM-2110-5 and NASD Conduct Rule 2110)**

9. The Department realleges and incorporates Paragraphs 1 through 8 by reference.
10. NASD Conduct Rule 2110 (n/k/a FINRA Rule 2010) mandates that persons associated with a member “in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade.”
11. IM-2110-5, which has been superseded by FINRA Rule 5240, provided that “[i]t is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member.”
12. From at least September 2006 through October 2007, Arguelles was a trader for FINRA member Banorte in Mexico.
13. From August 5, 1996 through May 7, 2007, PJ was associated with FINRA member Beta.
14. In 2006 and 2007, Arguelles conducted proprietary trading through an account at Beta with PJ.
15. In September 2006, Arguelles threatened PJ that he was going to take Banorte’s lucrative business elsewhere unless PJ gave him money.
16. Between approximately January and April 2007, and as a result of Arguelles’ threat, PJ paid approximately \$18,000 to Arguelles and Arguelles’ wife so that Arguelles would continue to conduct Banorte’s securities transactions through its account at Beta.

17. PJ made the payments by providing Arguelles with cash and by depositing money into Arguelles' wife's bank account with Bank of America.

18. As a result of the foregoing, Arguelles violated IM-2110-5 and NASD Conduct Rule 2110.

**SECOND CAUSE OF ACTION
FAILURE TO PROVIDE INVESTIGATIVE TESTIMONY
(FINRA Rules 8210 and 2010)**

Response to Request for Documents and Information

19. The Department realleges and incorporates Paragraphs 1 through 18 by reference.

20. In a September 30, 2008 letter, Arguelles provided a written response to an NASD Procedural Rule 8210 request for documents and information issued by the Florida District Office staff ("Staff"). The Staff issued that request to Arguelles in connection with its investigation of the foregoing kickback arrangement.

Communications with Arguelles Regarding His Investigative Testimony

21. In connection with its investigation of the foregoing kickback arrangement, the Staff also sought to take Arguelles' testimony.

22. In conversations with Arguelles regarding the scheduling of his testimony, Arguelles, who lives in Mexico, told the Staff that he did not have the financial wherewithal to travel to Florida to provide testimony.

23. In order to verify Arguelles' oral representation concerning his financial condition, on December 1, 2008, the Staff sent a letter to Arguelles wherein it requested that he complete a Statement of Financial Condition and that he provide supporting documents concerning his financial condition. Arguelles failed to provide the requested documents and information or to otherwise respond to the request by the Staff's December 15, 2008 deadline.

The Staff sent additional letters to Arguelles wherein it requested that he provide the previously requested documents and information concerning his financial condition. Arguelles has failed to provide the requested documents and information or to otherwise respond to the requests.

June 29th Request

24. In connection with its investigation of the foregoing kickback arrangement, on June 29, 2009, pursuant to FINRA Rule 8210, the Staff sent a letter to Arguelles requesting that he appear for investigative testimony on July 16, 2009 at the Florida District Office ("June 29th Request").

25. The Staff sent the June 29th Request to Arguelles at the following addresses by first class mail:

- 
- 
-  and
- 

The first address is Arguelles' residential address reflected in the CRD ("CRD Address"). The second address is Arguelles' CRD Address plus a zip code provided by the Staff ("CRD Address Plus Zip Code"). The third address is an address for Arguelles that Banorte provided to the Staff ("New Address"). The fourth address is Arguelles' New Address plus a zip code provided by the Staff ("New Address Plus Zip Code"). The Staff is unaware of a more current address for

Arguelles than the foregoing addresses. The United States Postal Service ("USPS") has not returned any of the first class mailings of the June 29th Request to the Florida District Office.

26. The Staff also sent the June 29th Request to Arguelles at his CRD Address Plus Zip Code and New Address Plus Zip Code by Federal Express. The Staff did not send the June 29th Request to addresses without a zip code because Federal Express requires a zip code in order to send a letter or package. Federal Express' website indicates that the June 29th Request sent to Arguelles at his CRD Address Plus Zip Code is at a Federal Express facility in Mexico and is in "Delivery exception" status, presumably because of an "Incorrect address - Recipient moved." An e-mail that Federal Express sent to the Staff regarding the status of the June 29th Request sent to Arguelles at his New Address Plus Zip Code indicates that the mailing is at a Federal Express facility in Mexico and is in "Delivery exception" status.

27. Arguelles failed to appear for testimony on July 16, 2009.

July 17th Request

28. On July 17, 2009, pursuant to FINRA Rule 8210, the Staff sent another letter to Arguelles requesting that he appear for investigative testimony on August 6, 2009 at the Florida District Office ("July 17th Request"). The Staff sent the July 17th Request to Arguelles at the four addresses identified above by first class mail. The Staff also sent the July 17th Request to Arguelles at his CRD Address Plus Zip Code and New Address Plus Zip Code by Federal Express.

29. The USPS has not returned any of the first class mailings of the July 17th Request to the Florida District Office.

30. Federal Express returned the July 17th Request sent to Arguelles at his CRD Address Plus Zip Code to the Florida District Office marked "WRG ADDR." Federal Express'

website indicates that the July 17th Request sent to Arguelles at his New Address Plus Zip Code is at a Federal Express facility in Mexico and is in "Delivery exception" status, presumably because the mailing was "Refused by recipient."

31. Arguelles failed to appear for testimony on August 6, 2009.

32. By failing to appear for investigative testimony on July 16, 2009 and August 6, 2009, Arguelles violated FINRA Rules 8210 and 2010.

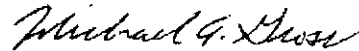
Relief Requested

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 Arguelles 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 3, 2009



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