

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MOHAMED S. HASSAN
(CRD No. 5108964),

Respondent.

Disciplinary Proceeding
No. 2010023435701

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

April 25, 2013

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

Appearances

For the Department of Enforcement, Complainant: John S. Han, Esq. and Jacqueline D. Whelan, Esq.

For Mohamed S. Hassan, Respondent: no appearance.

DECISION

Mohamed S. Hassan was formerly registered with FINRA and associated as an Investment Company and Variable Contracts Products Representative at FINRA member firm NYLife Securities LLC (“NYLife”) from October 2008 through June 2010. After receiving an amendment to the Uniform Termination Notice for Securities Industry Registration (“Form U5”) that NYLife filed on Hassan’s behalf, FINRA staff began investigating his conduct related to variable annuity applications. In connection with the investigation, FINRA staff sent Hassan two requests for an on-the-record interview pursuant to Rule 8210. He failed to respond to either request.

As a result, Enforcement filed a complaint with the Office of Hearing Officers, charging Hassan with violating FINRA Rules 8210 and 2010. FINRA Rule 8210 grants FINRA staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in an investigation, complaint, examination, or proceeding. FINRA Rule 2010 requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade.

Hassan did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of a default decision. The motion is supported by the Declaration of John S. Han and 12 exhibits.

For the reasons discussed below, the Hearing Officer grants Enforcement's motion.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws¹ because (1) the Complaint was filed within two years after Hassan's last registration with FINRA terminated,² and (2) the Complaint charges him with failing to respond to requests for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

II. Enforcement's Motion for Entry of a Default Decision Is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on January 11, 2013, and the same day served Hassan with a copy of the Notice of Complaint and Complaint by certified mail at his last known residential address as reported in the Central Registration Depository ("CRD Address")³ and at a more recent address Hassan had given to the

¹ 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").

² FINRA terminated his last registration effective December 5, 2011. CX-1, at 3.

³ Declaration Supporting Motion for Entry of Default Decision ("Decl.") ¶ 6; CX-2, at 11-12; CX-3.

staff ("PO Box Address").⁴ Each mailing was returned to Enforcement.⁵ Hassan did not answer the Complaint or otherwise respond by February 8, 2013, the deadline set in the Notice of Complaint.⁶

On February 11, 2013, Enforcement served Hassan with a copy of the Second Notice of Complaint and Complaint by certified mail at his CRD address and PO Box Address.⁷ The certified mailings to the two addresses were returned to Enforcement.⁸ The Second Notice of Complaint required Hassan to file an answer with the Office of Hearing Officers on or before February 28, 2013.⁹ To date, Hassan has not answered or otherwise responded to the Complaint.¹⁰

On March 20, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Hassan did not respond to the motion.

The Hearing Officer concludes that Hassan received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.

⁴ Decl. ¶ 6; CX-2, at 11-12. Because the Notice of Complaint contained an incorrect Disciplinary Proceeding number for this case, on January 15, 2013, Enforcement served a corrected Notice of Complaint on Hassan by certified mail at the CRD Address and the PO Box Address. Decl. ¶ 10; CX-6. The corrected Notice contained the same deadline for responding to the Complaint as the original Notice. The certified mailing to the CRD Address was returned "UNCLAIMED" and "UNABLE TO FORWARD." Decl. ¶ 13; CX-8. The certified mailing to the PO Box Address was returned "NO SUCH NUMBER" and "UNABLE TO FORWARD." Decl. ¶ 14; CX-9.

⁵ The certified mailing to the CRD Address was returned to Enforcement, "ATTEMPTED NOT KNOWN." Decl. ¶ 8; CX-4. The certified mailing to the PO Box Address was returned, "NO SUCH NUMBER." Decl. ¶ 9; CX-5.

⁶ Decl. ¶ 15.

⁷ Decl. ¶ 16; CX-10.

⁸ Decl. ¶¶ 18-19; CX-11; CX-12. The certified mailing to the CRD address was marked: "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD." Decl. ¶ 18; CX-11. The certified mailing to the PO Box Address was marked "nsm," i.e. no such number. CX-12.

⁹ CX-10.

¹⁰ Decl. ¶ 20.

III. Findings of Fact

The Hearing Officer treated the allegations in the attached Complaint as admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

A. Mohammed S. Hassan

Hassan began his career in the securities industry in March 2006.¹¹ From October 1, 2008 until June 8, 2010, he was registered as an Investment Company and Variable Contracts Representative at NYLife.¹² Hassan resigned from NYLife while the firm was reviewing his conduct in connection with variable annuity new account documents.¹³ Thereafter, from November 10, 2010 through December 5, 2011, Hassan was registered in the same capacity at another FINRA member.¹⁴ He is not currently associated with a FINRA-registered firm.¹⁵

B. Hassan's Failure to Provide On-The-Record Testimony

In June 2010, after NY Life filed an amendment to Hassan's Form U5, FINRA staff began an investigation into Hassan's conduct in connection with his submission of variable annuity documents.¹⁶ As part of that investigation, on or about February 28, 2012, FINRA staff sent Hassan a letter pursuant to Rule 8210 ("First Request").¹⁷ The letter requested that he provide testimony on April 11, 2012, at FINRA's San Francisco District Office.¹⁸ FINRA staff

¹¹ Compl. ¶ 2.

¹² Compl. ¶ 5; CX- 1, at 3.

¹³ CX-1, at 10.

¹⁴ CX-1, at 3.

¹⁵ Compl. ¶ 5; CX-1, at 3.

¹⁶ Compl. ¶ 7; Decl. ¶ 22. The Form U5 disclosed that, according to the firm, Hassan had provided "inaccurate client information" on variable annuity documents that resulted in his receiving "commissions in excess of what he was actually entitled to." *Id.*

¹⁷ Compl. ¶ 11.

¹⁸ *Id.*

sent the request to his CRD Address and the PO Box Address.¹⁹ Hassan failed to appear for his scheduled testimony.²⁰

On or about April 11, 2012, FINRA staff sent Hassan a second letter, pursuant to Rule 8210, requesting that he appear for testimony on April 25, 2012, at FINRA's San Francisco District Office ("Second Request").²¹ The Second Request was sent to his CRD and PO Box Addresses.²² The certified mailing to Hassan's PO Box Address generated a return receipt bearing the signature "Max Hassan." Previously, Hassan had informed FINRA staff that "Max" was his nickname.²³ Hassan failed to appear for his scheduled testimony.²⁴

IV. Conclusions of Law

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

¹⁹ Compl. ¶ 12.

²⁰ *Id.* ¶ 16.

²¹ *Id.* ¶ 17.

²² *Id.* ¶ 18.

²³ *Id.* ¶ 22.

²⁴ *Id.* ¶ 23.

cooperate fully and promptly with requests for information.²⁵ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.²⁶ It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.²⁷

In this case, Enforcement made two attempts to obtain an on-the-record interview from Hassan pursuant to FINRA Rule 8210. He failed to respond to either request. Accordingly, the Hearing Officer concludes that Hassan violated FINRA Rules 8210 and 2010 by failing to appear for an on-the-record interview.

V. Sanctions

For failing to respond in any manner to a Rule 8210 request for information, the FINRA Sanction Guidelines provide that a bar should be the standard sanction.²⁸ Further, the adjudicator should consider the "[i]mportance of the information requested as viewed from FINRA's perspective."²⁹ Here, according to the staff, one of the primary reasons it sought Hassan's testimony was to obtain information from him about the legitimacy of variable annuity applications he submitted. His failure to provide testimony prevented the staff from determining whether Hassan had falsified the applications.³⁰ The record does not disclose any mitigating

²⁵ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC 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). See also *Morton Bruce Erenstein*, 316 Fed. App'x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) ("[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.").

²⁶ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

²⁷ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

²⁸ FINRA SANCTION GUIDELINES 33 (2011), available at www.finra.org/sanctionguidelines.

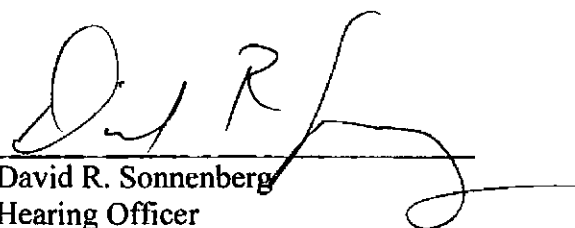
²⁹ *Id.*

³⁰ Decl. ¶ 25.

factors that would warrant permitting Hassan to remain in the securities industry. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for his failure to appear and provide testimony.

VI. Order

Mohamed S. Hassan is barred from associating with any member firm in any capacity for failing to provide testimony, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



David R. Sonnenberg
Hearing Officer

Copies to:

Mohamed S. Hassan (*via overnight courier and first-class mail*)

John S. Han, Esq. (*via electronic mail and first-class mail*)

Jacqueline D. Whelan, Esq. (*via electronic mail*)

Jeffrey D. Pariser, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Mohamed S. Hassan (CRD No. 5108964),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2010023435701

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Mohamed S. Hassan failed to provide testimony requested by FINRA staff in connection with an investigation.

RESPONDENT AND JURISDICTION

2. Hassan entered the securities industry in March 2006 when he became an associated person of a FINRA member firm.
3. From on or about October 1, 2008 through on or about June 8, 2010, Hassan was registered as an Investment Company and Variable Contracts Products Representative at FINRA member NYLife Securities LLC (the Firm).
4. From on or about November 10, 2010 through on or about December 5, 2011, Hassan was registered in that same capacity at another FINRA member.
5. Although Hassan has not been registered or associated with a FINRA member firm since December 5, 2011, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:

- a. the Complaint was filed within two years after the effective date of termination of Hassan's registration with his most recent employing member firm, namely, December 5, 2011; and
- b. the Complaint charges Hassan with failing to appear for testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

CAUSE OF ACTION
Failure to Provide Testimony (FINRA Rules 8210 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. On or about June 21, 2010, FINRA staff opened an investigation into potential misconduct by Hassan as a result of a Form U5 amendment filed by the Firm, disclosing that Hassan had allegedly provided "inaccurate client information" on variable annuity documents that resulted in Hassan receiving "commissions in excess of what he was actually entitled to."
8. On or about January 25, 2012, FINRA staff sent a letter to Hassan requesting that he appear at FINRA's San Francisco District Office on February 22, 2012 to provide testimony in connection with the above-described investigation.
9. On or about February 3, 2012, Hassan telephoned FINRA staff and stated that he was unavailable to appear for testimony on February 22, 2012, but that he would be available during the first full week of March 2012. The staff therefore agreed to reschedule his testimony to March 5, 2012.
10. On or about February 21, 2012, Hassan telephoned FINRA staff and left a voicemail message stating that he was leaving the country to visit his sick father, and did not

know when he would be returning. FINRA staff subsequently called Hassan back and left two voicemail messages for him, instructing him to provide the staff with a copy of his travel itinerary and informing him that his testimony was being rescheduled to April 11, 2012. Hassan never returned these telephone calls.

11. On or about February 28, 2012, FINRA staff sent Hassan a letter pursuant to FINRA Rule 8210, requesting that he provide testimony at FINRA's San Francisco District Office on April 11, 2012 at 10:00 a.m. (First Request).
12. The First Request was sent by first class and certified mail to two addresses:
 - a. Hassan's most recent residential address as reflected in the Central Registration Depository (CRD Address); and
 - b. A post office box that Hassan had orally disclosed to the staff (PO Box Address).
13. Neither of the first class mailings was returned.
14. The staff received a return receipt for the certified mailing to the CRD Address, but the signature of the person accepting delivery was illegible.
15. The certified mailing to the PO Box Address was returned, marked, "Unclaimed."
16. Hassan failed to appear for testimony at the San Francisco District Office on April 11, 2012.
17. Due to Hassan's nonappearance, on or about April 11, 2012, FINRA staff sent Hassan another letter pursuant to FINRA Rule 8210, requesting that he provide testimony at the San Francisco District Office on April 25, 2012 at 10:00 a.m. (Second Request).
18. The Second Request was sent by first class and certified mail to the CRD Address and the PO Box Address.¹

¹ Staff determined that Hassan had given an incorrect spelling for the city associated with the PO Box Address. The spelling was corrected for the mailings of the Second Request.

19. The first class mailing to the CRD Address was not returned.
20. The first class mailing to the PO Box Address was returned, marked, "Not deliverable as addressed."
21. The certified mailing to the CRD Address was returned, marked, "Unclaimed."
22. The staff received a return receipt for the certified mailing to the PO Box Address.

The receipt was signed by "Max Hassan." Hassan had previously informed FINRA staff during a telephone conversation that his nickname was "Max."
23. Hassan failed to appear for testimony at the San Francisco District Office on April 25, 2012.
24. By failing to provide testimony requested by FINRA staff in connection with an investigation, Hassan violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

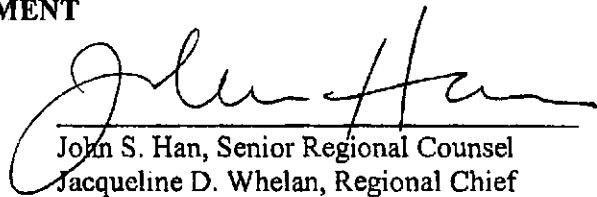
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Hassan 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 Hassan 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: January 11, 2013

A handwritten signature in dark ink, appearing to read "John S. Han", is written over a horizontal line.

John S. Han, Senior Regional Counsel
Jacqueline D. Whelan, Regional Chief
Counsel

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