

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESUP & LAMONT SECURITIES CORP.
(CRD No. 39056),

Respondent.

Disciplinary Proceeding
No. 2009020539501

Hearing Officer – RSH

DEFAULT DECISION

October 7, 2010

For failing to respond to a request for information in a timely manner, in violation of Procedural Rule 8210 and Conduct Rule 2010, the Respondent was expelled from membership.

David B. Klafter, Deputy Regional Chief Counsel, Boca Raton, Florida, and Andrew A. Favret, Regional Chief Counsel, New Orleans, Louisiana, for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Jurisdiction

Respondent Jesup & Lamont Securities Corp. ("Jesup") has been a FINRA member since February 28, 1996.¹

II. Respondent's Default

Enforcement filed a Complaint against Jesup charging the firm with violating Procedural Rule 8210 and Conduct Rule 2010 by failing to answer FINRA's requests for information in a timely manner.²

¹ Answer to Complaint ("Ans."), ¶ 2.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules.

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Enforcement filed the Complaint with the Office of Hearing Officers on April 13, 2010. Jesup filed an Answer to the Complaint on May 27, 2010. On June 21, 2010, the Hearing Officer held an initial pre-hearing conference ("Conference") pursuant to an order served on the parties on May 27, 2010. Jesup failed to appear at the Conference, despite having been properly served with due notice of the Conference. On June 21, 2010, the Hearing Officer issued an Order to Show Cause why Jesup should not be held in default. The Order explicitly stated that if "the Respondent fails to file a response to the Order to Show Cause by the deadline, the Hearing Officer will deem the allegations against the Respondent as admitted and will issue a default decision based on such admissions." Jesup did not respond to the Order to Show Cause. On July 7, 2010, the Hearing Officer ordered Enforcement to file a Motion for Entry of Default Decision. On July 20, 2010, Enforcement filed a Motion for Entry of Default Decision, which was supported by the Declaration of David B. Klafter and six exhibits. Jesup did not reply to the motion.³

Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Motion for Entry of a Default Decision.

III. Violation

The Complaint alleged that on November 20, 2009, FINRA staff opened an examination to investigate the allegations made in a *Miami Herald* article about JDF, a former Jesup broker. The article claimed that JDF had recommended that a Jesup customer invest \$2 million in an investment offered by an entity controlled by a Florida attorney who later pled guilty to orchestrating a Ponzi scheme.

³ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

On the morning of Friday, November 20, 2009, FINRA staff called Jesup's president and informed him that they would be conducting an examination at the firm's Fort Lauderdale, Florida branch (where JDF worked) later that day. That afternoon, FINRA staff members appeared at Jesup's Fort Lauderdale branch to conduct an examination. During the visit, the staff handed to Jesup's in-house counsel a letter requesting, pursuant to Rule 8210, that Jesup make available for immediate inspection and copying numerous documents related to trading, correspondence, and other activity conducted by JDF, his branch manager, and other representatives in the Fort Lauderdale branch ("November 20 Request"). The staff also requested that they be allowed to interview Jesup personnel and physically inspect the branch. While the staff was on-site, the firm refused to provide any documents, other than those related to JDF, and did not allow the staff to interview Jesup personnel or inspect the branch.

On Monday, November 23, 2009, the staff returned to Jesup's Fort Lauderdale office in an attempt to obtain the additional documents requested in the November 20 Request. Despite the staff's renewed request for documents responsive to the November 20 Request, Jesup refused to provide any documents other than those related to JDF. Jesup's counsel stated that the staff's requests were "illegitimate" and "beyond the scope of a cause examination."

On November 23, 2009, FINRA staff sent another letter ("November 23 Request") to Jesup's general counsel again requesting, pursuant to Rule 8210, that the firm immediately make available for inspection and copying the documents responsive to the requests set forth in the November 20 Request.

On Tuesday, November 24, 2009, FINRA staff returned to Jesup's Fort Lauderdale branch to obtain the documents responsive to its outstanding November 20

Request. Once again, Jesup refused to provide all of the documents requested. As a result, FINRA issued, pursuant to Rule 9552, a Notice of Intent to Suspend the membership of Jesup in connection with the firm's failure to provide documents and information requested pursuant to Rule 8210. The Notice stated that if Jesup did not respond to the November 20 and November 23 Requests by December 18, 2009, Jesup would be suspended.⁴ Jesup requested a hearing, thereby staying the date of suspension, and a hearing was set for February 18, 2010.

On February 11 and 12, 2010, Jesup produced all documents responsive to the November 20 Request and November 23 Request. On the basis of that production, FINRA staff filed a Notice of Withdrawal of its Suspension Notice. On February 16, 2010, the Hearing Officer granted FINRA's Motion to Dismiss, without prejudice.

The facts alleged in the Complaint establish that Jesup failed to respond to FINRA's 8210 Requests in a timely manner; its response was nearly three months after the Requests were made. The fact that Jesup eventually responded to the 8210 Requests "does not absolve it of liability for violating Rules 8210 and 2110."⁵ The submission of information after FINRA institutes proceedings is no defense to a finding of violation. FINRA should not have to bring a disciplinary proceeding in order to obtain information requested pursuant to Rule 8210.⁶

Therefore, the Hearing Officer finds that Jesup violated Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.⁷

⁴ Complainant's Exhibit ("CX")-I.

⁵ *Ashton Noshir Gowadia*, Exchange Act Rel. No. 40410, 1998 SEC LEXIS 1887 (Sept. 8, 1998).

⁶ *Joseph Ricupero*, Exchange Act Rel. No. 62891, at *12 (Sept. 10, 2010); *Mark Allen Elliot*, Exchange Act Rel. No. 34194; 1994 SEC LEXIS 1765 (June 10, 1994).

⁷ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

IV. Sanction

FINRA's Sanction Guidelines provide that in an egregious case of a firm failing to respond to requests for information in a timely manner, an adjudicator should consider expelling the firm. If mitigation exists, the Guidelines direct the adjudicator to consider suspending the firm for up to two years. The Principal Considerations to be used in determining sanctions are: (1) the nature of the information requested; and (2) whether the requested information has been provided, and if so, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response.⁸

This case is egregious, and there do not appear to be any mitigating facts. The information FINRA sought pertained to an investigation of a Ponzi scheme involving retail customers, and Jesup's untimely production occurred only after FINRA staff had been forced to exert the highest degree of regulatory pressure. Regardless of whether FINRA eventually found sufficient evidence to support the allegations of wrong-doing, the information requested pursuant to Rule 8210 was highly significant. It was not until after FINRA made two requests, expended significant time and resources, and sent Jesup a Notice of Intent to Suspend that Jesup provided all of the documents and information requested. Jesup did not respond until nearly three months after FINRA made its requests.

Jesup's challenge of the legitimacy of FINRA's 8210 Requests is not a defense, nor is it mitigating. As the Securities and Exchange Commission ("SEC") has explained, because FINRA lacks subpoena power, "[i]t must therefore rely on Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated

⁸ FINRA Sanction Guidelines, 35 (2007 ed.), www.finra.org/sanctionguidelines.

persons.... The rule is at the heart of the self-regulatory system for the securities industry.”⁹ In *PAZ Securities*, the SEC, in explaining why a bar is the appropriate sanction for a failure to respond to Rule 8210 said, “In addition to protecting investors by barring individuals and firms who have already demonstrated a refusal to be investigated, failures to cooperate should be prevented...by the very real threat of a bar and expulsion. The possibility of receiving a bar for failure to cooperate may have a very specific deterrent effect on all current and future SRO members and associated persons. NASD members and associated persons who know of wrongdoing and are approached by NASD with a request for information as part of an investigation should be deprived of any incentive to fail to cooperate.”¹⁰

The Hearing Officer therefore finds that Jesup should be expelled from FINRA membership.

V. Order

For failing to respond to requests for information in a timely manner, in violation of Procedural Rule 8210 and Conduct Rule 2010, Jesup & Lamont Securities Corp. is expelled from FINRA membership. If this Default Decision becomes the final disciplinary action of FINRA, Jesup’s expulsion shall take effect immediately.

SO ORDERED.


Rochelle S. Hall
Hearing Officer

⁹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13-16 (Nov. 14, 2008) (citations omitted). See also *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007).

¹⁰ *PAZ Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *11 (Apr. 11, 2008), *aff’d sub nom. PAZ Securities v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009).

Copies to: Jesup & Lamont Securities Corp. *(via first-class mail)*
 Todd A. Zuckerbrod, Esq. *(via first-class and electronic mail)*
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Department of Enforcement,

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Jesup & Lamont Securities Corp.
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DISCIPLINARY PROCEEDING
No. 2009020539501

HEARING OFFICER-

COMPLAINT

The Department of Enforcement alleges:

Summary

1. In violation of FINRA Rules 8210 and 2010, Jesup & Lamont Securities Corp. ("Jesup") failed to respond timely to the staff's document and information requests. Jesup only fully complied with the requests after the staff issued a Notice of Intent to Suspend the firm's FINRA membership.

Respondent and Jurisdiction

2. Jesup is a FINRA member and has been such since February 28, 1996.
3. Jesup is headquartered in New York City, has 22 branches, 232 registered persons and 43 non-registered persons.

CAUSE OF ACTION
FAILURE TO RESPOND TIMELY
(Violation of FINRA Rules 8210 and 2010)

4. The Department realleges and incorporates by reference paragraphs 1-3, above.
5. On Friday, November 20, 2009, FINRA staff opened an examination to investigate allegations set forth in an article in *The Miami Herald* that former Jesup broker JDF had recommended that customer TS invest approximately \$2 million in an investment offered by an entity controlled by SR, a Ft. Lauderdale, Florida attorney, who has since been charged with and pled guilty to orchestrating a Ponzi scheme through the sale of investments in fictitious legal settlements.¹
6. During the morning of Friday, November 20, 2009, FINRA staff called Jesup's president and informed him that they would be conducting an examination at the firm's Ft. Lauderdale, Florida branch later that day.
7. On Friday, November 20, 2009, at approximately 2:00 pm, members of the FINRA staff appeared at the Jesup's Ft. Lauderdale, Florida branch, where JDF worked, to conduct an examination.
8. During the visit, the staff hand-delivered a Rule 8210 letter, dated November 20, 2009, to MR, Esq., one of Jesup's in-house counsel, who acknowledged receipt of the letter by signing the same. In its letter, the staff, pursuant to FINRA Rule 8210, requested, among other things, that Jesup immediately make available for inspection and copying various documents, including, without limitation: letters of authorization for the period of February 1, 2009 through November 20, 2009; incoming and outgoing correspondence of the branch for the period of

¹ On February 12, 2010, JDF, without admitting or denying FINRA's allegations, accepted a bar and agreed to the entry of findings that he failed to respond to staff's Rule 8210 requests that had been issued in connection with the staff's underlying investigation.

January 1, 2009 through November 20, 2009; securities-related emails for JDF, his branch manager and two other branch employees for the period of January 1, 2008 to November 20, 2009; a branch commission blotter for the period of February 1, 2009 through November 20, 2009; annual forms disclosing all outside business activities by representatives who worked or had worked at the branch for the period of February 1, 2009 to November 20, 2009; and documents regarding approval for private securities transactions requested by representatives who worked or had worked at the branch for the period of February 1, 2009 to November 20, 2009.

9. While the staff was on-site at Jesup's Ft. Lauderdale, Florida branch, MR told them that the firm was limiting its response to only those documents that related to JDF. The staff reiterated its request that Jesup provide all of the requested documents. MR allowed the staff to inspect and copy only the following documents: written correspondence to or from JDF; wire requests made by JDF's clients; letters of authorization from JDF's clients; JDF's employment file; and the branch's advertising file.

10. Despite the staff's multiple requests, MR did not allow the staff to interview any Jesup personnel or to physically inspect or tour the branch, including JDF's office.

11. On Monday, November 23, 2009, the staff returned to Jesup's Ft. Lauderdale, Florida branch in an attempt to obtain additional documents responsive to its outstanding Rule 8210 requests and to interview Jesup personnel. RR, Esq., another in-house counsel for Jesup, and CP, Esq., outside counsel for Jesup, allowed the staff at that time to interview the branch manager and to inspect JDF's office. Despite the staff's renewed requests for all documents responsive to its November 20, 2009, Rule 8210 letter, RR and CP refused to provide any

additional documents to the staff. In response to the staff's request, CP represented in writing to the staff that Jesup is "only responding to the 8210 letter with respect to [JDF]."

12. On November 23, 2009, after the staff had returned from Jesup's Ft. Lauderdale, Florida branch to FINRA's Boca Raton office, the staff sent a letter to TZ, Esq., Jesup's General Counsel, and CP, wherein it again requested, pursuant to Rule 8210, that the firm immediately make available for inspection and copying all documents responsive to the requests set forth in its November 20, 2009 letter. In the November 23, 2009 letter, the staff advised the firm that its current response improperly limited the scope of the staff's outstanding Rule 8210 requests and cited legal authority for its position. The staff sent the November 23, 2009 by first class mail and e-mail.

13. On Tuesday, November 24, 2009, the staff again returned to Jesup's Ft. Lauderdale, Florida branch to obtain the documents responsive to its outstanding Rule 8210 requests but not yet provided, and to interview additional Jesup personnel. MR and RR allowed the staff at that time to interview multiple persons who work at the branch.

14. Despite renewed requests by the staff for production of all documents responsive to the requests set forth in its November 20, 2009 letter, MR again told the staff that Jesup was providing only documents concerning JDF and concerning investments involving any SR-controlled entity. This time, however, despite multiple requests by the staff, MR and RR refused to put that representation in writing.

15. MR repeatedly referred to the staff's requests as being "illegitimate" and beyond the scope of a cause examination. She also assured the staff that: (1) there were no other wires from the firm to SR-controlled entities; (2) there had been no private securities transactions at the

branch, except the TS transaction; and that (3) she would collect for the staff certain relevant e-mails on Monday, November 30, 2009.

16. Although Jesup did produce certain of the requested documents and information requested by FINRA staff, namely certain documents that relate specifically to JDF, the firm refused to produce a large number of other requested documents and information, including: letters of authorization for the period of February 1, 2009 through November 20, 2009; incoming and outgoing correspondence of the branch for the period of January 1, 2009 through November 20, 2009; securities-related emails for JDF, his branch manager and two other branch employees for the period of January 1, 2008 to November 20, 2009; a branch commission blotter for the period of February 1, 2009 through November 20, 2009; annual forms disclosing all outside business activities by representatives who worked or had worked at the branch for the period of February 1, 2009 to November 20, 2009; and documents regarding approval for private securities transactions requested by representatives who worked or had worked at the branch for the period of February 1, 2009 to November 20, 2009.

17. On November 24, 2009, pursuant to FINRA Rule 9552, FINRA issued a Notice of Intent to Suspend the membership of Jesup in connection with the firm's failure to provide certain documents and information requested pursuant to Rule 8210. Subsequently, on December 7, 2009, the firm requested a hearing staying the Notice of Intent to Suspend.

18. A hearing was scheduled for February 18, 2010.

19. On February 11 and 12, 2010, Jesup produced all documents responsive to the staff's Rule 8210 requests at issue.

20. On the basis of this production, on February 12, 2010, staff filed a Notice of Withdrawal of its November 24th Suspension Notice.

21. On February 16, 2010, the Hearing Officer granted FINRA's Motion to Dismiss that proceeding without prejudice.

22. By failing to timely produce the documents and information requested in the staff's November 20 and November 23, 2009 Requests, Jesup 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 Jesup bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: April 13, 2010

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