

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANCIS JOSEPH GUILTINAN
(CRD No. 1389620),

Respondent.

Disciplinary Proceeding
No. 2012033540501

Hearing Officer—RLP

DEFAULT DECISION

November 8, 2013

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

Appearances

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

No appearance by or for Francis Joseph Guiltinan.

DECISION

I. Introduction

FINRA staff began its investigation involving Respondent Francis Joseph Guiltinan following Integrity Brokerage Services, Inc.'s filing of a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that Guiltinan was discharged because he had executed an unauthorized trade and lied about it when questioned by the firm.¹ After Guiltinan failed to respond to requests for information made as part of the investigation, Enforcement initiated this proceeding on July 25, 2013, alleging that Guiltinan had violated FINRA Rules 8210 and 2010.

¹ Declaration of Maurice O. Cox in support of motion for entry of default decision ("Cox Decl.") ¶ 3; Complainant's Exhibit ("CX")-2, at 1-2.

Gultinan did not answer or otherwise respond to the complaint. Consequently, on October 15, 2013, Enforcement filed a motion for entry of default decision, supported by the declarations of Maurice O. Cox and Joel T. Kornfeld and eight exhibits. Gultinan has not responded to the motion.² For the reasons set forth below, Enforcement's motion is granted.

II. Jurisdiction

On October 19, 2009, Gultinan became employed by Integrity Brokerage, registering through the firm with FINRA as a General Securities Representative and a General Securities Principal. On August 1, 2012, his registration was terminated after Integrity Brokerage filed the Form U5 reporting his discharge.³ Although Gultinan is not currently registered through or associated with a FINRA member, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the complaint (1) was filed within two years following the termination of Gultinan's registration, and (2) charges Gultinan with failing to respond to FINRA's requests for information made during the two-year period following that termination.⁴

III. Respondent's Default

Enforcement staff served the notice of complaint and complaint on Gultinan on July 25, 2013, by first-class and certified mail addressed to Gultinan's residential address as reflected in the Central Registration Depository ("CRD address") and to an alternate address staff found as a result of a public records search. The certified mailings to both addresses were returned to FINRA as unclaimed, while the first-class mailings were not returned. Gultinan nevertheless

² Given that Gultinan is in default as detailed below, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, as well as on the Cox and Kornfeld declarations and attached exhibits.

³ Complaint ¶¶ 2, 5; Cox Decl. ¶¶ 2-3; CX-1, at 5-6; CX-2, at 2.

⁴ 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").

did not respond to the complaint. Accordingly, on August 23, 2013, Enforcement staff served a second notice of complaint and complaint by first-class and certified mail addressed to Guiltinan's CRD and alternate addresses. Again, the first-class mailings were not returned. According to a United States Postal Service tracking record, the certified mailing to Guiltinan's CRD address was delivered on September 16, 2013. The certified mailing to the alternate address was returned as unclaimed. Guiltinan did not respond to the second notice of complaint.⁵

Guiltinan received valid constructive notice of this proceeding and, therefore, the Hearing Officer concludes that he has defaulted by failing to answer the complaint.

IV. Respondent's Violations of Rules 8210 and 2010

Following the receipt of the Form U5 reporting the termination of Guiltinan's employment with Integrity Brokerage, FINRA began an inquiry to determine whether Guiltinan had engaged in unauthorized trading. Accordingly, on November 9, 2012, FINRA staff sent Guiltinan a Rule 8210 request seeking documents and information about: (1) Guiltinan's discharge; (2) the transaction at issue; (3) Guiltinan's interaction with the customer in whose account the transaction occurred; and (4) Guiltinan's communications with Integrity Brokerage. The request directed Guiltinan to respond no later than November 23, 2012. The request was sent by first-class mail, among other means, to Guiltinan's CRD and alternate addresses. Although the first-class mailing to Guiltinan's CRD address was not returned, Guiltinan did not respond by the due date.⁶

Thereafter, on December 7, 2012, FINRA sent Guiltinan a second Rule 8210 request, requiring him to provide the previously requested information by December 20, 2012. This

⁵ Kornfeld Decl. ¶¶ 3-9; CX-3 – CX-8.

⁶ Complaint ¶¶ 6-9; Cox Decl. ¶¶ 4-6.

request also was sent by first-class mail, among other means, to Gultinan's CRD and alternate addresses and, again, the first-class mailing to the CRD address was not returned. Gultinan nevertheless did not respond to this second request for information.⁷

By failing to respond to FINRA's requests for information, Gultinan violated Rules 8210 and 2010.

V. Sanctions

Since FINRA lacks subpoena power, it must rely upon Rule 8210 "to police the activities of its members and associated persons."⁸ The "failure to respond to . . . information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."⁹ For that reason, under the applicable sanction guideline, if an individual does not respond in any manner to an information request, a bar should be standard.¹⁰

Gultinan's failure to respond to requests for information impeded FINRA staff's ability to determine whether Gultinan made an unauthorized trade in a customer's account and lied to his firm. Under the circumstances, a bar from associating with any FINRA-registered firm in any capacity is the appropriate sanction for Gultinan's misconduct.

⁷ Complaint ¶¶ 10-13; Cox Decl. ¶¶ 7-8.

⁸ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁹ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹⁰ FINRA Sanction Guidelines 33 (2011).

VI. Order

For violating FINRA Rules 8210 and 2010 by failing to respond to requests for information, Gultinan is barred from associating with any FINRA-registered firm in any capacity. The bar shall become effective immediately if this decision becomes FINRA's final disciplinary action.

Rada Lynn Potts
Rada Lynn Potts
Hearing Officer

Copies to:

Francis Joseph Gultinan (*via overnight courier and first-class mail*)
Joel T. Kornfeld, 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*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Frances Joseph Gultinan
(CRD No. 1389620)

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033540501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This Complaint alleges that Former Integrity Brokerage Services, Inc. representative Francis Joseph Gultinan violated FINRA Rules 8210 and 2010 by failing to respond to an inquiry made in connection with an investigation involving an alleged unauthorized trade that generated a loss of about \$80,000.

RESPONDENT AND JURISDICTION

2. Gultinan entered the securities industry, in a registered capacity, in July 1987. From October 19, 2009 through August 1, 2012, Gultinan was associated with Integrity Brokerage Services, Inc. ("IBS" or "the Firm") as a General Securities Representative (Series 7) and a General Securities Principal (Series 24).

3. Although Gultinan 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 his registration with IBS, namely, August 1, 2012, 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 1, 2012, IBS filed a Form U5 (Uniform Termination Notice for Securities Industry Registration) reporting that Gultinan was terminated from IBS because he had made an unauthorized trade that generated an \$80,000 debit and lied when questioned about the transaction. After receipt of the Form U5, FINRA initiated an investigation and, in connection with that investigation, requested information from Gultinan.

The First Request – November 9, 2012

6. On November 9, 2012, the staff sent to Gultinan, pursuant to Rule 8210, a letter seeking information about the transactions and events described in the Form U5. The letter was sent, via first class and certified mail, to Gultinan's CRD residential address of record ("CRD Address") and a possible alternate address ("Alternate Address") that the staff located through a public records search. Gultinan's written response was due by November 23, 2012.

7. The first class letter sent to Gultinan's CRD Address was not returned. The certified letter sent to his CRD Address was returned marked "Return to Sender – Unclaimed – Unable to Forward."

8. The first class and certified letters sent to the Alternate Address were returned with the notation "Return to Sender – Unclaimed – Unable to Forward."

9. Gultinan never responded to the First Request.

The Second Request – December 7, 2012

10. On December 7, 2012, the staff sent letters to Gultinan requesting the same information that had been sought in the First Request. The Second Request was also made pursuant to FINRA Rule 8210 and the letters were again sent by first class and certified mail to Gultinan's CRD and Alternate Addresses. Gultinan's response was due by December 20, 2012.

11. The letter sent by first class mail to Gultinan's CRD Address was not returned. The certified letter sent to his CRD Address was returned marked "Return to Sender – Unclaimed – Unable to Forward."

12. The first class and certified letters sent to Gultinan's Alternate Address were returned with the notation, "Return to Sender – Unclaimed – Unable to Forward."

13. Gultinan never responded to the Second Request.

14. By failing to respond to the requests for information dated November 9, 2012 and December 7, 2012, Gultinan impeded FINRA's investigation and violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

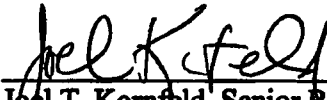
WHEREFORE, the Department respectfully requests that the Panel:

- 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: July 25, 2013


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