

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL DENNIS MONTGOMERY
(CRD No. 2029289),

Respondent.

Disciplinary Proceeding
No. 20090190544

Hearing Officer – LBB

DEFAULT DECISION

November 11, 2011

Respondent is barred from associating with any member firm in any capacity for failing to provide information, produce documents, and appear for an on-the-record interview, in violation of FINRA Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Conway Lee, Esq., Senior Counsel, New York, New York, for the Department of Enforcement.
No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed a one-cause Complaint in this disciplinary proceeding on July 19, 2011, charging Michael Dennis Montgomery (“Respondent”) with failing to respond to requests for information and documents, and failure to appear for on-the-record testimony, thereby violating FINRA Rule 8210 and 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. Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions on October 6, 2011, to which Respondent did not respond. Accordingly, pursuant to

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

I. Jurisdiction

Respondent became a registered representative with a FINRA member firm in 1992, and continued to be employed as a registered representative by member firms through July 2009. He joined FINRA member firm Mutual Service Corporation ("Mutual Service") as a registered representative in April 2006, and remained employed by Mutual Service until July 27, 2009, when Mutual Service terminated his employment. CX-1; Decl. ¶ 4.

FINRA received a Form U5 from Mutual Service on July 30, 2009, reporting that Respondent's employment had been terminated for failing to follow firm policies and procedures. CX-2; Decl. ¶ 5. On August 13, 2009, FINRA received an amended Form U5 from Mutual Service, reporting that on July 27, 2009, Mutual Service had settled a customer complaint involving Respondent for \$58,000, and that the State of Washington Department of Financial Institutions had initiated a disciplinary action against Respondent on July 10, 2009. CX-3; Decl. ¶ 6.

Although Respondent has not been registered with a member firm since July 27, 2009, he remains subject to FINRA's jurisdiction, 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 failure to respond to Rule 8210 requests that were issued within two years after the termination of his registration with a member firm. FINRA also has jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which includes the Declaration in Support of Motion for Entry of Default Decision, signed by counsel for Enforcement, and supporting documentation that is attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ___." The supporting documentation is cited herein as "CX-___."

filed within two years after the filing of an amendment to Respondent's Form U5, the amendment discloses that respondent "may have engaged in conduct actionable under any applicable statute, rule, or regulation," and the Complaint charges Respondent with failure to respond to Rule 8210 requests that were issued within two years after the filing of the amended Form U5.

II. Respondent's Default

On July 19, 2011, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first-class mail at his residential address as listed in the Central Registration Depository ("CRD address"), and at fourteen additional addresses. Decl. ¶ 33; CX-4, 6-20. The copies of the Complaint and Notice of Complaint that were sent by certified mail were returned to Enforcement. Some first-class mailings were returned, and some were not. Decl. ¶¶ 35-49; CX-6-20. The Notice of Complaint stated that Respondent was required to answer the Complaint by August 16, 2011. Decl. ¶ 50; CX-6-20. Respondent did not file an answer or otherwise respond to the Complaint by August 16, 2011. Decl. ¶ 51.

On August 18, 2011, Enforcement served the Complaint, Notice of Complaint, and Second Notice of Complaint on Respondent by certified and first-class mail at his CRD address and the fourteen additional addresses. Complaint ¶ 52; CX-4, 6-20. The copies of the Complaint, Notice of Complaint, and Second Notice of Complaint that were sent by certified mail were returned to Enforcement. Some first-class mailings were returned, and some were not. Decl. ¶¶ 54-68; CX-6-20. The return receipt for the mailing to one of the additional addresses, in Whittier, California, was signed by someone other than Respondent, and returned to Enforcement. The certified mailing to this address was subsequently returned to Enforcement, marked "Return to Sender – Whittier College." The first-class mailing to the Whittier address was not returned. CX-20; Decl. ¶ 68. The Second Notice of Complaint stated that Respondent

was required to answer the Complaint by September 6, 2011. Respondent has not filed an answer or otherwise responded to the Complaint. CX-6-20; Decl. ¶¶ 69-71.

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.

III. Respondent Violated FINRA Rule 8210 and Conduct Rule 2010 by Failing to Provide Documents and Information, and Failing to Appear for On-the-Record Testimony

On September 9, 2009, FINRA staff sent a letter to Respondent at his CRD address requesting, pursuant to FINRA Rule 8210, a signed written statement regarding the Form U5 filed by Mutual Service reporting his termination due to his alleged failure to follow Mutual Service's policies and procedures with respect to outside business activity. The letter notified Respondent that his response was due on or before October 9, 2009. Respondent failed to respond to the request. Complaint ¶ 7.

On October 9, 2009, FINRA staff sent a letter to Respondent renewing its September 9, 2009, request, pursuant to Rule 8210. The letter directed Respondent to provide the information requested on or before October 23, 2009. The staff sent the letter to Respondent at his CRD address and to an additional address that the staff obtained from a Lexis search. Respondent failed to respond to the request for information. Complaint ¶ 8.

On March 10, 2011, Enforcement sent a letter to Respondent by regular and certified mail requesting that, pursuant to Rule 8210, Respondent provide documents and information by March 24, 2011, concerning his outside business activities. The letter also directed Respondent to appear for on-the-record testimony at FINRA's office on April 7, 2011. Complaint ¶ 10. The March 10 letter was sent to Respondent at his CRD address and 13 other addresses identified in a Lexis search. Complaint ¶ 11. All the certified letters were returned to FINRA with various

stamps indicating that they could not be delivered. All but two of the first-class mailings were returned. Complaint ¶ 27. Respondent did not provide the documents or appear for on-the-record testimony. Complaint ¶¶ 28, 29.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide information and documents requested by FINRA staff, and failed to appear for an on-the-record interview, in violation of FINRA Rule 8210. A violation of FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010.²

IV. Sanctions

The FINRA Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210. Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.³ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years.

Respondent completely failed to respond to requests for information, documents, and testimony. There are no mitigating factors. A bar is the appropriate sanction.

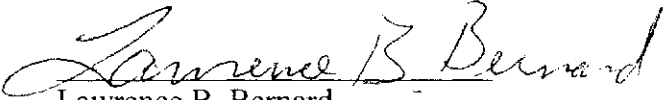
V. Conclusion

Respondent Michael Dennis Montgomery is barred from associating with any member firm in any capacity for failure to produce documents, in violation of FINRA Procedural Rule

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

³ *FINRA Sanction Guidelines* 33 (2011).

8210 and FINRA Conduct Rule 2010. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Michael Dennis Montgomery (*via first-class mail and overnight courier*)
Conway Lee, Esq. (*via first-class and electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Michael Dennis Montgomery (CRD No.
2029289),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090190544

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. In September 1991, Michael Dennis Montgomery ("Respondent") entered the securities industry as a broker trainee at Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") in Tacoma, Washington. In January 1992, Respondent became a registered representative at Merrill Lynch where he remained until his employment termination in May 1998. In June 1998, Respondent joined Wachovia Securities Financial Network, LLC ("Wachovia") as a registered representative in Tacoma, Washington, and remained there until February 17, 2006, when he resigned voluntarily. In April 2006, he joined Mutual Service Corporation ("Mutual Service") as a registered representative in Tacoma, Washington and remained there until July 27, 2009, when his employment was terminated by Mutual Service.

2. On July 30, 2009, FINRA received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from Mutual Service reporting that Respondent's employment with Mutual Service had been terminated on July 27, 2009 for failing to follow firm policies and procedures. On August 13, 2009, FINRA received an amended Form U-5 from Mutual Service reporting that on July 27, 2009, it settled a customer complaint against Respondent for \$58,000, and also reporting that the State of Washington Department of Financial Institutions had initiated a disciplinary action against Respondent on July 10, 2009.

3. To date, Respondent has not re-entered the securities industry.

4. Although Respondent has not been associated with a FINRA member firm since July 27, 2009, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction for purposes of this proceeding because: (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member firm or other event such as the filing of an amendment to Form U-5, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

OVERVIEW

5. Respondent failed to cooperate with FINRA's request for documents and information and failed to appear to provide requested testimony.

FIRST CAUSE OF ACTION FAILURE TO COOPERATE (FINRA PROCEDURAL RULE 8210 AND FINRA CONDUCT RULE 2010)

6. The Department realleges and incorporates by reference paragraphs 1-4 above.

7. On September 9, 2009, FINRA staff sent a letter to Respondent, notifying him of its inquiry and requesting, pursuant to FINRA Rule 8210, a signed written statement regarding

the Form U-5 filed by Mutual Service reporting his termination due to his failure to follow Mutual Service's policies and procedures with regard to outside business activity. The response to FINRA's request for information was due on or before October 9, 2009. The letter was sent via certified mail and return receipt requested to Respondent at [REDACTED] [REDACTED] ("North M St.") which was his last known residential address as reflected in CRD. A copy of the letter was sent by first class mail to the same address. The letter sent by certified mail and return receipt requested and the copy of the letter sent by first class mail were both returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". Respondent failed to provide the requested information.

8. On October 9, 2009, FINRA staff sent a letter to Respondent renewing its request that, pursuant to FINRA Rule 8210, Respondent provide a written statement regarding the allegations of that he failed to follow Mutual Service's policies and procedures with regard to outside business activity. The response to FINRA's request for information was due on or before October 23, 2009. The letter was sent via certified mail and return receipt requested to the North M St. address and to [REDACTED] ("49th Ave."), which was an address linked to Respondent through a Lexis database. Copies of the letter were sent to Respondent via first class mail to both of these addresses. The letters sent to Respondent at the North M St. address via certified mail and return receipt requested and via first class mail were both returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The letter sent to Respondent at the 49th Ave. address via certified mail and return receipt requested was returned to FINRA and marked "Not Deliverable as Addressed", and "Unable to Forward". The letter sent to Respondent at the 49th Ave. address

via first class mail was not returned to FINRA. Respondent did not respond to the requests for information.

9. On April 13, 2010, FINRA staff sent a letter to Respondent notifying him that the Central Review Group's Preliminary Investigations Unit had determined to refer the matter to FINRA's Enforcement Department.

10. On March 10, 2011 and March 11, 2011, Enforcement sent a letter to Respondent requesting that, pursuant to FINRA Rule 8210, Respondent provide documents and information regarding the individual person and related entities in connection with his outside business activities (the "March 2011 letter"). The response to FINRA's request for documents and information was due on or before March 24, 2011. The March 2011 letter also requested that, pursuant to FINRA Rule 8210, Respondent provide on-the-record testimony at FINRA's office located at 14 Wall Street, 14th floor in New York City on April 7, 2011 at 10:00 a.m. The March 2011 letter was sent by certified mail and return receipt requested to the North M St and 49th Ave. addresses as well as other addresses linked to Respondent through a Lexis database.

11. The additional addresses to which the March 2011 letter was sent by certified mail and return receipt request and via first class mail were: [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

12. The March 2011 letter sent to Respondent via certified mail and return receipt requested at the North M St. address was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA marked "Unclaimed."

13. The March 2011 letter sent to Respondent via certified mail and return receipt requested at the 49th Ave. address was returned to FINRA marked "Return to Sender", "Unclaimed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA marked "Return to Sender", "Attempted – Not Known", and "Unable to Forward."

14. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

15. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

16. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

17. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Attempted – Not Known", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

18. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

19. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

20. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The

March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

21. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

22. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

23. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Not Deliverable as Addressed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was not returned to FINRA.

24. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Attempted – Not Known", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA with the same markings.

25. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Return to Sender", "Unclaimed", and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was not returned to FINRA.

26. The March 2011 letter sent to Respondent via certified mail and return receipt requested at [REDACTED] was returned to FINRA marked "Not Deliverable as Addressed" and "Unable to Forward". The March 2011 letter sent to Respondent via first class mail to this address was returned to FINRA marked "Insufficient Address."

27. In summary, all of the March 2011 letters sent to Respondent via certified mail and return receipt requested were returned to FINRA. All of the March 2011 letters sent to Respondent via first class mail were returned to FINRA except the letters sent via first class mail to the [REDACTED] and the [REDACTED] addresses.

28. On March 24, 2011, Respondent failed to provide the requested documents and information to Enforcement. To date, Respondent has not responded to Enforcement's request for documents and information.

29. On April 7, 2011, Respondent failed to appear and provide the requested testimony. To date, Respondent has not responded to Enforcement's request for his on-the-record testimony.

30. Respondent's failure to provide the requested information and to appear for testimony has impeded FINRA's investigation.

31. As a result of the foregoing conduct, Respondent violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 by failing to appear and provide testimony to FINRA.

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: 7/19/11


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