

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOIL KIM
(CRD No. 5739789),

Respondent.

Disciplinary Proceeding
No. 2010024329101

Hearing Officer—LOM

DEFAULT DECISION

October 11, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to respond to requests for information in connection with a FINRA investigation in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Respondent is also found to have violated NASD Conduct Rule 3030 and FINRA Conduct Rule 2010 by failing to disclose to his FINRA registered firm his involvement in outside business activities (mortgage brokering), but, in light of the bar, the suspension that would have been appropriate for those violations is superfluous and will not be imposed.

Appearances

William St. Louis Esq., Deputy Regional Chief Counsel, and David Jaffe, Regional Chief Counsel, New York, New York, for the Department of Enforcement.

No appearance on behalf of Doil Kim.

I. Introduction

The FINRA Department of Enforcement ("Enforcement") has filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion") based on the Respondent's failure to file an Answer or otherwise respond to the charges against him. Enforcement filed the

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attached Complaint with the Office of Hearing Officers on June 7, 2011, and served it twice (first in June and again in July) on the Respondent, Doil Kim, who was employed by MF Global Inc. ("MFG" or the "firm") until August 20, 2010, and was registered as a General Securities Representative with the firm until August 30, 2010. To date, Kim has not responded to the Complaint.

Accordingly, on August 26, 2011, Enforcement filed and served by first-class mail and certified mail, return receipt requested, a Default Motion, together with the declaration of William St. Louis ("St. Louis Decl.") and 16 attached exhibits.¹ Kim did not respond to the Default Motion.

The Complaint alleges two causes of action against Kim. First, the Complaint charges him with violating NASD Conduct Rule 3030 by engaging in outside business activities (mortgage brokering) without disclosure to his firm. It further alleges that by violating the rule against engaging in undisclosed outside business activities Kim violated FINRA Rule 2010 (formerly NASD Conduct Rule 2110). Second, the Complaint charges Kim with violating FINRA Rules 8210 and 2010 by failing to comply with Enforcement's request for information in connection with an investigation of his outside business activities.²

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Kim in default, grants Enforcement's Default Motion, and

¹ Enforcement's exhibits are labeled CX-1 through CX-16.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. NASD Conduct Rule 3030 was in effect at the time of the conduct in issue here and until December 15, 2010, when FINRA Rule 3270 became effective concerning outside business activities of registered persons. FINRA Rule 2010, which became effective December 15, 2008 and which replaced NASD Conduct Rule 2110, was in effect at the time of the conduct at issue here. Although amended on December 29, 2010, in relevant part FINRA Rule 8210 was in effect at the time of the conduct at issue here.

deems the allegations against Respondent admitted. On that basis, the Hearing Officer also issues this Decision barring Kim from associating with any FINRA member firm in any capacity.

II. Procedural History And Grant Of Default Motion

On June 7, 2011, Enforcement served the Complaint and the First Notice of Complaint on Kim by first-class mail and certified mail, return receipt requested, addressed to Kim at his most recent address recorded in the Central Registration Depository ("CRD").³ The copy sent by first-class mail was returned to Enforcement labeled "Moved Left No Address – Unable to Forward – Return to Sender."⁴ The copy sent by certified mail was returned to Enforcement with an identical label.⁵

Pursuant to FINRA Rules 9215(a) and 9138(c), Kim was required to file and serve his Answer within 28 days after service, on or before July 5, 2011, as Enforcement specified in the Notice of Complaint.⁶ However, Kim did not file an Answer with the Office of Hearing Officers by July 5, 2011.

On July 5, 2011, Enforcement served the Complaint and a Second Notice of Complaint at Kim's CRD address by first-class mail and certified mail, return receipt requested.⁷ The Second Notice specified that Kim's Answer was due within 17 days after service, on or before July 22, 2010. The Second Notice warned that a failure to submit an Answer could result in a default decision against Kim pursuant to FINRA Rule 9269. Again, the copy sent by first-class mail was returned to Enforcement with the label, "Moved Left No Address – Unable to Forward – Return

³ St. Louis Decl. ¶¶ 12-13; CX-1 and CX-5.

⁴ St. Louis Decl. ¶ 14; CX-6.

⁵ St. Louis Decl. ¶ 14; CX-6.

⁶ CX-5.

⁷ St. Louis Decl. ¶ 15; CX-7.

to Sender.”⁸ The copy sent by certified mail also was returned to Enforcement with an identical label.⁹ Kim did not file an Answer with the Office of Hearing Officers by the July 22, 2011, deadline and has not filed an answer at any time since then.

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 Enforcement 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. Enforcement served Kim both times at his CRD residential address.¹⁰ Kim is not currently employed in the securities industry.¹¹

Service here was valid. Pursuant to FINRA Rules 9215(f) and 9269(a) and based on Kim’s default, the Hearing Officer deems the allegations in the attached Complaint admitted.

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

A. Background

Kim joined MFG in November 2009 and became a FINRA-registered representative in association with MFG in May 2010.¹² Prior to that, he worked as a mortgage broker and in other jobs that were not investment related.¹³ E-mail correspondence to and from Kim in July and August 2010 (which was found on MFG’s computer system) shows that at least for those two months Kim was running a mortgage broker business at the same time that he was employed as a

⁸ St. Louis Decl. ¶ 17; CX-8.

⁹ St. Louis Decl. ¶ 17; CX-8.

¹⁰ St. Louis Decl. ¶¶ 13 and 16.

¹¹ St. Louis Decl. ¶ 10.

¹² St. Louis Decl. ¶¶ 5-6; CX- 1.

¹³ St. Louis Decl. ¶ 8; CX-1.

registered representative at MFG.¹⁴ However, Kim did not notify MFG of these other business activities.¹⁵

On August 20, 2010, MFG terminated Kim's employment. MFG filed a Uniform Termination Notice for Securities Industry Regulation (Form U-5) on August 30, 2010, in which it said Kim's termination was because of a "Policy violation – investment related."¹⁶ That filing prompted Enforcement to conduct an investigation, and, pursuant to FINRA Rule 8210, Enforcement sent Kim two letters of inquiry.

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after termination of Kim's registration, and it charges him both (i) with misconduct that occurred while he was associated with a FINRA member firm and (ii) with failing to respond to Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.¹⁷

C. Non-Disclosure Of Outside Business Activities

The first cause of action alleges that Kim engaged in outside business activities (mortgage brokering) without disclosure to his firm in violation of NASD Conduct Rule 3030

¹⁴ St. Louis Decl. ¶ 19; CX-9.

¹⁵ The firm terminated Kim because it discovered his outside business activity, which he had not disclosed to the firm. CX-11. In fact, it appears that prior to July 2010 Kim told MFG that he was *not* engaged in any outside business interests, and he never amended the prior disclosures. MFG requires its employees on an annual basis to state, via a software program, whether they are engaged in outside business activities. St. Louis Decl. ¶ 22; CX-3, CX-11. In January 2010, Kim completed an annual certification required by MFG and answered "no" to the question about outside business activities. CX-12. In March 2010, Kim indicated on his MFG Form U-4 that he was not engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise in response to the Other Business Question. CX-3.

¹⁶ St. Louis Decl. ¶ 9; CX-4.

¹⁷ 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").

and FINRA Rule 2010. NASD Conduct Rule 3030, as applicable at the time, provided that “[n]o person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.” This Rule had been in effect for more than 20 years,¹⁸ and has been carried forward as FINRA Rule 3270. Along with the Rule against selling securities away from an associated person’s member firm, Rule 3030 has been long recognized as an important component of appropriate supervision of registered persons by their firms.¹⁹

FINRA Rule 2010, as applicable at the time, states that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” It is inconsistent with the duties imposed by Rule 2010 to violate other FINRA (and formerly applicable NASD) rules.²⁰

Because Kim failed to file and serve an answer and is in default, the allegations of the Complaint are deemed admitted. In any event, the evidence attached to the Default Motion supports the allegations. In e-mail correspondence on MFG’s computers during July and August 2011, Kim sought mortgage rate bids and guidance on closings.²¹ He gave instructions to condominium buyers on what information might be required to secure a loan and offered to

¹⁸ Adopted by SR-NASD-88-34, eff. Oct. 13, 1988.

¹⁹ See, generally, NASD Notice to Members 01-79 (“Associated persons are required, either under Rule 3030 or Rule 3040, to report, in writing, any and all types of business that they plan to conduct away from their firms, whether or not it involves a security.”).

²⁰ The Securities and Exchange Commission has consistently held that a violation of an NASD rule or regulation is inconsistent with NASD Conduct Rule 2110, which is the predecessor to FINRA Rule 2010 and is identical to it. *Alvin W. Gebhart*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006) *rev’d and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007).

²¹ CX-9.

handle mortgage refinancings.²² He discussed his own charges for services and assisted residential loan borrowers in collecting and providing the necessary paperwork for their loan.²³ An MFG Senior Vice President saw e-mails in which Kim was working with a potential client on a refinancing and learned that Kim had not discussed his mortgage business with MFG.²⁴ MFG terminated Kim because he had not disclosed his outside business activity to the firm as required by company policy.²⁵ The evidence shows that Kim was engaged in a mortgage brokerage business while registered with MFG and that he failed to inform MFG of his outside business activity.

The Hearing Officer finds that Kim violated NASD Conduct Rule 3030 by engaging in outside business activities without disclosure to his firm. The Hearing Officer further finds that Kim violated FINRA Rule 2010 when he violated the rule against non-disclosure of outside business activities.

D. Failure To Comply With Requests For Information And Testimony

Kim violated FINRA Rules 8210 and 2010 by failing to respond to requests for information and testimony. Rule 8210 grants FINRA the right to require members and persons subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding."²⁶ Rule 8210 enables FINRA to

²² CX-9.

²³ CX-9.

²⁴ CX-10.

²⁵ CX-11.

²⁶ FINRA Rule 8210(a)(1); *see also Michael J. Markowski*, Exchange Act Rel. No. 43259, 2000 SEC LEXIS 1860, at *15 (Sept. 7, 2000) ("The NASD has the right to request information and require cooperation from its members and persons associated with them."), *aff'd*, 2001 U.S. App. LEXIS 27007 (D.C. Cir. Dec. 21, 2001).

conduct meaningful examinations and investigations. FINRA relies heavily on Rule 8210, and the Securities and Exchange Commission has “repeatedly stressed the importance of cooperation in [FINRA] investigations ... [and] emphasized that the failure to provide information undermines [FINRA’s] ability to carry out its self-regulatory functions.”²⁷ Indeed, Rule 8210 is widely accepted as FINRA’s most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members.²⁸ FINRA is therefore entitled to the “full and prompt cooperation” of all persons subject to its jurisdiction when investigative requests are made by members of its staff.²⁹

In this case, FINRA learned from the Form U-5 that MFG filed in connection with Kim’s termination that Kim had been terminated for engaging in outside business activities without disclosure to his firm.³⁰ FINRA began an inquiry and requested information from Kim.³¹

Pursuant to Rule 8210, FINRA requested by letter dated October 8, 2010, that Kim answer a series of questions about his outside business activity and provide related correspondence and memoranda, as well as any documentation of complaints against Kim regarding his employment at MFG during the preceding three years.³² When Kim failed to

²⁷ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at * 9 (Sept. 14, 1998) (internal citations omitted).

²⁸ See *John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *57 n.67 (Nov. 12, 2010), appeal docketed, No. 10-15918 (11th Cir. Dec. 23, 2010).

²⁹ *Michael David Borth*, Exchange Act Rel. No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

³⁰ CX-13.

³¹ Compl. ¶¶ 14, 17; CX-13 and CX-15.

³² St. Louis Decl. ¶ 24; CX-13.

respond,³³ Enforcement reiterated its request pursuant to FINRA Rule 8210 by letter dated April 6, 2011.³⁴ Kim still failed to respond.³⁵

The Hearing Officer finds that Kim violated FINRA Rules 8210 and 2010 by failing to respond to the two letters requesting information pursuant to Rule 8210.

IV. Sanctions

A. Failure To Disclose Outside Business Activities

FINRA's Sanction Guidelines ("Sanction Guidelines") provide for a suspension for up to 30 business days and a fine of \$2,500 to \$50,000 for failure to disclose outside business activities in violation of FINRA Rules 2010 and 3270 (the current version of NASD Conduct Rule 3030), unless there are aggravating factors warranting a more severe sanction. The Sanction Guidelines recommend a one-year suspension where there are aggravating factors. The Sanction Guidelines specify that one of the principal considerations in determining a sanction for this type of misconduct is whether the respondent misled his FINRA registered firm about his activities.³⁶ In this case the evidence shows that Kim did mislead his firm. Earlier in 2010, Kim twice submitted responses on compliance forms that affirmatively represented that he was not engaged in any outside business activities. Kim never amended those responses. Accordingly, even if he only engaged in outside business activities in July and August of 2010, in failing to amend his earlier submissions to reflect his activities in July and August he misled the firm. This constitutes an aggravating factor that warrants a longer suspension. The Hearing Officer finds that a suspension of one year would be appropriate for the failure to disclose outside business

³³ St. Louis Decl. ¶ 26.

³⁴ St. Louis Decl. ¶¶ 27-28; CX-15 and CX-16.

³⁵ St. Louis Decl. ¶ 29.

³⁶ FINRA Sanction Guidelines 13 (2011), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

activities. However, in light of the bar imposed for violation of FINRA Rule 8210 (see below), the suspension would be superfluous and will not be imposed.

B. Failure To Respond To Requests For Information

The Sanctions Guidelines provide that a bar is “standard” when there is a complete failure to respond to requests for information pursuant to FINRA Rule 8210.³⁷ Here, Kim failed completely to respond to two Rule 8210 requests for information.

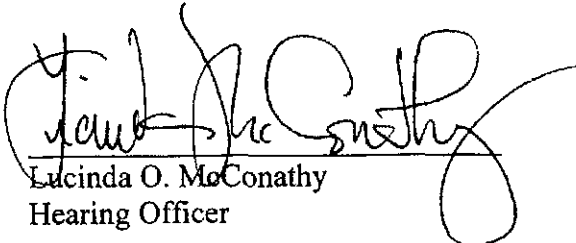
The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case. Kim was given two opportunities to come forward with information and yet did not do so. No mitigating circumstances are presented, and, as noted above, the obligation to cooperate with and provide information to FINRA in connection with its investigations is critical to the proper functioning of the self-regulatory process.

A bar remedies the risk that Enforcement will not be able to obtain information necessary to the protection of investors and will serve to deter others from failing to provide Enforcement with information requested under FINRA Rule 8210. Accordingly, for violating FINRA Rules 8210 (and thereby also violating FINRA Rule 2010), the Hearing Officer orders Respondent Doil Kim barred from associating with any FINRA member firm in all capacities.

³⁷ Sanction Guidelines 33.

V. **Order**

Respondent is barred from associating with any member firm in any capacity for failing to provide information requested by Enforcement pursuant to FINRA Rule 8210, in violation of that Rule and FINRA Rule 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

Copies to:

Doil Kim (via overnight courier and first-class mail)
William St. Louis, Esq. (via electronic and first-class mail)
David Jaffe, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOIL KIM (CRD No. 5739789),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010024329101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Doil Kim ("Kim") engaged in undisclosed outside business activities while registered with FINRA through member firm MF Global Inc. (BD No. 6731)("MFG"). During at least July and August 2010, Kim was engaged in mortgage brokering activities without providing prompt written notice of such outside activities to MFG.
2. Further, by letters dated October 8, 2010 and April 6, 2011, the staff of FINRA's Central Review Group (the "Staff") requested, pursuant to FINRA Rule 8210, that Kim provide a written statement addressing certain questions. To date, Kim has failed to respond to these requests.

BACKGROUND OF RESPONDENT AND JURISDICTION

3. Kim first became associated with MFG in or around November 2009.
4. From May 6, 2010 through August 30, 2010, Kim was registered with FINRA as a General Securities Representative through an association with MFG. At MFG, Kim worked in a Chicago, Illinois office and was responsible for, *inter alia*, the sale of managed futures funds (MF Global proprietary and third party funds) to both current MFG internal prospects as well as to Independent Broker/Dealer Financial Advisors.
5. According to the March 1, 2010 Uniform Application for Securities Industry Registration or Transfer (Form U4) MFG filed on Kim's behalf, Kim's employment history included:

From	To	Name	Investment Related Business?	City	State	Position
05/2006	03/2008	BENCHMARK MORTGAGE	N	ARLINGTON HEIGHTS	IL	BRANCH MANAGER
11/2005	04/2006	QUOTEMEAREATE. COM	N	HOUSTON	TX	BRANCH MANAGER
01/2005	10/2005	ENVISION MORTGAGE	N	CRESTWOOD	IL	MORTGAGE BROKER
03/2004	12/2004	AMERIQUEST MORTGAGE	N	VERNON HILLS	IL	ACCOUNT EXECUTIVE

6. On August 30, 2010, MFG filed a Uniform Termination Notice for Securities Industry Regulatory (Form U5) with respect to Kim that stated that his termination basis was "Other" and that his last date of employment at the firm was August 20, 2010. The firm disclosed on his Form U5 as a Termination Explanation: "Policy violation - not investment related."

7. Kim is not currently associated with any FINRA member firm, nor is he otherwise employed in the securities industry. He remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION
Undisclosed Outside Business Activity
(Violation of NASD Conduct Rules 3030 and FINRA Rule 2010)

8. Paragraphs 1 through 7 above are re-alleged and incorporated herein.
9. On his March 1, 2010 MFG Form U4, Kim answered "no" to the following question:

Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.) If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business. (Emphasis in original).

10. During at least July and August 2010, Kim engaged in undisclosed outside business activities while registered through MFG. Specifically, as indicated by emails sent to and from his MFG email account, Kim engaged in mortgage brokering activities without providing written notice to MFG.
11. One example of such emails is this August 16, 2010 (3:15 pm) email from Kim:

Hey Susan, On every refinance there aren't any miscellaneous fee's that I charge, it's pretty black and white and only true third party fee's. . . . How about to make things easier and more comforting for your client, he'll just pay 950 for closing costs . . . and instead of crediting 1k, I'll cover any cost over and above this figure. The only reason it might be different is because the title insurance sometimes comes in a little higher based on how many pages they need to record, and exact loan amt (I don't have the title insurance rate's in front of me). . . ." (Emphasis added).

12. Kim failed to provide prompt written notice to MFG of his mortgage brokering activities. Indeed, Kim did not provide any such notice to MFG.

By reason of the foregoing, Kim violated NASD Conduct Rules 3030 and FINRA Rule 2010.

**SECOND CAUSE OF ACTION
Failure to Respond to FINRA Inquiries
(Violation of FINRA Rules 8210 and 2010)**

13. Paragraphs 1 through 12 are re-alleged and incorporated herein.
14. By letter dated October 8, 2010, FINRA Staff requested, pursuant to FINRA Rule 8210, that Kim submit a written response addressing certain questions by or before October 22, 2010. The letter was sent by regular first class mail and certified mail return receipt requested to Kim's residential address as reflected in CRD [REDACTED] ("CRD Address").
15. The envelope containing the regular first class mailing was not returned to the Staff. The envelope containing the certified mailing was returned marked "Return to Sender – Vacant – Unable to Forward."
16. To date, no response to this letter has been received from Kim.
17. By letter dated April 6, 2011, the Staff again requested, pursuant to FINRA Rule 8210, a response to the October 8, 2010 letter which was attached. The letter was sent by regular first class mail and certified mail return receipt requested to Kim's CRD Address.

18. The envelopes containing both the regular first class mailing and the certified mailing were returned marked "Moved Left No Address – Unable to Forward – Return to Sender."

19. To date, no response to this letter has been received from Kim.

By reason of the foregoing, Kim 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.
- B. order that the 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

Date: June 7, 2011


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