

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

Department of Enforcement,

Complainant,

v.

Darren M. Kubiak
CRD No. 1239086,

Respondent.

Disciplinary Proceeding
No. 2018060897302

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Darren M. Kubiak (“Kubiak”) failed to appear and provide testimony requested pursuant to FINRA Rule 8210 on two occasions. As a result, Kubiak violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Kubiak first entered the securities industry in February 1984 as an Investment Company and Variable Contracts Products Representative (“IR”) of a former FINRA member firm. Between February 1984 and January 2007, Kubiak was registered with FINRA as an IR through various member firms.

3. In January 2007, Kubiak registered with FINRA as an IR through Kalos Capital, Inc. (CRD No. 44337). In March 2008, Kubiak also registered with FINRA as a General Securities Representative through Kalos Capital.

4. On October 10, 2019, Kalos Capital filed a Uniform Termination Notice for Securities Industry Registration terminating Kubiak's registration through the firm. Kalos terminated Kubiak for "[v]iolation of firm policy. Non sales practice related."

5. Although Kubiak 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 July 28, 2021, which was the date of an amendment to Kubiak's notice of termination that Kalos Capital filed within two years of his original notice of termination and that disclosed that Kubiak may have engaged in conduct actionable under any applicable statute, rule, or regulation, and (2) the Complaint charges him with failing to appear for on-the-record testimony during the two-year period after the date on which Kalos Capital amended his notice of termination from registration with a FINRA member.

CAUSE OF ACTION
Failure to Appear for Testimony
(Violation of FINRA Rules 8210 and 2010)

6. The Department of Enforcement realleges and incorporates by reference all paragraphs above.

7. FINRA Rule 8210(a)(1) provides that FINRA staff may "require a . . . person subject to FINRA's jurisdiction . . . to testify at a location specified by FINRA staff . . . with respect to any matter involved in [an] investigation."

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

9. FINRA Rule 8210(d) specifies that notice under Rule 8210 shall be deemed received by a currently or formerly registered person to whom it is directed by mailing or otherwise

transmitting the notice to the last known residential address of the registered person as reflected in FINRA's Central Registration Depository system ("CRD").

10. FINRA Rule 2010 requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

11. FINRA staff was conducting an investigation into the suitability of Kubiak's recommendations between April 2016 and May 2018 to at least ten of his customers, two of which were seniors, to invest in four limited partnerships for which GPB Capital Holdings, LLC was the general partner, including GPB Holdings II, LP, GPB Automotive Portfolio, LP, GPB NYC Development, LP, and GPB Waste Management, LP (collectively the "GPB Capital Related Limited Partnerships").

12. On May 18, 2023, FINRA staff sent Kubiak a letter pursuant to FINRA Rule 8210 requesting that he appear for testimony on June 21, 2023, in connection with FINRA's investigation of the suitability of Kubiak's recommendations that his customers purchase GPB Capital Related Limited Partnerships (the "First Testimony Request").

13. FINRA staff sent the First Testimony Request by certified mail, return receipt requested, and first-class mail, to Kubiak's two last known residential addresses as reflected in CRD (the "First Address" and the "Second Address"). FINRA staff also sent the First Testimony Request to three email addresses that FINRA identified for Kubiak through a Lexis-Nexis search, although FINRA staff received a bounce back notification that one of the three email addresses was no longer in existence.

14. The First Testimony Request sent by certified mail to the First Address was not delivered because the addressee "[m]oved, [and] [l]eft no [forwarding] [a]ddress." The First

Testimony Request sent by certified mail to the Second Address was “returned to sender” because the address had “No Authorized Recipient Available” and went unclaimed. The first-class mailings of the First Testimony Request to the First Address and Second Address were not returned to FINRA. Kubiak did not respond to the First Testimony Request sent by email to the two existing email addresses that FINRA staff identified for Kubiak.

15. Kubiak did not appear for testimony on June 21, 2023, nor did he request an extension of the testimony date.

16. On June 21, 2023, FINRA staff sent Kubiak a letter pursuant to FINRA Rule 8210, requesting that he appear for testimony on July 6, 2023, in connection with FINRA’s investigation (the “Second Testimony Request”).

17. FINRA staff sent the Second Testimony Request by certified mail, return receipt requested, and first-class mail, to Kubiak’s First Address and his Second Address. FINRA staff also sent the Second Testimony Request by email to two of the three email addresses that FINRA staff identified for Kubiak through Lexis-Nexis. FINRA staff did not send a copy to the email address from which the staff previously received the bounce back notice in connection with the First Testimony Request and that was no longer in existence.

18. The Second Testimony Request sent by certified mail to the First Address was not delivered, and returned to the sender, because the addressee “moved and left no forwarding address.” The Second Testimony Request sent by certified mail to the Second Address was delivered to an individual at the address on June 26, 2023. The first-class mailings of the Second Testimony Request to the First Address and Second Address were not returned to FINRA. FINRA staff received a notification that one of the emails they sent with the Second Testimony Request was undeliverable because the “user(s) account is temporarily over quota.” Kubiak did

not respond to the Second Testimony Request sent by email to the other existing email address that FINRA staff identified for Kubiak.

19. Kubiak did not appear for testimony on July 6, 2023, nor did he request an extension of the testimony date.

20. Kubiak's testimony was material to FINRA staff's investigation into whether Kubiak engaged in misconduct when he recommended to his customers investments in the GPB Capital Related Limited Partnerships, and was necessary for FINRA staff to complete its investigation into whether Kubiak made unsuitable recommendations to his customers.

21. Kubiak's failure to appear for testimony has impeded FINRA staff's investigation into his conduct.

22. By failing to appear for testimony requested pursuant to FINRA Rule 8210, Kubiak violated FINRA Rules 8210 and 2010.

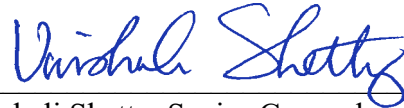
RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Kubiak 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 Kubiak bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 27, 2023



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