

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

Department of Enforcement,

Complainant,

v.

Hector Hugo Gutierrez, Jr.,
CRD No. 6595317,

Respondent.

Disciplinary Proceeding
No. 2016049745502

Hearing Officer: DRS

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 13, 2018

INTRODUCTION

Disciplinary Proceeding No. 2016049745502 was filed on September 21, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Gutierrez submitted an Offer of Settlement (Offer) to Complainant dated February 2, 2018. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of

the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent entered the securities industry in December 2015 through an association with Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm"), a FINRA member. Respondent was also dually employed at Wells Fargo Bank, N.A. ("Wells Fargo Bank"), an affiliate, as a relationship banker. On February 10, 2016, Gutierrez became registered through an association with the Firm as an Investment Company Products/Variable Contracts Representative (Series 6). Respondent remained registered through an association with the Firm until his termination on April 8, 2016.

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 the Complaint (1) was filed within two years after the effective date of termination of Respondent's registration with Wells Fargo, namely April 22, 2016, and (2) charges him with failing to timely 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.

In a Uniform Termination Notice of Securities Registration Amendments ("Form U5") dated April 22, 2016, the Firm reported, in pertinent part, that Respondent had been terminated from the Firm on April 8, 2016 for "accessing and updating the accounts of his own family members rather than having another team member handle those transactions. In addition, he

entered his manager's initials on a review form indicating that his manager reviewed the form" at Wells Fargo Bank, the affiliate.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

1. Respondent Hector Gutierrez, Jr. failed to timely appear and provide on-the-record testimony pursuant to FINRA Rule 8210. As a result, Respondent violated FINRA Rules 8210 and 2010.

BACKGROUND

2. Pursuant to FINRA Rule 8210, FINRA sent to Gutierrez, at his CRD address, requests dated May 2, 2016 and June 6, 2016 for documents and information relating to the reasons for his termination from Wells Fargo as reported on his Form U5.

3. The response to the first request was due on May 16, 2016 and the response to the second request was due on June 20, 2016. Gutierrez did not provide any responses by those dates.

4. On August 15, 2016, FINRA sent a Notice of Suspension letter to Gutierrez, at his CRD address, pursuant to FINRA Rule 9552 ("Suspension Notice Letter"), which stated that Gutierrez would be suspended on September 8, 2016 from associating with any FINRA member in any capacity because he failed to comply with the requests. In addition, in the Suspension Notice Letter, FINRA advised Gutierrez that if he failed to request termination of the suspension within three months, then he would be automatically barred on November 18, 2016 from associating with any FINRA member in any capacity.

5. On August 30, 2016, Gutierrez belatedly provided an incomplete response to the FINRA Rule 8210 requests to FINRA. By letter dated September 2, 2016, FINRA notified Gutierrez that his response to FINRA's Rule 8210 request was deficient, and that he would be given until September 14, 2016 to produce the requested information. On September 12, 2016, Gutierrez responded to the FINRA Rule 8210 request prior to the imposition of any suspension and the FINRA Rule 9552 process was terminated.

6. When Gutierrez responded to the Suspension Notice Letter on August 30, 2016 and September 12, 2016, he used his CRD address as his return address.

7. On February 7, 2017, FINRA sent additional correspondence to Gutierrez via FedEx at his CRD address, which FedEx delivered to that address. On February 8, 2017, Gutierrez signed for that correspondence.

CAUSE OF ACTION
Failure to Timely Appear and Provide Testimony
(FINRA Rules 8210 and 2010)

8. On May 4, 2017, Enforcement staff sent Gutierrez a letter addressed to his CRD address, for delivery via FedEx, certified and first class mail, requesting that he appear pursuant to FINRA Rule 8210 for on-the-record testimony at 10:00 a.m. on May 18, 2017 ("First Testimony Request"). The First Testimony Request stated that "if you fail to appear on the date scheduled for your testimony or do not obtain our agreement to reschedule your testimony for another date, time or location, you will be in violation of FINRA Rule 8210" and "[a] failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry."

9. According to FedEx records, FedEx delivered the FINRA Rule 8210 request letter to the CRD address on May 5, 2017. The USPS returned the certified letter as unclaimed and unable to forward. The USPS did not return the first-class letter.

10. Gutierrez failed to appear for the on-the-record testimony on May 18, 2017, as requested by the First Testimony Request.

11. On June 26, 2017, Enforcement staff sent Gutierrez a second letter addressed to the CRD address, as well as to a second address (“Dallas”) found in a Lexis search of public records, for delivery via FedEx, certified and first class mail, requesting that he appear pursuant to Rule 8210 for on-the-record testimony at 10:00 a.m. on July 11, 2017 (“Second Testimony Request”).

12. The Second Testimony Request stated that “if you fail to appear on the date scheduled for your testimony or do not obtain our agreement to reschedule your testimony for another date, time or location, you will be in violation of FINRA Rule 8210” and “[a] failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry.”

13. According to FedEx records, FedEx delivered the Second Testimony Request to the CRD and Dallas addresses on June 28, 2017. The USPS returned the certified letters to the CRD address as unclaimed and unable to forward, and the first-class letter was not returned.

14. On June 30, 2017 and dates thereafter, the USPS unsuccessfully attempted to deliver the certified letter to the Dallas address. It subsequently left a notice at the address asking that the letter be retrieved from the post office. The first-class letter to the Dallas address was not returned.

15. Gutierrez failed to appear for the on-the-record testimony on July 11, 2017, as requested by the Second Testimony Request.

16. FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA staff has the right to require a person subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff."

17. FINRA Rule 8210(c) provides that "no member or person shall fail to provide information or testimony ... pursuant to this Rule."

18. On September 21, 2017, Enforcement filed a Complaint against Gutierrez with the FINRA Office of Hearing Officers ("OHO"). The Complaint alleged that Gutierrez twice failed to appear for on-the-record testimony pursuant to FINRA Rule 8210 requests. Enforcement staff served the Complaint and Notice of Complaint on Gutierrez at his CRD and Dallas addresses. Gutierrez failed to answer the Complaint by October 19, 2017, the deadline set forth in the Notice of Complaint.

19. On October 25, 2017, Enforcement staff served the Complaint, Notice of Complaint and Second Notice of Complaint on Gutierrez at his CRD and Dallas addresses. Gutierrez failed to answer the Complaint by November 13, 2017, the deadline set forth in the Second Notice of Complaint.

20. On December 5, 2017, an Order Governing Motion for Entry of Default Decision was issued, setting a January 4, 2018 deadline for Enforcement's motion.

21. On December 18, 2017, Gutierrez stated during a telephone call with Enforcement staff that he would belatedly cooperate with Enforcement's investigation by appearing at an on-the-record interview pursuant to FINRA Rule 8210. On December 26, 2017,

Enforcement's time to file a motion for entry of a default decision was extended until February 6, 2018.

22. On January 3, 2018, Enforcement sent Gutierrez a post-Complaint FINRA Rule 8210 request to appear and testify at an on-the-record interview at FINRA's Dallas office to his CRD and Dallas addresses, as well as to an email address provided by Gutierrez on December 18, 2017 ("Third Testimony Request"). On January 17, 2018, Respondent appeared and provided on-the-record testimony at FINRA's office in Dallas in response to Enforcement's Third Testimony Request, pursuant to FINRA Rule 8210.

23. By failing twice to timely appear and provide on-the-record testimony pursuant to FINRA Rule 8210, Gutierrez violated FINRA Rules 8210 and 2010.

Based on the foregoing, Respondent violated FINRA Rules 8210 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be

- Suspension from association with any FINRA member in any and all capacities for a period of nine months; and
- Fine of \$5,000.

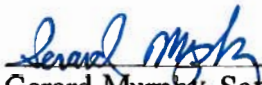
The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority


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