

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

Department of Enforcement,

Complainant,

v.

J. Gordon Cloutier Jr. (CRD No. 2817022),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016051652702

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

SUMMARY

1. Respondent J. Gordon Cloutier Jr. failed to appear for testimony under oath on October 25, 2017 and January 31, 2018 as requested pursuant to FINRA Rule 8210 in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry on October 7, 1996 when he became associated with a FINRA member firm. While at that firm, he first became registered with FINRA as a General Securities Representative on December 11, 1996. On April 2, 2009, Respondent became associated with Wells Fargo Advisors, LLC (the “Firm”), also as a General Securities Representative.

3. On October 7, 2016, the Firm filed a Uniform Termination Notice for Securities Registration (“Form U5”) for Respondent disclosing that Respondent was terminated on September 9, 2016 because he “asked a client for a personal loan” and “also did not confirm authorization the same day with this client before attempting a trade.”

4. Although Respondent is no longer registered with FINRA or associated with a 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 the Complaint (1) was filed within two years after the effective date of termination of Respondent's registration with the Firm, namely, before October 5, 2018 and (2) charges him with failing to appear for testimony under oath during the two-year period after the date upon which he ceased to be registered.

BACKGROUND

5. On October 28, 2016, FINRA's Preliminary Investigations Unit ("PIU"), pursuant to FINRA Rule 8210, sent a request for documents and written information to Respondent via certified mail to his Central Registration Depository address in Allen, Texas (the "CRD Address"). The request concerned the allegations in the Firm's Form U5 filing and had a response date of November 11, 2016. A copy of PIU's request was also sent to another address in Allen, Texas that had been located through a Lexis public records search (the "Lexis Address"). According to USPS.com, the postal service was "unable to deliver" the copy of the letter sent to the CRD Address due to a "problem with [the] address." USPS.com also states that the copy sent to the Lexis Address remains "in transit to the destination," rather than stating that it has been delivered. Respondent failed to respond to PIU's request by the response date. Respondent did not request an extension of time or explain why he could not respond on time.

6. On November 16, 2016, PIU, pursuant to FINRA Rule 8210, sent a second request to Respondent for the documents and written information sought by its October 28, 2016 request. PIU set a November 30, 2016 response date for the request. PIU's second request was sent via certified mail to Respondent's CRD Address and the Lexis Address. According to USPS.com, PIU's second request to the CRD Address was delivered to an address in

Weatherford, Texas. USPS.com states that the copy sent to the Lexis Address remains “in transit to the destination,” rather than stating that it has been delivered. Respondent failed to respond to PIU’s second request by the response date. Respondent again did not request an extension of time or explain why he could not respond on time.

7. On February 10, 2017, Enforcement, pursuant to FINRA Rule 9552, sent Respondent a letter notifying him that he would be suspended on March 6, 2017 for failing to respond to PIU’s requests. The letter also informed Respondent that the suspension would not take effect if, by the suspension date, he either complied with PIU’s requests or requested a hearing under FINRA Rule 9552(e). The notice was sent via certified mail to the CRD Address and an address in Richardson, Texas (the “Richardson Address”) that was located through a Lexis public records search for addresses associated with Respondent. According to USPS.com, the copy sent to the Richardson Address was delivered. The copy sent to the CRD Address was also delivered, but to an unspecified address in Richardson, Texas.

8. Respondent had not responded to PIU’s requests, nor had he requested a FINRA Rule 9552(e) hearing, by the March 6, 2017 response deadline. Pursuant to FINRA Rule 9552, Enforcement sent Respondent a letter notifying him that he was suspended as of March 6, 2017. The notice was sent via certified mail to the CRD Address and the Richardson Address. According to USPS.com, the copy of the notice sent to the Richardson Address was delivered. USPS.com states that the copy sent to the CRD Address remains “in transit to the destination,” rather than stating that it has been delivered.

9. On or about April 7, 2017, Respondent sent a letter to Enforcement responding to the FINRA Rule 8210 requests that PIU sent to him on October 28, 2016 and November 16, 2016. Respondent also requested that his suspension be terminated. Respondent did not offer

any explanation for his delay in responding to PIU's requests. The outside of the envelope in which the April 7, 2017 letter was sent listed the Richardson Address as the return address.

10. On April 14, 2017, Enforcement sent a letter via certified mail to the CRD Address and the Richardson Address, notifying Respondent that his suspension had been terminated in light of his response to PIU's requests. According to USPS.com, the April 14, 2017 letter was delivered to the Richardson Address. The postal service attempted delivery to the CRD Address and the letter was subsequently held at the post office.

**SOLE CAUSE OF ACTION
FAILURE TO APPEAR
FOR TESTIMONY UNDER OATH
(FINRA Rules 8210 and 2010)**

11. Enforcement realleges and incorporates by reference paragraphs 1-10 above.

12. On September 27, 2017, Enforcement, pursuant to FINRA Rule 8210, sent Respondent a letter (the "First Request") requesting that he appear on October 25, 2017 at 9:00 AM to testify under oath at FINRA's Dallas office with respect to the allegations in the Form U5. A supplemental information sheet enclosed with the First Request stated that "[f]ailure to appear on the date scheduled for your testimony . . . 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."

13. The First Request was sent via certified mail to Respondent's CRD Address and the Richardson Address. According to USPS.com, the First Request was delivered to the Richardson Address on October 2, 2017. Enforcement also received a return receipt confirming delivery to the Richardson Address. The return receipt was signed by someone bearing Respondent's surname, Janet P. Cloutier. USPS.com states that the copy sent to the CRD address is "in transit to the next facility," rather than stating that it had been delivered.

Respondent failed to appear for testimony on October 25, 2017 as requested. Nor did he request that his testimony be rescheduled or contact Enforcement to discuss the First Request.

14. On January 9, 2018, Enforcement, pursuant to FINRA Rule 8210, sent Respondent a letter setting forth a second request (the "Second Request") for his testimony under oath regarding the Form U5 filing. The Second Request requested that Respondent appear at FINRA's Dallas office on January 31, 2018 at 9:00 AM. The Second Request also notified Respondent: "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."

15. The Second Request was sent via certified mail to Respondent's CRD Address and the Richardson Address. According to USPS.com, the Second Request was delivered to the Richardson Address on January 17, 2018. Enforcement also received a return receipt confirming delivery to the Richardson Address. The return receipt was again signed by Janet P. Cloutier.

16. On January 30, 2018, Enforcement again attempted to contact Respondent by leaving another voice message at the working telephone number provided by the Firm and by sending an e-mail to his personal e-mail account. Enforcement did not receive any response to its voice message or its e-mail.

17. The next day, on January 31, 2018, Respondent failed to appear for testimony as requested. Nor did he request that his testimony be rescheduled.

18. The copy of the Second Request sent to the CRD Address was returned to Enforcement. The United States Postal Service had affixed a label to the outside of the envelope indicating that the forwarding address for "Cloutier" was the Richardson Address.

19. On March 28, 2018, Enforcement sent a Wells notice via certified mail to the CRD Address and the Richardson Address to inform Respondent of the potential charges against him. According to USPS.com, the Wells notice was delivered to the Richardson Address on April 2, 2018. Enforcement also received a return receipt confirming delivery to the Richardson Address. The return receipt was signed by another individual bearing Respondent's surname, Joseph K. Cloutier. USPS.com states that the copy sent to the CRD address is "in transit to the next facility," rather than stating that it has been delivered.

20. FINRA Rule 8210(a) provides that for purposes of an investigation, Enforcement has "the right to require a member, person associated with a member, or any other person subject to FINRA's jurisdiction . . . to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation."

21. FINRA Rule 8210(c) further provides that "[n]o member or person shall fail to provide . . . testimony . . . pursuant to this Rule."

22. By failing to appear and provide testimony under oath as requested by Enforcement in the First Request and Second Request, pursuant to FINRA Rule 8210, on October 25, 2017 and January 31, 2018, respectively, Respondent violated FINRA Rule 8210.

23. By violating FINRA Rule 8210, Respondent also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

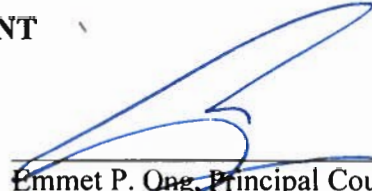
- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

- 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: _____

4/30/18



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