

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Dale G. Froehlich (CRD No. 1356663),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036362001

COMPLAINT

The Department of Enforcement (“Department”) alleges:

SUMMARY

1. While associated with Centaurus Financial Inc., Dale G. Froehlich violated: (i) FINRA Rules 3240 and 2010 because he borrowed from a customer; and (ii) FINRA Rules 8210 and 2010 because he failed to produce documents and failed to appear for on-the-record testimony.

RESPONDENT AND JURISDICTION

2. From January 3, 2007 to March 22, 2013, Froehlich was registered with Centaurus Financial, Inc. (“Centaurus” or the “Firm”) as an Investment Company Products/Variable Contracts Representative (Series 6) and Investment Company Products/Variable Contracts Principal (Series 26).

3. Although Froehlich 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 the FINRA By-Laws, because (1) the Complaint was filed within two years after

the effective date of termination of Froehlich's registration with a member firm, namely March 22, 2013, and (2) the Complaint charges him with: (i) misconduct committed while he was registered or associated with a FINRA member and with (ii) failing to respond to FINRA requests for information and 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.

FIRST CAUSE OF ACTION
Borrowing from a Customer
(Violation of FINRA Rules 3240 and 2010)

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

5. In late November 2012, Customer AK and his wife, EK, loaned \$16,800 to Froehlich. Froehlich promised to repay the principal amount plus 12% annual interest, *i.e.*, \$17,808, on or before June 30, 2013.

6. In March 2013, Froehlich gave AK and EK a personal check in the amount of \$17,808, to repay the loan. The check, however, was returned for nonsufficient funds.

7. After June 30, 2013, AK and EK repeatedly inquired about the repayment of the loan. Froehlich repaid \$1,000 and promised - but failed - to repay any additional amount of the remaining balance.

8. FINRA Rule 3240 prohibits representatives from borrowing money from their customers unless the representative's firm has written procedures allowing borrowing and the borrowing meets one of the five specific conditions described in Rule 3240(a)(2).

9. Centaurus' procedures specified that if a contemplated loan fell within the exceptions to the Rule's general prohibition, such loan required a prior written request from the representative and prior written approval from the Firm.

10. Froehlich neither sought nor obtained approval from his Firm for the loan from AK and EK. Moreover, his arrangement with AK and EK did not satisfy any of the conditions set forth in Rule 3240(a)(2).

11. By reason of the foregoing, Froehlich violated FINRA Rules 3240 and 2010.

SECOND CAUSE OF ACTION
Failure to Produce Documents and Appear for Testimony
(Violation of FINRA Rules 8210 and 2010)

12. The Department realleges and incorporates by reference Paragraphs 1 through 11 above.

13. The staff initiated an investigation after receipt of a Form U5, filed March 22, 2013, reporting that Froehlich had been discharged because he had "borrowed money from a customer and failed to disclose all outside business activities."

First Rule 8210 Request for Information – July 23, 2013

14. On July 23, 2013, the staff, pursuant to Rule 8210, mailed a notice to Froehlich at his residential address as reflected in the Central Registration Depository ("CRD Residential Address"), seeking information about the loan to AK and EK and his outside business activities, and requesting; (i) "copies of [his] personal Federal and State tax returns for years 2010, 2011 and 2012, including copies of 1099s and income-related schedules" and (ii) "copies of the Federal and State tax returns for years 2010, 2011 and 2012, including copies of 1099s and income-related schedules, for any business (corporation or partnership) in which [he] and/or [his]

spouse held a combined beneficial interest totaling at least fifty percent.” Froehlich’s response was due by August 6, 2013.

15. On August 5, 2013, the staff received a fax from an attorney who stated that Froehlich had asked her to assist with his response and requested a 60-day extension of time in which to respond, but disclosed that she had not been formally retained. The staff promptly informed her that it could not communicate with her about the investigation until she had, in fact, been retained. There was no further contact from this attorney.

16. Froehlich did not respond to the July 23, 2013 request.

Second Rule 8210 Request for Information – August 12, 2013

17. On August 12, 2013, the staff, pursuant to Rule 8210, mailed a notice to Froehlich at his CRD Residential Address, reminding him that he had not responded to the previous letter, warning him that a failure to respond could result in a disciplinary proceeding which might result in a bar from the industry, and seeking the same information and documents that had been requested on July 23, 2013. Froehlich’s response was due no later than August 23, 2013.

18. On August 20, 2013, Froehlich telephoned the staff and advised that his response would arrive by September 1, 2013.

19. On September 12, 2013, Froehlich’s assistant telephoned the staff and advised that Froehlich had recently taken ill but that he intended on working with Froehlich on the following day to prepare the response.

20. On September 25, 2013, Froehlich’s assistant telephoned the staff and stated that Froehlich would sign and mail his response that day.

21. On October 8, 2013, the staff telephoned Froehlich to inquire about the status of his response that had still not arrived. Froehlich told the staff that he would provide his response by the end of the week and informed the staff that he had moved to Florida and provided his new address ("Florida Address").

22. The staff received Froehlich's incomplete response on October 17, 2013. With respect to the request for copies of Froehlich's personal state and federal tax returns, Froehlich wrote, "I am in the process of filing my 2012 taxes." However, he did not produce any other returns or schedules and offered no explanation for the omission.

23. With respect to the request for tax returns for any business in which he held the specified beneficial interest, Froehlich wrote, "n/a" and provided no further explanation.

24. On November 14, 2013, when the staff telephoned and inquired about the omitted tax returns and related documents, Froehlich apologized for the "oversight" and stated that he would ask his assistant to provide them. The staff emailed Froehlich later that day and asked that he provide the documents on or before November 22, 2013.

25. In a November 18, 2013 telephone conversation, Froehlich orally confirmed that the staff had used a correct email address and represented that his assistant would help him assemble the documents that had not been produced.

26. On December 9, 2013, the staff telephoned Froehlich and, again, inquired about the tax documents. In that conversation, Froehlich represented that his tax accountant would forward the documents to the staff.

27. On December 17, 2013, the staff received a Holiday card from Froehlich with a handwritten message that stated, "*Glenda Tax Preparer will only send me the taxes because she*

not [sic] allowed to give them to you directly . . . She doesn't want to get in the same jam that I got in with your firm [and] the broker firm. I will call you when I receive them."

28. On January 9, 2014, Froehlich left a voicemail message claiming that his tax returns had been sent to the staff, but had been returned because he had used an incorrect zip code. Froehlich promised that he would resend the documents. Later that day, the staff left a voicemail message for Froehlich repeating the correct address and zip code for the FINRA Los Angeles District Office.

29. Froehlich failed to produce any of the documents that were the subject of the Second Request.

Third Rule 8210 Request for Information – February 18, 2014

30. On February 18, 2014, the staff, pursuant to Rule 8210, mailed a third notice to Froehlich, at his CRD Residential Address and his Florida Address, requesting the same tax returns and related documents that had been previously requested. The Third Request was sent by first class and certified mail and demanded a response no later than March 4, 2014. It specifically warned that, "if you fail to deliver the requested information to this office on or before the close of business on March 4, 2014, you may be subject to the institution of a non-summary or formal disciplinary proceeding leading to sanctions including a bar from the securities industry."

31. The staff received a signed receipt with an illegible signature and the hand written name "Froehlich" indicating that the Third Request was delivered to the Florida Address.

32. Froehlich neither responded to the Third Request nor produced any of the requested tax returns and related documents.

The First Testimony Request – June 9, 2014

33. On June 9, 2014, pursuant to Rule 8210, the staff mailed a notice to Froehlich, at his CRD Residential and Florida Addresses, requesting that he appear for on-the-record (“OTR”) testimony on July 3, 2014 at FINRA’s Los Angeles District Office.

34. Froehlich did not appear on July 3, 2014 and did not provide any explanation for his nonappearance.

The Second Testimony Request – July 3, 2014

35. On July 3, 2014, the staff requested, pursuant to Rule 8210, that Froehlich appear for OTR testimony, on July 22, 2014, at FINRA’s Los Angeles District Office. The notices were mailed to Froehlich’s CRD Residential and Florida Addresses. They advised that “a failure to appear, in and of itself, is grounds for a disciplinary action that may result in a fine, a suspension, and/or a bar from associating with any FINRA member.”

36. The staff received a receipt from the U.S. Postal Service, bearing the signature of “Patricia Froehlich,” indicating that the Second Request for testimony had been forwarded and delivered to an address in Illinois (“Illinois Address”).

37. Froehlich did not appear for testimony on July 22, 2014.

38. Three days later, on July 25, 2014, the staff received a voicemail from an individual who identified herself as [REDACTED], Dale Froehlich’s wife.” The message further stated that they had received “papers in the mail,” but that Froehlich “can’t do any travelling” because of a variety of medical issues. The message did not include a contact telephone number.

The Staff's Efforts to Verify Froehlich's Medical Condition

39. The staff, to assess the veracity of the voicemail message, requested a physician's note addressing Froehlich's medical condition. To that end, on August 29, 2014, the staff sent a letter, addressed to [REDACTED], at the CRD Residential, Florida, and Illinois Addresses, that requested a note from a physician describing Froehlich's condition and prognosis and explaining why he was unable to respond to the staff's inquiries.

40. The staff did not receive any response to the August 29, 2014 letter.

41. By failing to produce the tax returns and related documents, and by failing to appear for testimony, Froehlich 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, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and

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- 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: March 9, 2015



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