

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHAMS KHWAJA
(CRD No. 6906622),

Respondent.

Disciplinary Proceeding
No. 2019063626701

Hearing Officer–LOM

DEFAULT DECISION

July 24, 2020

Respondent Chams Khwaja is barred from associating with any FINRA member in any capacity for failing to provide documents and information requested pursuant to FINRA Rule 8210.

Appearances

For the Complainant: Melissa J. Turitz, Esq., Jeff Fauci, Esq., Department of Enforcement,
Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Respondent Chams Khwaja (“Khwaja”) was registered as a General Securities Representative for approximately three months in early spring 2018 through an association with Worden Capital Management LLC (“Worden” or the “Firm”). Since April 27, 2018, when Worden filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) disclosing Khwaja’s voluntary termination, Khwaja has not been registered or associated with any FINRA member firm.

In connection with an investigation of another individual who also was registered through Worden at the same time as Khwaja, but who is now registered with FINRA through a different member firm, FINRA staff learned that Khwaja may have committed violations while he was registered with Worden. He may have conducted certain undisclosed business activities out of the same office where he had conducted his Worden securities business. On January 15, 2020, FINRA staff sent Khwaja a request for information and documents pursuant to FINRA Rule 8210. The staff wanted to better understand the business activities of Khwaja and the individual

already under investigation. When Khwaja did not respond, FINRA staff sent him a second request for information and documents. He still did not respond.

FINRA's Department of Enforcement ("Enforcement") filed and served Khwaja with a Notice of Complaint and Complaint on April 1, 2020, alleging that he had violated FINRA Rules 8210 and 2010 by failing to provide information and documents. When he did not respond to the Complaint, Enforcement filed and served the Complaint and a Second Notice of Complaint on April 30, 2020. Both times, service was in accordance with FINRA Rules 9131 and 9134. To date, Khwaja has not answered or otherwise challenged the charges against him.

Pursuant to FINRA Rules 9215(f) and 9269, Enforcement then filed and served a motion for entry of default decision ("Default Motion"), together with counsel's declaration (in text, "Declaration"; in footnote, "Decl.") and accompanying eight exhibits in support of the Default Motion. Khwaja did not respond.

For the reasons set forth below, I find Khwaja in default and grant Enforcement's Default Motion. As authorized by FINRA Rule 9269(a)(2), I deem the factual allegations in the Complaint against Khwaja admitted. Based on these facts and the additional information provided in the Declaration, along with accompanying exhibits, I find that Khwaja committed the violations alleged in the Complaint and, as set forth below, impose sanctions consistent with FINRA's Sanction Guidelines.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

On February 7, 2018, Khwaja became registered with FINRA as a General Securities Representative through an association with Worden.¹ On April 24, 2018, he voluntarily terminated his employment, which the Firm disclosed on April 27, 2018, by filing a Form U5.² Khwaja has not been registered or associated with a FINRA member firm since he left Worden.³

B. FINRA's Jurisdiction

Article V, Section 4(a) of FINRA's By-Laws establishes the period and the circumstances in which FINRA retains jurisdiction over an individual who is no longer associated with a FINRA member. Under Article V, Section 4(a), even after a person is no longer associated with a FINRA member, FINRA retains jurisdiction for two years after the termination of his or her association to commence a disciplinary action for misconduct during the period of the person's association, or for a person's failure during the period of retained jurisdiction to provide information requested pursuant to FINRA's rules. The Complaint in this

¹ Although the Firm employed Khwaja in January 2018 and filed to register him with FINRA on January 30, 2018, FINRA did not approve his registration until February 7, 2018. Exhibit ("Ex.") 3.

² Complaint ("Compl.") ¶ 2; Ex. 4.

³ Ex. 3; Compl. ¶ 3.

matter was filed on April 1, 2020, within two years of the termination of Khwaja's association with the Firm.

C. Origin of the Investigation

In August 2019, FINRA opened an investigation of Representative A, an individual currently registered with FINRA who had been registered through Worden during the spring of 2018, the same period when Khwaja was registered through Worden. During the investigation, FINRA staff learned that Representative A was related to Khwaja and conducted his securities business out of the same office space where Khwaja had conducted his securities business when registered through Worden. FINRA staff also learned that Khwaja may have engaged in undisclosed outside business activities while registered and had continued to conduct those business activities in the same office space after his registration was terminated.⁴

More specifically, FINRA staff accumulated evidence that Representative A had failed to provide his firm with prior written notice of multiple outside business activities, including activities involving Company 1 and Company 2. Some of the evidence suggested that Representative A may have been affiliated with Company 1, and Company 1 was the subject of an investigation. In an on-the-record interview, Representative A testified that Khwaja had conducted business activities through Companies 1 and 2 but did not disclose any of those outside business activities to Worden when he was registered through it. According to Representative A, Khwaja continued those business activities after the termination of his registration.⁵

D. Rule 8210 Requests

On January 15, 2020, FINRA staff sent Khwaja a letter pursuant to FINRA Rule 8210. The letter requested information and documents in connection with the ongoing investigation. Among other things, it asked for a description of the business purposes of Companies 1 and 2, and of Khwaja's role with each company.⁶ Khwaja did not provide any information or documents in response and did not contact FINRA staff.⁷

On January 24, 2020, FINRA staff sent a second letter pursuant to FINRA Rule 8210.⁸ He did not respond in any way.⁹

Khwaja was properly served with the January 15 and January 24 Rule 8210 requests. Each time, FINRA staff sent the request by the U.S. postal service first-class mail to Khwaja's

⁴ Compl. ¶¶ 4-5.

⁵ Compl. ¶¶ 4-5; Decl. ¶ 6.

⁶ Compl. ¶ 11.

⁷ Compl. ¶ 15.

⁸ Compl. ¶ 16.

⁹ Compl. ¶¶ 20-21.

last known residential address as shown in the Central Registration Depository (“CRD Address”). In addition, each time FINRA staff sent the request to his CRD Address by first-class and certified mail.¹⁰ Nevertheless, Khwaja failed to respond to those requests by the deadlines they specified and has failed to respond at any time thereafter.¹¹

E. Importance of the Requested Information and Documents

The requests to Khwaja for information and documents were material to FINRA’s investigation. They were necessary to determine the business purposes of Companies 1 and 2 and Khwaja’s role in connection with them. They also were material to determine whether Khwaja and Representative A were involved in undisclosed outside business activities while registered with FINRA. They would assist in evaluating the credibility of Representative A’s claims that he was not involved with Companies 1 and 2.¹²

F. Respondent’s Default

After Khwaja failed to respond to either the first or second Rule 8210 request, Enforcement filed and served a Complaint alleging that he had violated FINRA Rules 8210 and 2010. Enforcement served the Complaint and the First and Second Notices of Complaint in accord with FINRA Rules 9131 and 9134. Enforcement sent the Complaint and First Notice of Complaint to Khwaja’s CRD Address by the U.S. postal service first-class and certified mail and sent the Complaint and Second Notice of Complaint to the same address by the same means.¹³ Enforcement had no knowledge that Khwaja’s CRD Address was outdated.¹⁴ Under Rules 9131 and 9134, that is all that is necessary for constructive notice.

Khwaja did not file an answer or otherwise respond to the Complaint. He also has not filed and served a response to the Default Motion, although it was properly served on him at his CRD Address. Accordingly, I find that Khwaja has defaulted.¹⁵

G. Respondent Violated Rule 8210

FINRA Rule 8210(a) requires a “person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically . . . and to testify . . . with respect to any matter involved in [an] investigation, complaint, examination, or proceeding.” Rule 8210(c) makes clear that the obligation to provide the requested information or testimony is mandatory. It provides

¹⁰ Compl. ¶¶ 12, 14, 16, 21.

¹¹ Decl. ¶ 9.

¹² Compl. ¶ 22.

¹³ Decl. ¶¶ 15-27.

¹⁴ Decl. ¶ 16.

¹⁵ Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”

Because FINRA lacks subpoena power, and its ability to gather information from its members and associated persons is limited to its ability to obtain documents, information, and testimony pursuant to Rule 8210, that Rule is an essential investigatory tool.¹⁶ That tool is critical to FINRA’s ability to carry out its regulatory mandate.¹⁷ Courts, the Securities and Exchange Commission (“SEC”), and FINRA have emphasized the key role that Rule 8210 plays in FINRA’s discharge of its regulatory responsibilities, calling it “indispensable,”¹⁸ “essential,”¹⁹ and “at the heart of the self-regulatory system for the securities industry.”²⁰ Without question, “FINRA Rule 8210 requires a registered person to respond fully, completely, and truthfully to a request for information from FINRA”²¹

Because, as discussed above, Khwaja did not respond in any way to the two Rule 8210 requests, he violated FINRA Rule 8210, and a violation of any FINRA Rule is also a violation of FINRA Rule 2010.²² The SEC has explained that Rule 2010 encompasses any unethical business-related misconduct, even where the activity does not involve a security.²³

III. Sanctions

FINRA’s Sanction Guidelines recommend that, if an individual does not respond in any manner to a Rule 8210 request for information and documents, a bar in all capacities should be

¹⁶ *E.g.*, *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *petition for review denied*, 436 F. App’x 31 (2d Cir. 2011); *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 57 S.E.C. 330 (2004).

¹⁷ *Dep’t of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *43-44 (NAC Jan. 8, 2019).

¹⁸ *Dep’t of Enforcement v. Merrimac Corp. Sec.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *10-11 (NAC May 26, 2017), *aff’d in relevant part and remanded*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *21 (July 17, 2019), *modified sanctions for supervisory violations*, No. 2011027666902r, 2020 FINRA Discip. LEXIS 3 (NAC Mar. 27, 2020).

¹⁹ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

²⁰ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

²¹ *Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *41-42 (NAC July 24, 2017), *application for review dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

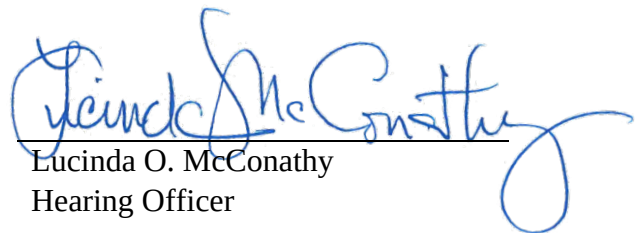
²² *See, e.g.*, *N. Woodward Fin. Corp.*, Exchange Act Rel. No. 74913, 2015 SEC LEXIS 1867, at *13 (May 8, 2015).

²³ *Dep’t of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under [FINRA] Rule [2010] is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”) (internal citations and quotations omitted), *aff’d in relevant part*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012); *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at *17-18 n.46 (OHO June 13, 2011) (“[FINRA] Rule [2010] is an ethical rule] FINRA’s authority to pursue disciplinary action for violations of Rule [2010] is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”), *aff’d*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012) (respondent barred for acting as unregistered principal).

standard.²⁴ In this case, Khwaja's failure to respond in any manner deprived FINRA of information that was material to an ongoing investigation and to determining whether Khwaja himself had engaged in misconduct while associated with his Firm. The misconduct is serious, and there are no mitigating factors present. Thus, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

For violating FINRA Rules 8210 and 2010 by failing to provide documents and information requested pursuant to Rule 8210, Respondent Chams Khwaja is barred from associating with any member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

Copies to:

Chams Khwaja (via overnight courier)
Melissa J. Turitz, Esq. (via email)
Jeff Fauci, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

²⁴ FINRA Sanction Guidelines at 33 (March 2019) (Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210), <http://www.finra.org/Industry/Sanction-Guidelines>.