

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN MELTON HACKBARTH
(CRD No. 2920705),

Respondent.

Disciplinary Proceeding
No. 2011028083102

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

January 25, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Complainant: Sarah B. Belter, Esq.

For John Melton Hackbarth, Respondent: no appearance.

DECISION

John Melton Hackbarth was formerly registered with FINRA and associated as a General Securities Representative with Morgan Stanley Smith Barney. Morgan Stanley discharged Hackbarth in May 2011. FINRA began an investigation into the reasons underlying his discharge after it received the Uniform Termination Notice for Securities Industry Registration (Form U5) Morgan Stanley filed on Hackbarth's behalf. In the course of the investigation, FINRA Staff sent Hackbarth requests for information that he failed to answer.

Enforcement filed a complaint with the Office of Hearing Officers, charging Hackbarth with violating FINRA Rules 8210 and 2010. FINRA Rule 8210 grants FINRA Staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any

matter involved in an investigation, complaint, examination, or proceeding. FINRA Rule 2010 requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade.

Hackbarth did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of a default decision. The motion is supported by sworn Declaration of Sarah B. Belter (“Decl.”) and six exhibits. Hackbarth did not file a response to Enforcement’s motion.

For the reasons discussed below, the Hearing Officer grants Enforcement’s motion.

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 Hackbarth’s last registration with FINRA terminated,² and (2) the Complaint charges him with failing to respond to requests for information 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

Enforcement filed the attached Complaint with the Office of Hearing Officers on July 11, 2012, and the same day served Hackbarth 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”).³ The certified mailing was returned to

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 FINRA terminated his registration effective June 8, 2011. Ex. 1, at 4.

³ Decl. § III(4). Enforcement also sent a copy of the Complaint to Hackbarth’s attorney by electronic and first-class mail.

Enforcement because it was unclaimed.⁴ Respondent did not answer the Complaint by August 8, 2012, the deadline set in the Notice of Complaint.⁵

On August 9, 2012, Enforcement served Hackbarth with a copy of the Complaint and Second Notice of Complaint by first-class certified mail (return receipt requested) at his CRD address.⁶ The certified mailing was returned to Enforcement because it was unclaimed.⁷ The Second Notice of Complaint required Hackbarth to file an answer with the Office of Hearing Officers on or before August 27, 2012.⁸ To date, Hackbarth has not answered or otherwise responded to the Complaint.⁹

On October 3, 2012, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Hackbarth did not respond to the motion.

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

III. Findings Of Fact

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

⁴ Decl. ¶ 6.

⁵ *Id.* ¶¶ 7-8.

⁶ Decl. ¶ 9. Enforcement also sent a copy of the Complaint to Hackbarth's attorney by electronic and first-class mail.

⁷ Decl. ¶ 11.

⁸ *Id.* ¶ 12.

⁹ *Id.* ¶ 14.

A. John Melton Hackbarth

Hackbarth was associated with Morgan Stanley between June 1, 2009, and May 12, 2011.

His last registration with FINRA terminated on June 8, 2011.¹⁰

B. Failure to Provide Information and Documents

Beginning in January 2012, FINRA attempted to obtain information from Hackbarth concerning its investigation of his financial arrangements with two customers. The underlying investigation sought information regarding cash gifts, loans, and possible conversion of funds.¹¹

On January 5, 2012, FINRA Staff sent Hackbarth a request for information pursuant to Rule 8210. FINRA Staff sent the request by first-class certified mail to Hackbarth's CRD address. FINRA Staff also sent a copy to Hackbarth's personal e-mail address. He did not respond to the request letter.¹²

On February 28, 2012, FINRA Staff sent Hackbarth a second Rule 8210 request letter. The staff sent the letter by first-class certified mail to Hackbarth's CRD address. The staff also sent a copy to Hackbarth's personal e-mail address. He did not respond to the second request letter.¹³

On March 13, 2012, an attorney contacted FINRA Staff on Hackbarth's behalf. The attorney requested an extension of time for Hackbarth to respond to the second request letter. FINRA Staff granted the request and extended the deadline to April 14, 2012. FINRA Staff confirmed the extension of time by a third Rule 8210 request dated March 14, 2012.¹⁴

¹⁰ Ex. 1, at 4.

¹¹ Compl. ¶ 20.

¹² *Id.* ¶¶ 7-10.

¹³ *Id.* ¶¶ 11-14.

¹⁴ *Id.* ¶¶ 15-16.

FINRA Staff sent the third Rule 8210 request to Hackbarth's CRD address by first-class certified mail. The staff also sent copies of the March 14 letter to Hackbarth's personal e-mail address and to Hackbarth's attorney. To date, Hackbarth has not provided any of the requested information.¹⁵

IV. Conclusions Of Law

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.¹⁶ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.¹⁷

In this case, Enforcement made three attempts to obtain information from Hackbarth pursuant to FINRA Rule 8210. Each time, FINRA Staff sent a written request to Hackbarth's CRD address as well as his personal e-mail address. Hackbarth received at least one of the

¹⁵ *Id.* ¶¶ 16-20.

¹⁶ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC 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 Fed. 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.").

¹⁷ *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).

mailings because his attorney contacted the staff and requested an extension of the deadline to respond.

The Hearing Officer finds that Hackbarth violated FINRA Rule 8210 by his failure to provide the requested information pursuant to that Rule. In addition, the Hearing Officer finds that Hackbarth violated FINRA Rule 2010. It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.¹⁸

V. Sanctions

For failing to respond in any manner to a Rule 8210 request for information, the FINRA Sanction Guidelines provide that a bar should be the standard sanction.¹⁹ The record does not disclose any mitigating factors that would warrant permitting Hackbarth to remain in the securities industry. Accordingly, a bar is the appropriate sanction for his failure to provide information.

VI. Order

John Melton Hackbarth is barred from associating with any member firm in any capacity for failing to provide information, in violation of 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

¹⁸ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

¹⁹ FINRA SANCTION GUIDELINES 33 (2011), available at www.finra.org/sanctionguidelines.

Copies to:

John Melton Hackbarth (*via overnight courier and first-class mail*)

Sarah B. Belter, Esq. (*via electronic and first-class mail*)

David B. Klafter, Esq. (*via electronic mail*)

David R. Sonnenberg, Esq. (*via electronic mail*)

Mark P. Dauer, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John Melton Hackbarth
(CRD No. 2920705),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011028083102

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. John Melton Hackbarth failed to respond to FINRA staff's requests for documents and information, in violation of FINRA Rules 8210 and 2010. Hackbarth's failure to cooperate has impeded the staff's investigation concerning his financial arrangements with two customers. Specifically, FINRA staff sought information to aid in its investigation of whether Hackbarth may have improperly accepted cash gifts, a loan away from his firm, and/or possibly converted funds.

RESPONDENTS AND JURISDICTION

2. John Melton Hackbarth entered the securities industry in July 1997, as a General Securities Representative of a member of FINRA. Hackbarth, during all periods mentioned herein, was associated with member firm Morgan Stanley Smith Barney,

and was registered with FINRA under Article V of the By-Laws as a General Securities Representative.

3. Morgan Stanley Smith Barney filed a Form U4 for Hackbarth, commencing his association with the firm as of June 1, 2009. On June 8, 2011, Morgan Stanley Smith Barney filed a Form U5 for Hackbarth, terminating his association with it as of May 12, 2011 for "acceptance of gifts and other financial arrangements with a client."
4. Hackbarth currently is not associated with a FINRA member.
5. Although Hackbarth is no longer 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 (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, specifically, May 12, 2011, and (2) the Complaint charges Hackbarth with failing to respond to FINRA requests for information which were requested during the two-year period after the date when he ceased to be registered or associated with a member.

CAUSE OF ACTION

(FINRA Rules 8210 and 2010 - Failure to Provide Requested Information)

6. The Department realleges and incorporates by reference paragraphs 1 - 5 above.
7. By letter dated January 5, 2012, FINRA staff requested, pursuant to FINRA Rule 8210, that Hackbarth provide certain information concerning financial arrangements with two customers.

8. The January 5, 2012 letter was sent to Hackbarth's CRD residential address, via certified mail. It was also sent electronically to Hackbarth at his personal email address that he provided. Hackbarth's response was due on January 19, 2012.
9. The January 5, 2012 certified mail letter was not returned to FINRA staff, however the U. S. Postal Tracking system reflects that the mailing was processed through the sort facility in Birmingham, AL on January 9, 2012. The electronic mail was delivered successfully to Hackbarth at the email address.
10. Hackbarth failed to respond to the January 5, 2012 Rule 8210 letter.
11. Accordingly, in a second letter dated February 28, 2012, FINRA staff again requested, pursuant to FINRA Rule 8210, that Hackbarth provide certain information concerning financial arrangements with two customers.
12. The February 28, 2012 letter was sent to Hackbarth's CRD residential address, via certified mail. It was also sent electronically to Hackbarth at his personal email address that he provided. Hackbarth's response was due on March 13, 2012.
13. The February 28, 2012 certified mail letter was returned to FINRA and bore the U.S. Postal Service markings "Return to Sender." The electronic mail was delivered successfully to Hackbarth at the email address.
14. Hackbarth failed to respond to the February 28, 2012 Rule 8210 letter.
15. On March 13, 2012, an attorney contacted staff via email and indicated that Hackbarth had consulted him regarding representation. On Hackbarth's behalf, the attorney requested additional time to respond to the outstanding Rule 8210 request so

that he could determine whether to take the representation or advise Hackbarth to retain other counsel. Staff granted an extension of time to April 14, 2012.

16. Confirming the attorney's request, on March 14, 2012 FINRA sent a third Rule 8210 letter to Hackbarth's CRD residential address, via certified mail. It was also sent electronically to Hackbarth at his personal email address that he provided. A courtesy copy was also sent to the attorney via email and regular mail. Hackbarth's response was due on April 14, 2012.
17. The March 14, 2012 certified mail letter to Hackbarth was returned to FINRA and bore the U.S. Postal Service markings "Return to Sender." The electronic mail was delivered successfully to Hackbarth at the email address.
18. The email was delivered successfully to the attorney. The regular mail copy also sent to the attorney was not returned to FINRA.
19. Hackbarth failed to respond to the March 14, 2012 Rule 8210 letter.
20. To date, FINRA staff has not received a response from Hackbarth to the January 5, 2012, February 28, 2012, and March 14, 2012 letters described previously which had been issued by the staff in accordance with, and pursuant to, FINRA Rule 8210. The staff issued all three letters in connection with its investigation of Hackbarth's financial arrangements with two customers. Specifically, FINRA staff sought information to aide in its investigation of whether Hackbarth may have improperly accepted cash gifts, a loan away from his firm, and/or possibly converted funds.

21. The failure to provide information to the staff as requested by letters dated January 5, 2012, February 28, 2012, and March 14, 2012, constitute separate and distinct violations of FINRA Rules 8210 and 2010 by John Melton Hackbarth.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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: July 11, 2012



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