

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDRE MARI GONZALES
(CRD No. 5494315),

Respondent.

Disciplinary Proceeding
No. 2010024330002

Hearing Officer – MC

DEFAULT DECISION

January 25, 2012

Respondent Andre Mari Gonzales is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210. In light of the bar, it is unnecessary to impose additional sanctions for his failure to make a timely response to previous requests for information.

Appearances

Sandra J. Harris, Deputy Regional Chief Counsel, Los Angeles, California, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Introduction

After FINRA member firm SunTrust Investment Services, Inc. (“SunTrust”) filed a Form U5 disclosing that it had terminated Respondent Andre Mari Gonzales’ employment because he had altered bank documents, FINRA staff initiated an investigation and issued requests for information to Gonzales pursuant to FINRA Procedural Rule 8210. Gonzales failed to respond to the initial requests in a timely fashion, and failed to respond to additional requests in any fashion.

The Department of Enforcement filed the attached two-cause Complaint on August 15, 2011, charging Gonzales with violations of FINRA Conduct Rule 2010 and Procedural Rule 8210. Despite being served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On November 2, 2011, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Sandra J. Harris and eight exhibits.¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Gonzales was employed by SunTrust's affiliated bank and was associated with SunTrust as an Investment Company Products/Variable Contracts Representative from January 20, 2010, to August 24, 2010.² Subsequently, Gonzales has not associated with any other FINRA member firm. Nonetheless, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws because the Complaint was filed less than two years after August 24, 2010, and the Complaint charges him with failing to respond to requests for information issued pursuant to Rule 8210 within two years of his termination.

B. Default

On August 15, 2011, Enforcement served the Complaint and Notice of Complaint on Gonzales by regular and certified first-class mail at his residential address as it appears in the Central Registration Depository ("CRD"), and at a second address Gonzales had provided to Enforcement ("Second Address"). The certified mailings to both addresses were returned with

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 included the Declaration of Sandra J. Harris in Support of Motion for Entry of Default Decision, and the exhibits attached to the Declaration. The Declaration will be referred to as "Decl." or "Harris Decl." The exhibits are referred to as "CX-__."

² Complaint ¶ 2.

the envelopes stamped “UNCLAIMED.”³ Neither first-class mailing was returned to Enforcement. Gonzales did not file an answer or otherwise respond to the Complaint.⁴

On September 13, 2011, Enforcement served the Complaint and Second Notice of Complaint on Gonzales. Once again Enforcement served the Complaint by regular and certified first-class mail to Gonzales’ CRD address and the Second Address. This time, Enforcement received a return receipt for the certified mailing it sent to the CRD address on which the signature of the recipient was crossed out.⁵ The certified mailing to the Second Address was returned with the envelope stamped “UNCLAIMED.”⁶ As before, neither first-class mailing was returned to Enforcement. Gonzales did not file an answer or otherwise respond to the Complaint.⁷

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Gonzales by certified mail at his CRD address and the Second Address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.⁸ By failing to file an Answer, Gonzales defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.

³ Decl. ¶ 5; CX-4; CX-5.

⁴ Decl. ¶ 5.

⁵ CX-7.

⁶ CX-8.

⁷ Decl. ¶ 6.

⁸ *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address)(citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

C. Gonzales Violated FINRA Conduct Rule 2010 and Procedural Rule 8210

The Complaint's first cause of action states that Gonzales failed to respond in a timely manner to requests for information and documents that Enforcement issued to him pursuant to Rule 8210.

To conduct an investigation into the allegation concerning alteration of bank documents contained in SunTrust's Form U5,⁹ on October 18, 2010, FINRA staff issued a request by regular and certified first-class mail to Gonzales' CRD address, requesting that he provide information and documents pursuant to Rule 8210 by November 15, 2010. Enforcement received the return receipt for the certified mailing, but the signature of the recipient is illegible. The first-class mailing was not returned to Enforcement. Gonzales did not provide the information by November 15, 2010.¹⁰

On November 18, 2010, FINRA staff issued a second request by regular and certified first-class mail to Gonzales' CRD address, requesting that he to provide information and documents by December 2, 2010. Enforcement received the return receipt for the certified mailing, marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The first-class mailing was not returned to Enforcement. Gonzales did not respond as directed by December 2, 2010.¹¹

Because Gonzales failed to provide the requested information, pursuant to Rule 9552, Enforcement served a Notice of Suspension by FedEx and first-class mail to Gonzales' CRD address on March 7, 2011.¹² The Notice of Suspension informed Gonzales that he would be

⁹ CX-2, p. 2.

¹⁰ Complaint ¶ 6.

¹¹ Complaint ¶ 7.

¹² Complaint ¶ 8.

suspended from associating with any FINRA member in any capacity unless he responded to the previously issued Rule 8210 requests for information prior to March 31, 2011.¹³

Enforcement received Gonzales' responses to the Rule 8210 requests in a mailing dated March 29, 2011.¹⁴ Nonetheless, Gonzales' untimely response impeded Enforcement's investigation and violated Conduct Rule 2010 and Procedural Rule 8210, as charged in the first cause of action of the Complaint.¹⁵

After reviewing Gonzales' belated responses to its previous requests for information, on May 17, 2011, FINRA staff issued the first of three additional requests for information pursuant to Rule 8210. The Complaint's second cause of action states that Gonzales failed to respond in any manner to these requests.

The staff sent the first request to Gonzales by first-class mail at his CRD address and the Second Address. The staff also sent the request to an e-mail address Gonzales had provided to the staff. The first-class mailings were not returned. The staff's deadline for Gonzales' response was June 1, 2011. On May 23, 2011, Gonzales contacted the staff by telephone to say he would respond to the information request by the end of the week. He did not do so.¹⁶

On June 3, 2011, the staff issued another request for information, this time by regular and certified first-class mail to Gonzales' CRD address and the Second Address, and also by e-mail. The staff received signed return receipts for both certified mailings, but Gonzales apparently did not sign them. The first-class mailings were not returned. Gonzales did not respond.¹⁷

On June 21, 2011, the staff issued its final request for information to Gonzales by regular and certified first-class mail to his CRD address and the Second Address, and by e-mail. The

¹³ Complaint ¶ 9.

¹⁴ Complaint ¶ 10.

¹⁵ Complaint ¶¶ 11-12.

¹⁶ Complaint ¶ 15.

¹⁷ Complaint ¶ 16.

staff set a deadline of July 6, 2011, for Gonzales' response. The certified mailing to Gonzales' CRD address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The staff received the signed return receipt for the certified mailing to the Second Address, but apparently Gonzales did not sign it. The first-class mailings were not returned. Gonzales failed to respond to the request in any fashion.¹⁸

By failing to provide a response to FINRA's repeated requests for information issued pursuant to Rule 8210, Gonzales violated FINRA Conduct Rule 2010 and Procedural Rule 2010, as charged in the second cause of action of the Complaint.

III. Sanctions

Enforcement requests the imposition of a bar for Gonzales' failure to respond to the series of Rule 8210 requests described in the second cause of action of the Complaint. Enforcement does not request the imposition of additional sanctions for Gonzales' untimely responses charged in the first cause of action if a bar is imposed.

FINRA's Sanction Guidelines state that a bar should be the standard sanction for a failure to respond in any manner to a request for information.¹⁹ In this case, no mitigating factors are present. By informing the staff that he would comply with the request by the end of May, Gonzales confirmed his receipt of the request and his knowledge of the deadline.

As has often been observed, "Conduct Rule [2010] and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information." Concerning

¹⁸ Complaint ¶ 17.

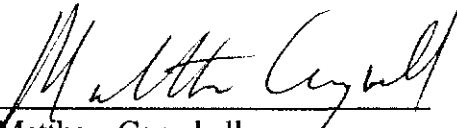
¹⁹ *FINRA Sanction Guidelines* at 33 (2011).

sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”²⁰ Here, FINRA staff properly sought to meet its regulatory responsibilities by investigating the possibility that Gonzales had altered bank records, which could have led to discovery of serious violations of law and securities regulations. Gonzales impeded FINRA’s investigation by failing to respond to the staff’s requests for information, and by not allowing the staff to follow up on the information he had belatedly provided in response to the first series of requests. To deter such egregious, repeated refusals to provide information the staff requires to investigate violations of securities laws and regulations, a bar is the appropriate sanction.

IV. Conclusion

Respondent Andre Mari Gonzales is barred from associating with any FINRA member firm in any capacity for violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond to requests for information issued to him by FINRA staff pursuant to Rule 8210, as charged in the second cause of action of the Complaint. Because of the bar, it is unnecessary to impose any additional sanction for his violations of Conduct Rule 2010 and Procedural Rule 8210 by failing to make a timely response to the earlier requests for information issued to him by FINRA staff pursuant to Rule 8210, as charged in the first cause of action of the Complaint.

If this decision becomes FINRA’s final disciplinary action, the bar shall be effective immediately.


Matthew Campbell
Hearing Officer

²⁰ *Dep’t of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 – 36, *41 (N.A.C. Dec. 18, 2006).

Copies to:

Andre Mari Gonzales (*via overnight courier and first-class mail*)

Sandra J. Harris, Esq. (*via e-mail and first-class mail*)

Mark P. Dauer, Esq. (*via e-mail*)

David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Andre Mari Gonzales (CRD No. 5494315),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010024330002

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In connection with FINRA's investigation concerning alleged alteration of bank documents, Respondent Andre Mari Gonzales failed to timely respond to the staff's initial Rule 8210 requests for information and documents, and subsequently failed to respond to additional Rule 8210 requests from the staff, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent was associated with FINRA member SunTrust Investment Services, Inc. (the Firm) as an Investment Company Products/Variable Contracts Representative from January 20, 2010 to August 24, 2010. He was also employed by the Firm's affiliated bank.

3. Although Respondent has not been associated with a FINRA member firm since August 24, 2010, 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 date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with failing to timely respond and failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
Failure to Timely Respond to Rule 8210 Requests
for Information and Documents
(Violation of FINRA Rules 8210 and 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. FINRA staff issued two letters to Respondent pursuant to FINRA Rule 8210 as part of an investigation concerning alleged alteration of bank documents while Respondent was a bank employee and associated with the Firm.

6. On or about October 18, 2010, FINRA's CRG staff issued the first Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD residential address: [REDACTED]

[REDACTED] The letter contained a response due date of November 15, 2010. The first class letter was not returned. The certified mail receipt was signed but the signature is illegible.

Respondent did not respond to the October 18, 2010 letter by the due date of November 15, 2010.

7. On or about November 18, 2010, FINRA's CRG staff issued the second Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address. The letter contained a response due date of December 2, 2010. The first class letter was not returned. The certified mail letter was returned

marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Respondent did not respond to the November 18, 2010 letter by the due date of December 2, 2010.

8. As a result of Respondent's failure to respond to the staff's two Rule 8210 request letters, on March 7, 2011, the staff initiated a Rule 9552 proceeding against Respondent. The Notice of Suspension was served by FedEx and first class mail on Respondent's CRD address.

9. The Notice of Suspension stated, among other things, that Respondent would be suspended from associating with any FINRA member in any capacity unless he complied with the Rule 8210 requests of October 18 and November 18, 2010, prior to the suspension date of March 31, 2011.

10. On or about March 30, 2011, CRG staff received Respondent's response to the Rule 8210 requests, dated March 29, 2011.

11. Respondent's failure to timely respond to the Rule 8210 requests impeded the staff's investigation.

12. By failing to timely respond to the Rule 8210 requests, Respondent violated FINRA Rules 8210 and 2010.

SECOND CAUSE OF ACTION
Failure to Respond to Rule 8210 Requests
for Information and Documents
(Violation of FINRA Rules 8210 and 2010)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.

14. Based on information provided by Respondent in his undated response to the first set of Rule 8210 letters, FINRA's Los Angeles Member Regulation staff issued three additional letters to Respondent as part of its investigation of the allegations concerning Respondent.

15. On or about May 17, 2011, the staff issued the first Rule 8210 request for information and documents to Respondent. The letter was sent by first class mail to Respondent's CRD address and to the address contained in Respondent's response to CRG staff: [REDACTED] as well as to an e-mail address provided by Respondent. The letter contained a response due date of June 1, 2011. The first class letter to both addresses was not returned. On May 23, 2011, Respondent contacted the staff by telephone and stated that he would provide a response to the letter by the end of the week. Respondent did not respond to the letter.

16. On or about June 3, 2011, the staff issued the second Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address, to his current address as well as by e-mail. The letter contained a response due date of June 17, 2011. The first class letter to both addresses was not returned. The certified mail receipts for the letters to both addresses were signed by an individual other than the Respondent. Respondent did not respond to the second letter.

17. On or about June 21, 2011, the staff issued the third Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address, to his current address, as well as by e-mail. The letter contained a response due date of July 6, 2011. The first class letter to both addresses was not returned. The certified mailing to the CRD address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The certified mail receipt for the letter sent to the current address was signed by an individual other than the Respondent. Respondent did not respond to the third letter.

18. Respondent's failure to respond to the Rule 8210 requests impeded the staff's investigation.

19. By failing to respond to the Rule 8210 requests, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

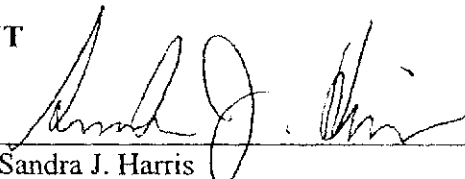
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- B. order that 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: _____

August 15, 2011



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