

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN-ERIC BONILLA  
(CRD No. 4149132),

Respondent.

Disciplinary Proceeding  
No. 20090171290-01

Hearing Officer— SNB

**DEFAULT DECISION**

June 27, 2011

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

**Appearances**

John S. Han, Esq., for the Department of Enforcement.

No appearance by or on behalf of John-Eric Bonilla.

**DECISION**

**I. Introduction**

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on February 8, 2011. The Complaint charges Respondent John-Eric Bonilla (“Respondent”) with failing to provide information requested by FINRA staff (“Staff”), in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Respondent did not answer the Complaint. Accordingly, on May 3, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”), together with the declaration of John S. Han, Esq. (“Decl.”) and 13 exhibits.<sup>1</sup> For the reasons set

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<sup>1</sup> Enforcement’s exhibits are labeled CX-1 through CX-13.

forth below, the Hearing Officer found Respondent in default and granted Enforcement's Default Motion.

## **II. Procedural History**

On February 8, 2011, Enforcement served the Complaint and the First Notice of Complaint on Respondent by sending them to his most recent addresses recorded in the Central Registration Depository ("CRD"), and two alternate addresses. CX-1, CX-2; Decl. ¶ 10. The mailings were sent by first class and certified mail. Decl. ¶ 10. Three of the certified mailings and one of the first class mailings were returned as unclaimed or undeliverable. *Id.*; CX-3 – CX-6. The other first class mailings were not returned. *Id.* The remaining certified mailing to one of the alternate addresses was returned with an illegible signature. *Id.*; CX-7. Respondent did not answer or otherwise respond to the Complaint. Decl. ¶ 11.

On March 15, 2011, Enforcement served the Complaint and the Second Notice of Complaint on Respondent in the same manner. Decl ¶ 12. One of the certified mailings and two of the first class mailings were returned as unclaimed or undeliverable. *Id.*; CX-8 – CX-10. Two of the certified mailings and two of the first class mailings were not returned. Decl ¶ 12. The remaining certified mailing to one of the alternate addresses was returned with an illegible signature. *Id.*; CX-13. Respondent did not answer or otherwise respond to the Complaint. Decl. ¶ 13.

Based on Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

Respondent was first registered with FINRA in March 2000. CX-1. He was registered with U.S. Bancorp Investments, Inc. (the "Firm") beginning in June 2007. *Id.* On October 7, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing Respondent's voluntary termination as of October 6, 2008. *Id.* The Firm filed an amended Form U5 on February 25, 2009, disclosing the settlement of a customer complaint alleging, among other things, that Respondent made an unsuitable recommendation. *Id.* Decl ¶ 8; CX-1 p. 12.

Although Respondent is not currently registered with a FINRA member firm, FINRA has jurisdiction for purposes of this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Amended Complaint was filed within two years following the Firm's filing of an amended Form U5 disclosing Respondent's possible misconduct, and it charges him with failing to respond to Rule 8210 requests for information while he was subject to FINRA's jurisdiction.<sup>2</sup>

#### **B. Failure to Provide Information and Documents**

The Complaint alleges that on August 26, 2010, Staff sent Respondent a letter pursuant to FINRA Procedural Rule 8210 that requested information about two different versions of a variable annuity disclosure form. Staff's inquiry was based upon information provided by the Firm indicating that Respondent provided one version of the form to his customers, and provided the other version to the Firm for processing. Complaint ¶ 7 -9; Decl ¶ 23. The version that Respondent provided to the Firm included greater annual income, investment experience and net

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<sup>2</sup> See Article V, Sec. 4(a), FINRA By-Laws, available at [www.finra.org/Rules](http://www.finra.org/Rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

worth. *Id.* In addition, while the version submitted to the Firm accurately reflected the annuity's features, the version given to the customer misrepresented the annuity's fee as 1.35% rather than 1.4%, and indicated that the annuity had an income benefits rider when it did not. *Id.* Staff sent its Rule 8210 request for information to Respondent by courier to his CRD addresses. Decl ¶ 23. Respondent did not respond. Decl ¶ 24.

On September 14, 2010, Staff sent Respondent a second Rule 8210 request for the same information. Decl ¶ 26. The staff sent the second request to Respondent's CRD address by first-class and certified mail. *Id.* Again, Respondent did not respond. Decl ¶ 27.

On October 7, 2010, in the same manner, Staff sent Respondent a third request for the same information. Decl ¶ 28. Staff sent the third Rule 8210 request to Respondent's CRD addresses and an alternate address provided by the U.S. Postal Service. Decl ¶ 29. Again, Respondent did not respond. Decl ¶ 30.

FINRA Rule 8210 requires persons associated with a member to "provide information orally [or] in writing ... with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding." Respondent's failure to respond to the staff's requests "demonstrates a prima facie violation of [FINRA] Rule 8210."<sup>3</sup> Accordingly, the Hearing Officer finds that Respondent violated FINRA Rules 8210 and 2010 by failing to respond to Staff's requests for information.<sup>4</sup>

#### **IV. Sanctions**

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 responsibilities without

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<sup>3</sup> *Department of Enforcement v. Houston*, No. 2006005318801, 2010 FINRA Discip. LEXIS 38, at \*17 (N.A.C. Dec. 22, 2010).

<sup>4</sup> *Id.* at \*20 n.13 (holding that a violation of Rule 8210 is also a violation of identical NASD Rule 2110).

subpoena power.<sup>5</sup> When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.<sup>6</sup> For these reasons, the FINRA Sanction Guidelines ("Guidelines") recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.<sup>7</sup> Respondent failed to respond to three requests for information. There is no evidence of any mitigating facts that would justify a sanction of less than a bar. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA member firm in any capacity.

**V. Order**

Respondent 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 shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

  
Sara Nelson Bloom  
Hearing Officer

Copies to: John-Eric Bonilla (via courier and first-class mail)  
John S. Han, Esq. (via electronic and first-class mail)  
David R. Sonnenberg, Esq. (via electronic mail)  
Mark P. Dauer, Esq. (via electronic mail)

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<sup>5</sup> *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000).

<sup>6</sup> *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

<sup>7</sup> FINRA Sanction Guidelines 33 (2011).

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

John-Eric Bonilla (CRD No. 4149132),

Respondent.

DISCIPLINARY PROCEEDING  
No. 20090171290-01

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Respondent John-Eric Bonilla failed to provide information requested by FINRA staff pursuant to FINRA Rule 8210.

**RESPONDENT AND JURISDICTION**

2. Respondent entered the securities industry in March 2000 by filing a Form U4 to request registration with a FINRA member. He passed the Series 7 examination in March 2000, the Series 63 examination in April 2000 and the Series 66 examination in September 2002.
3. On or about June 5, 2007, Respondent registered as a General Securities Representative at FINRA member U.S. Bancorp Investments, Inc. (the Firm). On or about October 7, 2008, the Firm filed a Form U5 indicating that Respondent's registration had been voluntarily terminated as of October 6, 2008. Respondent has not since become associated with any FINRA member.

4. On or about February 25, 2009, the Firm filed an amendment to Respondent's Form U5 to disclose the settlement of a customer complaint alleging that Respondent had made an unsuitable recommendation.
5. Although Respondent has not been registered with a FINRA member firm since October 6, 2008, Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, until February 24, 2011 because:
  - a. less than two years have elapsed since the Firm filed an amendment to Respondent's Form U5;
  - b. the Form U5 amendment disclosed that Respondent may have engaged in conduct actionable under FINRA rules; and
  - c. the Complaint charges Respondent with failing to respond to FINRA requests for information during the two-year period following the filing of the Form U5 amendment.

#### BACKGROUND

6. On or about March 24, 2009, FINRA staff sent Respondent a letter requesting information about the suitability of his recommendation to purchase a variable annuity in the account of customers MD & BD while registered with the Firm. On or about April 7, 2009, FINRA staff received the requested information from Respondent.
7. On or about April 8, 2009, the Firm provided FINRA staff with two different versions of MD & BD's Account Application and their Variable Annuity Acknowledgment and Disclosure form. Based upon information provided by the Firm, FINRA staff

determined that, at or around the time of Respondent's recommendation to MD & BD, one version of the documents was given to the customers while the other version was submitted to the Firm for processing. The variable annuity was ultimately issued pursuant to the version of the documents submitted to the Firm.

8. The version of the Account Application submitted to the Firm included greater annual income, investment experience and net worth figures than the version given to the customers.
9. The version of the Variable Annuity Acknowledgment and Disclosure form submitted to the Firm included accurate information about the annuity's features. The version given to the customers, however, misrepresented the annuity's fees, class share and rider. Specifically, the customer version stated that the total fees for the annuity were 1.35%, the class share being purchased was "A" and the annuity included an income benefits rider. In fact, as evidenced by the version submitted to the firm, the annuity's fees total fees were actually 1.40%, the class share was "B" and no income benefits rider was included.

#### CAUSE OF ACTION

##### Failure to Provide Information (FINRA Rules 8210 and 2010)

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. On or about August 26, 2010, FINRA staff sent Respondent a letter (First Request), pursuant to FINRA Rule 8210, requesting information about the two different versions of the Account Application and Variable Annuity Acknowledgment and Disclosure form.
12. The First Request was sent by courier (FedEx) to three addresses:

- a. Respondent's current residential address as reflected in CRD: [REDACTED]  
[REDACTED] (CRD Address 1);
  - b. Respondent's second current residential address as reflected in CRD: [REDACTED]  
[REDACTED] (CRD Address 2); and
  - c. an address given to FINRA staff by Respondent in a telephone conversation on or about August 19, 2010: [REDACTED]  
(Edgewood Address).
13. With respect to the mailings of the First Request:
- a. the mailing to CRD Address 1 was returned by FedEx with a note that the addressee had moved;
  - b. the mailing to CRD Address 2 was returned by FedEx after three failed delivery attempts; and
  - c. the mailing to the Edgewood Address was returned by FedEx after three failed delivery attempts.
14. The due date for the First Request was September 8, 2010 but Respondent failed to provide any of the requested information.
15. On or about September 14, 2010, FINRA staff sent Respondent a second letter (Second Request), pursuant to FINRA Rule 8210, re-requesting the information sought in the First Request.
16. The Second Request was sent by First Class Mail and Certified Mail to CRD Address 1, CRD Address 2 and the Edgewood Address.
17. With respect to the mailings of the Second Request:

- a. the First Class mailing to CRD Address 1 was returned by the United States Postal Service (USPS) marked, "FORWARD TIME EXP, RTN TO SEND." The forwarding address listed by the USPS was [REDACTED] (the Kokomo Address);
  - b. the Certified mailing to CRD Address 1 was returned by the USPS stamped, "UNCLAIMED";
  - c. the First Class mailing to CRD Address 2 was returned by the USPS stamped, "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD";
  - d. the Certified mailing to CRD Address 2 was returned by the USPS stamped, "UNCLAIMED";
  - e. the First Class mailing to the Edgewood Address was not returned; and
  - f. FINRA staff received a return receipt evidencing delivery of the Certified mailing to the Edgewood Address with an illegible signature.
18. The due date for the Second Request was September 28, 2010 but Respondent failed to provide any of the requested information.
19. In light of the USPS's notation concerning the Kokomo Address, on or about October 7, 2010, FINRA staff sent Respondent a final letter (Final Request), pursuant to FINRA Rule 8210, re-requesting the information sought in the First Request.
20. The Final Request was sent by First Class Mail and Certified Mail to CRD Address 1, CRD Address 2, the Edgewood Address and the Kokomo Address.
21. With respect to the mailings of the Final Request:

- a. the First Class mailing to CRD Address 1 was returned by the USPS marked, "FORWARD TIME EXP, RTN TO SEND" and included the Kokomo Address as the forwarding address;
  - b. the Certified mailing to CRD Address 1 was returned by the USPS marked, "FORWARD TIME EXP, RTN TO SEND" and included the Kokomo Address as the forwarding address;
  - c. the First Class mailing to CRD Address 2 was not returned;
  - d. the Certified mailing to CRD Address 2 was returned by the USPS stamped, "RETURN TO SENDER, UNCLAIMED";
  - e. the First Class mailing to the Edgewood Address was not returned;
  - f. the Certified mailing to the Edgewood Address was returned by the USPS stamped, "UNCLAIMED";
  - g. the First Class mailing to the Kokomo Address was not returned; and
  - h. FINRA staff received a return receipt evidencing delivery of the Certified mailing to the Kokomo Address with an illegible signature.
22. The due date for the Final Request was October 21, 2010 but Respondent failed to provide any of the requested information.
23. By failing to provide information requested by FINRA staff in connection with an investigation, Respondent violated FINRA Rules 8210 and 2010.

#### RELIEF REQUESTED

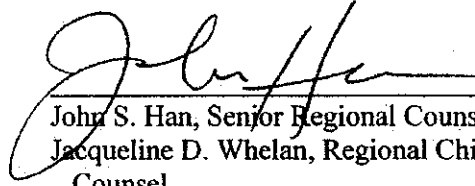
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

B. order that 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: February 4, 2011



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John S. Han, Senior Regional Counsel  
Jacqueline D. Whelan, Regional Chief  
Counsel  
FINRA Department of Enforcement  
One Montgomery Street  
Suite 2100  
San Francisco, CA 94104  
(415) 217-1124; Fax: (415) 217-1201  
john.han@finra.org  
jacqueline.whelan@finra.org