

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DEREK RASHOD QUALLS
(CRD No. 4419302),

Respondent.

Disciplinary Proceeding
No. 2010024436902

Hearing Officer – LBB

DEFAULT DECISION

December 23, 2011

Respondent Derek Rashod Qualls is suspended for six months from associating with any FINRA member firm in any capacity and fined \$5,000 for violating FINRA Rule 8210 and FINRA Conduct Rule 2010 by failing to respond to requests for information and documents in a timely manner.

Appearances

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

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding on August 16, 2011, charging Respondent Derek Rashod Qualls (“Respondent”) with failing to respond to requests for information and documents in a timely manner, in violation of FINRA Rule 8210 and FINRA Conduct Rule 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 November 8, 2011, 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 August 16, 2011, Enforcement served the Notice of Complaint and Complaint on Respondent by first-class and certified mail at his residential address as listed in the Central Registration Depository ("CRD address"). The Postal Service returned the certified mailing unclaimed. The first-class mailing was not returned. Respondent did file an answer or otherwise respond to the Notice of Complaint. Decl. ¶ 5; CX-3, CX-4.

On September 14, 2011, Enforcement served the Second Notice of Complaint and Complaint on Respondent at his CRD address by first-class and certified mail. The certified mailing was returned unclaimed. The first-class mailing was not returned. Respondent did not file an answer or otherwise respond to the Second Notice of Complaint. Decl. ¶ 6; CX-5, CX-6.

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 briefly registered with two FINRA member firms in 2001 and 2003. He worked in the banking industry, in unregistered capacities, from 2003 until 2007. He began employment with Wachovia Bank, N.A. ("Wachovia") in December 2006, and remained employed by Wachovia until August 2010. While employed by Wachovia, Respondent registered with member firm Wells Fargo Advisors, LLC ("Wells Fargo"), an affiliate of Wachovia, in August 2007, and remained registered with Wells Fargo until September 15, 2010,

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 the Declaration Sandra J. Harris in Support of Motion for Entry of Default Decision, and supporting documentation that is attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ___." The supporting documentation is cited herein as "CX-___."

when Wells Fargo filed a Form U5, reporting that Respondent had been discharged by Wachovia on August 18, 2010, for receiving a personal loan from a bank customer. Respondent has not been registered with a member firm since the termination of his registration with Wells Fargo. Decl. ¶¶ 3-4; CX-1, CX-2.²

Although Respondent has not been registered with a member firm since September 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 registration with a member firm, and it charges him with failure to respond in a timely manner to Rule 8210 requests that were issued within two years after the termination of his registration with a member firm.

III. Violation: Failure to Respond to Requests for Information and Documents in a Timely Manner, in Violation of FINRA Rule 8210 and FINRA Conduct Rule 2010

On October 6, 2010, FINRA's Central Review Group ("CRG") staff issued a request for information and documents to Respondent, pursuant to FINRA Rule 8210, as part of the staff's investigation into Respondent's receipt of a loan from a bank customer.³ The request was sent by first-class and certified mail to Respondent's CRD address. It required Respondent to respond by November 5, 2010. The certified mailing was returned marked, "Not Deliverable as Addressed, Unable to Forward." The first-class mailing was not returned. Respondent did not respond to the request by the November 5, 2010, due date. Complaint ¶¶ 5-6.

On November 10, 2010, CRG staff issued a second request for information and documents to Respondent, pursuant to FINRA Rule 8210. The letter was sent by first-class and certified mail to Respondent's CRD address. The certified mailing was returned to the staff marked, "Return to Sender, Unclaimed, Unable to Forward." The first-class mailing was not

² The investigation that led to this disciplinary proceeding began as a result of the filing of the Form U5 by Wells Fargo. Decl. ¶ 4.

³ The Central Review Group is part of the Office of Fraud Detection and Market Intelligence.

returned. Respondent did not respond by the November 24, 2010, due date set forth in the Rule 8210 request. Complaint ¶ 7.

As a result of Respondent's failure to respond to the staff's two Rule 8120 requests, the staff served Respondent with a Notice of Suspension on February 14, 2011. The Notice of Suspension informed Respondent that he would be suspended from associating with any FINRA member in any capacity unless he complied with the Rule 8210 requests of October 6, 2010, and November 10, 2010, prior to the suspension date of March 10, 2011. Complaint ¶¶ 8-9. On March 10, 2011, CRG staff received Respondent's undated response to the Rule 8210 requests. The return address on the envelope was Respondent's CRD address. Complaint ¶¶ 9-10.

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

IV. Sanctions

For failure to respond to a Rule 8210 request in a timely manner, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years, and a fine of \$2,500 to \$25,000.⁵ The principal considerations are: 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 to obtain a response; and 3) the length of time to respond.⁶

The information requested by the staff was important in determining whether Respondent had violated FINRA rules in connection with the alleged loan from a bank customer. The staff issued two requests for information and documents, and Respondent complied with the requests

⁴ *Dep't of Enforcement v. Hoepfer*, 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).

⁵ *FINRA Sanction Guidelines* 33 (2011).

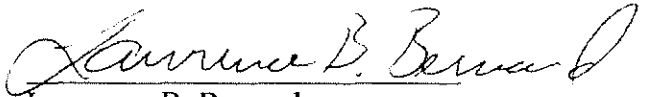
⁶ *Id.*

only after the staff notified him that he would be suspended if he did not respond. Respondent did not comply with the requests until more than four months after the first response was due, and responded on the day on which he would have been suspended if he had not responded.

Enforcement recommends a six-month suspension and a \$5,000 fine. Enforcement's recommendation is appropriate. Respondent is suspended for six months and fined \$5,000.

V. Conclusion

For failure to respond to requests for information and documents in a timely manner, in violation of FINRA Rules 8210 and 2010, Respondent Derek Rashod Qualls is suspended for six months from associating with any member firm in any capacity and fined \$5,000. If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on February 6, 2012, and will end on the close of business on August 6, 2012. The fine shall be due and payable if and when Respondent re-enters the securities industry.


Lawrence B. Bernard
Hearing Officer

Copies to: Derek Rashod Qualls (*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.

Derek Rashod Qualls (CRD No. 4419302),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010024436902

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In connection with FINRA's investigation concerning a loan received from a bank customer, Respondent Derek Rashod Qualls failed to timely respond to the staff's Rule 8210 requests for information and documents, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent was associated with FINRA member Wells Fargo Advisors, LLC (the Firm) as an Investment Company Products/Variable Contracts Representative from August 13, 2007 to August 18, 2010. He was also employed by the Firm's affiliated bank. Respondent entered the securities industry in 2001 and was previously associated with two FINRA member firms.

3. Although Respondent has not been associated with a FINRA member firm since August 18, 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 to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

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 a loan that Respondent received from a bank customer while Respondent was a bank employee and associated with the Firm.

6. On or about October 6, 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 5, 2010. The first class letter was not returned. The certified mail letter was returned marked "Not Deliverable as Addressed, Unable to Forward." Respondent did not respond to the October 6, 2010 letter by the due date of November 5, 2010.

7. On or about November 10, 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

November 24, 2010. The first class letter was not returned. The certified mail letter was returned marked "Return to Sender, Unclaimed, Unable to Forward." Respondent did not respond to the November 10, 2010 letter by the due date of November 24, 2010.

8. As a result of Respondent's failure to respond to the staff's two Rule 8210 request letters, on February 14, 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 6, 2010 and November 10, 2010, prior to the suspension date of March 10, 2011.

10. On March 10, 2011, CRG staff received Respondent's undated response to the Rule 8210 requests. The address listed on the envelope from Respondent was his CRD address.

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

RELIEF REQUESTED

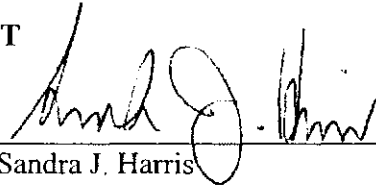
WHEREFORE, the Department respectfully requests that the Panel:

- 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 16, 2011



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