

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALLAN C. ENGLISH
(CRD No. 861313),

Respondent.

Disciplinary Proceeding
No. 20090168787-01

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

December 23, 2010

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

Appearances

Mark A. Graves, Esq., for the Department of Enforcement.

No appearance by or on behalf of Allan C. English.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on August 30, 2010. The Complaint charges Respondent Allan C. English (“English”) with failing to provide information and documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. English did not answer the Complaint.

On November 17, 2010, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the declaration of Mark Graves (“Graves Decl.”) and four exhibits.¹ English did not respond to the Default Motion.

II. Procedural History

On August 30, 2010, Enforcement served the Complaint and the First Notice of Complaint on English by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”) by first-class certified mail, return receipt requested.² The mailing was returned to Enforcement because it was unclaimed. English did not answer or other respond to the Complaint.

On September 28, 2010, Enforcement served a Second Notice of Complaint on English by mailing it to his CRD address by first-class certified mail, return receipt requested.³ The United States Postal Service was not able to deliver the mailing to English and therefore returned the mailing to Enforcement.⁴ To date, English has not answered or otherwise responded to the Complaint.

English defaulted by failing to file an answer or otherwise respond to the Complaint in accordance with FINRA Rule 9215. Accordingly, the Hearing Officer found English in default and deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

¹ Enforcement’s exhibits are labeled CX-1 through CX-4.

² Graves Decl. ¶ 8.

³ Graves Decl. ¶ 9.

⁴ *Id.*

III. Findings of Fact and Conclusions of Law

A. English's Background and Employment in the Securities Industry

English first entered the securities industry in 1979.⁵ In August 2007, he associated with Portfolio Advisors Alliance, Inc., ("Portfolio Advisors"), a FINRA registered firm. English was registered with FINRA through Portfolio Advisors as a General Securities Representative from August 14, 2007, until September 12, 2008.⁶ English has not been registered with FINRA or associated with a FINRA member firm since September 12, 2008.⁷

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 September 12, 2008, the date FINRA terminated English's registration, and (2) the Complaint charges him with failing to respond to Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.⁸

C. Failure to Provide Information and Documents

In January 2009, FINRA received a written complaint from FF, one of English's former customers. Customer FF alleged that in January 2008 English misappropriated \$50,000 that he had given English for investment in XS, Inc., a company for which English served as the chief executive officer. Customer FF alleged that he lost his entire investment.⁹

FINRA opened an investigation into Customer FF's allegations. In connection with that investigation, FINRA staff sent a series of information requests to English and his attorney.

⁵ Graves Decl. ¶ 5.

⁶ CX-1, at 1.

⁷ Graves Decl. ¶ 5.

⁸ 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").

⁹ Graves Decl. ¶ 11; Compl. ¶ 5.

Although the evidence reflects that English received the requests, he did not provide all of the requested information.

According to the Complaint and the evidence Enforcement submitted in support of its Default Motion, FINRA staff made the following efforts to obtain information from English about Customer FF's allegations:

- 1) On April 8, 2009, FINRA staff sent a letter to English requesting information about FF's investment in XS, Inc. (the "First Request"). The staff requested the information pursuant to FINRA Rule 8210. The staff sent the First Request by certified mail, return receipt requested to English's CRD Address. On or about April 14, 2009, FINRA staff received the certified mail delivery receipt signed by "Patricia English." English did not provide the requested information by the specified due date.¹⁰
- 2) On April 29, 2009, FINRA staff sent a second request for information to English at his CRD Address (the "Second Request") pursuant to FINRA Rule 8210. Once again, FINRA staff received the certified mail delivery receipt signed by "Patricia English." Nonetheless, English did not provide the requested information.¹¹
- 3) On April 29, 2009, FINRA staff received a letter from an attorney, SB, stating that he represented English. SB advised that he would not be able to respond to FINRA's information request for another week. He also provided FINRA staff with English's current residential address.¹²

¹⁰ Compl. ¶¶ 6, 8.

¹¹ *Id.* ¶¶ 9, 11.

¹² *Id.* ¶ 12.

- 4) SB did not provide any of the requested information or documents. Thus, on June 4, 2009, FINRA staff sent English a third request for information (the “Third Request”) pursuant to FINRA Rule 8210. The Third Request was addressed to English’s attorney and sent by certified mail, return receipt requested. English did not respond to the Third Request.¹³
- 5) On July 20, 2009, FINRA staff sent a fourth request for information to English (the Fourth Request”) pursuant to FINRA Rule 8210. The Fourth Request was addressed to English’s attorney.¹⁴
- 6) On August 3, 2009, FINRA staff received a facsimile from English that responded to some, but not all, of the information and documents requested in the Fourth Request. The information English provided raised additional areas of inquiry.¹⁵
- 7) On September 16, 2009, FINRA staff sent a fifth request for information to English addressed to his attorney (the “Fifth Request”) pursuant to FINRA Rule 8210. The Fifth Request was sent by first-class mail and by facsimile.¹⁶
- 8) On September 17, 2009, FINRA staff received by facsimile a letter from SB acknowledging receipt of the Fifth Request. In the letter, SB objected to the September 30, 2009, deadline and represented that he would provide the staff with a “more realistic deadline” in the near future.¹⁷

¹³ Compl. ¶ 13.

¹⁴ *Id.* ¶ 15.

¹⁵ *Id.* ¶ 17.

¹⁶ *Id.* ¶ 18.

¹⁷ *Id.* ¶ 20.

- 9) On October 1, 2009, FINRA staff received a letter from SB by facsimile in which he stated that English would respond to the Fifth Request before the end of October 2009. FINRA staff did not receive a response by October 31, 2009,¹⁸
- 10) On November 4, 2009, FINRA staff sent a sixth request for information to English (the “Sixth Request”) pursuant to Rule 8210. The Sixth Request was addressed to English’s attorney and sent by certified mail, return receipt requested, and by facsimile. FINRA staff did not receive a response to the Sixth Request by the due date.¹⁹
- 11) On November 12, 2009, FINRA staff received an e-mail from SB, which provided a partial response to the Sixth Request. In addition, SB stated that English had recently had a heart attack and was still “working on some of his responses and would follow up as soon as he is capable.”²⁰
- 12) On December 3, 2009, FINRA staff sent a seventh request for information pursuant to Rule 8210 to English addressed to his attorney (the “Seventh Request”). On January 8, 2010, FINRA staff received an e-mail from SB, which provided a partial response to the Seventh Request. English never provided the balance of the information and documents FINRA staff requested.²¹

The facts alleged in the Complaint and the evidence submitted in support of the Default Motion establish that English violated FINRA Rules 8210 and 2010 by failing to provide all of

¹⁸ Compl. ¶ 22.

¹⁹ *Id.* ¶ 23.

²⁰ *Id.* ¶ 26.

²¹ *Id.* ¶¶ 27, 30.

the information FINRA staff requested in connection with the investigation of Customer FF's allegations.

IV. Sanctions

The FINRA Sanction Guidelines ("Sanction Guidelines") provide that a bar should be standard when there is a complete failure to respond.²² The Hearing Officer finds that a bar is the appropriate sanction in this case.

The Sanction Guidelines list two principal considerations for adjudicators to assess in determining appropriate sanctions for failure to respond truthfully, completely, or timely to requests for information made pursuant to Rule 8210. First, adjudicators are to consider the nature of the information requested. Second, adjudicators are to consider "[w]hether the requested information has been provided and, if so, [to] consider the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response."²³

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given all of the facts and circumstances of this case. The documents and information that the staff sought were important. Customer FF had lodged a written complaint, alleging that English had converted \$50,000 that FF had given to English for investment in XS, Inc. Second, the evidence shows that English received actual notice of many of the information requests and that he was represented by counsel. Finally, the evidence shows that FINRA staff made repeated attempts to obtain the needed information over a period of nearly eight months.

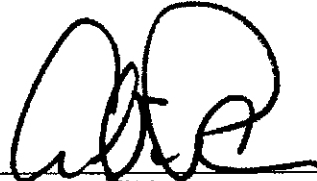
²² FINRA Sanction Guidelines 35 (2007), www.finra.org/sanctionguidelines.

²³ *Id.*

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 English from associating with any FINRA member firm in all capacities.

V. Order

English is barred from associating with any member firm in any capacity for failing to provide complete and timely responses to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010, as alleged in the Complaint. The bar 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:

Allan C. English (*via overnight courier and first-class mail*)
Mark A. Graves, 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.

Allan C. English
(CRD No. 861313),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090168787

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Allan C. English failed to fully provide information and documentation requested by staff pursuant to FINRA Rule 8210 on multiple occasions during 2009.

RESPONDENT AND JURISDICTION

2. Allan Christopher English entered the securities industry in or around January 1979 as an associated person of a member of FINRA. He became registered as a General Securities Representative in January 1979. From on or about August 3, 2007, until on or about September 5, 2008, he was registered with FINRA member firm Portfolio Advisors Alliance, Incorporated (PAA) as a General Securities Representative.
3. Respondent English has not registered or associated with another member firm since he terminated his association and registration with PAA on or about September 5,

2008. FINRA, therefore, has jurisdiction to issue this Complaint until September 3, 2010, pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION
(FAILURE TO FULLY AND COMPLETELY RESPOND TO RULE 8210 REQUESTS FOR
INFORMATION (FINRA RULE 8210))

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. Staff commenced an investigation of English following a complaint made by FF alleging that, in or about January 2008, while English was associated with PAA, FF invested \$50,000 with English in XS, Inc., a company of which English was the chief executive officer and in which he was an approximately 20% stock holder outside the scope of his association with PAA. FF alleged he subsequently lost his entire investment in XS, Inc.
6. FINRA staff sent a letter to English on or about April 8, 2009 (First Letter), requesting certain information about his involvement in FF's investment in XS, Inc. The staff requested the information pursuant to FINRA Rule 8210. The First Letter was sent by certified mail, return receipt requested, and by regular first class mail to English's residential address as listed in the Central Registration Depository (CRD):
[REDACTED] (CRD Address). The First Letter required English to provide the requested information on or before April 22, 2009.
7. On or about April 14, 2009, staff received the certified mail delivery receipt evidencing that "Patricia English" accepted delivery of the First Letter.
8. FINRA staff did not receive the information requested in the First Letter by the April 22, 2009, due date.

9. On or about April 29, 2009, staff sent a second request for information to English at his CRD Address (Second Letter). The request was again sent pursuant to FINRA Rule 8210, via first class mail and by certified mail, return receipt requested. The Second Letter required English to provide the requested information on or before May 13, 2009.
10. On or about May 5, 2009, staff received a certified mail delivery receipt evidencing that "Patricia English" accepted delivery of the Second Letter.
11. FINRA did not receive the information requested in the Second Letter on or before the due date.
12. Also on or about April 29, 2009, apparently in response to the First Letter, staff received a letter from an attorney, SB, stating that he represented Respondent English. SB represented that English no longer lived at his CRD Address, but did not provide staff with English's current address. SB did not answer any of the questions asked or provide any of the information requested in the First Letter. He did not request an extension of the due date; rather, he informed the staff that he would not be able to respond to the request for information for another week.
13. On or about June 4, 2009, when approximately a month had passed since SB's correspondence without submission of the information requested in the First and Second Letters, a third request for information (Third Letter) was sent to SB at the address of his law firm (Law Office Address). The Third Letter was sent pursuant to FINRA Rule 8210, via first class mail and by certified mail, return receipt requested. The Third Letter required English to provide the requested information on or before June 18, 2009.

14. Staff received a certified mail delivery receipt evidencing acceptance of delivery on June 8, 2009, of the Third Letter. FINRA did not receive any information in response to the Third Letter on or before the June 18, 2009, due date.
15. On or about July 20, 2009, staff sent a fourth request for information to SB at the Law Office Address (Fourth Letter). The Fourth Letter was sent pursuant to FINRA Rule 8210, via first class mail and by certified mail, return receipt requested. The Fourth Letter required English to provide the requested information on or before August 3, 2009.
16. Staff received a certified mail delivery receipt evidencing that the July 20th letter was received at the Law Office Address on July 22, 2009.
17. On or about August 3, 2009, staff received a communication from Respondent English via facsimile. English provided some, but not all, of the documents and information requested in the Fourth Letter. Further, the information English did provide raised additional questions requiring answers from him.
18. In order to obtain the information previously requested in the First, Second, Third and Fourth Letters, but not yet provided, and to obtain the additional information necessitated by English's response, staff sent a fifth request for information pursuant to Rule 8210 to SB on or about September 16, 2009, at the Law Office Address (Fifth Letter). The Fifth Letter was sent via first class mail and by facsimile to a facsimile number associated with SB's law firm (SB Fax Number). The Fifth Letter required English to provide the requested information on or before September 30, 2009.

19. The Fifth Letter was successfully transmitted by facsimile on September 16, 2009, to the SB Fax Number. The first class mailing was not returned to the staff.
20. On or about September 17, 2009, staff received by facsimile a letter from SB acknowledging receipt of the Fifth Letter. In the letter, SB objected to the September 30, 2009, deadline and represented that he would provide the staff in the near future with a "more realistic deadline."
21. FINRA did not receive the information requested in the Fifth Letter on or before the September 30, 2009, due date.
22. On or about October 1, 2009, staff received a letter from SB by facsimile. In the letter, SB stated that English would provide information responsive to the Fifth Letter at or before the end of October 2009. As of October 31, 2009, FINRA had not received any of the information requested in the Fifth Letter.
23. On or about November 4, 2009, staff sent a sixth request for information from English pursuant to Rule 8210 to SB at the Law Office Address (Sixth Letter). The request was sent via first class mail, certified mail, return receipt requested, and by facsimile to the SB Fax Number. The Sixth Letter required English to provide the requested information on or before November 11, 2009.
24. The Sixth Letter was successfully transmitted by facsimile on November 4, 2009, to the SB Fax Number. Staff received a certified mail delivery receipt evidencing acceptance of delivery on November 5, 2009, of the Sixth Letter.
25. FINRA did not receive the information requested in the Sixth Letter on or before the November 11, 2009, due date.

26. On or about November 12, 2009, staff received a letter from SB via electronic mail.

The letter provided some, but not all, of the information requested in the Fifth Letter and the Sixth Letter. SB also stated that English had recently had a heart attack and was still "working on some of his responses and would follow up as soon as he is capable."

27. On or about December 3, 2009, having received no additional information since SB's

November 12, 2009, communication, staff sent a seventh request for information

pursuant to Rule 8210 to SB at the Law Office Address (Seventh Letter). The

Seventh Letter was sent via first class mail and by certified mail, return receipt

requested. The Seventh Letter required English to provide the requested information

on or before December 17, 2009.

28. Staff received a certified mail delivery receipt evidencing that delivery of the Seventh

Letter was accepted on December 4, 2009.

29. FINRA did not receive the information requested in the Seventh Letter on or before

the December 17, 2009, due date.

30. On or about January 8, 2010, staff received a letter from SB via electronic mail. In

the letter, SB provided some, but not all, of the information requested in the Seventh

Letter. As of the date hereof, FINRA has not received any further information or

documents from English or from SB on English's behalf. Further, staff has not been

advised that SB no longer represents English in this matter.

31. The incomplete information provided by or on behalf of English was inadequate to

permit the staff to fully analyze the allegations set forth by customer FF in his

complaint and to determine whether English may have violated FINRA or NASD Rules regarding his outside business activities, apparent private securities transactions, and use of proceeds.

32. Each failure to provide any or all of the information requested by FINRA staff pursuant to FINRA Rule 8210 in the First through Seventh Letters, as set forth in paragraphs 5-31 above, constitutes a separate and distinct violation of FINRA Rule 8210 by Respondent English. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of FINRA Rule 2010 by Respondent English.

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) 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: August 30, 2010



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