

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAMIEN P. ALEXANDER
(CRD No. 2724252),

Respondent.

Disciplinary Proceeding
No. 2013035581901

Hearing Officer – CC

DEFAULT DECISION

June 9, 2014

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

Appearances

John S. Han, Esq., for the Department of Enforcement, Complainant.

No appearance by or on behalf of Damien P. Alexander, Respondent.

DECISION

I. Introduction

On January 30, 2014, FINRA's Department of Enforcement ("Enforcement") filed the attached Complaint with FINRA's Office of Hearing Officers. The Complaint alleges that Respondent Damien P. Alexander ("Alexander") failed three times to respond to FINRA Rule 8210 requests for information and documents, in violation of FINRA Rules 8210 and 2010.¹

¹ FINRA's Rules are available at www.finra.org/Rules.

Alexander failed to answer or otherwise respond to the Complaint. Accordingly, on April 15, 2014, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”).² Alexander did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Alexander in default, grants Enforcement’s Default Motion, and deems the allegations in the attached Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Alexander’s Background

Alexander first entered the securities industry in July 1996.³ From December 12, 2012, through January 11, 2013, Alexander was registered with FINRA as an Investment Company and Variable Contracts Products Representative and was associated with FINRA member firm Quest Securities, Inc. (“Quest”).⁴ Quest filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting Alexander’s termination in January 2013 for failing to provide proper disclosure information.⁵ Since January 11, 2013, Alexander has not been associated with a FINRA member.⁶

B. FINRA’s Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA’s By-Laws, because (1) Enforcement filed the Complaint within two years after FINRA terminated Alexander’s registration, and (2) the Complaint alleges that Alexander failed,

² Enforcement’s Default Motion is supported by the Declaration of John S. Han, Esq., (“Han Decl.”) and 14 exhibits, which are labeled CX-1 through CX-14.

³ CX-1, at 4.

⁴ CX-1, at 1.

⁵ CX-1, at 1; Han Decl. ¶ 21.

⁶ CX-1, at 1.

while subject to FINRA's jurisdiction during the two years following the termination of his registration, to provide information requested by FINRA pursuant to FINRA Rule 8210.⁷

C. Origin of the Investigation

FINRA commenced an investigation of Alexander in January 2013 after receiving the Form U5 that Quest filed disclosing its termination of Alexander.⁸ The Form U5 reported that Alexander failed to provide proper disclosure information and that, at the time of his termination, he was under investigation by the State of California Corporate Division for possibly engaging in undisclosed outside business activities and private securities transactions away from Quest.⁹

D. Alexander's Default

On January 30, 2014, Enforcement served Alexander with the Notice of Complaint and Complaint by certified mail at his residential address recorded in the Central Registration Depository ("CRD").¹⁰ Enforcement also sent a copy of the Notice of Complaint and Complaint by first-class mail.¹¹ The USPS provided Enforcement with a certified mail delivery receipt signed by "Azar Abdollahzadeh" evidencing delivery on February 1, 2014, of the certified mailing to Alexander's CRD address.¹² Alexander's Answer was due on or before February 27, 2014.¹³

⁷ 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").

⁸ Han Decl. ¶ 21.

⁹ Han Decl. ¶ 21; Complaint ("Compl."), ¶ 8.

¹⁰ Han Decl. ¶ 11; CX-3; CX-4.

¹¹ Han Decl. ¶ 11. The United States Postal Service ("USPS") did not return the first-class mailing. Han Decl. ¶ 12.

¹² Han Decl. ¶ 13; CX-5.

¹³ CX-4, at 2.

On February 21, 2014, Alexander contacted Han by telephone, acknowledged receipt of the Complaint, and verified that the CRD Address was his current address.¹⁴ Alexander did not file an Answer or otherwise respond to the Complaint.¹⁵

On February 28, 2014, Enforcement served Alexander (at his CRD address) with the Second Notice of Complaint and Complaint via certified mail.¹⁶ Enforcement also sent a copy of the Second Notice of Complaint and Complaint by first-class mail.¹⁷ The USPS provided Enforcement with a certified mail delivery receipt evidencing an attempted delivery on March 3, 2014, of the certified mailing.¹⁸ On March 19, 2014, the USPS returned the certified mailing to Enforcement marked as “unclaimed.”¹⁹ Alexander’s Answer was due on or before March 17, 2014.²⁰ Alexander did not file an Answer or otherwise respond to the Complaint.²¹

FINRA Rule 9134(b) provides for service on a natural person at the person’s residential address as indicated in CRD. The Hearing Officer finds that Alexander received actual notice of the Notice of Complaint and Complaint and constructive notice of the Second Notice of Complaint and Complaint.²² Accordingly, the Hearing Officer finds that Alexander defaulted by failing to answer or otherwise respond to the Complaint.

¹⁴ Han Decl. ¶ 14.

¹⁵ Han Decl. ¶ 15.

¹⁶ Han Decl. ¶ 16; CX-6.

¹⁷ Han Decl. ¶ 16. The USPS did not return the first-class mailing. Han Decl. ¶ 17.

¹⁸ Han Decl. ¶ 18; CX-7.

¹⁹ Han Decl. ¶ 18; CX-8.

²⁰ CX-6.

²¹ Han Decl. ¶ 19. Enforcement does not have knowledge of a better address for Alexander. Han Decl. ¶ 20.

²² FINRA Rule 9134(b) provides for service on a natural person at the person’s residential address as indicated in CRD. *See Dep’t of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in CRD, by first-class and certified mail).

E. Failure to Appear and Provide Sworn Testimony

The Complaint alleges that Alexander failed to respond to three requests pursuant to FINRA Rule 8210 for information and documents. FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide information and documents with respect to any matter involved in the investigation, examination, or proceeding. FINRA Rule 8210(d) provides that notice shall be deemed received by a formerly registered person by mailing it to the last known residential address of the person as reflected in CRD. Rule 8210(d) further provides that, if FINRA staff is aware that a CRD Address is out of date or inaccurate, FINRA staff shall mail or otherwise transmit a copy of its request to any other current address known to staff. The Hearing Officer finds that Enforcement complied with the requirements of FINRA Rule 8210, and Alexander failed to respond to Enforcement's three requests for information and documents.

On March 19, 2013, Enforcement sent Alexander a written request for information and documents, pursuant to FINRA Rule 8210 ("First Request").²³ Enforcement sent the First Request via certified and first-class mail to Alexander's CRD address and requested that Alexander respond by April 2, 2013.²⁴ The USPS provided Enforcement with a certified mail delivery receipt signed by "Azar Abdollahzadeh" evidencing delivery on March 21, 2013.²⁵ On March 25, 2013, Alexander telephoned FINRA staff and requested an extension until April 12, 2013, to respond to the First Request.²⁶ FINRA staff granted the request.²⁷ On April 11, 2013,

²³ Han Decl. ¶ 10; CX-9.

²⁴ *Id.*

²⁵ Han Decl. ¶ 10; CX-10. The USPS did not return the first-class mailing. Han Decl. ¶ 10.

²⁶ Compl., ¶ 13.

²⁷ *Id.*

Alexander called to request a second extension until April 26, 2013.²⁸ FINRA staff requested that he provide a written explanation for the requested extension.²⁹ Alexander failed to provide an explanation and never responded to the First Request.³⁰

On April 16, 2013, Enforcement provided Alexander with a second Rule 8210 request for the same documents and information (“Second Request”).³¹ Enforcement sent the Second Request via certified and first-class mail to Alexander’s CRD address and requested that Alexander respond by April 26, 2013.³² The USPS Website indicated that the USPS successfully delivered the certified mailing of the Second Request on April 29, 2013.³³ Alexander never responded to the Second Request.³⁴

On May 6, 2013, Enforcement provided Alexander with a third Rule 8210 request for the same documents and information (“Third Request”).³⁵ Enforcement sent the Third Request via certified and first-class mail to Alexander’s CRD address and requested that Alexander respond by May 20, 2013.³⁶ Enforcement also sent the Third Request via certified and first-class mail to a Sacramento, California address for Alexander that it located through a search of public records.³⁷ The USPS did not return either first-class mailing.³⁸ The USPS provided

²⁸ Compl., ¶ 14.

²⁹ *Id.*

³⁰ Compl., ¶¶ 14, 15.

³¹ Han Decl. ¶ 10; CX-11.

³² *Id.*

³³ Han Decl. ¶ 10; CX-12. The USPS did not return the first-class mailing. Han Decl. ¶ 10.

³⁴ Han Decl. ¶ 10.

³⁵ Han Decl. ¶ 10; CX-13.

³⁶ *Id.*

³⁷ Compl. ¶¶ 21, 22; CX-13.

³⁸ Han Decl. ¶ 10.

Enforcement with certified mail delivery receipts signed by Alexander for both addresses.³⁹ On May 7, 2013, Alexander left a telephone message for FINRA staff indicating that he intended to respond to the Third Request by May 10, 2013.⁴⁰ Alexander left a second telephone message for FINRA staff on May 16, 2013, asking to discuss the Third Request.⁴¹ FINRA staff returned Alexander's call on May 20, 2013, but Alexander did not answer.⁴² Alexander did not return FINRA staff's call and never responded to the Third Request.⁴³

Enforcement properly served Alexander with multiple requests for information and documents, and Alexander failed to respond. By doing so, Alexander violated FINRA Rule 8210.⁴⁴ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010.⁴⁵

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") advise that, if an individual did not respond in any manner, a bar in all capacities should be standard.⁴⁶ The Guidelines further provide that, where an individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.⁴⁷

³⁹ CX-14. The delivery receipt for Alexander's CRD address indicated a delivery date of May 5, 2013. *Id.* The delivery receipt for Alexander's Sacramento, California address indicated a delivery date of May 25, 2013. *Id.*

⁴⁰ Compl., ¶ 26.

⁴¹ Compl., ¶ 27.

⁴² *Id.*

⁴³ Compl., ¶ 27; Han Decl. ¶ 10.

⁴⁴ See *Dep't of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (FINRA NAC July 21, 2011) (finding violation of FINRA Rules 8210 and 2110 by failing to appear for on-the-record testimony).

⁴⁵ See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

⁴⁶ FINRA Sanction Guidelines at 33 (2013), available at www.finra.org/Industry/Enforcement/SanctionGuidelines.

⁴⁷ *Id.*

Enforcement's three requests for information and documents asked Alexander for detailed, written responses to a variety of questions, including the nature and extent of the information that he failed to disclose to Quest.⁴⁸ FINRA also requested accompanying documentation.⁴⁹ During Alexander's March 25, 2013 telephone call to FINRA staff, Alexander requested an extension of time to respond to the First Request.⁵⁰ During that call, Alexander claimed that he did not conduct any business while registered with Quest and could not recall participating in private securities transactions or outside business activities while registered at a previous FINRA member firm.⁵¹ After making these statements, Alexander asked for additional time to review his records to ensure that his statements were accurate and complete.⁵² Alexander subsequently failed to provide confirmation of his statements or to respond to the numerous other questions contained in the First Request.⁵³ Given Alexander's uncertainty as to whether his statements were complete and accurate, and his failure to respond to Enforcement's many other inquiries contained in the same letter, the Hearing Officer finds that Alexander failed to respond in any manner to Enforcement's three information requests.

There are no mitigating factors and some aggravating factors present in this case. The Guidelines direct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective.⁵⁴ Enforcement learned from Quest and the State of California that Alexander may have engaged in undisclosed outside business activities and private securities

⁴⁸ CX-9; CX-11; CX-13.

⁴⁹ *Id.*

⁵⁰ Han Decl. ¶ 22.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

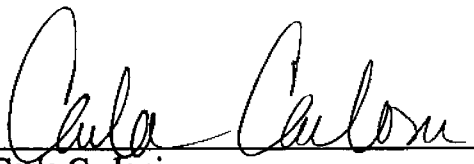
⁵⁴ Guidelines at 33.

transactions away from Quest.⁵⁵ Alexander's failure to respond had a significant, negative impact on FINRA's investigation and prevented FINRA from completing its investigation. Additionally, by requesting two extensions and leaving an ambiguous message for FINRA staff asking to "discuss" an information request, Alexander attempted to lull FINRA staff into inactivity while he continued to fail to respond and to delay FINRA's investigation of the underlying misconduct.⁵⁶ This conduct is aggravating.

Accordingly, the Hearing Officer bars Alexander from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010, as alleged in the Complaint.

IV. Order

Respondent Damien P. Alexander is barred from associating with any member firm in any capacity for failing to respond to FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010, as alleged in the Complaint. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Carla Carloni
Hearing Officer

Copies to: Damien P. Alexander (*via overnight courier and first-class mail*)
John S. Han, Esq. (*via electronic and first-class mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)
Aimee Williams-Ramey, Esq. (*via electronic mail*)

⁵⁵ Compl., ¶ 8.

⁵⁶ Guidelines at 6-7 (Principal Consideration nos. 10, 12).

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Damien P. Alexander (CRD No. 2724252),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013035581901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Damien P. Alexander failed to provide information requested by FINRA staff in connection with an investigation.

RESPONDENT AND JURISDICTION

2. Alexander entered the securities industry in March 1996 by applying for registration as an Investment Company and Variable Contracts Products Representative at a FINRA member firm. His registration was approved in July 1996.
3. Alexander first became registered as an Investment Company and Variable Contracts Products Principal in August 2001.
4. From on or about December 12, 2012 through on or about January 11, 2013, Alexander was registered as an Investment Company and Variable Contracts Products Representative at FINRA member Quest Securities, Inc. (the Firm).
5. Although Alexander has not been registered or associated with a FINRA member firm since January 11, 2013, 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 within two years after the effective date of termination of Alexander's registration with his most recent employing member firm, namely, January 11, 2013; and
- b. the Complaint charges Alexander with failing to provide information requested by FINRA staff 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 Provide Information (FINRA Rules 8210 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. On or about January 14, 2013, FINRA staff opened an investigation into potential misconduct by Alexander as a result of a Form U5 filed by the Firm, which stated that Alexander had been terminated for failing "to provide proper disclosure information." The Form U5 further disclosed that, at the time of his termination, Alexander had been under investigation by the State of California's "Corporate Division."
8. After receiving some information from the Firm and from the State of California, FINRA staff determined that Alexander may have engaged in violative activities away from the Firm, to wit, undisclosed outside business activities and/or private securities transactions.
9. On or about March 19, 2013, pursuant to FINRA Rule 8210, FINRA staff sent a letter (First Request) to Alexander, requesting that he provide information concerning, among other things, his engagement in any outside business activities and private securities transactions while registered at the Firm and at a previous FINRA member. The due date for Alexander's response was April 2, 2013.

10. The First Request was sent by first class and certified mail to Alexander's most recent residential address as reflected in the Central Registration Depository (CRD Address).
11. The first class mailing of the First Request was not returned.
12. The staff received a return receipt for the certified mailing of the First Request, signed by "Azar Abdollahzadeh."
13. On or about March 25, 2013, Alexander telephoned FINRA staff and asked that the due date for his response to the First Request be extended to April 12, 2013. FINRA staff granted the extension.
14. On or about April 11, 2013, Alexander telephoned FINRA staff and requested another extension for his response to the First Request, this time to April 26, 2013. FINRA staff requested a written explanation from Alexander concerning his need for another extension. Alexander failed to provide any such explanation and his request for an extension was not granted.
15. Alexander never provided any of the information requested in the First Request.
16. On or about April 16, 2013, pursuant to FINRA Rule 8210, FINRA staff sent another letter to Alexander (Second Request), requesting that he provide the information previously sought in the First Request. The due date for Alexander's response was April 26, 2013.
17. The Second Request was sent by first class and certified mail to the CRD Address.
18. The first class mailing of the Second Request was not returned.

19. According to the United States Postal Service's website, the certified mailing of the Second Request was successfully delivered on April 29, 2013, with an initial delivery attempt made on April 18, 2013.
20. Alexander never provided any of the information requested in the Second Request.
21. On or about May 6, 2013, pursuant to FINRA Rule 8210, FINRA staff sent a final letter to Alexander (Third Request) requesting that he provide the information previously sought in the First Request and the Second Request. The due date for Alexander's response was May 20, 2013.
22. The Third Request was sent by first class and certified mail to the CRD Address and to a second address (Sacramento Address) discovered by FINRA staff through a search of public records.
23. Neither of the first class mailings of the Third Request was returned.
24. The staff received a return receipt for the certified mailing of the Third Request to the CRD Address, signed by Alexander.
25. The staff received a return receipt for the certified mailing of the Third Request to the Sacramento Address, signed by Alexander.
26. On or about May 7, 2013, Alexander left a telephone message for the staff indicating that he intended to submit a response to the Third Request by May 10, 2013. FINRA staff did not receive anything from Alexander by that date.
27. On or about May 16, 2013, Alexander left another telephone message for FINRA staff, asking to discuss the Third Request. On or about May 20, 2013, the staff returned Alexander's telephone call but he did not answer, so the staff left a message.

Alexander never returned the staff's call and never provided any of the information requested in the Third Request.

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

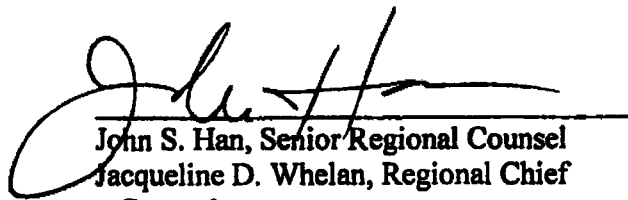
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Alexander 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 Alexander 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: January 30, 2014



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