

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CLINTON D. FRALEY
(CRD No. 5281935),

Respondent.

Disciplinary Proceeding
No. 2012033644301

Hearing Officer – RLP

DEFAULT DECISION

June 7, 2013

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

Appearances

Jennifer L. Crawford, Esq., and Perry C. Hubbard, Esq., Rockville, MD, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

FINRA investigators began the inquiry that led to the filing of a complaint against Clinton D. Fraley after receiving a regulatory tip concerning a possible misappropriation by Fraley.¹ Based on evidence obtained in the course of the investigation, the FINRA Department of Enforcement initiated this proceeding on February 21, 2013.

Enforcement charged that Fraley failed to respond to requests for information, in violation of FINRA Rules 8210 and 2010. Fraley did not answer or otherwise respond to the

¹ Declaration of Jennifer L. Crawford ("Crawford Decl.") ¶ 5.

complaint. Consequently, on May 14, 2013, Enforcement filed a motion for entry of a default decision, supported by the Declaration of Jennifer L. Crawford and four exhibits. Fraley did not respond to the motion.²

For the reasons set forth below, the Hearing Officer concludes that FINRA has jurisdiction over this disciplinary proceeding and that Fraley has defaulted by failing to answer the complaint. The Hearing Officer further concludes that the facts set out in the complaint and materials supporting Enforcement's motion establish violations of Rules 8210 and 2010, as charged in the complaint, and that it is appropriate to impose the sanction of a bar for Fraley's failure to respond to Rule 8210 requests.

II. Jurisdiction

Fraley began his career in the securities industry in 2007. On April 29, 2011, he became employed by MML Investor Services, LLC ("MML") and, through the firm, registered with FINRA as an Investment Company and Variable Contracts Representative. On September 21, 2011, MML discharged Fraley for violation of firm policy related to non-securities life insurance premiums. His FINRA registration was terminated on October 5, 2011. Since then, Fraley has not been associated with or registered through a FINRA member firm.³

Although Fraley is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the complaint: (i) was filed within two years following the termination of Fraley's

² Given that Fraley 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 Crawford Declaration and its exhibits.

³ Complaint ¶¶ 2-3; Crawford Decl. ¶ 6; CX-1.

registration with MML; and (ii) charges Fraley with failing to respond to information requests made during the two-year period following that termination.⁴

III. Fraley's Default

On February 21, 2013, Enforcement sent a notice of complaint and the complaint to Fraley by first-class and certified mail to his residential address as recorded in FINRA's Central Registration Depository ("CRD address") and to an alternative address. Both certified mailings were returned to Enforcement; the first-class mailings were not returned. Fraley did not respond. Accordingly, on March 26, 2013, Enforcement sent a second notice of complaint and the complaint to Fraley's CRD and alternative addresses by first-class and certified mail. This time, all mailings were returned to Enforcement. The deadline specified in the second notice for filing an answer was April 12, 2013. To date, Fraley has not filed an answer or otherwise responded to the complaint.⁵

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

IV. Findings of Fact and Conclusions of Law

A. Fraley Failed to Respond to Requests for Information

During the course of FINRA's investigation into whether Fraley misappropriated money from customers, FINRA sent letters to Fraley, pursuant to FINRA Rule 8210, seeking documents and other information concerning the possible misappropriation.⁶

The first letter, dated August 15, 2012, was sent via certified and first-class mail to Fraley at his CRD address. It requested that Fraley provide documents and information no later than

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

⁵ Crawford Decl. ¶¶ 8-12; CX-1 – CX-4.

⁶ Complaint ¶ 5.

August 22, 2012. Although the certified mailing was returned to FINRA, marked “unclaimed” by the United States Postal Service (“USPS”), the first-class mailing was not returned. Fraley did not supply the information by August 22.⁷

Accordingly, on August 30, 2012, FINRA staff sent another letter to Fraley at his CRD address via certified and first-class mail, requesting that he provide the previously requested information no later than September 6, 2012. The certified mailing was returned to FINRA, marked “not deliverable” by USPS; the first-class mailing was not returned. Fraley did not respond by September 6.⁸

Finally, on September 6, 2012, FINRA staff sent another information request to Fraley, this time by certified and first-class mail to both Fraley’s CRD address and an alternative address. The staff requested that Fraley provide the information no later than September 13, 2012. The certified mailings were returned to FINRA, marked “not deliverable” by USPS, and the first-class mailings were not returned to FINRA. Again, Fraley did not respond.⁹

B. Fraley Violated FINRA Rules 8210 and 2010

FINRA Rule 8210(c) sets forth an unequivocal requirement that registered persons comply with FINRA information requests, providing that “[n]o member or person shall fail to provide information” requested pursuant to the Rule. The foregoing facts establish that multiple requests for information elicited no response from Fraley. Accordingly, the Hearing Officer

⁷ Complaint ¶¶ 6, 7, 10.

⁸ Complaint ¶¶ 6, 8, 10.

⁹ Complaint ¶¶ 6, 9, 10.

finds that Fraley violated Rule 8210. Fraley's violation of Rule 8210 is also a violation of Rule 2010.¹⁰

V. Sanctions

A violation of Rule 8210 is serious because Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."¹¹ The rule thus "is at the heart of the self-regulatory system for the securities industry" and, when members delay their responses or neglect entirely their responsibilities under the rule, they "undermine the ability of [FINRA] to . . . protect the public interest."¹² For these reasons, the FINRA Sanction Guidelines recommend a bar when an individual does not respond in any manner.¹³ In this case, there is no evidence of any mitigating facts that would justify a sanction less than a bar and, therefore, the Hearing Officer finds that Fraley should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

VI. Order

Respondent is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this decision becomes FINRA's final disciplinary action.


Rada Lynn Potts
Hearing Officer

¹⁰ See *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *13-14 & n.14 (Apr. 1, 2005) ("efforts to impede [FINRA] investigations violate . . . high standards of commercial honor and just and equitable principles of trade"), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

¹¹ *Richard J. Rouse*, 51 S.E.C. 581, 584, 1993 SEC LEXIS 1831, at *7 (1993).

¹² *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *pet. denied*, 347 F. App'x 692 (2d Cir. 2009).

¹³ *FINRA Sanction Guidelines* 33 (2011), available at www.finra.org/sanctionguidelines.

Copies to:

Clinton D. Fraley (via overnight courier and first-class mail)

Jennifer L. Crawford, Esq. (via email and first-class mail)

Perry C. Hubbard, 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.

Clinton D. Fraley
CRD No. 5281935

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033644301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Clinton D. Fraley ("Fraley"), a former registered representative at MML Investor Services, LLC ("MML Investors" or "Firm"), failed to respond to FINRA's document and information requests, sent pursuant to FINRA Rule 8210. By engaging in the foregoing conduct, Fraley violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Fraley was registered with MML Investors as an Investment Company Products/Variable Contracts Limited Representative (Series 6) from July 29, 2011 until his termination on September 21, 2011. Prior to becoming registered with MML Investors, he was registered with another FINRA member firm beginning on March 1, 2007.

3. Fraley has not been registered or associated with any FINRA member since the termination of his registration on September 21, 2011. 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 MML Investors, and (2) the Complaint charges him with failing to respond to FINRA requests for documents and information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION
(Failure to Provide Documents and Information)
(FINRA Rules 8210 and 2010)**

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

5. During the course of FINRA's investigation into whether Fraley misappropriated money from four of his former customers, on August 15, 2012, August 30, 2012, and September 6, 2012, FINRA sent Fraley letters, pursuant to FINRA Rule 8210, requesting that he provide certain documents and information relating to the possible misappropriation of customer funds. The letters requested documents and information that covered a time period in which Fraley was registered.

6. In accordance with FINRA Rule 8210(d), the August 15, August 30, and September 6 request letters were sent by certified mail and first class mail to Fraley's residential address as listed in the Central Registration Depository ("CRD address"). A copy of the September 6 letter was also sent an alternative address found for Fraley in the Lexis-Nexis database ("Lexis-Nexis address").

7. The August 15 letter was sent to Fraley via certified mail and first class mail and requested that he provide documents and information no later than August 22, 2012. The August 15 letter sent via certified mail was returned to FINRA and marked "unclaimed" by the United States Post Office ("USPS"). The August 15 letter sent via first class mail was not returned to FINRA.

8. The August 30 letter was sent to Fraley via certified mail and first class mail and requested that he provide documents and information no later than September 6, 2012. The August 30 letter sent via certified mail was returned to FINRA and marked "not deliverable" by USPS at Fraley's CRD address. The August 30 letter sent via first class mail was not returned to FINRA.

9. The September 6 letter was sent to Fraley via certified mail and first class mail at his CRD address and the Lexis-Nexis address and requested that he provide documents and information no later than September 13, 2012. The September 6 letters sent via certified mail to Fraley's CRD address and Lexis-Nexis address were returned to FINRA from both addresses and marked "not deliverable" by USPS. The September 6 letter sent via first class mail was not returned to FINRA.

10. Fraley failed to respond to any of the requests for documents and information contained in FINRA's August 15, August 30, and September 6 letters.

11. By virtue of the foregoing conduct, Fraley violated FINRA Rules 8210 and 2010.

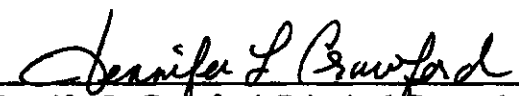
RELIEF REQUESTED

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.**
- 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: February 21, 2013


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