

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAREAM H. WHITE
(CRD No. 3109919),

Respondent.

Disciplinary Proceeding
No. 2011026620501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 6, 2013

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

Appearances

Helen G. Barnhill, Esq., and Jacqueline D. Whelan, Esq., for the Department of Enforcement.

No appearance by or on behalf of Respondent Kaream H. White.

DECISION

Kaream H. White formerly was a registered securities broker with Merrill Lynch, Pierce, Fenner & Smith Incorporated. Merrill Lynch discharged White in February 2011 for violating its policy relating to personal accounts, which led FINRA staff to open an investigation into the facts and circumstances surrounding the reason for his discharge. In the course of that investigation, FINRA staff sent White written requests pursuant to FINRA 8210 that he appear and testify at an on-the-record interview (“OTR”). White did not comply with the requests. As a result, FINRA’s Department of Enforcement initiated this disciplinary proceeding, charging him with violating FINRA Rules 8210 and 2010.

Enforcement filed the attached Complaint with the Office of Hearing Officers on January 14, 2013. White did not answer or otherwise respond to the Complaint.

On April 10, 2013, Enforcement filed a motion for entry of a default decision. The motion is supported by the declaration of Helen G. Barnhill, Esq., and five exhibits. At the Hearing Officer's direction, Enforcement filed a supplemental declaration on April 29, 2013. For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars White from associating with any FINRA member firm in any capacity.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws¹ because (1) the Complaint was filed within two years after White's last registration with FINRA terminated,² and (2) the Complaint charges him with failing to respond to Rule 8210 requests that he appear and testify at an OTR that FINRA staff issued during the two-year period following the termination of his FINRA registration.

II. Enforcement's Motion For Entry Of A Default Decision Is Granted

On January 11, 2013, Enforcement served White with a copy of the Complaint and Notice of Complaint by first-class certified mail (return receipt requested) at his residential address recorded in the Central Registration Depository ("CRD") and at two other addresses Enforcement believed might have been more current than his CRD address. The certified mailing Enforcement sent to White's CRD address was returned unclaimed.³ Enforcement received the return receipt for the certified mailing it sent to one of the alternative addresses, bearing the

¹ 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").

² White's last FINRA registration terminated effective February 24, 2011. Ex. 2. White has not been associated with a FINRA member firm since February 2011. Ex. 1, at 2.

³ Barnhill Decl. ¶¶ 10-11.

signature, "JWhite."⁴ White did not answer the Complaint by the deadline set in the Notice of Complaint.

On February 13, 2013, Enforcement served White with a copy of the Complaint and the Second Notice of Complaint by first-class certified mail (return receipt requested) to the same three addresses.⁵ The certified mailing sent to White's CRD address was returned to Enforcement because it was not a good address.⁶

The Second Notice of Complaint required White to file an Answer with the Office of Hearing Officers on or before February 28, 2013.⁷ To date, White has not answered or otherwise responded to the Complaint.

The Hearing Officer concludes that White received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and that he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.⁸

III. Findings Of Fact And Conclusions Of Law

A. Background

White entered the securities industry in 1998 and first registered with FINRA as a General Securities Representative in March 1999.⁹ He was associated with Merrill Lynch from July 16, 2010, until February 4, 2011, at which time Merrill Lynch discharged White for

⁴ Barnhill Decl. ¶ 11; Ex. 4, at 17.

⁵ Barnhill Decl. ¶ 12.

⁶ *Id.* There is no evidence that White received any of the mailings sent to the other two addresses.

⁷ Ex. 5, at 1.

⁸ The Hearing Officer treated the allegations in the attached Complaint as admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

⁹ Ex. 1, at 3.

violating its policy regarding personal accounts.¹⁰ White was registered as a General Securities Representative while he was associated with Merrill Lynch. White's registration terminated on February 24, 2011, when Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on his behalf.¹¹ White has not been associated with a FINRA member firm or registered with FINRA since February 2011.¹²

B. Failure To Appear For An On-The-Record Interview

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.¹³ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.¹⁴

The Complaint alleges that, pursuant to Rule 8210, FINRA staff sent White two requests that he appear at FINRA's Denver office for an OTR to answer questions regarding the reason

¹⁰ *Id.* at 8.

¹¹ Ex. 2.

¹² Ex. 1, at 2; Barnhill Decl. ¶ 5.

¹³ See, e.g., *Dep't of Enforcement v. Valentino*, No. FP1010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted). See also *Morton Bruce Erenstein*, 316 F. App'x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) ("[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.").

¹⁴ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

Merrill Lynch terminated his employment. Merrill Lynch had filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on February 24, 2011, reporting that he was discharged for conduct inconsistent with the firm's policies regarding personal accounts.¹⁵ FINRA staff came to suspect that he might have been engaged in criminal check kiting (intentionally writing checks on an account with insufficient funds) or check fraud.¹⁶

The first request was dated October 2, 2012, and the second November 8, 2012. The staff sent each request to White's CRD address by first-class certified mail and an alternate address the staff believed might be more current than the CRD address. In addition, the staff sent the November 8 request by first-class certified mail to an address in Kansas City, which the staff uncovered in October 2012 through a LexisNexis search.¹⁷ According to the United States Postal Service's records, the certified mailing sent to the Kansas City address was delivered on November 13, 2012, and signed for by "K. White."¹⁸ Nonetheless, White did not appear or otherwise respond to the requests.

The facts alleged in the Complaint establish that White violated FINRA Rules 8210 and 2010 by failing to appear and provide testimony in connection with FINRA's investigation into the facts and circumstances that gave rise to his discharge from Merrill Lynch.

IV. Sanctions

The FINRA Sanction Guidelines ("Sanction Guidelines") provide that a bar should be standard where there is a complete failure to respond to a Rule 8210 request for information.¹⁹ In

¹⁵ Ex. 2.

¹⁶ Supplemental Decl. ¶¶ 5-8.

¹⁷ Compl. ¶¶ 8-9; Barnhill Decl. ¶ 18.

¹⁸ Barnhill Decl. ¶ 19.

¹⁹ FINRA Sanction Guidelines 33 (2011), *available at* www.finra.org/sanctionguidelines.

addition, the Sanction Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective when assessing sanctions.²⁰

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. The information Enforcement sought was important. Enforcement was investigating serious potential misconduct. Merrill Lynch discharged White because it suspected that he was engaged in criminal check kiting or check fraud. There are no mitigating factors in the record that would warrant a lesser sanction. Accordingly, in the absence of any mitigating factors, the Hearing Officer concludes that a bar is the appropriate sanction in this case.

V. Order

Kaream H. White is barred from associating with any member firm in any capacity for failing to appear and testify at an on-the-record interview, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Kaream H. White (*via overnight courier and first-class mail*)
Helen G. Barnhill, Esq. (*via electronic and first-class mail*)
Jacqueline D. Whelan, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

²⁰ *Id.*

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Kaream Hassan White
(CRD No. 3109919),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011026620501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Kaream H. White ("the Respondent") failed to appear for an on-the-record interview ("OTR") in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. The Respondent entered the securities industry in March 1999 when he became registered with a FINRA member firm as a general securities representative ("GS"). He left that firm in November 2001. Thereafter he registered as a GS through four other member firms before becoming registered with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("the firm") from July 16, 2010 through February 4, 2011. The firm filed a Form U5 on February 24, 2011 indicating that it terminated the Respondent's registration for conduct inconsistent with firm policy regarding

personal bank accounts. The Respondent has not been associated with a FINRA member since February 4, 2011.

3. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the effective date of termination of Respondent's registration with Merrill Lynch, Pierce, Fenner & Smith Incorporated, namely, February 24, 2011 and the Respondent failed to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

(Failure to Appear for an On-the-Record Interview (Rules 8210 and 2010))

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. On October 2, 2012, the staff sent a letter to Respondent's residential CRD address and to his most current residential address appearing in Lexis/Nexis ("the newer address"), via first class and certified mail. The Respondent's residential CRD address and the newer address are both in Gilbert, Arizona. The October 2, 2012 letter requested that the Respondent appear for an OTR at FINRA's Denver office on November 7, 2012. The letter stated that the Respondent was required to appear pursuant to FINRA Rule 8210 and asked that he contact FINRA to confirm that he intended to appear on the date scheduled for the OTR. The letter further stated that if the Respondent was not available on the scheduled date, he was to notify FINRA to

discuss another mutually acceptable date and time and that unless and until a postponement was agreed to, the Respondent was still obligated to appear on the date and at the time specified in the letter.

6. The certified letter sent to the CRD address was returned to FINRA marked "forward time exp, rtn to send," and included a forwarding address in Phoenix, AZ. The certified letter sent to the newer address was returned to FINRA marked "return to sender, attempted, not known, unable to forward" and "notify sender of new address," with a third Gilbert, AZ address indicated as a forwarding address. The first class letters were also returned to FINRA with the same notations that appeared on the returned certified mailings. The Respondent did not contact the staff concerning the letter and did not appear for the OTR.
7. Prior to the issuance of the request for appearance at the OTR described in paragraph 6 above, FINRA had attempted to obtain information from the Respondent by sending written requests to the two forwarding addresses indicated on the returned certified and first-class mailings described above. Specifically, on May 7, 2012, the staff sent a letter to the Respondent at both of the new forwarding addresses by first class and certified mail. The certified letter sent to the Phoenix address was returned marked "return to sender, attempted – not known, unable to forward." The first class letter was not returned. The certified letter and the first class letter sent to the third Gilbert address were returned marked "return to sender, attempted – not known, unable to forward." As a result of the returned mailings described herein, the Phoenix and the third Gilbert address did not constitute more current addresses for the Respondent known to the staff.

8. On or about October 30, 2012, FINRA staff conducted another Lexis/Nexis search for any more current addresses for the Respondent. The search revealed a new address in Kansas City, MO ("Kansas City address") and a telephone number associated with that address. The staff called the Respondent on November 2, 2012 at the identified telephone number. The outgoing message did not indicate the owner of the telephone, but the staff examiner left a voicemail identifying himself and requesting that the Respondent contact him. The Respondent did not return the phone call.
9. On November 8, 2012, the staff sent a second OTR request letter to the Respondent asking him to appear, pursuant to FINRA Rule 8210, for an OTR on November 19, 2012 at FINRA's Denver office. The letter was sent via certified and first class mail to the CRD address, the newer address and the Kansas City address. Both letters sent to the newer address and the CRD address were returned marked "return to sender, attempted – not known, unable to forward" or "return to sender, not deliverable as addressed, unable to forward." The letters sent to the Kansas City address were not returned to FINRA. However, postal records indicate that the certified mailing to the Kansas City address was delivered on November 13, 2012 and was signed for by "K. White." The Respondent did not contact the staff concerning the letter and he did not appear for his OTR.
10. The staff had a regulatory need to interview the Respondent in order to fully investigate the firm's assertion that the Respondent had engaged in conduct inconsistent with firm policy regarding personal bank accounts. The staff did not have the ability to obtain the information it was seeking from the interview from any source other than the Respondent.

11. By failing to appear for his OTR, the Respondent violated FINRA Rules 8210 and 2010.

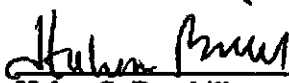
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- C. order that 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: January 11, 2013



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