

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILLIP E. JOHNSON, JR.
(CRD No. 4808529),

Respondent.

Disciplinary Proceeding
No. 2010024221401

Hearing Officer – LBB

DEFAULT DECISION

Date: January 15, 2013

Respondent Phillip E. Johnson, Jr. is barred from associating with any FINRA member firm in any capacity for failing to appear and testify at an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

Appearances

Kelly A. McCormick, Esq., Principal Counsel, Rockville, Maryland, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement filed the Complaint in this disciplinary proceeding on October 2, 2012, charging Respondent Phillip E. Johnson, Jr., with failing to appear and testify at an on-the-record interview (“OTR”), in violation of FINRA Rules 8210 and 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 on December 19, 2012, 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. Respondent's Default

On October 2, 2012, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail at his residential address as listed in the Central Registration Depository. The Postal Service was unable to deliver the documents, and returned them to FINRA. The Notice informed Respondent that he was required to answer the Complaint by October 30, 2012. He failed to answer the Complaint by that date. Decl. ¶¶ 10-12, 15, 16; CX-1, CX-2.

On October 31, 2012, Enforcement served the Complaint and Second Notice of Complaint on Respondent at his CRD address by certified mail. The Second Notice informed Respondent that he was required to answer the Complaint by October 19, 2012, a typographical error. However, the Second Notice also informed Respondent that he was required to answer the Complaint within 19 days of the service of the Complaint and Second Notice of Complaint. The Postal Service was unable to deliver the Second Notice of Complaint and Complaint to Respondent, and they were returned to FINRA staff. Decl. ¶ 17; CX-3.² Respondent has not filed an answer to the Complaint. Decl. ¶ 18.

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 a declaration by FINRA counsel, and supporting documentation. Counsel's declaration, the Declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-__."

² FINRA Rule 9215(f) provides, in part, "If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Department of Enforcement or the Department of Market Regulation shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice." Despite the error in the Second Notice, it was sufficient to provide Respondent with notice that he was required to answer the Complaint, and provided more time than required by the Rule. Because the Postal Service was unable to deliver the Complaint and Second Notice of Complaint, Respondent was not prejudiced, nor would he have been prejudiced if he had received and relied upon the Second Notice.

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.

II. Jurisdiction

Respondent was first registered with a FINRA member firm in 2004. He became registered with FINRA member firm Wells Fargo Advisors, LLC in 2006. Decl. ¶ 4; CX-1. Wells Fargo terminated Respondent's employment on or about August 18, 2010. The firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on September 8, 2010, stating that it had terminated Respondent's employment because Respondent had violated firm policies and procedures relating to the exercise of discretion in client accounts without written authorization. Decl. ¶ 5; CX-1.

Thrivent Investment Management Inc. filed a Uniform Application for Securities Industry Registration or Transfer (Form U4) on Respondent's behalf on October 12, 2010. Thrivent filed a Form U5 on October 15, 2010, notifying FINRA that it had decided not to contract with Respondent as a result of the termination of Respondent's employment by his previous firm. Decl. ¶ 6; CX-1. Although Respondent was not registered with FINRA during his brief association with that firm, he was an associated person of Thrivent because the firm submitted a Form U4 on his behalf.³

Although Respondent has not been associated with a member firm since October 15, 2010, 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

³ Article I, §(rr)(1) of FINRA's By-Laws defines "person associated with a member" or "associated person of a member" to include "a natural person who is registered or has applied for registration under the Rules of the Corporation."

association 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 association with a member firm.

III. Respondent Violated FINRA Rules 8210 and 2010

As a result of the information in Respondents Form U5, FINRA commenced an investigation into Respondent's conduct at Wells Fargo. Complaint ¶ 7. On February 22, 2012, FINRA staff sent a letter to Respondent, directing him to appear for an OTR pursuant to FINRA Rule 8210. The letter was sent to his current residential address, as listed in CRD, as well as to a corrected version of the address. The testimony was scheduled to take place on March 20, 2012. Complaint ¶ 8.

On March 16, 2012, Respondent left a voicemail for FINRA staff stating that he was not going to appear for the OTR scheduled for March 20, 2012. Respondent did not appear to testify on March 20, 2012. Complaint ¶¶ 10, 11. FINRA staff spoke on the telephone with Respondent on March 21, 2012. Respondent told the staff that he would not appear at an OTR at any time. Complaint ¶ 12.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for documents and information, in violation of FINRA Rule 8210. A violation FINRA Rule 8210 is also a violation of FINRA Rule 2010.⁴

IV. Sanctions

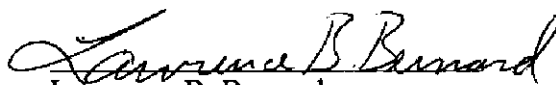
The FINRA Sanction Guidelines recommend a bar as the standard sanction where a respondent fails to respond in any manner to a request for information issued pursuant to Rule

⁴ *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).

8210.⁵ Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. Respondent did not appear to testify at the OTR, and informed the staff that he would not appear in the future. There are no mitigating factors. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violation of FINRA Rules 8210 and 2010.

V. Conclusion

Respondent Phillip E. Johnson, Jr., is barred from associating with any member firm in any capacity for failure to provide documents and information, in violation of FINRA Rules 8210 and 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: Phillip E. Johnson, Jr. (*via overnight courier and first-class mail*)
Kelly A. McCormick, Esq. (*via electronic and first-class mail*)
Thomas B. Lawson, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁵ FINRA Sanction Guidelines at 33 (2011) ("Guidelines").

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DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

PHILLIP E. JOHNSON, JR.
(CRD No. 4808529),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2010024221401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Phillip E. Johnson, Jr. failed to appear for testimony requested by FINRA staff, pursuant to Procedural Rule 8210. He thereby violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Johnson entered the securities industry in May 2004 as an associated person of a FINRA member. He first became registered as a General Securities Representative and a State Securities Agent in August 2004. In February 2006, Johnson became registered as a General Securities Representative and a State Securities Agent at what is now FINRA member Wells Fargo Advisors, LLC. In February 2007, Johnson became registered as an investment advisor, also.

3. Johnson was terminated from Wells Fargo Advisors, LLC on or about August 18, 2010. Wells Fargo filed a Form U5 with FINRA on September 8, 2010, stating that Johnson had been terminated for “violat[ing] firm policies and procedures relating to discretion in accounts without written authorization.”

4. Thrivent Investment Management Inc. filed a Form U4 on Johnson’s behalf on October 12, 2010. However, Thrivent subsequently filed a Form U5 for Johnson on October 15, 2010, stating that the “firm decided not to pursue contracting [Johnson].” Johnson has not been associated with any FINRA member since that time.

5. Although Johnson 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 Johnson’s association with Thrivent, namely, October 15, 2010; and (2) the Complaint charges him with failing to respond to FINRA requests for information 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 APPEAR FOR TESTIMONY Violation of FINRA Rules 8210 and 2010

6. The Department of Enforcement re-alleges and incorporates by reference Paragraphs 1 through 5 above.

7. As a result of the information contained in Johnson’s Form U5, FINRA commenced an investigation into Johnson’s conduct at Wells Fargo.

8. On or about February 22, 2012, FINRA staff sent a letter requesting that Johnson appear for testimony pursuant to FINRA Rule 8210. The letter was sent to Respondent's then-current residential address in Newburgh, Indiana listed in FINRA's Central Registration Depository (CRD) system as well as to a corrected version of the address. Specifically, copies were sent to Respondent's CRD address that contained a typographical error ("Urghevansville, IN") and also to the corrected city ("Newburgh, IN"). The letter was sent to the CRD address and the corrected address via U.S. Postal Service Certified Mail, Return Receipt Requested, and First Class Mail. The testimony was scheduled to take place on March 20, 2012.

9. The Return Receipt attached to the letter sent to Johnson's CRD address was returned to FINRA staff with a signature of Phillip Johnson, indicating that he had received it on February 24, 2012.

10. After business hours on March 16, 2012, Johnson left a voicemail with FINRA staff stating that that he was not going to show up for the testimony on March 20, 2012.

11. Johnson did not appear for testimony on March 20, 2012.

12. On March 21, 2012, FINRA staff spoke with Johnson via telephone. In that conversation, Johnson stated that he would not appear for testimony at any time.

13. By failing to appear for testimony, Johnson violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

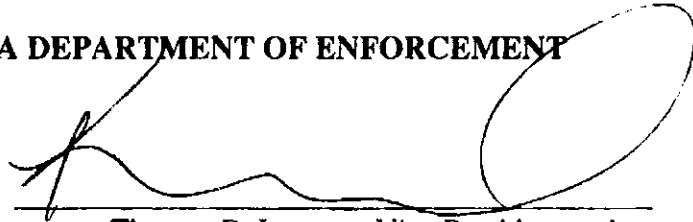
WHEREFORE, the Department respectfully requests that the Panel:

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 the Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

A handwritten signature in black ink, appearing to read 'Thomas B. Lawson', is written over a horizontal line. The signature is stylized with a large loop at the end.

Date

Thomas B. Lawson, Vice President and
Chief Counsel
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