

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JERRY A. PAPIN, JR.
(CRD No. 2226175),

Respondent.

Disciplinary Proceeding
No. 20110293884-01

Hearing Officer – Andrew H. Perkins

DEFAULT DECISION

September 20, 2013

Respondent is barred from associating with any FINRA registered firm in any capacity for his failure to substantially comply with FINRA's requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Complainant: John S. Han and Jacqueline D. Whelan, San Francisco, California.

Respondent Jerry A. Papin, Jr. did not appear.

DECISION

Jerry A. Papin, Jr. is a former securities broker. He was last associated with Ameriprise Financial Services, Inc.

In September 2011, Ameriprise filed an amended Uniform Termination Notice for Securities Industry Registration (Form U5) that Ameriprise had been investigating Papin for activity that could constitute a violation of FINRA's Conduct Rules. Upon receipt of the amended Form U5, FINRA opened an investigation regarding the potential rule violations disclosed in the Form U5.

In the course of FINRA's investigation, FINRA staff sent Papin five requests for information and documents pursuant to FINRA Rule 8210. Papin did not respond fully to the requests. Accordingly, FINRA's Department of Enforcement initiated this disciplinary proceeding.

Enforcement filed a Complaint with the Office of Hearing Officers, charging Papin with violating FINRA Rules 8210 and 2010 by not responding fully to FINRA's requests for information. Papin did not answer or otherwise respond to the Complaint.

This disciplinary proceeding is now before the Hearing Officer on Enforcement's motion for entry of a default decision. The motion is supported by the sworn declarations of John S. Han, Esq., and Cheryl A. Ray, and eight exhibits. Papin did not respond to the motion.

For the reasons discussed below, the Hearing Officer finds Papin in default, grants Enforcement's motion for entry of a default decision, and permanently bars Papin from associating with any FINRA member firm in any capacity.

I. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws.¹ Enforcement filed the Complaint with the Office of Hearing Officers within two years after Papin's last registrations with FINRA terminated,² and the Complaint charges Papin with failure to comply with Rule 8210 requests for information that FINRA staff issued during the two-year period after the date his registrations terminated.

¹ See Article V, Sec. 4, FINRA By-Laws, *available* at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

² Papin was last registered with Ameriprise as a General Securities Principal, a General Securities Representative, and a Securities Sales Supervisor. His registrations with Ameriprise terminated on September 6, 2011. *See* CX-1, at 1-2.

II. Procedural History And Entry Of Default

Enforcement filed the attached Complaint with the Office of Hearing Officers on June 24, 2013. On June 26, 2013, Enforcement served Papin with a copy of the Complaint and a Notice of Complaint by first-class certified mail (return receipt requested) at his residential address recorded in the Central Registration Depository ("CRD").³ Enforcement also served Papin with duplicate copies of the Complaint and Notice of Complaint by first-class certified mail (return receipt requested) at his business address recorded in CRD. The United States Postal Service returned the mailing Enforcement sent to Papin's residential address because it was unclaimed.⁴ The mailing sent to Papin's business address was delivered on July 1, 2013.⁵ Papin did not answer the Complaint by the requisite deadline.

On July 26, 2013, Enforcement served Papin with a copy of the Complaint and a Second Notice of Complaint by first-class certified mail (return receipt requested) at his residential and business addresses recorded in CRD.⁶ The United States Postal Service was not able to deliver either mailing. Each was returned because it was "unclaimed." Papin did not answer the Complaint or otherwise respond to the Second Notice of Complaint.⁷

On August 28, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Papin did not respond to the motion.

³ John S. Han Declaration ¶ 7. The certificate of service filed with the Office of Hearing Officers erroneously states that Enforcement served the Complaint and Notice of Complaint by first-class mail and FedEx. Cheryl A. Ray Declaration ¶¶ 2-4.

⁴ John S. Han Declaration ¶ 9; CX-5.

⁵ "Kirsten Hartley" at Strategic Capital Alternatives signed the Domestic Return Receipt as Papin's agent. John S. Han Declaration ¶ 10; CX-5.

⁶ John S. Han Declaration ¶ 12. The certificate of service filed with the Office of Hearing Officers erroneously states that Enforcement served the Complaint and Notice of Complaint by first-class mail and FedEx. Cheryl A. Ray Declaration ¶¶ 6-7.

⁷ John S. Han Declaration ¶¶ 14-16.

The Hearing Officer finds Papin in default. Papin received valid notice of this proceeding in accordance with the provisions of FINRA Rule 9134(a)(2) and (b)(1), but he did not file an answer or make any other filing or request related to the Complaint within the time required by Rule 9215(f).

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).

A. Jerry A. Papin, Jr.

Papin was associated with Ameriprise from 1992 until August 24, 2011. At the time he left Ameriprise, he was registered as a General Securities Principal, a General Securities Representative, and a Securities Sales Supervisor.⁸ Papin is not currently registered or associated with a FINRA member firm.⁹

B. Papin Failed To Provide A Complete Response To FINRA's Requests For Information And Documents

FINRA staff concluded from the amended Form U5 that Ameriprise filed on Papin's behalf that he might have operated an outside business entity that Ameriprise had not approved. Accordingly, FINRA staff requested information and documents from Papin about that business known as JPSS.

FINRA staff sent Papin the following five requests pursuant to Rule 8210:¹⁰

⁸ Ex. CX-1, at 1-2.

⁹ *Id.* at 1.

¹⁰ The staff sent each request to Papin's residential CRD address, as required by Rule 8210(d).

1. On November 1, 2012, the staff requested information and documents relating to JPSS, including copies of JPSS's bank account statements for the period July 2010 through July 2011. Papin received the request, but he did not respond.¹¹
2. On November 19, 2012, the staff renewed its initial request. Papin provided some information on November 27, 2012, but he failed to produce a list of JPSS's bank accounts or the requested bank account statements.¹²
3. On December 4, 2012, the staff renewed the request that Papin identify JPSS's bank accounts and provide copies of its bank account statements for the period July 2010 through July 2011. The staff also requested that Papin provide an explanation for any deposits that exceeded \$10,000. On December 6, 2012, FINRA staff received a letter from Papin in response to this request. Papin wrote that he would not spend any money to obtain the requested bank account statements and demanded that FINRA send him a check for \$65.00 made payable to the Bank of Idaho. Papin did not provide any of the information and documents.¹³
4. On December 12, 2012, FINRA staff asked for the same information it had asked for in the December 4 request. In addition, the staff asked Papin for (i) a list of his personal bank accounts, (ii) copies of his bank account statements for the period July 2010 through July 2011, and (iii) copies of his personal and business tax

¹¹ Compl. ¶¶ 9-12.

¹² Compl. ¶ 18.

¹³ *Id.* ¶¶ 20-24.

returns, 1099s, and W-2 forms for tax years 2010 and 2011. Papin did not respond to this request.¹⁴

5. On January 8, 2013, the staff renewed its request for the information and documents it had requested on December 12, 2012. Papin did not respond to this request.¹⁵

IV. Conclusions of Law

FINRA Rule 8210 requires FINRA members and their associated persons “to provide information orally, in writing, or electronically” in connection with any investigation. This rule is crucial to FINRA’s ability to oversee and regulate broker-dealers because FINRA does not have subpoena power.¹⁶ Instead, FINRA must depend on member firms and their associated persons to cooperate fully and promptly with requests for information pursuant to Rule 8210.¹⁷ A failure to respond promptly and completely to such information requests frustrates FINRA’s ability to detect misconduct and protect investors and markets. It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 violates Rule 2010.¹⁸

¹⁴ *Id.* ¶¶ 25-29.

¹⁵ Compl. ¶¶ 30-34.

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); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 F. App’x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. 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.”); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

¹⁷ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 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. 2009).

¹⁸ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *29-30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

The Hearing Officer concludes that Papin violated FINRA Rules 8210 and 2010 by failing to substantially comply with FINRA's Rule 8210 requests for information and documents.

V. Sanctions

The FINRA Sanction Guidelines provide that adjudicators should impose a bar for an incomplete response to a Rule 8210 request unless the individual can demonstrate that the provided information substantially complied with all aspects of the request.¹⁹ Here, Papin's partial response did not substantially comply with all aspects of the staff's document requests. Papin refused to provide copies of his personal and business tax and bank records. In addition, the record does not disclose any mitigating factors that would warrant permitting Papin to remain in the securities industry. Accordingly, the Hearing Officer concludes that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction.

VI. Order

Jerry A. Papin, Jr. is barred from associating with any member firm in any capacity for failing to substantially comply with FINRA's Rule 8210 requests for information and documents, 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

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

Copies to:

Jerry A. Papin, Jr. (via overnight courier and first-class mail)

John S. Han, Esq. (via email and first-class mail)

Jacqueline D. Whelan, Esq. (via email)

Mark P. Dauer, Esq. (via email)

Jeffrey D. Pariser, Esq. (via email)

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FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jerry A. Papin, Jr. (CRD No. 2226175),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011029388401

COMPLAINT

The Department of Enforcement alleges:

2012 2 8 2013

SUMMARY

1. Respondent Jerry A. Papin, Jr. failed to provide information requested by FINRA staff in connection with an investigation.

RESPONDENT AND JURISDICTION

2. On or about March 26, 1992, Papin entered the securities industry by submitting an application for registration at FINRA member Ameriprise Financial Services, Inc. (the Firm).¹
3. Papin subsequently became registered at the Firm in the following capacities:
 - a. On or about April 1, 1992: General Securities Representative;
 - b. On or about April 27, 2000: General Securities Principal; and
 - c. On or about December 16, 2002: General Securities Sales Supervisor.

¹ Formerly known as American Express Financial Advisors Inc.

4. On or about September 6, 2011, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) for Papin, effectively terminating his registrations.
5. On or about September 15, 2011, the Firm filed an amendment to Papin's Form U5, disclosing that he may have engaged in conduct actionable under FINRA rules.
6. Although Papin has not been registered or associated with a FINRA member firm since September 6, 2011, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:
 - a. the Complaint was filed less than two years after September 15, 2011 (the date on which the above-described Form U5 amendment was filed); and
 - b. the Complaint charges Papin with failing to provide information requested by FINRA during the two-year period following the filing of the above-described Form U5 amendment.

CAUSE OF ACTION

Failure to Provide Information (FINRA Rules 8210 and 2010)

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. On or about September 21, 2011, FINRA staff opened an investigation into potential misconduct by Papin as a result of the above-described Form U5 amendment, which disclosed that Papin may have engaged in an undisclosed outside business activity.
9. On or about November 1, 2012, FINRA staff sent Papin a letter pursuant to FINRA Rule 8210 (the First Request), requesting that he provide certain information and documents pertaining to JPSS, an entity owned and controlled by Papin. Among the

requested items were a list of JPSS's bank accounts and copies of bank account statements for the period from July 2010 through July 2011.

10. The First Request was sent by first class and certified mail to Papin's most recent residential address as reflected in the Central Registration Depository (CRD Address) and bore a due date of November 14, 2012.
11. The first class mailing of the First Request was never returned.
12. Correspondence from the United States Postal Service (USPS) confirmed that the certified mailing of the First Request was successfully delivered on November 16, 2012, signed for by "J. Papin."²
13. Papin failed to provide any response to the First Request by the due date.
14. Having received no response to the First Request, on or about November 19, 2012, FINRA staff sent Papin a second letter pursuant to FINRA Rule 8210 (the Second Request). The Second Request asked for the same information and documents that were the subject of the First Request and bore a due date of December 3, 2012.
15. The Second Request was sent by first class and certified mail to the CRD Address.
16. The first class mailing of the Second Request was never returned.
17. Correspondence from USPS confirmed that the certified mailing of the Second Request was successfully delivered on November 23, 2012, signed for by "J. Papin."
18. On or about November 27, 2012, FINRA staff received Papin's partial response to the First Request. Although he provided some of the information requested, he failed to provide the above-described list of bank accounts and copies of bank statements.

² Although actual delivery of the certified mailing occurred after the First Request's due date, information from USPS's website indicates that delivery was first attempted on November 5, 2012, at which time a notice was left at the delivery address.

19. On or about December 3, 2012, FINRA staff contacted Papin by telephone. During the conversation, Papin stated that JPSS's bank account records would not be helpful to the staff because any bank accounts in the name of JPSS would have been used for business expenses, and not for the purpose of depositing compensation. He further stated that any compensation he received would have been deposited in his personal bank account, but that he would never provide FINRA staff access to his personal bank account records.
20. On or about December 4, 2012, FINRA staff sent Papin another letter pursuant to FINRA Rule 8210 (the Third Request). The Third Request asked for the above-described list of bank accounts and copies of bank account statements. It also asked Papin to provide explanations for any deposits greater than \$10,000 into the account, along with documentary support for such explanations.
21. The Third Request was sent by first class and certified mail to the CRD Address and bore a due date of December 14, 2012.
22. The first class mailing of the Third Request was never returned.
23. The certified mailing of the Third Request was returned by USPS, marked, "UNCLAIMED."
24. On or about December 6, 2012, FINRA staff received a letter from Papin, dated December 4, 2012. In the letter, Papin wrote that his bank charged \$5.00 per statement and that he would "not spend [his] money to fund someone else's witch hunt." He further wrote that if FINRA wished to obtain copies of the statements, the staff should send him a check for \$65.00, made payable to "Bank of Idaho." Papin's

- letter did not include a list of JPSS's bank accounts, copies of any bank account statements, explanations for any deposits or documents pertaining to any deposits.
25. On or about December 12, 2012, FINRA staff sent Papin another letter pursuant to FINRA Rule 8210 (the Fourth Request), asking for the same information and documents that were the subject of the Third Request. The Fourth Request also asked for a list of all of Papin's personal bank accounts along with copies of bank account statements for the period from July 2010 through July 2011. It further asked for Papin's personal and business tax returns for 2010 and 2011, along with supporting schedules, 1099s and W-2 forms.
26. The Fourth Request was sent by first class and certified mail to the CRD Address and bore a due date of December 28, 2012.
27. The first class mailing of the Fourth Request was never returned.
28. The certified mailing of the Fourth Request was returned by USPS after multiple attempts at delivery.
29. Papin never provided the information requested in the Fourth Request.
30. On or about January 8, 2013, FINRA staff sent Papin a final letter pursuant to FINRA Rule 8210 (the Fifth Request), asking for the same information and documents that were the subject of the Fourth Request.
31. The Fifth Request was sent by first class and certified mail to the CRD Address and bore a due date of January 15, 2013.
32. The first class mailing of the Fifth Request was never returned.
33. The certified mailing of the Fifth Request was returned by USPS, marked, "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD."

34. Papin never provided the information and documents requested in the Fifth Request.

35. By failing to provide information and documents requested by FINRA staff in connection with an investigation, Papin violated FINRA Rules 8210 and 2010.

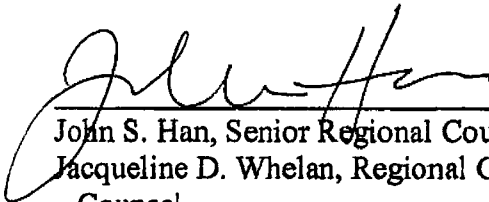
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Papin 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; and
- C. order that Papin 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: June 24, 2013



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