

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NEFTALI MERCEDES
(CRD No. 3201827),

Respondent.

Disciplinary Proceeding
No. 2009018755601

Hearing Officer – AWL

DEFAULT DECISION

October 19, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

Gary A. Chodosh, Esq. and David Jaffe, Esq. for the Department of Enforcement, Complainant

No appearance by or on behalf of Neftali Mercedes, Respondent

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) filed a Complaint with the Office of Hearing Officers on June 15, 2012, charging Respondent Neftali Mercedes (“Respondent”) with failure to respond to FINRA staff’s requests to provide information, in violation of FINRA Rules 8210 and 2010.

Respondent failed to answer the Complaint. Consequently, on August 29, 2012, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions (“Motion

for Default”), supported by the Declaration of Gary A. Chodosh and 16 exhibits.

Respondent did not reply to the motion.¹

II. PROCEDURAL HISTORY AND RESPONDENT’S DEFAULT

On June 15, 2012, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail, return receipt requested, at Respondent’s last known Central Registration Depository (“CRD”) address.² Respondent failed to answer or respond by the deadline in the Notice of Complaint.³ Enforcement served Respondent with the Complaint and Second Notice of Complaint on July 17, 2012, by certified mail, return receipt requested, at his CRD address.⁴ Again, Respondent failed to answer or respond by the deadline. To date, Respondent has not filed an answer or otherwise responded.⁵

The Hearing Officer finds that Respondent received valid constructive notice of this proceeding.⁶ Respondent defaulted by failing to answer the Complaint. Based on Respondent’s default, the factual allegations in the Complaint are deemed admitted, and the Hearing Officer grants the Motion for Default.

¹ The factual determinations in this decision are based on the allegations in the attached Complaint, which are deemed admitted, as well as the Declaration of Gary A. Chodosh (“Decl.”) and exhibits (CX-1 through CX-16) filed by Enforcement.

² Decl. ¶¶ 8-9; CX-1 and CX-4. Enforcement also served the Complaint on Respondent at two other addresses located through an Internet public records search. CX-3, CX-5 through CX-10.

³ Decl. ¶ 13.

⁴ Decl. ¶ 14; CX-11 through CX-16. Enforcement again served the Complaint and Second Notice of Complaint on Respondent at two other addresses in addition to the CRD address.

⁵ Decl. ¶ 18.

⁶ *Dep’t of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (N.A.C. July 26, 2012) (Respondent has constructive notice of complaint when mailed to CRD address).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent first became registered with a FINRA member in 2000.⁷ From July 16, 2007, through July 8, 2009, Respondent was associated with Fordham Financial Management, Inc. (“Fordham Financial”) and registered with FINRA as a General Securities Representative and General Securities Principal.⁸ Respondent became associated with John Thomas Financial (“John Thomas”) in June 2009, and remained employed there until he voluntarily resigned on June 1, 2010.⁹ On June 24, 2010, John Thomas filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) on Mercedes’ behalf. Since then, Respondent has not been associated with any FINRA member.¹⁰

The Hearing Officer finds that jurisdiction exists in this proceeding pursuant to FINRA By-Laws Article V, Section 4 because: (1) the Complaint was filed within two years after FINRA terminated Respondent’s registrations, and (2) the Complaint charges him with failing to respond to FINRA’s requests for information issued during the two-year period of retained jurisdiction.¹¹

B. Failure to Provide Information

FINRA staff began an investigation of Respondent based on Fordham Financial’s Form U5, indicating that Respondent engaged in a private securities transaction without

⁷ Decl. ¶ 5; Compl. ¶ 2; CX-1.

⁸ Fordham Financial submitted a Uniform Termination Notice for Securities Industry Registration on July 8, 2009, stating that Respondent was permitted to resign in June 2009. See Compl. ¶ 7; CX-1, at 6.

⁹ CX-1, at 5 and CX-2.

¹⁰ Decl. ¶ 7; Compl. ¶¶ 4-5; CX-1, at 5 and CX-2.

¹¹ 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”).

notifying the firm.¹² In furtherance of its investigation, FINRA staff requested information from Respondent on four occasions: February 22, 2011, March 7, 2011, June 7, 2011, and June 21, 2011. FINRA staff mailed each request to Respondent's CRD address in compliance with the requirements of FINRA Rule 8210(d).¹³ When the postal service returned the initial two requests as undeliverable, FINRA staff located two other addresses and mailed the third and fourth requests to those addresses in addition to Respondent's CRD address.¹⁴ To date, Respondent has not responded to any of the requests.¹⁵

FINRA Rule 8210 authorizes FINRA staff to require members and persons subject to its jurisdiction "to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding" authorized by FINRA's By-Laws or rules.¹⁶ Because FINRA has no subpoena power, it must rely upon Rule 8210 to police the activities of its members and associated persons.¹⁷

Here, Respondent failed to respond to four Rule 8210 requests from FINRA staff. Accordingly, the Hearing Officer finds that Respondent violated FINRA Rules 8210 and 2010 as alleged in the Complaint.¹⁸

¹² Compl. ¶¶ 7-8.

¹³ Compl. ¶¶ 8-33.

¹⁴ Compl. ¶¶ 23 and 30.

¹⁵ Compl. ¶ 35.

¹⁶ Rule 8210(a).

¹⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (lack of subpoena power requires reliance on Rule 8210 to regulate its members and associated persons).

¹⁸ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of Rule 8210 also was violation of NASD Rule 2110).

IV. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) provide that a bar should be “standard” when a complete failure to respond to FINRA Rule 8210 requests for information exists.¹⁹ The Guidelines list the principal consideration in determining sanctions for failure to respond as the “[i]mportance of the information requested as viewed from FINRA’s perspective.”²⁰ Here, FINRA staff sought information regarding an alleged private securities transaction from Respondent on four separate occasions. Respondent’s lack of response thwarted FINRA’s investigation into this potentially serious misconduct.²¹

No mitigating circumstances exist to warrant a lesser sanction. As the Securities and Exchange Commission has emphasized, “[a] complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests.”²² Accordingly, the Hearing Officer bars Respondent from associating with any FINRA member firm for his refusal to provide the requested information, in violation of FINRA Rules 8210 and 2010.

¹⁹ Guidelines 33. *See also Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *25 (Sept. 10, 2010) (failure to respond before a complaint is filed warrants a bar in absence of mitigation factors), *aff’d*, 436 Fed. Appx. 31, 2011 U.S. App. LEXIS 18428 (2d Cir. 2011).

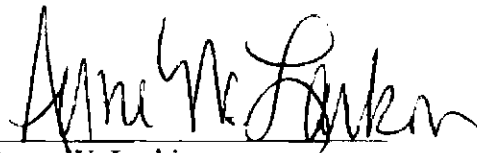
²⁰ Guidelines 33.

²¹ Decl. ¶ 19.

²² *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *aff’d sub nom*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (DC Cir. 2009).

V. ORDER

Respondent Neftali Mercedes is barred from associating with any member firm in any capacity for failing to provide information to FINRA in violation of FINRA Rules 8210 and 2010. If this Default Decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.



Anne W. Larkin
Hearing Officer

Copies to:

Neftali Mercedes (*via overnight courier and first-class mail*)
Gary A. Chodos, Esq. (*via electronic and first-class mail*)
David Jaffe, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NEFTALI MERCEDES
(CRD No. 3201827),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018755601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On four occasions, Neftali Mercedes failed to respond to FINRA requests for documents in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Mercedes first became registered with FINRA as a General Securities Representative (GSR) in July 2000, as a General Securities Principal (GSP) in June 2004, and as a Limited Representative – Investment Banking (IB) in June 2010.
3. Mercedes was registered as a GSR and GSP through an association with Fordham Financial Management, Inc. (BD No. 20996) (“Fordham Financial”) from July 16, 2007 through July 8, 2009.
4. His most recent FINRA registration ended on June 24, 2010.

5. Although Mercedes is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of his last registration with a FINRA member firm, and (2) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Failure to Respond (FINRA Rules 8210 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. A Uniform Termination Notice for Securities Industry Regulatory (Form U5) concerning Mercedes, filed by Fordham Financial on July 8, 2009, alleged that Mercedes had engaged in a private securities transaction without notifying the firm.
8. In connection with its investigation regarding the Form U5 disclosure, FINRA staff ("the Staff") requested that Mercedes produce his (a) 2009 income tax returns and supporting schedules, and (b) monthly bank account statements for January through December 2009 (the "Requested Documents").

The First Request

9. On February 22, 2011, the Staff sent a letter to Mercedes asking that he produce the Requested Documents by March 4, 2011 (the "First Request").

10. The First Request was made pursuant to FINRA Rule 8210 and warned of possible disciplinary action if Mercedes failed to respond.
11. The Staff sent the First Request by certified mail, return receipt requested and by regular first-class mail to Mercedes' residential address as listed on the Central Registration Depository [REDACTED] ("CRD Address").
12. The certified mailing was returned to the Staff by the United States Postal Service ("USPS"), marked "Attempted Not Known." The return receipt card for the certified mailing was separately returned to the Staff by USPS, with a signature of a "J. Kim."
13. The regular first-class mailing was returned to the Staff by USPS, marked "Return to Sender, Attempted - Not Known, Unable to Forward."
14. Mercedes did not respond to the First Request.

The Second Request

15. On March 7, 2011, the Staff sent a second letter to Mercedes, enclosing a copy of the First Request, and asking that he produce the Requested Documents by March 14, 2011 (the "Second Request").
16. The Second Request was made pursuant to FINRA Rule 8210 and warned of possible disciplinary action if Mercedes failed to respond.
17. The Staff sent the Second Request by certified mail, return receipt requested and by regular first-class mail to the CRD Address.
18. The certified mailing was returned to the Staff by USPS, marked "Return to Sender," "Attempted Not Known," "Undeliverable," and "UTF."

19. The regular first-class mailing was returned to the Staff by USPS, marked "Return to Sender, Not deliverable as Addressed, Unable to Forward."
20. Mercedes did not respond to the Second Request.

The Third Request

21. On June 7, 2011, the Staff sent a third letter to Mercedes, enclosing a copy of the First and Second Requests, and asking that he produce the Requested Documents by June 14, 2011 (the "Third Request").
22. The Third Request was made pursuant to FINRA Rule 8210 and warned of possible disciplinary action if Mercedes failed to respond.
23. The Staff sent the Third Request by certified mail, return receipt requested and by regular first-class mail to three addresses: (1) The CRD Address; (2) [REDACTED] [REDACTED] which is the same as the CRD Address except it also includes an apartment number previously supplied by Mercedes before the posting on CRD of the CRD Address (the "Second Address"); and (3) [REDACTED] [REDACTED] an address listed as current in a public records search on LexisNexis, conducted on April 13, 2011 (the "Third Address").
24. In connection with the mailings to the CRD Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender," and "Attempted, Not Known," and (2) the regular first-class mailing was returned to the Staff by USPS, marked "Return to Sender, Attempted, Not Known, Unable to Forward."

25. In connection with the mailings to the Second Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender," and "Attempted, Not Known," and (2) the regular first-class mailing was not returned.
26. In connection with the mailings to the Third Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender, Attempted, Not Known, Unable to Forward," and (2) the regular first-class mailing was not returned.
27. Mercedes did not respond to the Third Request.

The Fourth Request

28. On June 21, 2011, the Staff sent a fourth letter to Mercedes, enclosing a copy of the First, Second and Third Requests, and asking that he produce the Requested Documents by June 28, 2011 (the "Fourth Request").
29. The Fourth Request was made pursuant to FINRA Rule 8210 and warned of possible disciplinary action if Mercedes failed to respond.
30. The Staff sent the Fourth Request by certified mail, return receipt requested and by regular first-class mail to the CRD Address and the Second and Third Addresses.
31. In connection with the mailings to the CRD Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender," and "Attempted, Not Known," and (2) the regular first-class mailing was not returned.
32. In connection with the mailings to the Second Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender," and "Attempted, Not Known," and (2) the regular first-class mailing was not returned.

33. In connection with the mailings to the Third Address, (1) the certified mailing was returned to the Staff by USPS, marked "Return to Sender, Unclaimed, Unable to Forward," and (2) the regular first-class mailing was not returned.
34. Mercedes did not respond to the Fourth Request.
35. To date, Mercedes has not responded to any of the Requests.
36. By reason of the foregoing, Mercedes violated FINRA Rules 8210 and 2010.

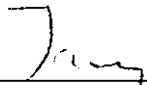
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. 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

Date: June 15, 2012



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