

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH ALPHONSE VITALE
(CRD No. 5223467),

Respondent.

Disciplinary Proceeding
No. 2009017585202

Hearing Officer – MC

DEFAULT DECISION

September 21, 2011

Respondent Joseph Alphonse Vitale is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information issued to him pursuant to FINRA Procedural Rule 8210, thereby violating FINRA Conduct Rule 2010 and Procedural Rule 8210.

Appearances

Rebecca L. Segrest, Regional Counsel, Atlanta, Georgia, Sean W. Firley, Senior Regional Counsel, Boca Raton, Florida, and Andrew A. Favret, Regional Chief Counsel, New Orleans, Louisiana, for the Department of Enforcement.

No appearance by or on behalf of Respondent Joseph Alphonse Vitale.

DECISION

I. Introduction

The Department of Enforcement filed the attached one-cause Complaint on October 14, 2010. It charges Respondent Joseph Alphonse Vitale with failing to respond to a series of requests for information issued to him by FINRA staff pursuant to Rule 8210 in order to investigate allegations that he had engaged in excessive trading in a customer account, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

Enforcement served the Complaint and Notices of Complaint upon Vitale by certified mail at his residential address as it appears in FINRA's Central Registration Depository. Vitale

initially failed to respond to the Complaint. Consequently, on March 24, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”) supported by the Declaration of Rebecca L. Burnaugh¹ and three exhibits.² Vitale belatedly filed an Answer on April 4, 2011, and the hearing was scheduled for July 18-19, 2011, in Boca Raton, Florida. When Vitale failed to appear for the final pre-hearing conference on July 8, the Hearing Officer issued an Order to Show Cause Why Respondent Should Not Be Held in Default (“Show Cause Order”) and set a Show Cause Hearing on July 12, 2011. The Show Cause Order contained an explicit warning that failure to appear at the Show Cause Hearing could be deemed a default. Once again, Vitale failed to appear. Consequently, the Hearing Officer issued an Order Setting Deadline for Filing Motion for Entry of a Default Decision on July 19. On July 29, 2011, Enforcement filed a Supplement to Motion for Entry of Default Decision and Request for Sanctions (“Supplementary Default Motion”), adopting and incorporating the Default Motion it had previously filed, and reciting Vitale’s failures to appear as required at the Final Pre-Hearing Conference on July 8, 2011, and the Show Cause Hearing on July 12, 2011.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Vitale first registered with FINRA in September 2006 as a General Securities Representative. He was last registered through FINRA member firm J.P. Turner & Company (“Turner”) from February 2008 until February 11, 2009, when the Firm terminated his association with it.³ Vitale remains subject to FINRA’s jurisdiction, for purposes of this proceeding, pursuant to Article V, Section 4, of FINRA’s By-Laws because (i) the Complaint

¹ Counsel’s former surname was Burnaugh.

² Enforcement’s exhibits will be referred to as “CX-___,” with the appropriate exhibit and page numbers. The Declaration of Rebecca L. Burnaugh will be referred to as “Decl.” or “Burnaugh Declaration,” with citation to specific paragraphs.

³ Complaint ¶ 2; Decl. ¶ 6.

was filed less than two years after the termination of his registration with a FINRA member firm, and (ii) 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.

B. Default

Vitale defaulted when he failed to appear as directed for a telephonic final pre-hearing conference on July 8, 2011, and failed to appear at the telephonic Show Cause Hearing on July 12, 2011, to show cause why he should not be deemed in default. Accordingly, pursuant to FINRA Procedural Rules 9241(f) and 9269(a)(1), and for the reasons given below, the Default Motion is granted.⁴

C. Violations

After Turner filed a Uniform Termination Notice for Securities Industry Registration reflecting Vitale's termination for excessive trading in a customer account, FINRA staff initiated an investigation,⁵ issuing a series of requests for information to Vitale pursuant to FINRA Procedural Rule 8210, all of which requested him to provide a detailed written statement regarding the allegation of excessive trading in a customer's account. FINRA staff sent the initial request on May 28, 2009, and a second request on June 15, 2009, by first-class and certified mail to his CRD address. Receiving no response, on December 16, 2009, FINRA staff sent Vitale a Notice of Intent to Suspend him for failing to provide the requested information, followed by a letter on January 11, 2010, notifying Vitale that he had been suspended from associating with any FINRA member firm in any capacity.⁶

⁴ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Burnaugh Declaration, the exhibits, the Supplementary Default Motion, and the transcripts of the July 8 Pre-Hearing Conference and the July 12 Show Cause Hearing.

⁵ Complaint ¶ 5; Decl. ¶ 2; CX-1, p. 8.

⁶ Decl. ¶ 11, pp. 3-4.

In June 2010, an attorney representing Vitale contacted the staff to inform it that Vitale would respond to the request for information, and to request that the suspension be stayed. On June 29 and July 19, 2010, the staff again sent requests pursuant to Rule 8210, this time to Vitale's counsel, again asking that Vitale provide a detailed written statement regarding the allegation of excessive trading. On July 21, 2010, the attorney informed the staff that he no longer represented Vitale. On that date, the staff renewed its request for information pursuant to Rule 8210, by letter to Vitale sent by first-class and certified mail to his CRD address. Receiving no response, the staff reissued its request in the same manner on August 10, 2010.⁷

Vitale failed to respond to six letters requesting the same information sent to him pursuant to Rule 8210 between May 28 and August 10, 2010.⁸ These facts, as alleged and deemed admitted in the Complaint, and supported by the Burnaugh Declaration and accompanying exhibits, are sufficient to establish, for the purposes of this Default Decision, that Vitale violated FINRA Conduct Rule 2010 and Procedural Rule 8210.

III. Sanctions

Rule 8210 gives FINRA "the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information."⁹ As for sanctions, "[t]he Guidelines treat a failure to respond ... as egregious."¹⁰

For failing to comply with Rule 8210 requests to provide information and documents, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines

⁷ Decl. ¶ 11, pp. 4-5.

⁸ Decl. ¶ 11, p. 6.

⁹ *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (N.A.C. Dec. 18, 2006).

¹⁰ *Id.* at *41.

recommend consideration of a suspension in any or all capacities for up to two years.¹¹

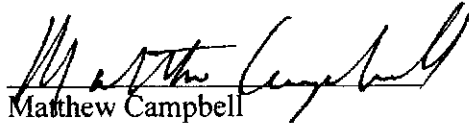
In this case, there are no mitigating circumstances. Vitale repeatedly failed to respond to requests for information over an extended period. Vitale's refusal frustrated FINRA's investigation into his misconduct, which had been protracted for over a year because of his obstructive tactics. It is well established that "refusing to respond at all to requests for information undermines [FINRA's] ability to conduct investigations"¹² and subverts FINRA's ability to perform its regulatory responsibilities and protect the investing public.¹³ In this case, Vitale's misconduct was egregious, obstructing an investigation into conduct that may have harmed investors, under circumstances with no factors to mitigate the potential of future harm. Such misconduct renders him "presumptively unfit for employment in the securities industry."¹⁴

For these reasons, Enforcement's recommendation of a bar is appropriate and necessary to deter Vitale and others from similar future misconduct.

IV. CONCLUSION

For his violations of FINRA Conduct Rule 2010 and Procedural Rule 8210, Respondent Joseph Alphonse Vitale is barred from associating with any FINRA member firm in any capacity.

If this Decision becomes FINRA's final disciplinary action, the bar shall be effective immediately.


Matthew Campbell
Hearing Officer

¹¹ *FINRA Sanction Guidelines*, p. 33 (2011); *Dep't of Enforcement v. Legacy Trading Co. LLC*, No. 2005000879302, 2010 FINRA Discip. LEXIS 20, at *41 (N.A.C. Oct. 8, 2010).

¹² *Geoffrey Ortiz*, Exch. Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *32 (Aug. 22, 2008).

¹³ *Id.*, citing *Michael A. Rooms*, Exch. Act Rel. No. 51467, 2005 SEC LEXIS 728 (Apr. 1, 2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

¹⁴ *Geoffrey Ortiz*, *supra* at *32.

Copies to:

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Rebecca L. Segrest, Esq. (via e-mail and first-class mail)
Sean W. Firley, Esq. (via e-mail and first-class mail)
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FINANCIAL INDUSTRY REGULATORY AUTHORITY ("FINRA")

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH ALPHONSE VITALE,
(CRD No. 5223467)

Respondent.

Disciplinary Proceeding
No. 2009017585201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Joseph Alphonse Vitale ("Vitale") failed to respond to FINRA's requests for information, pursuant to FINRA Rule 8210, in connection with an investigation of allegations of a potential FINRA Rule violation, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Vitale was first registered with FINRA in September 2006 as a general securities representative. At various times between September 2006 and February 2009, Vitale was registered with multiple FINRA member firms. Vitale was last registered as a general securities representative with J.P. Turner & Company, L.L.C. ("J.P. Turner") from February 2008 until February 11, 2009.
3. Vitale is not currently associated with a FINRA-registered firm, but he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws, in that the violation of FINRA Rule 8210 alleged in the Complaint occurred, and this Complaint was filed, within two years of his last association with a FINRA-registered firm.

CAUSE OF ACTION

FINRA Rules 8210 and 2010

(Failure to Respond to Information Requests)

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3 above.
5. In March 2009, J.P. Turner filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Vitale. The Form U5 indicates that the firm received a customer complaint alleging that Vitale excessively traded the customer's account during his association with J.P. Turner. FINRA initiated an investigation into the allegations on the Form U5 filed by J.P. Turner, including but not limited to, whether Vitale had engaged in excessive trading in the customer's account.
6. On May 28, 2009, FINRA requested, pursuant to FINRA Rule 8210, that Vitale submit a detailed written response regarding the allegation of excessive trading. The letter was sent to Vitale at his residential CRD address ([REDACTED]) and to an alternate address ([REDACTED]), obtained through a LexisNexis address search, via first class and certified mail. The letter set a deadline of June 11, 2009 for Vitale to respond.
7. The May 28, 2009 letters sent by first class mail were not returned. The May 28, 2009 letter sent to Vitale's residential CRD address by certified mail was signed for by "Bonny Reed" reflecting delivery to that address on June 3, 2009. The letter sent to the alternate address was returned unclaimed. Vitale failed to respond by the June 11, 2009 deadline.
8. On June 15, 2009, FINRA sent a second request, pursuant to FINRA Rule 8210, that Vitale submit a detailed written response regarding the allegation of excessive trading. The letter was sent to Vitale at his residential CRD address and the alternate address, via first class and certified mail. The letter set a deadline of June 29, 2009 for Vitale to respond.

9. The June 15, 2009 letters sent by first class mail were not returned. The June 15, 2009 letter sent by certified mail to Vitale's residential CRD address was returned with the handwritten notation "NK". The June 15, 2009 letter sent by certified mail to the alternate address was returned "Unclaimed-Attempted Not Known-Unable to Forward." Vitale failed to respond by the June 29, 2009 deadline.
10. Therefore, on December 16, 2009, pursuant to FINRA Rule 9552, FINRA issued a Notice of Intent to Suspend Vitale in connection with his failure to provide information requested pursuant to FINRA Rule 8210. Vitale was notified that he would be suspended from associating with any FINRA member firm in any capacity unless he complied with FINRA's request for information made pursuant to FINRA Rule 8210 before that date. Vitale failed to respond by January 11, 2010.
11. On January 11, 2010, pursuant to FINRA Rule 9552, Vitale was notified that he was suspended from associating with any FINRA member firm in any capacity, and that he would be barred from associating with any member firm effective June 21, 2010 unless he complied with FINRA's request for information made pursuant to FINRA Rule 8210 before June 21, 2010.
12. On June 18, 2010, A. L., an attorney representing Vitale, contacted FINRA, indicated that Vitale would respond to FINRA's request for information, and requested that the bar not go into effect as scheduled on June 21, 2010. Accordingly, FINRA did not impose a bar from association with any member firm on Vitale at that time.
13. On June 29, 2010, FINRA sent a letter via certified and first class mail to A. L.'s law office address. The June 29, 2010 letter requested, pursuant to FINRA Procedural Rule 8210, that Vitale provide FINRA with a signed statement responding to specific questions about the alleged excessive trading in a customer account. The June 29, 2010 letter set a deadline of July 13, 2010, for Vitale's response.

14. The June 29, 2010 letter sent by first class mail was not returned. The June 29, 2010 letter sent by certified mail was signed for by Joanne Lerner reflecting delivery to that address on July 21, 2010. Vitale failed to respond by the July 13, 2010 deadline.
15. On July 19, 2010, FINRA sent a second letter via certified and first class mail to A.L.'s law office address. The July 19, 2010 letter requested, pursuant to FINRA Rule 8210, that Vitale provide FINRA with a signed statement responding to specific questions about the alleged excessive trading in a customer account. The July 19, 2010 letter set a deadline of August 2, 2010, for Vitale's response.
16. The July 19, 2010 letter sent by first class mail was not returned. The July 19, 2010 letter sent by certified mail was signed for by N. Martinez reflecting delivery to that address on August 1, 2010. Vitale failed to respond by the August 2, 2010 deadline.
17. On July 21, 2010, A. L. contacted FINRA by telephone and informed FINRA that he no longer represented Vitale.
18. Therefore, on July 21, 2010, FINRA sent a letter to Vitale at his residential CRD address and the alternate address via first class and certified mail. The July 21, 2009 letter requested, pursuant to FINRA Rule 8210, that Vitale provide FINRA with the same information requested in all previous letters. The July 21, 2010 letter set a deadline of August 4, 2010, for a written response.
19. The July 21, 2010 letters sent by first class mail were not returned. The July 21, 2010 letter sent to Vitale's residential CRD address by certified mail was signed for by Bonny Reed reflecting delivery to that address on July 24, 2010. The July 21, 2010 letter sent to Vitale's alternate address by certified mail was returned as "unclaimed." Vitale failed to respond by the August 4, 2010 deadline.
20. On August 10, 2010, FINRA sent a second letter to Vitale at his residential CRD address and the alternate address via certified and first class mail. The August 10, 2010 letter requested, pursuant to FINRA Rule 8210, that Vitale provide FINRA with a signed statement responding to specific

questions about the alleged excessive trading in a customer account. The August 10, 2010 letter set a deadline of August 24, 2010, for Vitale's response.

21. The August 10, 2010 letters sent by first class mail were not returned. The August 10, 2010 certified letter sent to Vitale's residential CRD address was signed for by Romeo Vitale reflecting delivery to that address on August 13, 2010. The August 10, 2010 certified letter sent to the alternate address was returned as "unclaimed."
22. On August 23, 2010, Vitale contacted FINRA and requested a one week extension in which to provide a response. FINRA granted Vitale an extension until August 31, 2010. On August 25, 2010, Vitale faxed a signed statement to FINRA acknowledging that he was to respond to the request for information on or before August 31, 2010.
23. As of the date hereon, Vitale has not responded to FINRA's requests dated July 21, 2009 and August 10, 2010. Vitale's failure to submit the requested information impeded FINRA's investigation and prevented FINRA from completing its regulatory responsibility to fully investigate potential rule violations.
24. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Respondent Vitale.

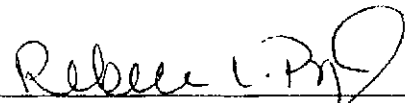
RELIEF REQUESTED

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 the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: Oct. 14, 2010



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