

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDRE MITCHELL
(CRD No. 2145891),

Respondent.

Disciplinary Proceeding
No. 2013035618602

Hearing Officer–AHP

DEFAULT DECISION

September 28, 2015

Respondent converted customer funds and failed to provide requested testimony, documents, and information in response to Rule 8210 requests. Respondent is barred for each violation.

Appearances

Eric Hansen, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent Andre Mitchell.

DECISION

I. Introduction

Andre Mitchell was registered as a general securities representative through FINRA member firm MetLife Securities, Inc. and dually employed by MetLife's affiliated insurance company from June 2008 to December 2012. Shortly after he left MetLife, the firm reported to FINRA that it had begun an internal review into a customer's allegation that Mitchell "was given a cash payment for insurance policy premiums but did not apply the payment toward those premiums." FINRA's ensuing investigation led to this disciplinary proceeding.

To gather information during the investigation, FINRA sent Mitchell requests for information and testimony under Rule 8210. Mitchell did not respond to the requests. FINRA's Department of Enforcement then filed the attached Complaint with the Office of Hearing Officers on April 20, 2015, alleging that Mitchell converted an insurance customer's funds and failed to respond to the requests for information and testimony. Mitchell did not file an Answer to the Complaint.

After Mitchell failed to respond to the Complaint, Enforcement moved for entry of a default decision. Mitchell did not respond to the Motion.

II. Findings of Fact and Conclusions of Law

A. Background

Mitchell was most recently registered with FINRA as a General Securities Representative with MML Investor Services, LLC from April 2013 until March 21, 2014. The Uniform Termination Notice for Securities Industry Registration (Form U5) MML filed on Mitchell's behalf reported that Mitchell's employment was "terminated in connection with FINRA inquiry and due to lack of sufficient production to warrant heightened supervision."¹ Mitchell is not currently associated with a FINRA member firm.

B. Jurisdiction

FINRA retains jurisdiction over Mitchell pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.

C. Mitchell Defaulted by Failing to Answer the Complaint

Enforcement served Mitchell with the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and Notice of Complaint on April 20, 2015, by first-class certified mail and by regular first-class mail addressed to his current residential address recorded in the Central Registration Depository ("CRD Address"). Mitchell did not respond to the Complaint.

Enforcement then served Mitchell with a Second Notice of Complaint by first-class certified mail and by regular first-class mail addressed to his CRD Address.² Mitchell's Answer was due on or before June 5, 2015.³ Mitchell did not answer the Complaint or otherwise respond to the Second Notice of Complaint.

Mitchell received valid constructive notice of this proceeding.⁴ Thus, I find that Mitchell defaulted by failing to answer the Complaint, and I deem the allegations in the attached Complaint admitted under FINRA Rules 9215(f) and 9269(a).

¹ Complainant's Exhibit ("CX-__") 1.

² Declaration of Eric Hansen in Support of Motion for Entry of Default Decision ("Decl.") ¶¶ 22, 24-25, 27-28; CX-16-CX-19.

³ Decl. ¶¶ 26, 30.

⁴ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

D. Mitchell Converted Funds

In July 2012, while Mitchell was employed by MetLife and its insurance affiliate, customer MM provided Mitchell with approximately \$658 in cash for the purpose of paying her insurance policy premiums. Mitchell understood that the cash was to be used for MM's insurance premiums, but he did not pay the premiums. Instead, without MM's permission or authorization, he used the funds for his own personal use. Mitchell thereby violated Rule 2010.⁵

E. Mitchell Failed to Respond to Requests for Information

1. The March 5, 2014 Rule 8210 Request

On March 5, 2014, in connection with its investigation, Enforcement sent Mitchell a letter by certified mail and first-class mail to his CRD address requesting under Rule 8210 that required him to provide testimony, documents, and other information relating to his alleged misconduct. 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. The letter stated that the requested documents and information were due on March 19. It also requested that Mitchell appear for an on-the-record interview ("OTR") on April 8, 2014.⁶

On April 7, 2014, Mitchell sent Enforcement an email stating that he would be "unable to attend the meeting as scheduled due to being unable to get the required and requested information" to FINRA and that he was "unable to have counsel representation."⁷ Mitchell failed to provide any of the requested documents and information, and he failed to appear at the scheduled OTR.⁸

2. The April 8, 2014 Rule 8210 Request

On April 8, 2014, Enforcement sent another letter to Mitchell, notifying him that he had not complied with the previous Rule 8210 request letter and directing him, under Rule 8210, to appear for an OTR on April 22. Enforcement sent the letter by certified mail and first-class mail to Mitchell's CRD Address, and by email to the address Mitchell had previously used. Mitchell did not respond or appear for testimony on April 22.⁹

⁵ Mitchell's failure to apply the funds to MM's insurance premiums caused her policies to lapse. Complaint ("Compl.") ¶¶ 12-19.

⁶ Compl. ¶¶ 24-25; CX-8; CX-11.

⁷ CX-12.

⁸ Compl. ¶¶ 26-27.

⁹ Compl. ¶¶ 28-29; CX-9; CX-13.

3. The September 25, 2014 Rule 8210 Request

Enforcement sent Mitchell a final Rule 8210 request letter on September 25, 2014, repeating its previous requests for information and documents, and setting a deadline of October 10 for Mitchell to respond. Enforcement also directed Mitchell to appear for testimony on October 16. Enforcement's letter advised Mitchell that failure to comply with could result in disciplinary action. Enforcement sent the September 2014 Rule 8210 request letter to Mitchell's CRD address by certified mail and first-class mail, and by email. Mitchell did not respond to the request or appear for testimony on October 16.¹⁰

To date, Mitchell has provided no documents, information, or testimony in response to FINRA's requests under Rule 8210.¹¹ He is therefore in violation of FINRA Rules 8210 and 2010.

III. Sanctions

A. Conversion

FINRA's Sanction Guidelines for conversion state that a bar should be "standard," regardless of the amount converted.¹² The record discloses no factors that would warrant a lesser sanction. Thus, the Hearing Officer concludes that Mitchell should be barred from associating with any FINRA member in any capacity for violating FINRA Rule 2010.

B. Failure to Respond to Rule 8210 Requests for Information and Testimony

A violation of Rule 8210 is serious because the rule is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹³ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.¹⁴ For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.¹⁵ Mitchell failed to respond in any manner to four requests for information. There is no evidence of any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer concludes that Mitchell should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

¹⁰ Compl. ¶¶ 30-31; CX-10; CX-14.

¹¹ Compl. ¶ 32; Decl. ¶ 20.

¹² FINRA Sanction Guidelines ("Guidelines") at 36 (2015), <http://www.finra.org/industry/sanction-guidelines>.

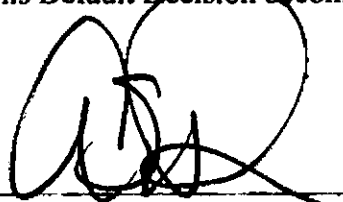
¹³ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 & n.19 (Nov. 14, 2008); *Joseph G. Chiulli*, 54 S.E.C. 515, 522-23 (2000).

¹⁴ *Joseph P. Hannan*, 53 S.E.C. 854, 858-59 (1998).

¹⁵ Guidelines at 33.

IV. Order

Andre Mitchell is barred from associating with any FINRA member firm in any capacity for conversion, in violation of FINRA Rule 2010, and for failing to respond to Rule 8210 requests for testimony, documents, and information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.

A handwritten signature in black ink, appearing to be 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Andre Mitchell (via first-class mail)
Eric Hansen, Esq. (via email and first-class mail)
Richard Chin, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)