

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

David A. Clark (CRD No. 6520351),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016050212201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent David A. Clark (“Clark” or “Respondent”) authored an eBook and operated a website and social media page that promoted his business as a registered representative of a broker dealer. In doing so, and as set forth more fully below, Clark violated FINRA Rule 2210 in five different ways, including by:
 - a. making claims without providing a sound basis to evaluate the facts;
 - b. omitting material information that caused a claim to be misleading;
 - c. making statements that were false, exaggerated, unwarranted, promissory or misleading;
 - d. failing to obtain approval from a registered principal prior to making the website and the social media page available to the public;

- e. failing to disclose the name of his member firm on the website and social media page prior to making them available to the public; and
 - f. failing to disclose that testimonials regarding the website and social media page may not be representative or otherwise serve as guarantees for future performance.
2. In addition, Clark violated FINRA Rules 8210 and 2010 when he twice failed to appear for on-the-record testimony, as he was obligated to pursuant to FINRA Rule 8210.

RESPONDENT AND JURISDICTION

3. Between August 4, 2015 and May 31, 2016, Clark was registered as a General Securities Representative with Edward Jones, a FINRA member firm, in O'Fallon, Illinois. Although Clark is no longer registered or associated with a FINRA member firm, 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 Edward Jones, namely, May 31, 2016; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member 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.

BACKGROUND
Communications with the Public

4. During April 2016, Edward Jones discovered that Clark had written an eBook entitled “Income for Life Blueprint.” The firm also discovered a website and a social media page promoting Clark and his eBook. One website was a Facebook page and the other website was published on MarketersMedia, a website that specializes in advertisement through press releases. Clark had hired a marketing firm to complete the design of the two websites.
5. The MarketersMedia website contained the following statement:

“For over 100 years, the firm I represent has helped its clients retire without the fear of running out of money during retirement.”
6. The social media page contained a statement that claimed that Mr. Clark was one of Illinois’s top retirement strategists.
7. The MarketersMedia website also contained the following 19 additional statements:
 - “Learn The Simple 5 Step System My Other Clients Have Used To Guarantee Their Income For Life;”
 - “Secure Your Retirement Lifestyle Now;”
 - “The Simple 3 Step Blueprint To Building A Retirement Income You Can Count On;”
 - “After going through this five-step process you will have a clear plan to move forward in a direction that gives you peace of mind, confidence and financial freedom;”
 - “Any one of these mistakes alone could cost you hundreds of thousands of dollars over the course of your financial life . . . ;”
 - “In the next few minutes, you’re going to discover a way to retire on time and with enough money to last you the rest of your life no matter how old you are today;”
 - “Imagine always having enough money to cover your bills . . . enough money set aside to take those dream vacations wherever you want . . . even enough to spoil your grand kids at Christmas or help pay for their education;”

- “However if you had been using my income for life blueprint you could have slept securely knowing that you would have still received the income you were counting on;”
- “The Secret Behind Surviving The Next Market Crash And Creating A Bulletproof Retirement;”
- “3-part investment guide to discover a simple strategy investors are using to lock in a higher guarantee lifetime income;”
- “And not only will this strategy reveal a proven system designed to provide you with a guaranteed income, but you will also learn how to protect your principle investment regardless of the direction the markets are heading;”
- “And if you're one of the unfortunate ones who watched their life savings go down the drain with the 2008 market crash, I want you to know that it's not too late to bounce back and rebuild a rock solid portfolio guaranteed to survive the next global catastrophe;”
- “By using this strategy, not only will you have nothing to worry about, but you will be able to plot a course for a successful retirement;”
- “By using this strategy, not only will you have nothing to worry about, but you will be able to plot a course for a successful retirement;”
- “Our Five-Step Financial Planning Process That Ensures Your Success;”
- “And even if you're already retired, the wealth preservation secrets I'm going to share with you today will provide you with an even more secure and comfortable retirement;”
- “How To Create Income For Life And Achieve The Retirement Of Your Dreams;”
- “Maintain absolute certainty of the future growth of your portfolio;” and
- “Never worry if you'll be able to maintain your retirement lifestyle.”

Failure to Appear and Provide Testimony

8. On or about November 29, 2017, FINRA staff sent Clark a letter requesting that he appear at the Chicago District Office of FINRA, pursuant to FINRA Rule 8210, to provide on-the-record testimony at 9:30 AM (CST) on December 15, 2017 (First Request Letter). The purpose of the request was to question Clark concerning his use of the communications with the public described in paragraphs 4 through 7 above, and any basis he may have had for the statements contained in those communications.

9. The First Request Letter was sent, pursuant to FINRA Rule 8210, both First-Class and Certified Mail via United States Postal Service (USPS) to Clark's address of record as reflected in the Central Registration Depository (CRD Address), which is located in O'Fallon, Illinois.
10. On December 5, 2017, Clark contacted FINRA staff to inquire about this upcoming on-the-record interview (OTR).
11. During a subsequent call between Clark and FINRA staff on December 14, 2017, Clark stated his intention to respond to a Letter of Acceptance, Waiver and Consent (AWC) rather than appear for an OTR.
12. During the December 14, 2017 call, Clark and FINRA staff agreed to cancel the OTR that was scheduled for December 15, 2017.
13. Settlement negotiations between FINRA and Clark failed.
14. On or about January 4, 2018, FINRA staff sent Clark a second letter requesting that he appear at the Chicago District Office of FINRA, pursuant to FINRA Rule 8210, to provide on-the-record testimony at 9:30 AM (CST) on January 25, 2018 (Second Request Letter).
15. The Second Request Letter informed Clark that he was obligated to appear for testimony pursuant to FINRA Rule 8210. Also, the Second Request Letter advised Clark that "[f]ailure to answer any questions completely and truthfully, or failure to provide any information requested by the staff, could violate Rule 8210 and could be the basis for the initiation of a disciplinary proceeding that could lead to the

imposition of sanctions, including a bar from the industry, suspension, censure and/or fine.”

16. The Second Request Letter was sent, pursuant to FINRA Rule 8210, both First-Class and Certified Mail via USPS¹ to Clark’s CRD Address.
17. According to the USPS, the Second Request Letter was delivered to Clark’s CRD Address on January 18, 2018. Receipt of delivery was acknowledged with an illegible signature by an individual at Clark’s CRD Address on that date. The First-Class mailing of the Second Request Letter was not returned to FINRA staff.
18. On January 25, 2018, Clark did not appear for the OTR scheduled for that day.
19. On or about January 26, 2018, FINRA staff sent Clark a third letter requesting that he appear at the Chicago District Office of FINRA, pursuant to FINRA Rule 8210, to provide on-the-record testimony at 9:30 AM (CST) on February 13, 2018 (Third Request Letter).
20. The Third Request Letter informed Clark that he was obligated to appear for testimony pursuant to FINRA Rule 8210. The Third Request Letter also advised Clark that “[f]ailure to answer any questions completely and truthfully, or failure to provide any information requested by the staff, could violate Rule 8210 and could be the basis for the initiation of a disciplinary proceeding that could lead to the imposition of sanctions, including a bar from the industry, suspension, censure and/or fine.”

¹ Certified Mail No. 9414 7266 9904 2103 0917 20.

21. The Third Request Letter was sent, pursuant to FINRA Rule 8210, both First-Class and Certified Mail via USPS² to Clark's CRD Address.
22. According to the USPS, no authorized recipient was available at the time of delivery of the Third Request Letter and a notice to reschedule delivery was left at Clark's CRD Address on February 1, 2018. The Certified mailing of the Third Request Letter was left unclaimed and the First-Class mailing of the Third Request Letter was not returned to FINRA staff.
23. On February 13, 2018, Clark did not appear for the OTR scheduled for that day, and he has made no attempt to appear for an OTR since that day.

**FIRST CAUSE OF ACTION
Communications Not Fair and Balanced
(FINRA Rules 2210(d)(1)(A) and 2010)**

24. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 23 above.
25. FINRA Rule 2210(a)(1) defines "communications" as consisting of correspondence, retail communications and institutional communications.
26. FINRA Rule 2210(a)(5) defines "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period."

² Certified Mail No. 9414 7266 9904 2103 0932 67.

27. FINRA Rule 2210(a)(6) defines a “retail investor” as “anyone other than an institutional investor, regardless of whether the person has an account with a member.”
28. Clark’s website and social media page are retail communications under FINRA Rules 2210(a)(5) and 2210(a)(6) as a result of their distribution to the general public, and the fact that they were made available to more than 25 retail investors.
29. FINRA Rule 2210(d)(1)(A) requires that “[a]ll member communications, including advertising, be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.”
30. FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”
31. On the MarketersMedia website, which was made available to the public, Clark failed to provide any basis, much less a sound basis, for the claim in paragraph 5 above.
32. Similarly, on the Facebook page for Clark’s eBook, which was also made available to the public, Clark failed to provide any basis, much less a sound basis, for the claim listed in paragraph 6 above.
33. In addition, Clark omitted material information on the MarketersMedia website, which caused the statements concerning the benefits of investing to be misleading. Specifically, Clark failed to include the risk or possibility of losing invested capital

with the claims made on the MarketersMedia website as listed in paragraph 5 above, which caused the communication to be misleading.

34. By making claims on the website and social media page without providing a sound basis to evaluate the facts and also omitting material information that caused the statements to be misleading, Clark violated FINRA Rules 2210(d)(1)(A) and 2010.

SECOND CAUSE OF ACTION

**False, Exaggerated, Unwarranted, Promissory Or Misleading Communications
(FINRA Rules 2210(d)(1)(B) and 2010)**

35. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 34 above.
36. FINRA Rule 2210(d)(1)(B) provides that “no member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.” In addition, situations in which an investor has been promised or guaranteed certain returns have been held to be materially misleading.
37. Clark’s MarketersMedia website contained 19 statements, listed in paragraph 7 above, that were false, exaggerated, unwarranted, promissory or misleading. The statements were false, unwarranted, and misleading because they indicated that customer returns will be absolutely protected from losses, would lead customers to believe that their investment was guaranteed in some way and that merely following Clark’s methods would ensure a secure retirement.

38. By using false, unwarranted, or misleading statements in communications with the public, Clark violated FINRA Rules 2210(d)(1)(B) and 2010.

**THIRD CAUSE OF ACTION
Use of Unapproved Advertising
(FINRA Rules 2210(b)(1)(A) and 2010)**

39. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 38 above.

40. FINRA Rule 2210(b)(1) provides that “[a]n appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA’s Advertising Regulation Department.”

41. Clark created the website and social media page, but he failed to have them approved by an appropriately qualified registered principal prior to those materials being available to the public.

42. By failing to obtain approval from a registered principal prior to making the website and social media page available to the public, Clark violated FINRA Rules 2210(b)(1) and 2010.

**FOURTH CAUSE OF ACTION
Failure to Disclose Broker-Dealer Name
(FINRA Rules 2210(d)(3)(A) and 2010)**

43. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 42 above.

44. FINRA Rule 2210(d)(3) states that “all retail communications and correspondence must prominently disclose the name of the member, or the name under which the

member's broker-dealer business primarily is conducted as disclosed on the member's Form BD.”

45. Neither the website nor the social media page disclosed the member name, specifically, Edward Jones.
46. By failing to disclose Edward Jones’s name on the website and the social media page, Clark violated FINRA Rules 2210(d)(3) and 2010.

FIFTH CAUSE OF ACTION
Failure to Make Disclosures Required for Testimonials
(FINRA Rules 2210(d)(6)(B) and 2010)

47. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 46 above.
48. FINRA Rule 2210(d)(6)(B) provides that “[r]etail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following: (i) The testimonial may not be representative of the experience of other customers. (ii) The testimonial is no guarantee of future performance or success. (iii) It is a paid testimonial, if more than \$100 in value is paid for the testimonial.”
49. The website and social media page contained testimonials, but failed to prominently disclose the information required by FINRA Rule 2210(d)(6)(B).
50. By failing to make the required disclosures, Clark violated FINRA Rules 2210(d)(6)(B) and 2010.

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

51. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 50 above.
52. FINRA Rule 8210 provides, in relevant part, that FINRA staff “shall have the right to require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in [an] investigation, complaint, examination, or proceeding.”
53. On two occasions, January 25, 2018 and February 13, 2018, Clark failed to appear for on-the-record testimony requested pursuant to FINRA Rule 8210 without having been excused by FINRA, and to date has not contacted FINRA staff to reschedule the testimony.
54. By failing to appear and provide testimony on January 25, 2018 and February 13, 2018, Clark violated FINRA Rules 8210 and 2010.

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RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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; and
- 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: May 3, 2018



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