

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Carla N. Amieiro  
(CRD No. 2975952),

Respondent.

Disciplinary Proceeding  
No. 20090202313-01

Hearing Officer—LOM

**DEFAULT DECISION**

January 4, 2012

**Respondent is barred from associating with any FINRA member in any capacity for twice failing to appear for On-The-Record testimony in connection with a FINRA investigation, which violated FINRA Rules 8210 and 2010.**

**Appearances**

Dana Yoon, Senior Counsel, New York, New York, for the Department of Enforcement.

No appearance on behalf of Carla N. Amieiro.

**I. Introduction And Origin Of Complaint**

The Respondent, Carla N. Amieiro, was associated with five FINRA member firms during the course of her career in the securities industry from March 1999 until October 2, 2009, when her then-current employer, Santander Securities Corporation (“Santander”), terminated Amieiro for providing false employment documentation in connection with a personal mortgage loan from an unaffiliated bank.<sup>1</sup> At the time of her termination, Amieiro was registered through

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<sup>1</sup> The Default Motion is supported by a Declaration given by FINRA attorney Dana Yoon (“Yoon Decl.”) and twenty-four exhibits marked CX-1 through CX-24. The facts set forth herein are based on that evidence, which is not in dispute, and the allegations of the Complaint, which, as discussed below, are deemed admitted as a result of Amieiro’s default.

Santander as a General Securities Representative. On October 9, 2009, Santander reported the termination on a Form RE-3.<sup>2</sup> That report triggered an investigation.

From December 2009 through March 2011, Respondent corresponded with FINRA staff regarding the investigation. In February 2011, FINRA staff requested that Respondent appear for On-The-Record (“OTR”) testimony on March 9, 2011.<sup>3</sup> She responded by letter dated March 7, 2011, that she was unable to appear on March 9, 2011, and requested a June date.<sup>4</sup> FINRA staff rescheduled the testimony for April 28, 2011, and notified Respondent of the new date.<sup>5</sup> Respondent failed to appear.<sup>6</sup> FINRA staff then set another date for OTR, June 21, 2011, and notified Respondent.<sup>7</sup> Respondent yet again failed to appear.<sup>8</sup>

Enforcement then filed the Complaint on July 6, 2011, alleging that Respondent’s failure to appear for OTR testimony on April 28, 2011, and June 21, 2011, violated FINRA Rules 8210 and 2010. That Complaint was served upon Amieiro by certified mail return receipt requested and first-class mail a total of four times, as described below. As of November 18, 2011, when Enforcement served its Motion for Entry of Default Decision and Imposition of Sanctions (“Default Motion”), however, Amieiro had not answered or otherwise responded to the Complaint.

The Default Motion is based on the Respondent’s failure to file an Answer or otherwise respond to the charges against her. The underlying Complaint focuses on Respondent’s failure – twice – to appear for OTR testimony. For the reasons set forth below and pursuant to authority

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<sup>2</sup> NYSE Form RE-3 is used for reporting certain complaint and disclosure information.

<sup>3</sup> CX-6.

<sup>4</sup> CX-7.

<sup>5</sup> CX-8, CX-10.

<sup>6</sup> CX-11.

<sup>7</sup> CX-12, CX-14, CX-15.

<sup>8</sup> CX-16.

granted by FINRA Rule 9269(a), the Hearing Officer finds Amieiro in default, grants Enforcement's Default Motion, and deems the allegations of the Complaint admitted. On that basis, the Hearing Officer issues this Decision barring Amieiro from associating with any FINRA member firm in any capacity.

## **II. Procedural History And Grant Of Default Motion**

On July 6, 2011, Enforcement served the Complaint and Notice of Complaint on Amieiro by certified mail return receipt requested and first-class mail at Amieiro's CRD address. The Notice of Complaint informed Amieiro that she was required to file an Answer by August 3, 2011 (28 days after service of the Complaint).<sup>9</sup> However, she filed no Answer.

On August 5, 2011, Enforcement served the Complaint, original Notice of Complaint, and Second Notice of Complaint on Amieiro by certified mail return receipt requested and first-class mail at Amieiro's CRD address.<sup>10</sup> The Second Notice of Complaint informed Amieiro that if she failed to file an Answer by August 22, 2011, the allegations of the Complaint might be deemed admitted and a default decision might be entered against her pursuant to FINRA Rule 9269. Amieiro nevertheless failed to file an Answer.

Subsequently, Enforcement determined to re-serve the Complaint at a variant of Respondent's CRD address. On September 20, 2011, Enforcement served the Complaint and another Notice of Complaint on Amieiro by certified mail return receipt requested and first-class mail at Amieiro's CRD address and a variant of that address.<sup>11</sup> The copies sent by certified mail were not returned to Enforcement. The copies sent by first-class mail were returned with hand-

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<sup>9</sup> CX-20.

<sup>10</sup> CX-21.

<sup>11</sup> Yoon Decl. ¶ 24; CX-17 (one line of the CRD address read [REDACTED] while the same line in the variant address read [REDACTED])

written notations saying “no such person in this address.”<sup>12</sup> The Notice of Complaint informed Amieiro that she was required to file an Answer by October 18, 2011 (28 days after service of the Complaint). However, she filed no Answer.<sup>13</sup>

On October 19, 2011, Enforcement served the Complaint, Notice of Complaint, and another Second Notice of Complaint on Amieiro by certified mail return receipt requested and first-class mail Amieiro’s CRD address.<sup>14</sup> None of the copies sent have been returned to Enforcement.<sup>15</sup> This Second Notice of Complaint informed Amieiro that if she failed to file an Answer by November 7, 2011, the allegations of the Complaint might be deemed admitted and a default decision might be entered against her pursuant to FINRA Rule 9269.<sup>16</sup> Amieiro nevertheless failed to file an Answer.<sup>17</sup>

Under FINRA Rule 9134, service of a complaint is valid if sent to an individual respondent by certified mail at the person’s most recent residential address in the CRD, unless the staff has actual knowledge that the CRD address is outdated. Alternatively, a complaint may be served on an individual at the CRD address of an entity employing the person.

In this case, Enforcement had been corresponding with Amieiro at her CRD address for over a year (December 2009 through March 2011),<sup>18</sup> and there is no indication in the record that Enforcement had any knowledge that Amieiro’s CRD address might be outdated. Enforcement reasonably sent the Complaint to Amieiro at her CRD address (and to a variant of that address).

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<sup>12</sup> Yoon Decl. ¶ 25; CX-18.

<sup>13</sup> Yoon Decl. ¶ 26; CX-17.

<sup>14</sup> Yoon Decl. ¶ 27; CX-19.

<sup>15</sup> Yoon Decl. ¶ 28.

<sup>16</sup> Yoon Decl. ¶ 29; CX-19.

<sup>17</sup> Yoon Decl. ¶ 29.

<sup>18</sup> CX-1 (CRD with residential address), CX-5 (correspondence from Amieiro with envelope showing return address same as CRD address), CX-7 and CX-8 (correspondence to Amieiro at her CRD address and letter responding to that correspondence)

Indeed, with respect to the third and fourth attempts to serve Amieiro, the fact that the postal service did not return any of the copies sent to Amieiro (the first set was returned with handwritten notations rather than a postal service stamp; and the second set was not returned) suggests that the Complaint did in fact reach Ms. Amieiro.

The Hearing Officer finds that the Complaint was validly served and that Amieiro failed to file an Answer. Pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer grants Enforcement's Default Motion and deems the allegations in the attached Complaint admitted.

### **III. Findings Of Fact And Conclusions Of Law As To Underlying Violations**

#### **A. Jurisdiction**

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed on July 6, 2011, within two years after Santander terminated Amieiro on October 2, 2009, and after Santander reported that termination, thereby ending Amieiro's registration with a FINRA member firm, on October 9, 2009.

#### **B. Respondent's Failure To Appear For Rule 8210 On-The-Record Testimony**

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to oversee and regulate member firms and associated persons because FINRA does not have

subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.<sup>19</sup>

In this case, FINRA staff first requested OTR testimony pursuant to Rule 8210 from Amieiro in late February 2011.<sup>20</sup> Only two days before the testimony was scheduled to be taken, Amieiro wrote Enforcement that she could not attend and wanted to reschedule for June.<sup>21</sup> Enforcement acceded to Amieiro's request by rescheduling, but it set a date in late April, earlier than she had requested.<sup>22</sup> Enforcement sent a copy of its rescheduled Rule 8210 request for OTR testimony by Federal Express, and that copy was signed for by "C. Amieiro."<sup>23</sup> On April 28, 2011, Amieiro failed to appear for the rescheduled OTR testimony.<sup>24</sup>

In early June 2011, Enforcement again sent Amieiro a letter requesting, pursuant to Rule 8210, that she appear for OTR testimony. The letter was sent to Amieiro's CRD address and a variant of the address. This time Enforcement set the date for June 21, 2011.<sup>25</sup> A copy of this request that was sent by Federal Express was delivered and signed for by "C. Amieiro," but it was then returned to FINRA in a different Federal Express envelope on June 22, 2011.<sup>26</sup>

Enforcement also sent the requests by first-class and certified mail. The first-class mailings were

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<sup>19</sup> See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at \*12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 2007 SEC LEXIS 2596, at \*13 (Nov. 8, 2007); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at \*11-12 (Oct. 19, 2001).

<sup>20</sup> Compl. ¶ 12; CX-6.

<sup>21</sup> Compl. ¶ 13; CX-7.

<sup>22</sup> Compl. ¶ 14; CX-8.

<sup>23</sup> Compl. ¶¶ 14-15; CX-9.

<sup>24</sup> Compl. ¶ 16.

<sup>25</sup> Compl. ¶ 17; CX-12.

<sup>26</sup> Compl. ¶ 18; CX-13.

returned with the notation “no such person.”<sup>27</sup> Amieiro failed to appear for the OTR testimony on June 21, 2011.<sup>28</sup>

The Hearing Officer finds that Amieiro violated FINRA Rule 8210 by failing to appear for OTR testimony. The record supports an inference that the failure was willful. It appears that Amieiro received notice each time that Enforcement scheduled the testimony but intentionally refused to cooperate or to provide information. Such recalcitrance imposed a substantial and unnecessary burden on FINRA in its efforts to conduct the investigation.

In addition, the Hearing Officer finds that Amieiro violated FINRA Rule 2010. FINRA Rule 2110 requires the observance of “high standards of commercial honor and just and equitable principles of trade.” It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.<sup>29</sup>

#### **IV. Sanctions**

The FINRA Sanction Guidelines (“Sanction Guidelines”) state that a bar should be the standard sanction for a complete failure to respond to a request for information pursuant to Rule 8210.<sup>30</sup> In addition, the Sanction Guidelines recommend a monetary sanction of \$25,000 to \$50,000 in appropriate cases. Among the principal considerations in determining sanctions for this type of violation, is the importance of the information requested, as viewed from FINRA’s perspective. As explained in the General Principles applicable to all FINRA sanctions, the overall purpose of the FINRA disciplinary process and FINRA sanctions is to deter the

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<sup>27</sup> Compl. ¶¶ 17-18.

<sup>28</sup> Compl. ¶ 19.

<sup>29</sup> See *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at \*30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at 22 (July 20, 1999).

<sup>30</sup> FINRA Sanction Guidelines (2011), available at [www.finra.org/oho](http://www.finra.org/oho) (then follow “Enforcement” hyperlink to “Sanction Guidelines”) at 33.

respondent and others from engaging in misconduct and to protect investors.<sup>31</sup> A principle consideration in determining the appropriate sanction for an individual is whether the person engaged in an intentional act (as opposed to a reckless or negligent act).<sup>32</sup>

The Hearing Officer finds that all of these considerations warrant barring Amieiro from associating with any FINRA member firm in all capacities. Amieiro failed to respond at all to the Rule 8210 requests for OTR testimony. She did so willfully. The information relating to her loan application was important for FINRA's investigation, and the refusal to provide testimony relevant and material to that investigation impeded FINRA's ability to perform its duties as a self-regulatory organization. FINRA simply cannot perform its oversight function effectively if associated persons refuse to provide FINRA information when requested to do so pursuant to Rule 8210.

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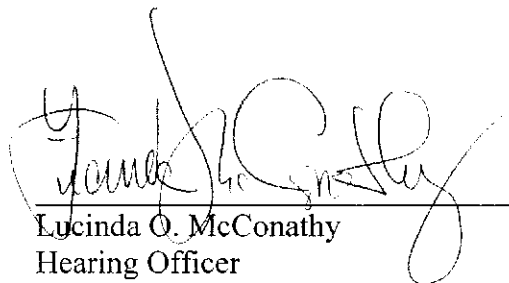
<sup>31</sup> Sanction Guidelines at 2.

<sup>32</sup> Sanction Guidelines at 7.

**V. Order**

Enforcement's Default Motion is granted and the allegations of the Complaint are deemed to be true.

The Hearing Officer finds and concludes that Respondent, Carla N. Amieiro, violated FINRA Rules 8210 and 2010. As the sanction for these two violations together, Respondent, Carla N. Amieiro, is barred from association with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy  
Hearing Officer

Copies to: Carla N. Amieiro (via first-class mail and overnight courier)  
Dana Yoon, Esq. (via electronic and first-class mail)  
David R. Sonnenberg, Esq. (via electronic mail)