

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GARTH A. MATHER
(CRD No. 2986605),

Respondent.

Disciplinary Proceeding
No. 2009016709701

Hearing Officer – LBB

DEFAULT DECISION

January 8, 2010

For Respondent's failure appear at on-the-record interviews, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

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

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on August 12, 2009, asserting one cause of action against Respondent Garth A. Mather ("Respondent"), for failure to appear and testify at on-the-record interviews, in violation of FINRA Procedural Rule 8210 and FINRA 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 November 9, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to

000005011 2010

Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

On August 12, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class regular and certified mail, return receipt requested, at his current residential address, as listed in the Central Registration Depository ("CRD"). The United States Postal Service returned the certified mail receipt to FINRA's office with an illegible signature. Gross Decl. ¶¶ 14, 15; CX-2. The Postal Service has not returned the first-class mailing. Gross Decl. ¶ 16. On September 10, 2009, Enforcement served Respondent with the Complaint and Second Notice of Complaint, by first-class regular and certified mail, at his CRD address. The Postal Service returned the certified mailing, stamped "Unclaimed." The Postal Service has not returned the first-class mailing. Gross Decl. ¶¶ 18 – 20; 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.

II. Jurisdiction

Respondent was first registered with FINRA in April 1998. Gross Decl. ¶ 5; CX-1. He was registered with member firm Perrot, Mather & Gilday, Inc. ("PMGI") from 2002 until February 25, 2009, when PMGI filed a Form U5 for Respondent, notifying FINRA that Respondent's employment with the firm had been terminated. Gross Decl. ¶¶ 7, 8; CX-1.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion. References to the Declaration Supporting Motion for Entry of Default Decision, signed by Department of Enforcement attorney Michael A. Gross, are cited as "Gross Decl. ¶____." The exhibits attached to the Declaration are cited as "CX-____."

Although Respondent has not been registered with any FINRA member firm since the termination of his employment with PMGI, 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 termination of his registration with a member firm, and it charges him with failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

III. Respondent Violated Procedural Rule 8210 and Conduct Rule 2010 by Failing to Appear at On-the-Record Interviews

FINRA Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The Complaint alleges that on February 11, 2009, FINRA staff sent a request to Respondent's counsel, requesting Respondent to appear and testify on February 19, 2009, at an on-the-record interview ("OTR") in connection with an investigation of allegations of securities fraud, sales practice violations, and membership agreement violations. Respondent's counsel told FINRA staff that Respondent did not intend to appear and testify on February 19, 2009. Respondent failed to appear on that date.

On February 24, 2009, FINRA staff sent a request both to Respondent and his counsel, directing Respondent to appear and testify at an OTR on March 5, 2009. At Respondent's request, the testimony was twice postponed, and subsequent Rule 8210 requests were issued to accommodate Respondent's scheduling requests. The testimony was rescheduled for April 30, 2009, and Respondent again failed to appear.

After determining that Respondent was no longer represented by counsel, FINRA staff issued a Rule 8210 request directly to Respondent but not to his former counsel, directing Respondent to appear and testify on July 7, 2009. Respondent again did not appear.

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

IV. Sanctions

For failing to respond in any manner to requests for information, the Sanction Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35 (2007). Where mitigation exists, or the person did not respond in a timely manner, the Guidelines recommend a suspension for up to two years. The Guidelines recommend a fine of \$2,500 to \$25,000 for failure to respond in a timely manner, and \$10,000 to \$25,000 for failure to respond completely. The principal considerations in assessing sanctions are the nature of the information requested and whether the requested information has been provided.

There is no evidence of mitigation. Given the nature of the issues under investigation, the nature of the information sought in the interviews would have been extremely important, and is an aggravating factor. A bar is the appropriate sanction.

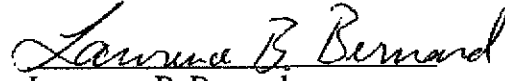
V. Conclusion

For Respondent's failure to appear at on-the-record interviews, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

² A violation of Rule 8210 is also a violation of Rule 2010. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001). Effective December 15, 2008, FINRA Conduct Rule 2010 replaced NASD Conduct Rule 2110, without material change. Regulatory Notice 08-57.

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

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Garth A. Mather (*via overnight courier and first-class mail*)
Michael A. Gross, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

vs.

GARTH A. MATHER (CRD No. 2986605),

Respondent.

Disciplinary Proceeding
No. 2009016709701

Hearing Officer TBD

COMPLAINT

The Department of Enforcement alleges:

Summary

1. Garth A. Mather failed to appear for investigative testimony on three separate occasions, in violation of FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

2. In April 1998, Mather became registered with FINRA as a General Securities Representative (Series 7). Later that month, he acquired a Series 63 license.

3. Between October 1997 and February 2009, Mather was associated with several FINRA members.

4. On January 11, 2002, Perrot, Mather & Gilday, Inc. (f/k/a Income Achievers, Inc.) ("PMGI") filed a Form U4 for Mather commencing his association with the firm as of that date.

5. On February 25, 2009, PMGI filed a Form U5 for Mather terminating his association with the firm as of February 11, 2009.

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

**Cause of Action
Failure to Appear for Investigative Testimony
Violations of FINRA Rules 8210 and 2010**

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

February 11th Request

8. In connection with an investigation of allegations of securities fraud, sales-practice violations, and membership agreement violations occurring at PMGI, pursuant to FINRA Rule 8210, on February 11, 2009, the FINRA Florida District Office staff ("Staff") sent a letter to Mather's counsel, Charles Pearlman, Esq., requesting that Mather appear for investigative testimony on February 19, 2009 at the Florida District Office ("February 11th Request").

9. The Staff sent the February 11th Request to Pearlman because prior to February 11, 2009, Mather had told the Staff that Pearlman represents him in connection with the Staff's investigation.

10. The Staff sent the February 11th Request to Pearlman at his office by certified mail, first class mail, and facsimile. The United States Postal Service ("USPS") returned the certified mail receipt for the February 11th Request to the Florida District Office. The signed receipt reflects that the February 11th Request was received by Pearlman's office on February 17, 2009. The USPS has not returned the February 11th Request sent by first class mail to the Florida District Office. The February 11th Request was successfully faxed to Pearlman's office on February 11, 2009 at approximately 7:00 pm, as evidenced by a fax transmission sheet.

11. Pearlman informed the Staff that Mather did not intend to appear for testimony on February 19, 2009.

12. Mather failed to appear for testimony on February 19, 2009.

February 24th Request

13. On February 24, 2009, pursuant to FINRA Rule 8210, the Staff sent a letter to Mather requesting that he appear for investigative testimony on March 5, 2009 at the Florida District Office ("February 24th Request").

14. The Staff sent the February 24th Request to Mather, instead of Pearlman, because Pearlman had yet to respond to the Staff's request that he acknowledge, in writing, that he represented Mather in connection with the Staff's investigation.

15. However, the Staff also sent a copy of the February 24th Request to Pearlman by first class mail and facsimile.

16. In February 25, 2009 and March 6, 2009 letters to the Staff, Pearlman acknowledged that he represented Mather in connection with the Staff's investigation.

17. In a February 25, 2009 letter to the Staff, Pearlman represented that Mather intended to appear for testimony on March 5, 2009 and that he would represent Mather at the testimony.

18. On March 4, 2009, Pearlman informed the Staff that Mather was unable to appear for testimony on the following day, but that Mather would appear for testimony on a later date.

19. Based on Pearlman's representation, the Staff agreed to reschedule Mather's testimony.

March 19th Request

20. On March 19, 2009, pursuant to FINRA Rule 8210, the Staff sent a letter to Mather requesting that he appear for investigative testimony on March 26, 2009 at the Florida District Office ("March 19th Request").

21. The Staff sent the March 19th Request to Mather, along with a copy of the request to Pearlman on March 19, 2009 by first class mail and facsimile.

22. On March 24, 2009, the Staff received a voicemail message from Mather wherein he stated that: (a) he was out of the country for a family emergency; (b) he would return on April 13, 2009; and (c) he would appear for testimony after that date.

23. Relying on Mather's representations, the Staff once again agreed to reschedule Mather's testimony.

April 17th Request

24. In a March 26, 2009 conversation with Pearlman, the Staff requested that Pearlman provide dates for Mather's testimony.

25. After Pearlman failed to provide dates for Mather's testimony, on April 7, 2009, the Staff sent an e-mail to Pearlman advising him that if he did not provide dates for Mather's testimony by April 13, 2009, then the Staff would unilaterally schedule Mather's testimony.

26. Pearlman did not provide the Staff with any dates.

27. On April 17, 2009, pursuant to FINRA Rule 8210, the Staff sent a letter to Pearlman requesting that Mather appear for investigative testimony on April 30, 2009 at the Florida District Office ("April 17th Request").

28. The Staff sent the April 17th Request to Pearlman at his office by certified mail, first class mail, and facsimile. The USPS returned the certified mail receipt for the April 17th

Request to the Florida District Office. The receipt reflects that the April 17th Request was received by Pearlman's office on April 21, 2009 and signed for by "Sammy Solon." The USPS has not returned the April 17th Request sent by first class mail to the Florida District Office. The April 17th Request was successfully faxed to Pearlman's office on April 17, 2009 at approximately 5:00 pm, as evidenced by a fax transmission sheet.

29. Mather failed to appear for testimony on April 30, 2009.

June 16th Request

30. Because Mather failed to appear for testimony on April 30, 2009, the Staff had concerns about whether Pearlman still represented him. Therefore, on May 28, 2009, the Staff sent a letter to Pearlman: (a) requesting that he confirm, in writing, that he still represented Mather; and (b) advising him that if he did not provide the requested written representation by June 3, 2009, then the Staff would assume that he no longer represents Mather.

31. Pearlman did not responded to the foregoing letter by June 3, 2009 nor has he responded since then.

32. On June 16, 2009, pursuant to FINRA Rule 8210, the Staff sent a letter to Mather requesting that he appear for investigative testimony on July 7, 2009 at the Florida District Office ("June 16th Request").

33. The Staff sent the June 16th Request to Mather at his residential address reflected in the CRD ("CRD Address") by certified and first class mail. The USPS returned the certified mail receipt for the June 16th Request to the Florida District Office. The receipt reflects that the June 16th Request was received by and signed for by Mather on June 22, 2009. The USPS has not returned the June 16th Request sent by first class mail to the Florida District Office.

34. The Staff is unaware of an address for Mather more current than his CRD Address.

35. On June 26, 2009, the Staff received a voicemail message from Mather wherein he requested that his testimony be rescheduled.

36. The Staff did not agree to reschedule his testimony for a sixth date.

37. Mather failed to appear for testimony on July 7, 2009.

38. By failing to appear for and to provide testimony on February 19, 2009, April 30, 2009, and July 7, 2009, Mather violated FINRA Rules 8210 and 2010.

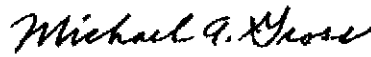
Relief Requested

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 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

Dated: August 12, 2009



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