

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

Department of Market Regulation,

Complainant,

v.

Richard Francis Kenny, Jr. (CRD No.
2794050),

Respondent.

Disciplinary Proceeding
No. 20140407790-01

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. In connection with an investigation being conducted by Market Regulation, Respondent Richard Francis Kenny, Jr. (“Kenny”) repeatedly refused to respond to certain requests for information made by Market Regulation staff (the “staff”) pursuant to FINRA Rule 8210. As a result of the foregoing, Kenny violated FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

2. Kenny first became employed in the securities industry in a registered capacity with a FINRA member firm in December 1996, when he went to work for Terra Nova Trading, LLC (“Terra Nova”). Kenny left Terra Nova in March 1998, and thereafter worked for other FINRA member firms until he again became registered with Terra Nova in February 2006. Thereafter, Kenny remained registered with Terra Nova, until the firm was acquired by Lightspeed Trading, LLC (“Lightspeed”) and, in October 2010, Kenny became registered with Lightspeed. Kenny

remained registered with Lightspeed until January 21, 2014, when his firm filed a Form U-5 terminating his registration. 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 a FINRA member firm, namely January 21, 2014; and (2) the Complaint charges him with failing to respond to FINRA requests for information while he was registered or associated with a FINRA member and during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

Statement of Facts

3. In November 2012, the staff commenced an examination of trading activity in several accounts serviced by Kenny while employed as a registered representative at Lightspeed during the period October 15, 2012 through November 15, 2012: ABC LLC ("ABC") owned by individual XYZ, and DEF LLC ("DEF") owned by individual UVW.

4. In the course of reviewing e-mail correspondence between Kenny and individuals XYZ and UVW, the staff identified an e-mail dated June 25, 2011, written by individual UVW, which suggested Kenny had made a personal investment in DEF.

5. Based upon this e-mail from individual UVW to Kenny, in a letter dated October 11, 2013, the staff requested, pursuant to FINRA Rule 8210, copies of Kenny's personal bank

account statements, as well as bank account statements for two companies with which Kenny was affiliated.¹

6. By letter dated November 11, 2013 received from Kenny's attorney, Kenny provided redacted bank statements for five bank accounts at JPMorgan Chase Bank, N.A.: two personal bank accounts, one for GHI, and two for JKL (jointly, the "Kenny Bank Accounts").

7. The staff's review of the Kenny Bank Accounts identified funds that were wired or transferred to other accounts belonging to other persons/entities, including customers of Lightspeed, which had accounts that were serviced by Kenny.

8. As a result of the staff's aforementioned review, on November 22, 2013, the staff sent an e-mail to counsel for Kenny, requesting that Kenny identify the owners of a total of 21 bank accounts which had transfers of funds into and/or out of the Kenny Bank Accounts.

9. In an e-mail response to the staff's November 22, 2013 request sent by Kenny's counsel on December 13, 2013, the only accounts identified was one belonging to JKL, and one personal account of Kenny. Kenny failed to provide the identity of the other 19 accounts, stating that "Mr. Kenny respectfully declines to provide this further information."

10. Thereafter, in a letter to Kenny's counsel dated January 10, 2014, the staff requested: (i) identifying information pertaining to 11 of the aforementioned accounts; and (ii) un-redacted copies of the bank statements that had previously been produced. The request was made pursuant to FINRA Rule 8210, and stated that failure to comply could subject Kenny to

¹ Kenny's Form U-4 reported that Kenny was a member of GHI, "a private investment-related company that trades futures for the benefit of its own account..." Kenny's Form U-4 further reported that Kenny was a director of JKL, "a private investment-related business formed as a personal corporation for business as a registered representative."

formal disciplinary action, which could result in a bar from association with a FINRA member firm.

11. In an e-mail response to the staff's January 10, 2014 request sent by Kenny's counsel on January 28, 2014, counsel for Kenny stated that Kenny "has been informed that he is not authorized to reveal the identity of account ownership of accounts he does not own. Accordingly, he respectfully declines to produce that information and will not divulge that information during any [on-the-record testimony]."

12. The January 28, 2014 response further stated that Kenny "respectfully declines to produce" the un-redacted bank statements, on the basis that: (i) the redacted information is private and confidential; and (ii) the redacted information was not maintained by Kenny in connection with his brokerage business.

13. During Kenny's investigative testimony on February 4, 2014, Kenny was asked by the staff to identify the owners of the accounts contained in the previously referenced January 10, 2014 letter. In response, Kenny stated that "offhand" he did not know the owners of the accounts. After hearing Kenny's answer, Kenny's counsel requested that staff include the request "one more time in your next [FINRA Rule] 8210 [request letter]"

14. Accordingly, in a letter to Kenny's counsel dated February 12, 2014, the staff again requested, pursuant to FINRA Rule 8210, the identity of individuals in connection with those 11 accounts. The letter also notified Kenny that the failure to provide the requested information could subject him to formal disciplinary action, which could result in a bar from association with a FINRA member firm.

15. The staff's February 12, 2014 letter also contained four other enumerated requests, one of which requested an explanation of the reason for certain transfers of funds into and out of the Kenny Bank Accounts; the accounts involved in these transfers were the same as those specified in the January 10, 2014 letter and in his February 4, 2014 investigative testimony.

16. In response to the staff's February 12, 2014 letter, Kenny's counsel e-mailed staff on February 26, 2014, stating that Kenny "declines to respond to this request."

17. Kenny has not provided any of the information requested pursuant to FINRA Rule 8210 in the staff's January 10, 2014 or February 12, 2014 requests, thus impeding staff's investigation.

18. As a result of Kenny's refusal to provide the requested information and documents, the staff was prevented from pursuing material areas of its investigation.

FIRST CAUSE OF ACTION

Failure to Fully Respond to FINRA Rule 8210 Requests (FINRA Rules 2010 and 8210)

19. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

20. By engaging in the foregoing conduct, Kenny violated FINRA Rules 2010 and 8210.

RELIEF REQUESTED

WHEREFORE, the Department of Market Regulation respectfully requests that the Panel:

- A. make findings of facts and conclusions of law that Respondent Richard Francis Kenny, Jr. committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed;
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and,
- D. grant all further relief, legal or equitable, that is warranted under the circumstances.

Dated: 10/24/2014

FINRA Department of Market Regulation



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