

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Douglas A. Leone
(CRD No. 2453784),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016052560002

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. In February 2017, FINRA opened an investigation into Respondent's trading activity while he was associated with SW Financial regarding potentially unsuitable and excessive transactions in customers' accounts. As part of its investigation, FINRA requested on two occasions in April 2017 and August 2017, pursuant to FINRA Rule 8210, that Respondent appear for on-the-record testimony ("OTR"). Respondent failed to appear and provide testimony in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent first entered the securities industry in September 1993 when he became associated with a FINRA member firm as a General Securities Representative ("GSR"). Between 1993 and 2013, Respondent was associated with several FINRA member firms as a GSR. In March 2013, Respondent became associated with FINRA member firm SW Financial

as a GSR and also became registered as an Investment Banking Representative. Respondent remained associated with SW Financial until March 22, 2017.

3. Although Respondent 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 SW Financial, namely, March 22, 2017; and (2) the Complaint charges Respondent with failing appear and provide testimony pursuant to FINRA's requests under FINRA Rule 8210 before the expiration of the two-year period after March 22, 2017.

BACKGROUND

4. FINRA opened this investigation into Respondent's potential misconduct while he was associated with a FINRA member firm involving, among other things, unsuitable recommendations and excessive trading involving multiple customers.

The First Request

5. On March 22, 2017, FINRA staff sent a letter to Respondent, pursuant to FINRA Rule 8210, requesting that he appear for an OTR at FINRA's office in New York, New York on April 5, 2017 (the "First Request"). FINRA sent the First Request via first class mail and certified mail, return receipt requested, to Respondent's address as reflected on his Central Registration Depository ("CRD Address").

6. According to the United States Postal Service ("USPS") Tracking and Information System, the First Request sent to the CRD Address via certified mail, return receipt

requested, was delivered on March 24, 2017. To date, the First Request sent by first class mail to the CRD Address has not been returned to FINRA.

7. On April 3, 2017, Respondent left a telephone message and sent an email to FINRA staff from his personal email address ("Personal Email") requesting a postponement of the OTR to consult with an attorney.

8. On April 4, 2017, FINRA staff contacted Respondent via telephone and agreed to reschedule the OTR to April 24, 2017.

The Second Request

9. On April 4, 2017, FINRA sent a letter to Respondent, pursuant to FINRA Rule 8210, requesting that he appear for an OTR at FINRA's office in New York, New York on April 24, 2017 (the "Second Request"). FINRA sent the Second Request via first class mail to Respondent's CRD Address and via electronic mail to his Personal Email.

10. To date, the Second Request sent by first class mail to the CRD Address has not been returned to FINRA by the USPS and the Second Request sent by electronic mail has also not been returned as undeliverable.

11. Respondent failed to appear for testimony on April 24, 2017, as requested in the Second Request.

The Rule 9552 Procedure

12. On May 3, 2017, FINRA sent Respondent a Notice of Suspension letter, pursuant to FINRA Rule 9552, which enclosed copies of the First Request and the Second Request. The Notice of Suspension informed Respondent that if he failed to take corrective action by complying with the requests by May 30, 2017, he would be suspended. The Notice of

Suspension also informed Respondent that if he failed to take corrective action by complying with the requests by August 7, 2017, he would be barred.

13. The Notice of Suspension was sent by both first class mail and certified mail, return receipt requested, to Respondent's CRD Address. According to the USPS Tracking and Information System, the Notice of Suspension letter sent to the CRD Address via certified mail, return receipt requested, was delivered on May 6, 2017. To date, the Notice of Suspension letter sent by first class mail has not been returned by the USPS.

14. On May 30, 2017, FINRA sent Respondent a Suspension from Association letter, pursuant to FINRA Rule 9552, that notified him that as of that date, he was suspended from associating with any FINRA member firm in any capacity. The Suspension from Association letter was sent by certified mail, return receipt requested, and first class mail to Respondent's CRD address and via electronic mail to his Personal Email. The Suspension from Association letter again informed Respondent that if he failed to respond and fully comply with the requests, he would be barred on August 7, 2017.

15. According to the USPS Tracking and Information System, the Notice of Suspension letter sent to the CRD Address via certified mail, return receipt requested, was delivered on June 2, 2017. To date, the Suspension from Association letter sent by first class mail has not been returned by the USPS and the Suspension from Association letter sent by electronic mail has also not been returned as undeliverable.

16. On July 27, 2017, Respondent contacted FINRA via electronic mail requesting termination of his suspension. However, Respondent did not indicate that he would appear for testimony.

17. On August 4, 2017, FINRA sent Respondent a Denial of Request for Termination of Suspension letter, pursuant to FINRA Rule 9552, that absent good cause shown, FINRA would not grant his request for termination of the suspension. Furthermore, the Denial of Request for Termination of Suspension letter informed Respondent that he would remain suspended pursuant to FINRA Rule 9552 until he appeared for testimony.

18. The Denial of Request for Termination of Suspension letter was sent by certified mail, return receipt requested, and first class mail to Respondent's CRD address and via electronic mail to his Personal Email.

19. According to the USPS Tracking and Information System, the Denial of Request for Termination of Suspension letter sent to the CRD Address via certified mail, return receipt requested, is still in transit to Respondent's CRD Address.¹ To date, the Denial of Request for Termination of Suspension letter sent by first class mail has not been returned by the USPS.

20. On August 4, 2017 Respondent again sent an email to FINRA asking FINRA to reconsider terminating his suspension. Respondent did not indicate in the email that he would appear for testimony.

The Third Request

21. On August 9, 2017, FINRA sent a letter to Respondent, pursuant to FINRA Rule 8210, requesting that he appear for an OTR at FINRA's office in New York, New York on August 24, 2017 (the "Third Request"). FINRA staff sent the Third Request via first class mail

¹ According to the USPS Tracking and Information System, the last known whereabouts of the certified mail, return receipt requested, to Respondent's CRD Address departed the USPS regional facility in Springfield, MA on August 10, 2017 and was in transit to its destination, the Respondent's CRD Address, since that time. No further updates have been provided.

and certified mail, return receipt requested, to Respondent's CRD Address and via electronic mail to his Personal Email.

22. According to the USPS Tracking and Information System, the Third Request sent to the CRD Address via certified mail, return receipt requested, was returned to sender marked "unclaimed" on September 12, 2017. To date, the Third Request sent by first class mail to the CRD Address has not been returned to FINRA by the USPS, and the Third Request sent by electronic mail has also not been returned as undeliverable.

23. Respondent failed to appear for testimony on August 24, 2017, as requested in the Third Request.

CAUSE OF ACTION

Failure to Appear and Provide Testimony (Violations of FINRA Rules 8210 and 2010)

24. The Department re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. FINRA Rule 8210 (a)(1) requires "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 notary public if requested, with respect to any matter involved in the investigation, complaint, examination or proceeding."

26. FINRA Rule 2010 requires FINRA member firms and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." Failure to comply with FINRA Rule 8210 is a violation of FINRA Rule 2010.

27. By failing to appear and provide testimony pursuant to the Second Request and Third Request, Respondent 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; 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: _____

1/9/2018



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