

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD MONTENEGRO, JR.
(CRD No. 2747462),

Respondent.

Disciplinary Proceeding
No. 20110303925

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

April 29, 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 Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Aismara J. Abreu, Esq., and John M. D'Amico, Esq., for the Department of Enforcement.

No appearance by or on behalf of Richard Montenegro, Jr.

DECISION

Richard Montenegro, Jr. was formerly registered with FINRA and associated as a General Securities Representative with LPL Financial LLC until December 2010. Thereafter, FINRA staff began investigating whether Montenegro had engaged in sales practice violations in connection with variable annuity and private securities transactions. During that investigation, FINRA staff sought his on-the-record testimony. The staff sent Montenegro three requests pursuant to Rule 8210 and a suspension notice pursuant to Rule 9552 before he appeared and testified. During his testimony, Montenegro requested, and was granted, an adjournment so he

could attend a doctor's appointment and retain counsel. The staff then sought to compel the completion of his testimony under Rule 8210, but he failed to appear.

As a result, the FINRA Department of Enforcement filed a complaint with the Office of Hearing Officers on December 6, 2012. The Complaint charges Montenegro with failing to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Montenegro did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a Motion for Entry of Default Decision. The motion is supported by a declaration of Aismara J. Abreu and 17 exhibits.

For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Montenegro 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 Montenegro's last registration with FINRA terminated,² and (2) the Complaint charges him with failing to appear and testify at an on-the-record interview requested by FINRA staff 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 December 6, 2012, and the same day served Montenegro with a copy of the Notice of Complaint and Complaint by certified mail at his then current residential address recorded in the Central Registration Depository ("CRD Address") and at two other addresses Montenegro had provided

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 last registration effective December 13, 2010. CX-1, at 5.

to the staff.³ The certified mailing to the CRD Address was returned unable to forward.⁴ The certified mailings to the other two addresses were returned unclaimed.⁵ Montenegro did not answer the Complaint by January 3, 2013, the deadline set in the Notice of Complaint.⁶

On January 7, 2013, Enforcement served Montenegro with a copy of the Second Notice of Complaint and Complaint by certified mail at his CRD Address and at the two addresses Montenegro had provided to the staff.⁷ The certified mailings sent to each of these addresses were returned undeliverable as addressed and unable to forward.⁸ The Second Notice of Complaint required Montenegro to file an Answer with the Office of Hearing Officers on or before January 24, 2013.⁹ He did not do so and, to date, Montenegro has not answered the Complaint.¹⁰

On March 12, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Montenegro did not respond to the motion. The Hearing Officer concludes that Montenegro received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.

³ Declaration of Aismara J. Abreu ("Decl.") ¶¶ 9-10; CX-2, at 19.

⁴ Decl. ¶ 11; CX-3.

⁵ Decl. ¶¶ 12-13; CX-4; CX-5.

⁶ Decl. ¶¶ 14-15.

⁷ Decl. ¶¶ 16-17; CX-6.

⁸ Decl. ¶¶ 18-20; CX-7; CX-8; CX-9.

⁹ Decl. ¶ 21; CX-6.

¹⁰ Decl. ¶ 22.

III. Findings of Fact

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

A. Richard Montenegro, Jr.

Montenegro first became registered with FINRA in 1996.¹¹ He joined LPL Financial LLC in April 2009 and was registered as a General Securities Representative at the firm until December 13, 2010.¹² Montenegro is not currently associated with a FINRA-registered firm.¹³

B. Montenegro Failed to Appear for On-the-Record Testimony

Based on a tip, FINRA staff began investigating Montenegro to determine if he was engaged in sales practice violations in connection with variable annuity and private securities transactions.¹⁴ On June 11, 2012, after not receiving all the documents it had requested from him,¹⁵ the staff sent Montenegro a request for on-the-record testimony, pursuant to Rule 8210.¹⁶ The staff sent the request by certified mail to his CRD Address and to another address he had identified to the staff as his then current address (“Additional Address”).¹⁷ Respondent failed to appear for the scheduled testimony on June 27, 2012.¹⁸

¹¹ Compl. ¶ 2; CX-1, at 7.

¹² Compl. ¶ 3; CX-1, at 5.

¹³ Compl. ¶ 4; CX-1, at 5.

¹⁴ Decl. ¶ 24.

¹⁵ *Id.* ¶¶ 25-26.

¹⁶ Compl. ¶ 7; Decl. ¶ 26.

¹⁷ Compl. ¶ 7; CX-10.

¹⁸ Compl. ¶ 13.

On that date, FINRA staff sent Montenegro a second Rule 8210 request letter seeking his testimony. The letter was sent by certified mail to both his CRD Address and the Additional Address.¹⁹ Montenegro failed to appear for his scheduled testimony on July 6, 2012.²⁰

On August 23, 2012, in response to Montenegro's failure to appear, the staff sent him a Notice of Suspension pursuant to Rule 9552. The Notice advised Montenegro that as a result of his failure to appear for testimony, he would be suspended and thereafter automatically barred if he took no corrective action.²¹ On September 12, 2012, five days before the suspension was to take effect, Montenegro informed the staff that he would appear for his testimony.²² He also provided the staff with his new address ("Current Address").²³

The staff rescheduled Montenegro's on-the-record interview for October 22, 2012, taking into consideration his request that it not be scheduled before October due to his health.²⁴ Montenegro appeared at the scheduled time and began testifying. But after approximately two and a half hours, he requested an adjournment (which the staff granted) so he could attend a medical appointment and have time to obtain counsel.²⁵

Following a delay due to Hurricane Sandy, on November 1, 2012, the staff sent Montenegro a Rule 8210 letter request rescheduling his on-the-record interview. After receiving the request, Montenegro requested a further delay due to the hurricane's aftermath.²⁶

¹⁹ Compl. ¶ 14; CX-10.

²⁰ Compl. ¶ 20; Decl. ¶ 27.

²¹ Compl. ¶ 21; Decl. ¶ 28; CX-11.

²² Compl. ¶ 28; Decl. ¶ 29; CX-12.

²³ Compl. ¶ 28.

²⁴ Compl. ¶¶ 31-32; Decl. ¶¶ 30-31.

²⁵ Compl. ¶ 40; Decl. ¶ 32.

²⁶ Compl. ¶¶ 48-50, 57; Decl. ¶¶ 33-34.

The staff accommodated Montenegro and, on November 7, sent him a sixth Rule 8210 request letter seeking his testimony.²⁷ The letter was sent by certified mail to Montenegro's CRD, Additional, and Current Addresses.²⁸ On November 15, 2012, the day of his scheduled testimony, Montenegro failed to appear²⁹ and, since then, has not contacted the staff.³⁰

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.³¹ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.³² "Unwarranted delay erodes [FINRA's] ability to carry out its regulatory responsibilities."³³ It is

²⁷ Compl. ¶ 58; Decl. ¶ 35; CX-17.

²⁸ *Id.*

²⁹ Compl. ¶ 65; Decl. ¶ 36.

³⁰ Decl. ¶ 36.

³¹ 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.").

³² *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).

³³ *Michael J. Markowski*, Exchange Act Rel. No. 43259, 2000 SEC LEXIS 1860, *15 (Sept. 7, 2000), *aff'd*, 274 F.3d 525 (D.C. Cir. 2001), *cert. denied*, 537 U.S. 819 (2002).

well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.³⁴

In this case, Montenegro appeared and began testifying in response to the September 17, 2012 Rule 8210 request (after not responding to the June 11 and 27, 2012 requests). But he did not complete his testimony. Instead, he terminated it and then failed to return for its completion following issuance of the November 7, 2012 request. Accordingly, the Hearing Officer concludes that Montenegro violated FINRA Rules 8210 and 2010 by failing to appear for an on-the-record interview.

V. Sanctions

Before failing to return to complete his testimony, Montenegro provided several hours of testimony at an on-the-record interview. Therefore, for sanctions purposes, it is appropriate to treat his violative conduct as an incomplete response, rather than a complete failure to respond. Under the Sanction Guidelines, a bar should be standard if the response is partial but incomplete, unless the individual demonstrates that the information provided substantially complied with all aspects of the request.³⁵ And, if mitigation exists or the response was untimely, the adjudicator should consider a suspension for up to two years.³⁶

Additionally, the Sanction Guidelines list a number of principal considerations for adjudicators to assess in determining appropriate sanctions for a partial response: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of

³⁴ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

³⁵ *FINRA Sanction Guidelines* 33 (2011), available at www.finra.org/sanctionguidelines.

³⁶ *Id.*

regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explains valid reasons for the deficiencies in the response.³⁷

Applying the relevant foregoing principles to this case, the Hearing Officer concludes that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction. From Enforcement's perspective, the information sought, but not provided, was important. The staff has represented that it was investigating matters potentially implicating customer harm and Montenegro's testimony was adjourned shortly after the staff began probing into matters of substance.³⁸

Additionally, substantial regulatory pressure was necessary to obtain any testimony from Montenegro. He appeared at his on-the-record interview only after the staff had spent four months trying to compel his testimony via multiple Rule 8210 requests and a Rule 9552 Notice of Suspension.

Finally, the record does not disclose any mitigating factors that would warrant permitting Montenegro 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 the appropriate sanction.

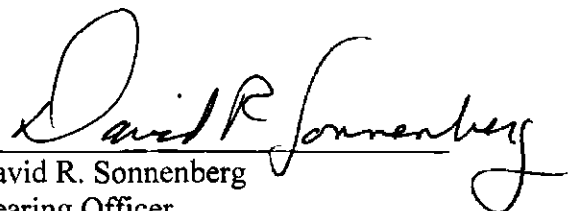
VI. Order

Richard Montenegro, Jr. is barred from associating with any member firm in any capacity for failing to provide testimony, in violation of FINRA Rules 8210 and 2010. The bar shall

³⁷ *Sanction Guidelines* 33.

³⁸ Motion 5-6.

become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.


David R. Sonnenberg
Hearing Officer

Copies to:

Richard Montenegro, Jr. (via overnight courier and first-class mail)
Aismara J. Abreu, Esq. (via electronic and first-class mail)
John M. D'Amico, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Richard Montenegro, Jr.
(CRD No. 2747462),

Respondent.

DISCIPLINARY PROCEEDING
No. 20110303925

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Richard Montenegro, Jr. (Montenegro) failed to appear for on-the-record testimony despite numerous written requests made by FINRA staff for such testimony. This conduct violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Montenegro first became registered with FINRA as a General Securities Representative on May 20, 1996.
3. From April 7, 2009 through December 13, 2010, Montenegro was registered in that same capacity through member firm LPL Financial LLC (Firm).
4. Montenegro is not currently associated with a member firm.

5. 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 (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Firm, namely, December 13, 2010; and (2) the Complaint charges him with failing 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.

CAUSE OF ACTION

Failure to Appear for On-The-Record Testimony
(FINRA Rules 8210 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. On June 11, 2012 and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Montenegro at his last residential address as reflected then in the records of FINRA's Central Registration Depository (CRD): [REDACTED] (the CRD Address). A copy of the letter was also sent to [REDACTED] [REDACTED] (7 Reiben Street Address), which Montenegro identified to the staff as his then current address. The letter requested, pursuant to FINRA Rule 8210, that Montenegro appear for on-the-record testimony before FINRA staff on Wednesday, June 27, 2012, at 10:00 a.m. in FINRA's New Jersey District Office. The letter also advised Montenegro that he "may be represented by an Attorney of [his] choice at the [on-the-record interview]." An addendum to the letter informed Montenegro that failure to appear for the testimony could subject him to FINRA disciplinary action. The letter, which requested that Montenegro confirm his intention to appear for

testimony on the date scheduled to the staff by June 18, 2012, was sent to both addresses by first-class and certified mail.

8. The certified mail envelope addressed to the CRD Address was returned to the staff on June 18, 2012 and marked "Returned to Sender, Not Deliverable as Addressed - Unable to Forward."
9. The first-class mail envelope addressed to the CRD Address was returned to the staff on June 20, 2012 and marked "UTF," which appears to mean "Unable to Forward."
10. The certified mail envelope addressed to the 7 Reiben Street Address was returned to the staff on July 5, 2012 and marked "Return to Sender, Unclaimed."
11. The first-class mailing envelope addressed to the 7 Reiben Street Address was not returned.
12. Montenegro did not confirm his intention to appear before the staff by the June 18, 2012 deadline.
13. Montenegro failed to appear for his scheduled testimony on June 27, 2012.
14. On June 27, 2012 and pursuant to FINRA Rule 8210, FINRA sent a second letter to Montenegro at his CRD Address and the 7 Reiben Street Address. The letter advised Montenegro that he failed to appear for the on-the-record interview that was scheduled on June 27, 2012. Further, it requested, pursuant to FINRA Rule 8210, that Montenegro appear for the on-the-record interview on July 6, 2012 at 10:00 a.m. at FINRA's New Jersey District Office. The letter also reiterated that Montenegro may be represented by an attorney at the on-the-record interview. An addendum to the letter again informed Montenegro that failure to appear for the testimony could

subject him to FINRA disciplinary action. The letter, which requested that Montenegro confirm his intention to appear for testimony on the date scheduled to the staff by July 3, 2012, was sent to both addresses by first-class and certified mail.

15. The certified mail envelope addressed to the CRD Address was returned to the staff on July 19, 2012 and marked "Returned to Sender, Unclaimed."
16. The first-class mail envelope addressed to the CRD Address was returned to the staff on July 9, 2012 and marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."
17. The certified mail envelope addressed to the 7 Reiben Street Address was returned to the staff on July 23, 2012 and marked "Returned to Sender, Unclaimed."
18. The first-class envelope addressed to the 7 Reiben Street Address was not returned.
19. Montenegro did not confirm his intention to appear before the staff by the July 3, 2012 deadline.
20. Montenegro failed to appear for his scheduled testimony on July 6, 2012.
21. On August 23, 2012, by letter sent via first-class mail and Federal Express, FINRA staff sent Montenegro a Notice of Suspension (Notice) pursuant to FINRA Rule 9552. The Notice sent to Montenegro was addressed to the CRD Address, 7 Reiben Street Address, and [REDACTED] (the Zophar Mills Address). The Zophar Mills Address was identified as a potentially viable address for Montenegro through an online search of the public records on Lexis-Nexis conducted

by FINRA staff.¹ The Notice advised Montenegro that, unless he took corrective action prior to the suspension date, he would be suspended from associating with any FINRA member in any capacity on September 17, 2012 for failing to appear for on-the-record testimony requested pursuant to FINRA Rule 8210. Montenegro was also advised that he would automatically be barred on November 26, 2012 from associating with any FINRA member in any capacity, if he took no further action. In addition, Montenegro was advised that he might still be subject to disciplinary action even if he took corrective action.

22. The Notice was delivered via Federal Express to the CRD Address on August 24, 2012.

23. The first-class mailing envelope sent to the CRD address was returned to the staff and marked "Returned to Sender" and "UTF" which typically stands for "Unable to Forward."

24. The Notice was delivered via Federal Express to the 7 Reiben Street Address on August 24, 2012.

25. The first-class mail envelope addressed to the 7 Reiben Street Address was not returned to FINRA staff.

26. The Notice was delivered via Federal Express to the Zophar Mills Address on August 24, 2012.

¹ On or about February 13, 2012, after having conducted the LexisNexis search of public records and having identified the Zophar Mills Address, FINRA staff spoke with Montenegro regarding outstanding document requests. During that telephone conversation, Montenegro indicated that his valid address was the 7 Reiben Street Address. As a result, no other communications were addressed to the Zophar Mills Address.

27. The first-class mail envelope addressed to the Zophar Mills Address was not returned to FINRA staff.
28. On September 12, 2012, five days before the suspension date set forth in the Notice, Montenegro sent an e-mail (from e-mail address: [REDACTED] to FINRA staff indicating two reasons for his lack of responsiveness including: 1) that he was only just then in receipt of the Notice because he had moved to a new address, which was [REDACTED] (29 Reiben Street Address); and 2) he had “very serious personal issues” with which to deal over the summer and thus, was not able to address the staff’s requests for information at that time. In conclusion, Montenegro represented, in his e-mail, that his personal issues had then been “cleared” and that he was then available to comply with FINRA’s request for information.
29. On September 12, 2012, following receipt of Montenegro’s e-mail, FINRA staff sent an e-mail to Montenegro at the [REDACTED] e-mail, requesting that Montenegro provide a telephone number at which he may be contacted that afternoon. No response was received from Montenegro on September 12, 2012.
30. On September 13, 2012, a follow-up e-mail was sent to Montenegro at the [REDACTED] e-mail, in which the staff requested that Montenegro contact FINRA staff to schedule his on-the-record interview.
31. Later in the day on September 13, 2012, Montenegro returned the staff’s telephone call. During the telephone conversation, the staff discussed with Montenegro the possibility of having him appear for testimony in late September or early October.

Montenegro indicated that he could not agree to appear for testimony due to medical reasons until late October.

32. On September 17, 2012, the staff called Montenegro. During the call, Montenegro informed the Staff that he would be available for testimony on October 16, 22 and 29, 2012.
33. On September 17, 2012, and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Montenegro at the CRD Address, 7 Reiben Street Address, and 29 Reiben Street Address. The letter requested, pursuant to FINRA Rule 8210, that Montenegro appear for on-the-record testimony before FINRA staff on Monday, October 22, 2012, at 9:30 a.m. in FINRA's New Jersey District Office. The letter also advised Montenegro that he "may be represented by an Attorney of [his] choice at the [on-the-record interview]." An addendum to the letter informed Montenegro that failure to appear for the testimony could subject him to FINRA disciplinary action. The letter, which requested that Montenegro confirm his intention to appear for testimony on the date scheduled to the staff by September 24, 2012, was sent to the three addresses by first-class and certified mail.
34. The certified mail envelope addressed to the CRD Address was returned to the staff on September 27, 2012 and marked "Returned to Sender – Not Deliverable As Addressed – Unable to Forward."
35. The first-class mail envelope addressed to the CRD Address was returned to the staff on September 26, 2012 and marked "Return to Sender- Not Deliverable As Addressed – Unable to Forward."

36. The certified mail envelope addressed to the 7 Reiben Street Address was returned to the staff on October 15, 2012 and marked "Returned to Sender - Unclaimed."
37. The first-class envelope addressed to the 7 Reiben Street Address was not returned.
38. The certified mail envelope addressed to the 29 Reiben Street Address was delivered on September 20, 2012, as reflected on the <http://www.usps.com> website. The actual green certified mail return receipt, which was received by the staff on September 24, 2012, appears to reflect a signature which reads "R. Montenegro."
39. The first-class mail envelope addressed to the 29 Reiben Street Address was not received by the staff.
40. On October 22, 2012, Montenegro appeared for testimony before the staff at the FINRA New Jersey District Office. The staff went on the record at approximately 9:39 a.m. At approximately 12:15 p.m., during a short break from testimony, Montenegro advised the staff that he would no longer be willing to proceed with his testimony for several reasons. First, he allegedly just then recalled that he had a medical appointment that afternoon and would thus, not be available for the remainder of the day for testimony. Second, he said that, in light of the questioning by the staff which had taken place up until that time, he would be unwilling to provide the staff with additional information, as he then felt that he needed an attorney to represent him in connection with any further questioning. After going back on the record to summarize the content of the aforementioned discussion with Montenegro, the staff went off the record at 12:28 p.m.

41. On October 23, 2012, and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Montenegro at his CRD Address, 7 Reiben Street Address, and 29 Reiben Street Address. The letter confirmed that the on-the-record interview which had taken place the day before had been adjourned, upon Montenegro's request, based upon his expressed desire to obtain legal counsel. The letter informed Montenegro that the remainder of his testimony was scheduled for Tuesday, October 30, 2012, at 9:30 a.m. in FINRA's New Jersey District Office. The letter also advised Montenegro that he "may be represented by an Attorney of [his] choice at the [on-the-record interview]." An addendum to the letter informed Montenegro that failure to appear for the testimony could subject him to FINRA disciplinary action. The letter was sent to the three addresses by first-class and certified mail. In addition, a copy of the letter was sent to Montenegro to the [REDACTED] e-mail address.
42. The certified mail envelope addressed to the CRD Address was returned to the staff on November 1, 2012 and marked "Returned to Sender – Not Deliverable As Addressed – Unable to Forward."
43. The first-class mail envelope addressed to the CRD Address was returned to the staff on November 7, 2012 and marked "Return to Sender- Not Deliverable As Addressed – Unable to Forward."
44. The certified mail envelope addressed to the 7 Reiben Street Address was returned to the staff on November 16, 2012 and marked "Returned to Sender – Unclaimed."
45. The first-class envelope addressed to the 7 Reiben Street Address was not returned.

46. The certified mail envelope addressed to the 29 Reiben Street Address was returned to the staff on November 16, 2012 and marked "Returned to Sender – Unclaimed."
47. The first-class envelope addressed to the 29 Reiben Street Address was not returned.
48. On October 28, 2012, the staff sent Montenegro an e-mail to the [REDACTED] address informing him that the staff had tried to reach him via telephone on Friday, October 26, 2012 to advise him that the on-the-record interview scheduled for October 30, 2012 at 9:30 a.m. was going to be canceled by the staff due to an impending hurricane, which was due to strike the New Jersey/New York area on or about October 30, 2012.
49. Later that day, the staff was able to reach Montenegro telephonically to inform him of the cancelation of the October 30, 2012 on-the-record interview.
50. On November 1, 2012, and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Montenegro at his CRD Address, 7 Reiben Street Address, and 29 Reiben Street Address. The letter requested, pursuant to FINRA Rule 8210, that Montenegro appear for on-the-record testimony before FINRA staff on Friday, November 9, 2012, at 9:30 a.m. in FINRA's New Jersey District Office. The letter also advised Montenegro that he "may be represented by an Attorney of [his] choice at the [on-the-record interview]." An addendum to the letter informed Montenegro that failure to appear for the testimony could subject him to FINRA disciplinary action. The letter was sent to the three addresses by first-class and certified mail. In addition, a copy of the letter was sent to Montenegro to the [REDACTED] e-mail address.

51. The certified mail envelope addressed to the CRD Address was returned to the staff on November 20, 2012 and marked "Return to Sender – Not Deliverable As Addressed – Unable to Forward."
52. The first-class mail envelope addressed to the CRD Address was returned to the staff on November 20, 2012 and marked "Return to Sender- Not Deliverable As Addressed – Unable to Forward."
53. The certified mail envelope addressed to the 7 Reiben Street Address was not returned to the staff. No tracking information is available on www.usps.com.
54. The first-class envelope addressed to the 7 Reiben Street Address was not returned.
55. The certified mail envelope addressed to the 29 Reiben Street Address was received by the staff on November 30, 2012 and marked "Returned to Sender - Unclaimed."
56. The first-class envelope addressed to the 29 Reiben Street Address was not returned.
57. On November 7, 2012, an e-mail was received by the staff from Montenegro's [REDACTED] e-mail address. In the e-mail, Montenegro requested postponement of the on-the-record interview scheduled for November 9, 2012 based upon his claim, as expressed in the e-mail, that he still did not "have power, Internet, or gas" as a result of Hurricane Sandy.
58. Later that same day, the FINRA staff, pursuant to FINRA Rule 8210, sent a letter to Montenegro at his CRD Address, 7 Reiben Street Address, and 29 Reiben Street Address. The letter requested, pursuant to FINRA Rule 8210, that Montenegro appear for on-the-record testimony before FINRA staff on Thursday, November 15, 2012, at 9:30 a.m. in FINRA's New Jersey District Office. An addendum to the letter

informed Montenegro that failure to appear for the testimony could subject him to FINRA disciplinary action. The letter was sent to the three addresses by first-class and certified mail. In addition, a copy of the letter was sent to Montenegro to the [REDACTED] e-mail address.

59. The certified mail envelope addressed to the CRD Address was returned to the staff on November 19, 2012 and marked "Returned to Sender" and "UTF" which means "Unable to Forward."
60. The first-class mail envelope addressed to the CRD Address was returned to the staff on November 28, 2012 and marked "Return to Sender- Not Deliverable As Addressed – Unable to Forward."
61. The certified mail envelope addressed to the 7 Reiben Street Address was not returned to the staff. According to <http://www.usps.com>, the envelope arrived at the 7 Reiben Street Address on November 13, 2012, with a notice left on that date, as well as a subsequent notice left on November 20, 2012.
62. The first-class envelope addressed to the 7 Reiben Street Address was not returned.
63. The certified mail envelope addressed to the 29 Reiben Street Address was not returned to the staff. According to <http://www.usps.com>, the envelope arrived at the address on November 13, 2012, with a notice left on that date, as well as a subsequent notice left on November 20, 2012.
64. The first-class envelope addressed to the 29 Reiben Street Address was not returned.
65. On November 15, 2012, Montenegro failed to appear for the scheduled on-the-record interview.

66. FINRA staff is not aware of any more current business or residential address for Montenegro.

67. By failing to appear for on-the-record testimony, Montenegro violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

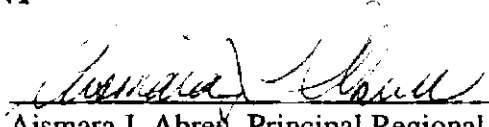
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the 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 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:

12/16/12


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