BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John Vincent Ballard Memphis, TN, Respondent.	DECISION Complaint No. 2010025181001 Dated: December 17, 2015

Respondent engaged in undisclosed outside business activities, failed to provide documents in response to FINRA's requests for documents, and failed to appear for on-the-record testimony. Held, findings and sanctions affirmed.

Appearances

For the Complainant: William Brice LaHue, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

John Vincent Ballard appeals a Hearing Panel decision issued on May 6, 2014. The Hearing Panel found that Ballard engaged in undisclosed outside business activities, failed to provide documents in response to FINRA's requests for documents, and failed to appear for on-the-record testimony. The Hearing Panel barred Ballard for failing to provide documents and appear for testimony, but it declined to impose additional sanctions for engaging in undisclosed outside business activities. After an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

I. Factual Background

Ballard entered the securities industry in November 1997. Ballard remained registered with FINRA continuously for nearly 14 years, from November 1997 until the termination of his most recent association in July 2011. During the period relevant to the conduct in this case, Ballard was registered with International Financial Solutions, Inc. ("IFS") and Guzman & Company ("G&C").

In May 2010, Ballard registered with IFS as a general securities representative and investment company products and variable contracts limited representative. Ballard remained associated with IFS for six months. In November 2010, IFS discharged Ballard. The Uniform Termination Notice for Securities Industry Registration ("Form U5") that IFS filed on behalf of Ballard explained that the firm had terminated Ballard for exceeding the limit of his corporate credit card. IFS also stated that Ballard owed the firm $33,000 in advances when he was fired.

A. The First Request for Information and Documents Concerning IFS

FINRA initiated an investigation into the circumstances surrounding Ballard's separation from IFS when the firm filed the Form U5 with FINRA. On December 7, 2010, a FINRA examiner sent Ballard a request for information and documents as part of the investigation. The request asked Ballard to provide a signed statement responding to IFS's allegations concerning his use of the firm credit card and receipt of the monetary advances. The request also noted that Ballard's response should include "all documentation necessary to support your written response." The deadline for Ballard's response was December 21, 2010.

After requesting and receiving an extension to respond to the request, Ballard provided a one-page written statement to the FINRA examiner on December 28, 2010. Ballard's written statement responded to several questions listed on FINRA's first request for information and documents, but Ballard did not provide FINRA with any documents.

B. Ballard Joins G&C

In December 2010, while FINRA was investigating the circumstances surrounding Ballard's departure from IFS, Ballard obtained employment with G&C as a general securities representative.[1] G&C hired Ballard as an independent contractor to assist municipal governments with their money management practices and solicit municipalities to enter into trading relationships with G&C.

C. The Second Request for Information and Documents Concerning IFS

FINRA's investigation of Ballard and his termination from IFS continued while he worked at G&C. On February 17, 2011, the FINRA examiner sent Ballard a second request for information and documents. The second request enumerated categories of information and documents that Ballard did not provide in his response of December 28, 2010. For example, the written statement, which Ballard sent to FINRA in December 2010, acknowledged that he received a corporate credit card and advances from IFS. Ballard's written statement, however, did not explain whether he had used the corporate credit for personal expenses or provide an "itemized listing" of how he spent the advances.

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[1] When Ballard joined G&C, he represented on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") that he was not currently engaged in any other business.

The second request also sought three additional categories of information and documents based on Ballard's recent employment with G&C. First, the request required Ballard to disclose whether G&C had provided him with an advance. Second, the request asked Ballard whether he had informed G&C of FINRA's ongoing investigation of his discharge from IFS. And third, the request asked Ballard to explain why he had answered "no" in response to questions concerning pending regulatory investigations on the Form U4 that he completed when he joined G&C. The deadline for the second request for information and documents was March 3, 2011.

Ballard provided a one-page written statement to the FINRA examiner on March 3, 2011. The statement responded to several categories of information, including two of the three additional categories, but Ballard did not provide complete responses to other categories of information, and he did not produce any documents. For example, Ballard admitted that G&C provided him with a $50,000 advance, but he did not explain how he used the advance or provide FINRA with documentation evidencing the receipt or deposit of the funds, as FINRA's second request for information and documents required him to do.

D. Ballard Obtains Outside Employment While Registered with G&C

Ballard's efforts to solicit municipal securities business on behalf of G&C were not successful. During his tenure with G&C, Ballard did not generate transactional business, commissions, or revenues for the firm, and he did not produce any commissions or any compensation for himself.

Ballard approached his supervisor at G&C, William Robertson, about seeking a second job to generate income. Robertson advised Ballard that he could obtain a second job as long as he disclosed the outside employment to G&C's compliance department, and there was no conflict of interest.[2] On May 31, 2011, while Ballard was employed with G&C, he obtained a second job as a general manager at G4S Secure Solutions (USA), Inc. ("G4S"), an integrated security company that specializes in security products, services, and solutions.[3] Ballard's employment with G4S ended on June 30, 2011.

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[2] Prior to engaging in any outside business activity, G&C required registered representatives to submit an "Outside Business Activity Request" form to G&C's compliance department. Upon receiving the form, the compliance department would consult with G&C's president, Leopoldo Guzman ("L. Guzman"), and provide the registered representative, and the representative's supervisor, with written notification of the firm's approval or disapproval of the outside business activity.

[3] Robertson and L. Guzman testified at the hearing. Robertson testified that he and Ballard had only one conversation about Ballard's search for outside employment, it was limited to a discussion of G&C's procedures for the review of proposed outside business activities, and he and Ballard had no follow-up discussions concerning Ballard's search for outside employment. Robertson and L. Guzman testified that Ballard did not inform them that he was seeking employment with G4S or advise them that he had obtained employment with the security company.

E. G&C Terminates Ballard for His Undisclosed Employment with G4S

During the investigation of Ballard's conduct at IFS, the FINRA examiner learned about Ballard's employment with G4S. On July 12, 2011, the examiner contacted G&C to determine what information, if any, the firm had concerning Ballard's employment with the security company. The examiner spoke to G&C's chief compliance officer, Mark Guzman ("M. Guzman"), concerning Ballard's employment with G4S.[4] M. Guzman contacted Ballard that same day for an explanation.

When Ballard spoke to M. Guzman, Ballard did not deny the outside employment with G4S. Rather, Ballard stated that he previously notified G&C about the outside business activity. In support of his claim, Ballard forwarded M. Guzman an email and letter, dated May 26, 2011, which requested that M. Guzman or Robertson update Ballard's Form U4 to reflect his outside employment with G4S. G&C determined that the email and letter were fabricated, and the firm terminated Ballard on July 14, 2011.[5] G&C's termination letter stated that the firm fired Ballard because he obtained employment with G4S without the firm's prior approval and sent M. Guzman "a fraudulent email intended to mask [his] failure to request permission for outside employment."

F. FINRA's Investigation Turns Towards Ballard's Employment with G4S

After G&C discharged Ballard, FINRA's investigation turned from an examination of Ballard's conduct at IFS to a review of his employment with G4S. Over the next two years, the FINRA examiner sent Ballard eight requests for documents and two requests to appear for on-the-record testimony. Ballard did not produce any documents, did not appear for testimony, and did not provide FINRA with any explanation of his failure to comply with the requests.

1. The Examiner's Post-Termination Telephone Conversation with Ballard

On July 15, 2011, the FINRA examiner telephoned Ballard to obtain his explanation of what transpired at G&C. The examiner prepared a memorandum to memorialize the conversation. Most notably, Ballard acknowledged his employment with G4S, but he said he provided G&C with oral and written notice of the activity. Ballard said that he sent G&C written notification of the outside business activity via email on May 26, 2011. During that same telephone conversation, however, Ballard also stated that he "forgot to hit 'send' on the email,"

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4 M. Guzman is L. Guzman's son.

5 Neither M. Guzman, L. Guzman, nor Robertson recalled receiving Ballard's email or letter, and none of them was aware of Ballard's employment with G4S. G&C's email archive did not contain Ballard's email, and when G&C reviewed the metadata contained in the letter, the metadata reflected that the letter was created on July 14, 2011, at 10:43 a.m., approximately one hour before Ballard met with M. Guzman about his employment with G4S.

and he did not send the email and letter until July 14, 2011. Ballard attributed this failure to problems with his G&C email account.[6]

2. FINRA's First, Second, and Third Requests for Documents Concerning Ballard's Employment with G4S

In February 2012, the FINRA examiner began requesting documents from Ballard to conduct a thorough examination of his outside business activity involving G4S. FINRA's investigation focused on whether Ballard received compensation from G4S or notified G&C of his employment with G4S. As part of the investigation, on February 7, 2012, February 22, 2012, and March 8, 2012, respectively, the examiner sent Ballard requests for documents.[7] The requests contained an itemized list of five categories of documents: (1) all tax documents that G4S sent to Ballard and Ballard's tax returns for 2010 and 2011 with all attachments, (2) bank statements from January 2010 to July 2011, (3) Ballard's hiring paperwork for G4S, (4) Ballard's termination paperwork for G4S, and (5) all emails that Ballard sent to G&C concerning his employment with G4S. Ballard did not respond in any manner to any of the three document requests.[8]

3. FINRA's Fourth Request for Documents Concerning Ballard's Employment with G4S

On March 23, 2012, the FINRA examiner sent Ballard a fourth request for documents reiterating the request for the categories of documents listed above. The deadline for Ballard's response to the fourth document request was April 6, 2012. Ballard responded to the examiner via email on that date. Ballard explained that he was not able to provide FINRA with any of the requested documents because he did not have any of the documents on file, and he did not have access to any of the documents "at this time [or] in the past." In lieu of responsive documents, Ballard offered to appear for an "oral interview" to "provide extensive information regarding this preliminary inquiry." Ballard stated that he would appear "in the Atlanta regional office of FINRA at your earliest appointed time."

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[6] The FINRA examiner testified at the hearing. The examiner testified that the conversation with Ballard was "disjointed." The examiner therefore asked Ballard to provide a written account of "what we discussed and the information he wanted to relay . . . so that there would be no confusion." Ballard sent the examiner his statement on August 24, 2011. Ballard's statement focused on his employment with, and termination from, IFS. It did not contain any information concerning his time with G&C.

[7] The deadlines to respond to the document requests were February 21, 2012, March 7, 2012, and March 22, 2012.

[8] The document requests, which the examiner sent to Ballard on February 22, 2012 and March 8, 2012, were follow-up requests based on Ballard's failure to respond to the original document request dated February 7, 2012.

4. FINRA's Fifth Request for Documents Concerning Ballard's Employment with G4S

The FINRA examiner testified that Ballard's email was not responsive to the document request because Ballard did not produce any documents, and he did not explain why he did not possess or have access to each category of document in the request. Accordingly, the examiner sent Ballard a fifth request for documents, seeking the same documents requested on February 7, 2012. The examiner sent the fifth request for documents to Ballard on April 11, 2012. The deadline for Ballard's response to the fifth document request was April 25, 2012. Ballard did not respond in any manner to the fifth request for documents.

5. FINRA's Sixth Request for Documents Concerning Ballard's Employment with G4S

On June 25, 2012, the FINRA examiner sent Ballard a sixth request for documents. The deadline for Ballard's response to the sixth document request was July 9, 2012. Ballard responded to the examiner via email on June 27, 2012. Ballard's email stated, "[t]hank you[.] I have already sent an electronic response via email."[9]

The FINRA examiner responded in five minutes, "[w]e have not received an email with the requested documents. Please resend by regular mail for receipt by the due date." The examiner sent a follow-up email to Ballard a couple of hours later that day. The examiner stated, "[a]ttached is the only email response I've received from you to date [referring to Ballard's email of April 6, 2012], and it is not responsive. Please provide[] the requested information to our office by July 9, 2012." Ballard did not respond to the examiner's emails, and he did not provide any documents in response to the sixth request for documents.

6. FINRA's Seventh Request for Documents Concerning Ballard's Employment with G4S

On July 18, 2012, the FINRA examiner sent Ballard a seventh request for documents. The seventh request asked Ballard to produce the same five categories of documents as the previous six requests. The deadline for the seventh request was August 1, 2012. Ballard did not respond in any manner to the seventh request for documents.

7. FINRA's Requests for Ballard to Appear for Testimony Concerning His Employment with G4S

When Ballard offered to appear for testimony in his email of April 6, 2012, the FINRA examiner contacted him to schedule his interview for later that same month. Ballard called the examiner to have the testimony scheduled for May 2012, instead of April 2012, because he was ill and had hurt his back. The examiner accommodated Ballard's request and scheduled the testimony for May, but the examiner had to postpone the interview to tend to a personal matter.

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[9] Between April 25, 2012 and June 25, 2012, the FINRA examiner was in contact with Ballard, attempting to schedule his on-the-record testimony.

On June 8, 2012, the FINRA examiner contacted Ballard via telephone and email to determine whether he was available for testimony during the week of July 9, 2012. Ballard did not respond to the examiner's voicemail or email.

a. The First Request for Testimony

On June 12, 2012, the FINRA examiner sent Ballard a request to appear for on-the-record testimony in FINRA's Atlanta office on July 10, 2012. The request required Ballard to confirm his intention to appear by June 27, 2012. The day after the examiner sent Ballard the request to appear, he emailed the examiner, and he stated that he "look[ed] forward to the interview on the 10th."

On July 9, 2012, the day before Ballard's on-the-record testimony was scheduled to occur, the FINRA examiner telephoned Ballard to confirm his appearance. Ballard responded to the examiner's call via email that same day. Ballard asked the examiner what time his testimony would begin.[10] Four minutes later, the examiner responded and informed Ballard of the start time, 10:00 a.m. The examiner also attached a copy of the request for testimony originally sent to Ballard on June 12, 2012. The examiner heard nothing further from Ballard that day.

The following morning, the day of Ballard's scheduled on-the-record testimony, the FINRA examiner noticed that Ballard had emailed her overnight at 3:04 a.m. Ballard's email stated that he would not be able to attend the interview in person, and he requested that the testimony take place later that same day via telephone or video conference. Ballard did not explain why he could not appear in person. The FINRA examiner responded to Ballard via email at 9:48 a.m., "[w]e are not able to . . . conduct your interview today via teleconference or video conference. We will proceed with the testimony at 10 am[,] and the record will show that you did not appear."[11] Ballard responded to the examiner's email at 9:58 a.m. Ballard asked the examiner to inform him of the earliest date to conduct his interview via telephone or video conference. Ballard did not appear for his testimony on July 10, 2012.

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[10] When Ballard emailed the FINRA examiner on July 9, 2012, he did not inform the examiner that he would not be able to attend the on-the-record testimony in person on July 10, 2012, and he never requested that he be permitted to provide his testimony via telephone or video conference.

[11] The FINRA examiner testified that she could not make arrangements for Ballard to appear for testimony via telephone or video conference on such short notice. The examiner, court reporter, Enforcement's counsel, and testimony exhibits all were located in FINRA's Atlanta office on the morning of Ballard's scheduled testimony. The examiner also explained that, if Ballard was going to provide his testimony telephonically or via video conference, at a minimum, a court reporter and copy of testimony exhibits would need to be present at Ballard's location in Memphis. Finally, the examiner stated that, if Ballard had requested permission to provide his testimony via telephone or video conference and provided a basis for that request, she would have travelled to Memphis to obtain Ballard's testimony in person.

Three days later, on July 13, 2012, the FINRA examiner sent Ballard an email, asking him to explain why he had not appeared for testimony and why he was requesting that his testimony be taken via telephone or video conference.[12] The examiner also called Ballard to discuss the matter, but Ballard did not respond to the examiner's email or voicemail.

b. The Second Request for Testimony

When Ballard did not respond to the FINRA examiner's communications, the examiner sent Ballard a second request to appear for on-the-record testimony. The examiner sent the second request on July 18, 2012. The second request required that Ballard appear for testimony in FINRA's Atlanta office on August 14, 2012.

On August 2, 2012, at 11:41 p.m., Ballard emailed the FINRA examiner to request an alternate date for the interview. The examiner responded to Ballard's email the following morning. The examiner asked Ballard to explain the basis for his request to reschedule the interview, and she asked him to provide at least three alternate dates in August 2012 for his testimony. The examiner's email advised Ballard that he remained obligated to appear for testimony on August 14, 2012, "unless and until there is an agreed upon alternate date." Ballard did not respond to the examiner's email, the examiner did not reschedule Ballard's testimony, and Ballard did not appear for his on-the-record testimony on August 14, 2012.

8. Post-Complaint Events and FINRA's Eighth Request for Documents Concerning Ballard's Employment with G4S

As discussed *infra* Part II (Procedural History), Enforcement initiated disciplinary proceedings against Ballard and filed a complaint in May 2013. As the case proceeded to a hearing before a FINRA Hearing Panel, Ballard reinitiated communications with FINRA concerning the requests for documents. On September 11, 2013, two months before the hearing, Ballard sent Enforcement's counsel an email, providing written responses to each of the five itemized documents listed in the original request of February 7, 2012.[13] Ballard's response did not include any documents. Rather, he stated: (1) he did not have copies of his tax records, and he did not have access to his tax records because they were in storage, (2) he did not have a bank account during the relevant period, (3) he did not have access to the hiring paperwork from G4S, (4) G4S did not provide him with termination paperwork, and (5) he did not have access to emails received or sent while he was registered with G&C. Ballard explained that, "[m]uch of the information is still not in my control[] or possession at this time," and he offered to sign a release to permit Enforcement to obtain the documents.

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[12] The FINRA examiner required that Ballard provide his explanation, if any, by July 17, 2012. The FINRA examiner testified that she sent the email to Ballard to determine if there was some financial (or other) difficulty that impeded his ability to appear for testimony in Atlanta. The examiner stated that she would have taken Ballard's testimony in Memphis if there was such an impediment.

[13] There were no communications between FINRA and Ballard concerning the requests for documents or testimony between August 2012 and September 2013.

In response to Ballard's email, the FINRA examiner sent Ballard an eighth request for documents on September 16, 2013. Although the eighth document request sought five categories of documents, the categories were narrower than the ones in the requests sent to Ballard between February 2012 and July 2012. The eighth request for documents asked Ballard to provide the examiner with the following five categories of documents by September 30, 2013: (1) emails received or sent between April 2011 and July 2011 in Ballard's Bloomberg email account, (2) bank statements for the "Ballard Group" between April 2011 and July 2011, (3) documentation of salary or payments from G4S to Ballard between May 2011 and July 2011, (4) bank statements evidencing G4S's payments to Ballard between May 2011 and July 2011, and (5) tax documents to demonstrate what amounts, if any, G4S paid Ballard in 2011. The day after the FINRA examiner sent Ballard the document request, Enforcement's counsel emailed Ballard. Enforcement's counsel reiterated the examiner's request for documents, advised Ballard that Enforcement still wanted to him to produce his tax returns, even if they were in storage, and requested a signed release from Ballard to direct G4S to provide FINRA with the information and documents it needed.

Ballard produced no documents in response to the eighth request for documents or Enforcement's counsel email. Rather, on October 1, 2013, Ballard emailed a response to Enforcement's counsel. Ballard stated: (1) he could not access emails associated with his Bloomberg email account, but he would sign a release to permit Enforcement to obtain the documents, (2) he could not access bank statements for the Ballard Group because "[t]he account in question is closed and it was not an account opened in my name," (3) he did not have access to bank statements to evidence G4S's payments to him, but he would sign a release to permit Enforcement to obtain the documents, and (4) he did not have copies of the tax "returns at hand to forward," but he proposed that Enforcement provide him with "an IRS release." It is unclear whether Enforcement's counsel provided Ballard with the releases or whether FINRA ever obtained any of the documents requested from Ballard.[14]

II. Procedural History

On May 28, 2013, Enforcement filed a three-cause complaint against Ballard. The first cause of action alleged that Ballard engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010.[15] The second cause of action alleged that Ballard failed to provide documents in response to FINRA's requests for documents, in violation of

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[14] The FINRA examiner testified that Enforcement's counsel sent Ballard documentation for him to submit to the IRS to obtain the tax records, and that Ballard provided "some sort of response." The record also contains an email, dated September 16, 2013, that Ballard sent to G4S to obtain access to his "W-2" and "payroll information." G4S responded to Ballard's email the following day, but Ballard emailed the security company to explain that he was not "able to log in to [the] system as it does not recognize me . . . [, and] I don't remember the cell/mobile or email I used as a retrieval contact."

[15] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

FINRA Rules 8210 and 2010.[16] The third cause of action alleged that Ballard failed to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

A three-day hearing took place in Memphis, Tennessee, in November 2013. Four witnesses testified at the hearing, Ballard, L. Guzman, Robertson, and the FINRA examiner. The Hearing Panel issued its decision in May 2014. The Hearing Panel found that Ballard violated FINRA's rules as alleged in the complaint and barred Ballard for failing to adhere to FINRA's requests made pursuant to FINRA Rule 8210. The Hearing Panel declined to impose additional sanctions on Ballard for engaging in undisclosed outside business activities. This appeal followed.

III. Discussion

The Hearing Panel found that Ballard engaged in undisclosed outside business activities and failed to provide documents and appear for on-the-record testimony in response to requests that FINRA made pursuant to FINRA Rule 8210. On appeal, Ballard does not contest the Hearing Panel's findings of liability. Nonetheless, we have reviewed the Hearing Panel's findings as part of our de novo review of this case, and we conclude that the record supports that Ballard violated FINRA's rules as explained below.

A. Ballard Engaged in Undisclosed Outside Business Activities

The Hearing Panel found that Ballard engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010. On appeal, we affirm the Hearing Panel's findings.

FINRA Rule 3270 prohibits associated persons from engaging in "any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member."[17] The purpose of FINRA Rule 3270 is to ensure that firms "receive prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." *Dep't of Enforcement v. Houston*, Complaint No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *32 (FINRA NAC Feb. 22, 2013) (quoting *Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *3 (Sept. 6, 1988)), *aff'd*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014).

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[16] The complaint focuses on Ballard's failure to respond to the requests for documents that the FINRA examiner sent on June 25, 2012 and July 18, 2012.

[17] A violation of FINRA Rule 3270 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010. *See Dep't of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *25 n.19 (FINRA NAC July 26, 2012). FINRA Rule 2010 states, "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Associated persons are subject to the duties and obligations of FINRA Rule 2010 pursuant to FINRA Rule 0140.

The record in this case demonstrates that Ballard obtained employment as a general manager at G4S, received compensation from G4S, and failed to provide his FINRA firm, G&C, with written notice of the employment.[18] Ballard's undisclosed employment with G4S violated FINRA Rules 3270 and 2010.

B. Ballard Failed to Respond to FINRA's Requests Made Pursuant to FINRA Rule 8210

The Hearing Panel found that Ballard failed to produce documents and failed to appear for on-the-record testimony in response to FINRA's requests made pursuant to FINRA Rule 8210. The Hearing Panel determined that Ballard's noncompliance with FINRA's requests for documents and testimony violated FINRA Rules 8210 and 2010. On appeal, we affirm the Hearing Panel's findings.

FINRA Rule 8210 requires that associated persons provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.[19] The rule is unequivocal in its mandate and grants FINRA broad authority to obtain from an associated person information regarding matters that are involved in FINRA's investigation. *See Dep't of Enforcement v. Fawcett*, Complaint No. C9A040024, 2007 NASD Discip. LEXIS 2, at *11-12 (NASD NAC Jan. 8, 2007), *aff'd*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007). Associated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (stating that associated persons "may not ignore NASD inquiries . . . nor take it upon themselves to determine whether information is material to an NASD investigation of their conduct").

The record in this case demonstrates that FINRA repeatedly attempted to obtain documents and testimony from Ballard as part of an investigation of his activities at IFS and G&C. Ballard never produced any documents, never appeared for his on-the-record testimony, and never provided FINRA with any explanation for his repeated failures to cooperate with the investigation. To the contrary, Ballard's communications with FINRA concerning his purported

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[18] The Hearing Panel found that L. Guzman and Robertson credibly testified that Ballard did not notify of them of his outside employment with G4S, Ballard was not credible when he testified that he provided the firm with written notice of the employment, and Ballard's purported written notice to the firm was a falsified document prepared moments before a meeting with management about his outside employment. There is no evidence in the record on appeal that warrants reversal of the Hearing Panel's findings. *See generally John Montelbano*, 56 S.E.C. 76, 89 (2003) ("[C]redibility determinations of an initial fact-finder . . . are entitled to considerable weight and deference, and can be overcome only where the record contains substantial evidence for doing so.").

[19] A violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010. *See Dep't of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (FINRA NAC July 21, 2011).

inability to obtain the documents are far afield of the conduct necessary to satisfy FINRA Rule 8210. Associated persons "have an obligation beyond a mere statement that information is unavailable. 'If such a person cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so.'" *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *21 (May 8, 2015) (citing *CMG Inst. Trading, LLC*, Exchange Release No. 59325, 2009 SEC LEXIS 215, at *23-24 (Jan. 30, 2009). Ballard had a responsibility to explain his efforts to obtain the documents that FINRA requested, and the obstacles, if any, he encountered while attempting to obtain those documents. *See CMG Inst. Trading*, 2009 SEC LEXIS 215, at *23.

Rather than do this, Ballard gave cursory and untimely explanations about the unavailability of the documents. If Ballard had problems complying with FINRA's document requests, as he claims, he should have "raised, discussed, and resolved [the matter] with [FINRA] in the cooperative spirit and prompt manner contemplated by the [r]ules." *Id.* at *23-24. The Hearing Panel aptly summarized Ballard's conduct in this case, "he stonewalled the investigation, ignoring certain requests, partially responding to others, while holding out the promise of cooperation that never materialized." Ballard's failure to adhere to FINRA's requests for documents and testimony violated FINRA Rules 8210 and 2010.

C. Ballard Received a Full and Fair Hearing Before the Hearing Panel

Ballard's appeal focuses on the fairness of the proceedings before the Hearing Panel. For example, Ballard claims that the Hearing Panel did not afford him and Enforcement the same amount of time to examine witnesses. The record belies Ballard's point. Enforcement called three witnesses at the hearing, and the Hearing Panel granted Ballard significant latitude in the examination of those witnesses.

Ballard also questions the fairness of the Chief Hearing Officer's decision to allow his disciplinary hearing to proceed with only the Hearing Officer and one Panelist.[20] Ballard fails to appreciate the Chief Hearing Officer's discretion in these matters. FINRA Rule 9234(a) states, "[i]n the event that a Panelist withdraws . . . the Chief Hearing Officer may, in the exercise of, discretion, determine whether to appoint a replacement Panelist." Nothing in the record suggests that the Chief Hearing Officer abused that discretion here.

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[20] In the proceedings before the Hearing Panel, Ballard filed a motion to disqualify a Panelist one day before the hearing was scheduled to begin. The Panelist who was the subject of Ballard's motion voluntarily withdrew, and pursuant to FINRA Rule 9234(a), the Chief Hearing Officer decided not to appoint a replacement Panelist for Ballard's hearing.

The day before the oral argument in this appeal, Ballard filed a motion to disqualify a Panelist of the NAC subcommittee. In accordance with FINRA Rule 9332(d)(3), the Chair of the NAC considered Ballard's motion and determined that the Panelist's disqualification was not required. Ballard's motion failed to demonstrate "a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the . . . Panelist . . . might reasonably be questioned." FINRA Rule 9332(b).

Finally, Ballard claims that the disciplinary proceedings were unfair because he appeared without counsel. Although FINRA Rule 9141(b) permits the participation of counsel, there is no constitutional or statutory right to counsel in [FINRA] disciplinary proceedings. *See Falcon Trading Group, Ltd.*, 52 S.E.C. 554, 559 (1995). Neither FINRA's requirements under the Exchange Act nor FINRA's rules require FINRA to provide a respondent with counsel free of charge. *See Dep't of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *23-24 (Oct. 4, 2011), *aff'd*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496 (Nov. 9, 2012).

FINRA disciplinary proceedings must be conducted in accordance with fair procedures. *See* Section 15A(b)(8) of the Securities Exchange Act of 1934 ("Exchange Act"); *see also Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009) (holding that FINRA must provide fair procedures for its disciplinary actions). To provide a fair disciplinary process, FINRA must "bring specific charges, notify such member or person of and give him an opportunity to defend against, such charges, and keep a record." Section 15A(h)(1) of the Exchange Act. Ballard's proceedings before the Hearing Panel were fair, conducted in accordance with FINRA rules, and provided Ballard with notice of the allegations against him and an opportunity to defend himself.

IV. Sanctions

The Hearing Panel consulted FINRA's Sanction Guidelines, barred Ballard for his failure to provide documents and testimony, and declined to impose additional sanctions on him for the undisclosed outside business activities.[21] As discussed below, we affirm the sanctions that the Hearing Panel imposed.

A. Failure to Respond to FINRA's Requests Made Pursuant to FINRA Rule 8210

When an associated person does not respond in any manner to a request made pursuant to FINRA Rule 8210, the Guidelines state that a bar should be standard.[22] When a respondent does not respond until after FINRA files a complaint, the Guidelines advise adjudicators to apply the presumption that the failure constitutes a complete failure to respond.[23] Under such circumstances, the Guidelines state that "a bar is standard unless the person can demonstrate that

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[21] *See FINRA Sanction Guidelines* (2013) [hereinafter *Guidelines*]. In assessing the appropriate sanctions for Ballard's misconduct, we apply the applicable Guidelines in place at the time of this decision and consider the specific Guidelines related to each violation. *See id.* at 8. We also consult the General Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, which adjudicators consult in every disciplinary case. *See id.* at 2-7.

[22] *See Guidelines*, at 33 (Requests Made Pursuant to FINRA Rule 8210).

[23] *See id.*

the information provided substantially complied with all aspects of the request."[24] If an adjudicator decides to impose a suspension in lieu of a bar for a partial, but incomplete, response to a request from FINRA, the Guidelines recommend that the adjudicator also consider imposing a fine of $10,000 to $50,000.[25] Where mitigation exists, or the respondent did not respond in a timely manner, the Guidelines suggest a fine of $2,500 to $25,000, and a suspension of the individual in any or all capacities for up to two years.[26]

The Guidelines provide several factors to determine the appropriate sanctions for a violation of FINRA Rule 8210. These factors include: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, (2) whether the information that was provided was relevant and responsive to the request, (3) the number of requests made, (4) the time the respondent took to respond, (5) the degree of regulatory pressure required to obtain a response, and (6) whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[27]

Ballard provided some limited information, but no documents, in response to FINRA's two requests for information and documents concerning IFS's and G&C's advances. He did not provide any documents in response FINRA's eight requests for documents concerning his outside employment with G4S. Ballard also failed to appear for on-the-record testimony concerning his outside employment with G4S, despite FINRA's two requests for interviews. In light of these facts, we apply the Guidelines for a partial, but incomplete, response to a request made pursuant to FINRA Rule 8210. Specifically, we review the record to determine whether Ballard substantially complied with all aspects of FINRA's request and whether there is any evidence of mitigation. After a careful examination of the record, we conclude that Ballard did not substantially comply with all aspects of FINRA's requests for documents or testimony, and he has not presented any evidence to mitigate his noncompliance.

As an initial matter, the documents and testimony that Ballard failed to provide were important to FINRA's examination of Ballard's conduct at IFS and G&C. In response to Ballard's termination from IFS and subsequent employment with G&C, FINRA initiated an inquiry to examine whether Ballard received advances from IFS and G&C, whether he obtained outside employment with G4S while he was registered with G&C, and whether he provided G&C with written notice of his outside employment with G4S. Ballard's responses to FINRA's inquiry were seriously deficient.

Ballard provided FINRA with two one-page narratives concerning the advances he received from IFS and G&C, but he did not produce any documentation to substantiate the uncorroborated statements in his accounts. In a telephone interview with the FINRA examiner

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24 *See Guidelines*, at 33.

25 *See id.*

26 *See id.*

27 *See id.*

after his termination from G&C, Ballard provided a disjointed explanation of his employment with G4S, but he did not produce any supporting financial documents. Finally, after Ballard volunteered to provide on-the-record testimony to explain what transpired while he was employed with G4S and registered with G&C, he failed to appear for the interview. To date, Ballard has not provided FINRA with any documents or testimony, and in doing so, Ballard has frustrated FINRA's investigation and left unanswered many of the questions surrounding his outside employment with G4S.

FINRA also expended an extraordinary amount of regulatory effort to attempt to obtain Ballard's compliance with the requests for information, documents, and testimony. Between December 2010, the date of FINRA's initial inquiry into Ballard's conduct, and May 2013, the date that Enforcement filed the complaint against Ballard, FINRA sent Ballard two requests for information and documents, two requests for on-the-record testimony, and seven requests for documents. Ballard provided incomplete responses to the two requests for information and documents. He did not appear for testimony or respond in any manner to five of the seven requests for documents. In the two instances that Ballard did "respond," he stated that he preferred to provide testimony and erroneously asserted that he already had responded.

Finally, Ballard's actions throughout these disciplinary proceedings suggest that his failure to comply with FINRA's requests is indicative of a broader pattern of conduct aimed at stalling FINRA's investigation and disciplinary process in perpetuity. When Enforcement filed the complaint, Ballard attempted to defer the disciplinary proceeding by suggesting that he was prepared to comply with the document request that FINRA had sent to him 15 months earlier. Ballard offered Enforcement cursory explanations in response to the requests for documents, but he proffered no documents. As the case proceeded to a hearing before the Hearing Panel, Ballard attempted to postpone the hearing at several junctures. He requested time to find an attorney, intimated about a pending settlement of the case, sought to disqualify a Panelist, and with no specificity, claimed he had "exigent circumstances." Even in this appeal, Ballard has strenuously attempted to delay the conclusion of FINRA's disciplinary process. He delayed briefing, missed filing deadlines, and sought to postpone oral argument on several occasions.

Over the course of three years, FINRA sent Ballard 12 requests for information, documents, and testimony related to two straightforward matters – advances that Ballard received from IFS and G&C and Ballard's outside employment with G4S while he was associated with G&C. FINRA's basic investigation of monies that Ballard received from IFS and G&C, and his one-month employment with G4S, became a labyrinth of piecemeal, scant, and near-incoherent excuses from Ballard about why he would not comply with FINRA's requests for documents or testimony. Ballard's conduct in this case demonstrates a profound deviation from an associated person's obligation to cooperate with FINRA's investigations. And, on appeal, Ballard has presented no evidence of mitigation to persuade us to impose sanctions less than bar.[28] Accordingly, we bar Ballard for failing to adhere to FINRA's requests made pursuant to FINRA Rule 8210.

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[28] Ballard's post-complaint attempts to explain his failure to produce the documents and his unsubstantiated claims of financial duress are not mitigating. The post-complaint explanations, which Ballard sent in September 2013 and October 2013, respectively, came too late to be mitigating. *See Guidelines*, at 33 (Requests Made Pursuant to FINRA Rule 8210) (explaining

[Footnote continued on next page]

B. Undisclosed Outside Business Activities

For engaging in undisclosed outside business activities, the Guidelines recommend a fine of $2,500 to $50,000.[29] The Guidelines also recommend a suspension of up to 30 business days, when the outside business activities do not include aggravating conduct.[30] Where there is aggravating conduct, however, the Guidelines suggest a suspension of up to one year.[31] In egregious cases, such as those involving a substantial volume of activity, the Guidelines recommend a longer suspension, or a bar.[32] In assessing sanctions for cases involving undisclosed outside business activities, the Guidelines advise adjudicators to consider: (1) whether the outside activity involved customers of the firm, (2) whether the outside activity resulted directly or indirectly in injury to customers of the firm, (3) the duration of the outside activity, the number of customers, and the dollar volume of sales, (4) whether the respondent's marketing and sale of the product or service could have created the impression that the firm had approved the product or service, and (5) whether the respondent misled the firm about the existence of the outside activity or otherwise concealed the activity from the firm.[33]

Ballard worked for G4S, a security company, for only one month. In our estimation, the undisclosed outside employment, standing in isolation, does not reach the level of egregious misconduct. That said, when we considered Ballard's pointed attempt to mislead FINRA and G&C about the outside employment through the submission of the falsified letter and email, we determined that a significant aggravating act accompanied Ballard's misconduct. Under such circumstances, the Guidelines recommend a suspension of up to one year. Accordingly, we agree with the Hearing Panel's determination to suspend Ballard in all capacities for one year and fine him $10,000 for engaging in undisclosed outside business activities. We, however, decline to impose these sanctions in light of the bar we already imposed on Ballard for his failure to provide documents and testimony.

[cont'd]

that responses after the filing of a complaint constitute a complete failure to respond). And, to the extent financial problems interfered with Ballard's ability to comply with FINRA's requests, he was obligated to contact the FINRA examiner, explain and document the cause for the delay or partial response, and propose alternate deadlines and arrangements to ensure his complete compliance with the requests. *See Fawcett*, 2007 SEC LEXIS 2598, at *18 ("As we have often noted, recipients of requests under [FINRA] Rule 8210 must promptly respond to the requests or explain why they cannot."). Ballard did not satisfy that standard.

29 *See Guidelines*, at 13 (Outside Business Activities).

30 *See id.*

31 *See id.*

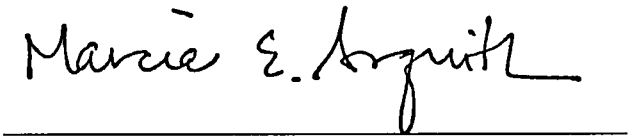
32 *See id.*

33 *See id.*

V. Conclusion

Ballard engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010, and failed to provide documents or testimony in response to FINRA's requests, in violation of FINRA Rules 8210 and 2010. We bar Ballard for failing to provide the documents and failing to appear for testimony, but we decline to impose sanctions on him for the undisclosed outside business activities. We affirm the Hearing Panel's order for Ballard to pay costs of $6,850.83, and we impose appeal costs of $1,617.85.[34]

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith,
Senior Vice President and Corporate Secretary

[34] The bar is effective as of the date of this decision.