

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAPIL SHASHIKANT SHAH
(CRD No. 4409290),

Respondent.

Disciplinary Proceeding

No. 2011027840902

Hearing Officer – MC

DEFAULT DECISION

April 18, 2013

Respondent Kapil Shashikant Shah is barred from associating with any FINRA member in any capacity for failing to respond to a request for information and documents, in violation of FINRA Rules 8210 and 2010.

Appearances:

Joel T. Kornfeld, Esq., Los Angeles, California, for the Department of Enforcement.

No appearance by or for Respondent Kapil Shashikant Shah.

DECISION

I. Background

The Department of Enforcement filed and served the attached Complaint, charging that Respondent Kapil Shashikant Shah refused to respond to a request for information made pursuant to FINRA Rule 8210 in the course of an investigation into possible sales practice violations. Because Shah failed to file an Answer or otherwise respond to the Complaint, Enforcement filed and served a Second Notice of Complaint. Respondent has not filed an Answer or otherwise responded to it.

Consequently, Enforcement filed a Motion for Entry of Default Decision (“Motion”) supported by the Declarations of Jason M. Freeman, Esq., and Joel T. Kornfeld, Esq., and eight exhibits. Respondent did not file a reply to the Motion.

Shah’s failure to file an Answer to the Complaint constitutes a default.¹ Accordingly, for the reasons set forth below, Enforcement’s Motion is granted.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Shah was registered with FINRA member Newport Coast Securities, Inc. (“Newport”), as a General Securities Representative and General Securities Principal from April 15, 2008, through August 17, 2011,³ when Newport terminated Shah’s employment.⁴ Nonetheless, Shah remains subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws because the Complaint charges him with misconduct for failing to respond to a Rule 8210 request within two years after he was last registered or associated with a FINRA member, and because the Complaint was filed less than two years after the termination of Shah’s registration with Newport.⁵

B. Respondent’s Default

Enforcement served the Complaint and Notice of Complaint on October 23, 2012, by first-class and certified mail at Shah’s Central Registration Depository residential address of record (“CRD address”), as well as at a second address Enforcement discovered through a public

¹ *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003).

² The factual determinations in this Decision are based on the allegations in the Complaint, which are deemed admitted pursuant to FINRA Rule 9269(a)(2), Enforcement’s Motion, the Declaration of Joel T. Kornfeld (“Kornfeld Decl.”), and Enforcement’s exhibits CX-1 through CX-8.

³ CX-1.

⁴ CX-2, at 1.

⁵ Compl. ¶ 2.

records search (“alternate address”).⁶ The Postal Service did not return either first-class mailing.⁷ The certified mailing to Shah’s CRD address was unclaimed.⁸ The Postal Service returned a signed receipt with an illegible signature reflecting the delivery of the certified mailing to the alternate address on October 26, 2012.⁹ Shah did not respond.¹⁰

Enforcement served the Second Notice of Complaint by first-class and certified mail at Shah’s CRD address and the alternate address on November 21, 2012.¹¹ The Postal Service did not return either first-class mailing.¹² Postal Service records reflect that notices of the certified mailings were left at the alternate and CRD addresses on November 24, 2012, and December 5, 2012, respectively.¹³ As before, Shah failed to respond.¹⁴

Enforcement complied with Rule 9134 by mailing the Complaint and Notices of Complaint to Shah’s last-known residential CRD address, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

C. Respondent’s Failure to Provide Information

In August 2011, staff members of FINRA’s Market Regulation Department, who were investigating allegations that Shah made unsuitable recommendations and misrepresentations to

⁶ Kornfeld Decl. ¶ 3; CX-3.

⁷ Kornfeld Decl. ¶ 4.

⁸ *Id.*; CX-4.

⁹ Kornfeld Decl. ¶ 5; CX-5.

¹⁰ Kornfeld Decl. ¶ 6.

¹¹ *Id.*, ¶ 7; CX-6.

¹² Kornfeld Decl. ¶ 8.

¹³ *Id.*, ¶¶ 8-9; CX-7. CX-8.

¹⁴ Kornfeld Decl. ¶ 10.

a customer, issued a request for information and documents pursuant to FINRA Rule 8210.¹⁵

The staff sought information about: Shah's relationship with the customer; the rationale for the transactions in the customer account; whether the customer authorized certain transactions; and whether the customer gave Shah discretionary control over the account. The Rule 8210 request set a deadline of August 16, 2011, for Shah to provide the information.¹⁶

It is apparent that Shah received the request because he contacted the staff five days before the deadline, on August 11, 2011, to request additional time to respond. Shah told the staff he would respond by August 23, 2011. He did not do so.¹⁷

On August 25, 2011, Shah informed Market Regulation staff that he was not going to respond to the information request. Consistent with his expressed intent, he has not provided the requested information.¹⁸

By failing to respond to the Rule 8210 request, Shah violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines underscore the seriousness of a failure to respond to a Rule 8210 request by making a bar the standard sanction when an individual completely fails to respond.¹⁹

The Principal Consideration for determining the appropriate sanction is the "[i]mportance of the information requested as viewed from FINRA's perspective."²⁰ Enforcement argues that

¹⁵ Compl. ¶ 5.

¹⁶ Compl. ¶ 6.

¹⁷ Compl. ¶ 7.

¹⁸ Compl. ¶ 8.

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

²⁰ *Id.*

the information the staff sought from Shah “was critical” to the staff’s ability to investigate allegations that Shah had engaged in sales practice violations that were detrimental to a customer.²¹ As noted above, the staff sought information relating, among other things, to whether transactions in the customer’s account were authorized and whether Shah had obtained discretionary control over the customer account. Shah’s refusal to provide any information in response to the request thwarted the staff’s efforts to conduct the review required by these serious allegations.

As it has often been observed, because FINRA lacks subpoena power, “it must rely upon Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated persons”²² to “obtain from its members information necessary to conduct investigations.”²³ “The rule is at the heart of the self-regulatory system for the securities industry” and imposes an “unequivocal” responsibility to comply with information requests.²⁴ “Vigorous enforcement of Rule 8210 helps ensure the continued strength of the self-regulatory system -- and thereby enhances the integrity of the securities markets and protects investors -- by preventing members and their associated persons who demonstrate their unfitness by failing to respond in any manner to Rule 8210 requests from remaining in the securities industry.”²⁵

Under these circumstances, devoid of mitigation, Shah’s refusal to provide any of the requested information constituted an abdication of his obligation to cooperate with FINRA’s

²¹ Motion at 7.

²² *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998).

²³ *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993). See also *Elliot M. Hershberg*, Exchange Act Rel. No. 53145, 2006 SEC LEXIS 99, at *10 (Jan. 19, 2006)(stating that “compliance is essential to NASD’s self-regulatory function because NASD lacks subpoena power” and that “[f]ailure to comply is a serious violation justifying stringent sanctions because it subverts NASD’s ability to execute its regulatory functions”) (citations omitted), *aff’d*, 210 Fed. App’x. 125 (2d Cir. 2006).

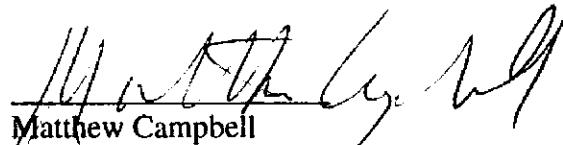
²⁴ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

²⁵ *Id.* at *15.

requests for information was “so fundamentally incompatible” with FINRA’s self-regulatory function that the only appropriately remedial sanction is a bar.²⁶

IV. Order

Respondent Kapil Shashikant Shah is barred from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110 by completely failing to respond to a request for information issued by FINRA staff pursuant to Rule 8210. The bar will become effective immediately if this Default Decision becomes FINRA’s final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

Copies to:

Kapil S. Shah (*via overnight courier and first-class mail*)
Joel T. Kornfeld, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
Susan M. Schroeder, Esq. (*via electronic mail*)

²⁶ *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *aff’d*, 436 F. App’x 31, (2d Cir. 2011)(citing *Paz Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *9 (April 11, 2008)(quoting *Charles C. Fawcett, IV*, Exchange Act Rel. 56770, 2007 SEC LEXIS 2598, at *21-22 (Nov. 8, 2007))).

FINANCIAL INDUSTRY REGULATORY AUTHORITY
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Department of Enforcement,

Complainant,

v.

Kapil Shashikant Shah
(CRD No. 4409290)

Respondent.

DISCIPLINARY PROCEEDING
No. 2011027840902

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In August 2011, the staff requested that former Newport Coast Securities representative Kapil S. Shah produce information and documents, pursuant to Rule 8210, in connection with an investigation involving allegations that he had made misrepresentations and unsuitable recommendations to a customer. Shah informed the staff that he would not respond to the Request and acknowledged that his failure could result in a bar. This Complaint alleges that Shah failed to respond to a Request for Information and thereby violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. From April 15, 2008 through August 15, 2011, Shah was associated with FINRA member Newport Coast Securities, Inc. ("Newport Coast" or "the Firm") as a General Securities Principal (Series 24) and General Securities Representative (Series 7).

3. Although Shah is not currently 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 the FINRA By-Laws, because the Complaint was filed within two years after the effective date of termination of Shah's registration with Newport Coast, namely, August 15, 2011, and the Complaint charges him with failing to respond to a request for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

CAUSE OF ACTION

Failure to Respond to Request for Information
(FINRA Rules 8210 and 2010)

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

5. On August 2, 2011, in connection with an investigation involving alleged unsuitable recommendations and misrepresentations by Shah in Newport Coast customer R.N.'s account, Member Regulation staff requested, pursuant to FINRA Rule 8210, information and documents from Shah. The Request was sent by mail to Shah's CRD Residential Address of record.

6. The August 2, 2011 Request sought, among other things, information about: the relationship between Shah and R.N.; the rationale for the transactions in R.N.'s account; whether the transactions at issue were authorized; and whether Shah exercised discretionary control over R.N.'s account. The Request specified that Shah's response was due no later than August 16, 2011.

7. On August 11, 2011, Shah contacted the staff, requested an additional week to prepare a response and represented that his response would be provided no later than August 23, 2011. No response was forthcoming on August 23, 2011.

8. On August 25, 2011, Shah orally informed the staff that he would not respond to the Rule 8210 Request for Information. Five days later, in an email dated August 30, 2011, Shah confirmed to the staff that he would not respond. To date, Shah has never responded to the Request.

9. By failing to respond to the staff's request for information dated August 2, 2011, Shah violated FINRA Rules 8210 and 2010.

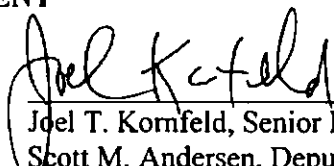
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violation charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- 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: October 23, 2012


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