

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID KRISTIAN EVANSEN
(CRD No. 1579910),

Respondent.

Disciplinary Proceeding
No. 2010023724601

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 24, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for failing to appear for testimony, in violation of FINRA Rules 8210 and 2010. In light of the bar imposed for this violation, no additional sanction is imposed for Respondent's untimely response to other requests for information, in violation of Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Complainant: Sean W. Firley, Esq.

For David Kristian Evansen, Respondent: no appearance.

DECISION

The FINRA Department of Enforcement ("Enforcement") initiated this disciplinary proceeding against David Kristian Evansen ("Evansen") because he failed to comply with requests for information FINRA staff had issued in connection with FINRA's investigation into the claims of four customers that he had made unsuitable recommendations and had engaged in unauthorized and excessive trading or churning while he was associated with Newbridge Securities Corporation ("Newbridge"), in violation of 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.

The Complaint contains two causes of action. The first alleges that Evansen failed to respond timely to two requests for information and documents, and the second alleges that he failed to provide testimony at an on-the-record interview.

I. Procedural History

Enforcement filed the attached Complaint with the Office of Hearing Officers on June 12, 2012. Enforcement served Evansen with a copy of the Complaint and Notice of Complaint by first-class mail and certified mail, return receipt requested, on June 12, 2012, at his residential address recorded in the Central Registration Depository ("CRD").¹ The certified mailing receipt reflects that the mailing was received by Jim Evansen.² Respondent however did not answer the Complaint by July 10, 2012, the deadline set in the Notice of Complaint.

On July 12, 2012, Enforcement served Evansen with a copy of the Complaint and Second Notice of Complaint by first-class mail and certified mail, return receipt requested, at his CRD address.³ The certified mailing receipt reflects that the mailing was received by J. Evansen on July 17, 2012.⁴ The Second Notice of Complaint required Evansen to file an Answer with the Office of Hearing Officers on or before July 30, 2012.

To date, Evansen has not filed an Answer or otherwise responded to the Complaint. On August 7, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions. Evansen did not respond to the motion.

¹ Declaration of Sean W. Firley ("Decl.") ¶ 14.

² Decl. ¶ 16; Ex. 2.

³ Decl. ¶ 18.

⁴ *Id.* ¶ 20; Ex. 3.

II. Findings of Fact and Conclusions of Law

Evansen defaulted by failing to answer the Complaint. Accordingly, pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer treated the allegations in the attached Complaint as admitted.

A. David Kristian Evansen

Evansen was associated with Newbridge between October 20, 2003, and May 1, 2009, during which time he was registered with FINRA as a General Securities Representative.⁵ Thereafter he was associated with Jesup & Lamont Securities Corp. His last registration with FINRA terminated on July 14, 2010.⁶

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws,⁷ because (1) the Complaint was filed within two years after FINRA terminated Evansen's registration, and (2) the Complaint charges him with failing to respond to requests that he provide documents and information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

C. Failure to Provide Information and Documents Timely

In late 2010, FINRA staff attempted to obtain information and documents from Evansen in connection with the investigation of his alleged improper trading in four customer accounts at Newbridge. The staff sent Evansen two requests for information by first-class and certified mail addressed to his CRD address pursuant to FINRA Rule 8210. The first request was dated November 9, 2010, and the second December 3, 2010. Evansen did not respond to either request.

⁵ Ex. 1.

⁶ *Id.*

⁷ 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").

On March 31, 2011, FINRA suspended Evansen from associating with any FINRA member firm in any capacity for his failure to respond to the requests for information. On June 6, 2011, Evansen wrote a letter requesting that FINRA terminate his suspension. FINRA denied the request because Evansen still had not complied with the information requests.

On June 10, 2011, FINRA sent Evansen a letter informing him that, pursuant to Rule 9552(h), and in accordance with the March 7, 2011, Notice of Suspension, he was barred from associating with any FINRA member in any capacity.

Evansen finally responded to the requests for information by letter dated June 9, 2011. Accordingly, on June 14, 2011, FINRA terminated Evansen's suspension and vacated the bar.

The Hearing Officer finds that Evansen impeded FINRA's investigation by failing to respond timely to the Rule 8210 requests for information, and he thereby violated FINRA Rules 8210 and 2010.

D. Failure to Provide Testimony

Following receipt of Evansen's response to the first two requests for information and documents, FINRA sought to question him at an on-the-record interview. FINRA staff sent him two letters at his CRD address by first-class and certified mail. The first letter was dated April 13, 2012, and the second was dated April 25, 2012. The second letter required Evansen to appear at FINRA's Florida office on May 9, 2012. Evansen did not comply with either request.

Following Evansen's failure to appear on May 9, 2012, FINRA staff learned that Evansen had updated his residential address in CRD. Accordingly, on May 10, 2012, the staff sent Evansen a final Rule 8210 request that he appear on May 21, 2012, for an on-the-record interview. FINRA staff sent this letter to Evansen at his updated CRD address by first-class and certified mail, return receipt requested. FINRA staff received the receipt for the certified mailing

signed by “James Evansen.” Evansen did not comply with any of the Rule 8210 requests that he provide testimony at an on-the-record interview.

The Hearing Officer finds that Evansen impeded FINRA’s investigation by failing to appear and provide testimony, and he thereby violated FINRA Rules 8210 and 2010.

III. Sanctions

A. Failure to Provide Testimony

For failing to respond in any manner to a Rule 8210 request for information, the FINRA Sanction Guidelines (“Sanction Guidelines”) provide that a bar should be the standard sanction.⁸ The record does not disclose any mitigating factors that would warrant permitting Evansen to remain in the securities industry. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for his failure to provide testimony, as alleged in the second cause of action.

B. Failure to Respond Timely

For failing to respond in a timely manner to a Rule 8210 request for information, the Sanction Guidelines provide for a suspension in any or all capacities for up to two years and a fine between \$2,500 and \$25,000.⁹ In determining the appropriate sanction in an individual case, the Sanction Guidelines instruct adjudicators to consider: (1) the importance of the information requested as viewed from FINRA’s perspective; (2) the number of requests made and the degree of regulatory pressure required obtaining a response; and (3) the length of time to respond.¹⁰

Taking the foregoing factors into consideration, the Hearing Officer finds that the appropriate sanctions for this violation would be a \$25,000 fine and a two-year suspension from associating with any FINRA member firm in any capacity. Evansen did not respond to the two

⁸ FINRA Sanction Guidelines 33 (2011), *available at* www.finra.org/sanctionguidelines.

⁹ *Id.*

¹⁰ *Id.*

initial requests for information until after he received a Notice of Suspension and was eventually barred. Evansen did not provide the requested information until approximately 19 months after FINRA staff issued the first request for information, which is an egregious violation of Rule 8210. However, in light of the bar imposed for his failure to respond to the other Rule 8210 requests for on-the-record testimony, the Hearing Officer will not impose a further sanction for this violation.

IV. Order

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

In light of the bar imposed for Evansen's failure to provide testimony, the Hearing Officer did not impose an additional sanction for his failure to respond in a timely manner to the requests FINRA staff issued in November and December 2010.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

David Kristian Evansen (*via overnight courier and first-class mail*)
Sean W. Firley, Esq. (*via electronic and first-class mail*)
David B. Klafter, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

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David Kristian Evansen
(CRD No. 1579910),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2010023724601

HEARING OFFICER ____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. David Kristian Evansen ("Evansen") failed to timely respond to requests for documents and information from FINRA staff and failed to appear for investigative testimony, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Evansen entered the securities industry in March 1987 when he became associated with a FINRA member. From October 20, 2003 through May 1, 2009, Evansen was associated with Newbridge Securities Corporation ("Newbridge"). From May 1, 2009 through June 29, 2010,¹ Evansen was associated with former FINRA member Jesup & Lamont Securities Corporation ("Jesup"). Since he was last associated with Jesup, Evansen has not been associated with another FINRA member.

¹ Jesup filed a Form U5 for Evansen on July 14, 2010, reflecting his termination as of June 29, 2010.

3. Although Evansen 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 Evansen's registration with Jesup, namely, July 14, 2010; and (2) the Complaint charges Evansen with failing to timely respond to FINRA requests for documents and information and with failing to appear for on-the-record testimony 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 Timely Respond to Requests for Documents and Information Violations of FINRA Rules 8210 and 2010

4. The Department realleges and incorporates by reference paragraphs one through three above.
5. In order to investigate claims by four Newbridge customers that Evansen had engaged in alleged unsuitable recommendations, unauthorized trading, churning and/or excessive trading, on November 9, 2010, FINRA staff (hereinafter the "Staff") sent a letter to Evansen, pursuant to FINRA Rule 8210, requesting that he provide various documents and information pertaining to the customers' claims (hereinafter the "First Request").
6. The First Request was sent by certified and first class mail to Evansen's residential address reflected in FINRA's Central Registration Depository ("CRD Address") and required his response on or before November 22, 2010.

7. The first class mailing of the First Request was not returned to FINRA. The certified mailing was returned as unclaimed. Evansen did not respond to the First Request.
8. On December 3, 2010, the Staff sent a second letter to Evansen, pursuant to FINRA Rule 8210, requesting that he provide the same documents and information that had been requested in the First Request ("Second Request").
9. The Second Request was sent by certified and first class mail to Evansen's CRD Address and required his response on or before December 17, 2010.
10. The first class mailing of the Second Request was not returned to FINRA. The certified mailing was returned as unclaimed. Evansen did not respond to the Second Request.
11. On March 7, 2011, FINRA sent Evansen a Notice of Suspension, pursuant to Rule 9552, which enclosed copies of the First and Second Requests. The Notice of Suspension informed Evansen that on March 31, 2011, Evansen would be suspended from associating with any FINRA member in any capacity because he had failed to provide FINRA with the documents and information sought in the First and Second Requests.
12. The Notice of Suspension also outlined that Evansen could request a hearing in response to the Notice and could request a termination of the suspension. Further, the Notice of Suspension informed Evansen that if he failed to request termination of the suspension within three months, he would automatically be barred on June 10, 2011 from associating with any FINRA member in any capacity. The Notice of Suspension

also informed Evansen that even if he complied prior to the date of the suspension, he might still be subject to disciplinary action due to his untimely response.

13. Evansen did not respond to the First and Second Requests even after the Notice of Suspension. On March 31, 2011, FINRA sent Evansen a letter informing him that, in accordance with the Notice of Suspension, he was suspended as of that date.
14. On June 6, 2011, Evansen wrote a letter to FINRA requesting termination of his suspension. Evansen's letter did not respond to the First and Second Requests and only stated that he had been in Atlantic City, New Jersey for six months and had only recently returned to Boca Raton, Florida where he resides.
15. On June 8, 2011, FINRA responded to Evansen, denying his request to terminate the suspension because Evansen had not fully complied by producing the documents and information sought in the First and Second Requests and because the First and Second Requests had been properly served on Evansen at his CRD Address.
16. On June 10, 2011, FINRA sent Evansen a letter informing him that, pursuant to Rule 9552(h), and in accordance with the March 7, 2011 Notice of Suspension, he was barred from associating with any FINRA member in any capacity effective as of that date.
17. On June 13, 2011, FINRA received correspondence from Evansen wherein he finally responded to the First and Second Requests. The letter from Evansen was dated June 9, 2011.
18. On June 14, 2011, FINRA sent Evansen a letter terminating the suspension and vacating the bar that had taken effect on June 10, 2011. The letter informed Evansen

that he could still be subject to disciplinary action for his untimely response to the First and Second Requests.

19. Evansen's failure to timely respond to the First and Second Requests has impeded the Staff's investigation.

20. By failing to timely respond to the First and Second Requests, Evansen violated FINRA Rules 8210 and 2010.

**SECOND CAUSE OF ACTION
Failure to Appear for Investigative Testimony
Violations of FINRA Rules 8210 and 2010**

21. The Department realleges and incorporates by reference paragraphs one through twenty above.

22. In order to investigate the claims made by the four Newbridge customers and to question Evansen about his untimely responses, the Staff thereafter sought to take Evansen's investigative testimony. On April 13, 2012, the Staff sent Evansen a letter, pursuant to FINRA Rule 8210, requesting that he appear for investigative testimony in the Florida District Office on April 25, 2012 and 9:30 a.m. (hereinafter the "Third Request").

23. The Third Request was sent by certified and first class mail to Evansen's CRD Address. Evansen did not appear for investigative testimony and did not contact the Staff to request an alternate date.

24. The first class mailing of the Third Request was not returned to FINRA. Online records from www.usps.com reflect that notice of the Third Request was left at

- Evansen's CRD Address on April 17, 2012, but that the Third Request had not been claimed.
25. On April 25, 2012, the Staff sent Evansen a letter, pursuant to FINRA Rule 8210, again requesting that he appear for investigative testimony in the Florida District Office on May 9, 2012 and 9:30 a.m. (hereinafter the "Fourth Request").
26. The Fourth Request was sent by certified and first class mail to Evansen's CRD Address. Evansen did not appear for investigative testimony and did not contact the Staff to request an alternate date.
27. The first class mailing of the Fourth Request was not returned to FINRA. Online records from www.usps.com reflect that notice of the Fourth Request was left at Evansen's CRD Address on April 26, 2012, but that the Fourth Request had not been claimed.
28. On May 9, 2012, after Evansen had failed to appear for his OTR scheduled for earlier that day, the Staff verified that the First, Second, Third and Fourth Requests had been sent to the residential address reflected in CRD for Evansen as of the dates that those letters were sent to Evansen.
29. On May 10, 2010, the Staff discovered that Evansen had updated his residential address in the CRD system. Thus, as of May 10, 2012, Evansen's residential address as reflected in the CRD system was a new address in New Lisbon, Wisconsin (hereinafter the "Wisconsin CRD Address").
30. On May 10, 2012, upon discovery of Evansen's Wisconsin CRD Address, the Staff again sought to take Evansen's investigative testimony by sending Evansen a letter,

pursuant to FINRA Rule 8210, requesting that he appear for investigative testimony in the Florida District Office on May 21, 2012 and 9:30 a.m. (hereinafter the "Fifth Request").

31. The Fifth Request was sent by certified and first class mail to Evansen's Wisconsin CRD Address. Evansen did not appear for investigative testimony and did not contact the Staff to request an alternate date.
32. The first class mailing of the Fifth Request was not returned to FINRA. Online records from www.usps.com reflect that the certified mailing of the Fifth Request was delivered at Evansen's Wisconsin CRD Address on May 17, 2012. In addition, the green certified card was returned to FINRA, reflecting delivery of the Fifth Request on May 17, 2012 and bearing a signature of "James Evansen."
33. Evansen's failure to appear for investigative testimony pursuant to the Third, Fourth and Fifth Requests has impeded the Staff's investigation.
34. By failing to appear for investigative testimony pursuant to the Third, Fourth and Fifth Requests, Evansen violated FINRA Rules 8210 and 2010.

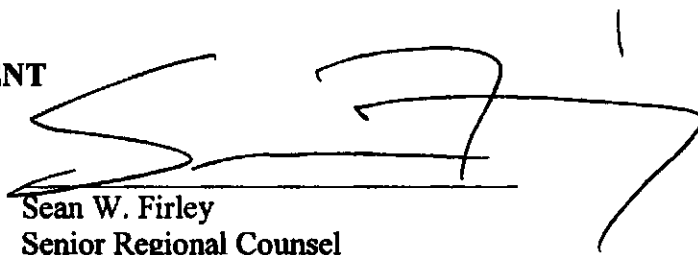
RELIEF REQUESTED

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

Dated: June 12, 2012



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