

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

Department of Enforcement,

Complainant,

v.

Wilfredo Felix
CRD No. 2693672,

Respondent.

Disciplinary Proceeding
No. 2020065128501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Wilfredo Felix failed to provide information and documents that FINRA staff requested pursuant to FINRA Rule 8210. As a result, Felix violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Felix first entered the securities industry in 1995. After working for several FINRA member firms, Felix purchased Primex Prime Electronic Execution, Inc. d/b/a Primex (CRD No. 29394) (Primex) in 2001. From 2001 until May 27, 2020—when FINRA cancelled Primex’s membership—Felix was registered with FINRA through Primex as a Corporate Securities Representative and a General Securities Principal. He served as Primex’s Chief Executive Officer (CEO), Chief Financial Officer (CFO), and Financial and Operations Principal (FINOP), among other roles. Felix’s registrations lapsed when FINRA cancelled Primex’s membership.

3. Although Respondent 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 May 27, 2020, which was the effective date of termination of Respondent's registration through Primex, and (2) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date on which he ceased to be registered or associated with a FINRA member.

FACTS

Prior Disciplinary Matter

4. On July 1, 2020, a FINRA hearing panel issued a decision (OHO Decision) barring Felix in all capacities for his failure to provide personal tax-related documents requested pursuant to FINRA Rule 8210 during the investigation of a prior matter (FINRA Matter No. 2018058286901). Felix has appealed the OHO Decision, including the sanction imposed against him, to the National Adjudicatory Counsel (NAC). His appeal to the NAC remains pending.

5. The hearing panel also found that Felix and Primex made and preserved inaccurate and false expense records, causing Primex to maintain an inaccurate general ledger and file inaccurate quarterly FOCUS reports.

6. The hearing panel also found that Primex violated FINRA Rules 8210 and 2010 by responding to a FINRA request for information and documents in an untimely manner.

7. The OHO Decision imposed a censure and \$40,000 fine against Primex.

8. Primex did not appeal the OHO Decision. The OHO Decision, as it pertains to Primex, became effective on August 18, 2020.

FINRA Staff's 2020 Firm Examination of Primex

9. In or around January 2020, FINRA staff commenced a routine examination of Primex.

10. Beginning in March 2020, FINRA staff sent Primex a number of requests, directed to Felix's attention, for documents and information via Request Manager. Among the documents sought were Primex's general ledger from March 1, 2019 forward and Primex's 2019 annual audit.

11. The general ledger and annual audit are the types of documents that FINRA staff routinely seeks as part of the examination process. In this case, the documents also would show whether Primex and Felix had continued to engage in the misconduct discovered during the 2018 examination of the firm, which resulted in the filing of a complaint and OHO's July 2020 decision.

12. Primex failed to produce the general ledger or 2019 annual audit requested by FINRA staff.

Cancellation of Primex's Membership with FINRA

13. On May 6, 2020, FINRA sent Primex a letter indicating its intent to cancel Primex's membership with FINRA because the firm had failed to pay arbitration and other fees due to FINRA. The letter advised Primex that, should it not pay those fees, its membership would be cancelled.

14. On May 27, 2020, pursuant to FINRA Rule 9553, Primex's membership with FINRA was cancelled for failure to pay the outstanding fees.

FINRA's Initial 8210 Request to Felix

15. As a result of Primex's failure to respond to FINRA's requests for information and documents in connection with FINRA's 2020 examination of Primex, on July 8, 2020, FINRA staff sent a request pursuant to FINRA Rule 8210 to Felix in his individual capacity which sought two items: Primex's general ledger from March 2019 through May 2020, and Primex's 2019 annual audit (the Initial 8210 Request).

16. Both of the items requested in the Initial 8210 Request were within Felix's possession, custody, and control as Primex's owner, CEO, CFO, and FINOP. Indeed, as the sole owner and sole financial officer of Primex, Felix had sole control over its finances, books and records.

17. FINRA staff sent Felix the Initial 8210 Request by certified mail, return receipt requested, to Felix's last known residential address as reflected in CRD.

18. The Initial 8210 Request also was sent to Felix via email at his business email address—the same email address he was utilizing for contemporaneous communications with FINRA regarding his appeal to the NAC.

19. Felix's response to the Initial 8210 Request was due on or before July 22, 2020.

20. The certified mailing containing the Initial 8210 Request was returned to FINRA on August 11, 2020. The United States Postal Service tracking website indicates that a notice was left for the letter, but ultimately it was unclaimed and returned to sender.

21. The email attaching the Initial 8210 Request was not returned or rejected as undeliverable.

22. Felix did not provide any information or documents to FINRA staff in response to the Initial 8210 Request, or contact FINRA staff about the Initial 8210 Request, on or before its deadline.

FINRA's Second 8210 Request to Felix

23. On July 27, 2020, FINRA staff sent Felix a second request pursuant to FINRA Rule 8210, requesting that Felix provide the same two items requested in the Initial 8210 Request (the Second 8210 Request). The Second 8210 Request appended the Initial 8210 Request.

24. FINRA staff sent Felix the Second 8210 Request via certified mail, return receipt requested, to his CRD address of record and via email to his business email address.

25. The Second 8210 Request advised Felix that as a result of his failure to respond to the Initial 8210 Request, “you may be in violation of FINRA Rule 8210.” The Second 8210 Request further warned Felix that if he failed to deliver the requested information “by **August 10, 2020**, [he] may be subject to the institution of an expedited or formal disciplinary proceeding leading to sanctions, including a bar from associating with any FINRA member firm” (emphasis in original).

26. The certified mailing containing the Second 8210 Request was returned to FINRA on August 24, 2020. The United States Postal Service tracking website indicates that a notice was left for the letter, but ultimately it was unclaimed and returned to sender.

27. The email attaching the Second 8210 Request was not returned or rejected as undeliverable.

28. Felix did not provide any information or documents to FINRA staff in response to the Second 8210 Request, or contact FINRA staff about the Second 8210 Request, on or before its deadline.

FINRA's Third 8210 Request to Felix

29. On August 28, 2020, FINRA sent Felix a third request pursuant to FINRA Rule 8210, requesting the same two items requested in the Initial 8210 Request and the Second 8210 Request (the Third 8210 Request). The Third 8210 Request appended the Initial 8210 Request and the Second 8210 Request.

30. FINRA sent Felix the Third 8210 Request to Felix's CRD address of record via certified mail, return receipt requested, and via first class U.S. mail (not certified). FINRA also sent Felix the Third 8210 Request by email to his business email address.

31. In the Third 8210 Request, FINRA advised Felix that "you are personally in violation of FINRA Rule 8210 for failure to respond to multiple 8210 requests, as detailed below." The Third 8210 Request further informed Felix, in bold type, "**[d]ue to this lack of a timely response to FINRA's requests pursuant to FINRA Rule 8210, Primex and you personally are in violation of FINRA Rule 8210.**" The Third 8210 Request also warned that "[d]ue to this failure to respond completely and in a timely manner to FINRA's requests for documents and information pursuant to FINRA Rule 8210, you [Felix] and Primex may be subject to the institution of an expedited or formal disciplinary proceeding leading to sanctions, including expulsion of the firm and/or a bar preventing you from association with any FINRA member firm."

32. The Third 8210 Request instructed Felix to provide the requested documents and information to FINRA “no later than Friday, September 11, 2020 to avoid the commencement of a disciplinary proceeding.”

33. The copy of the Third 8210 Request that was sent to Felix by first class U.S. mail (not certified) was not returned to FINRA.

34. The email attaching the Third 8210 Request was not returned or rejected as undeliverable.

35. The certified mailing containing the Third 8210 Request was delivered to Felix’s CRD address of record on September 2, 2020, and, according to the United States Postal Service tracking website, was “Left with [an] Individual.”

36. Pursuant to the U.S. Postal Service’s procedures during the COVID-19 pandemic, and to establish proof of delivery of the certified mailing, a postal worker asked for and recorded the name of the individual to whom the Third 8210 Request was delivered – “Mr. Wilfredo.”

37. Felix failed to provide any information or documents in response to the Third 8210 Request, or contact FINRA staff about the Third 8210 Request, on or before its deadline.

38. Although Felix was properly served with the Initial 8210 Request, the Second 8210 Request, and the Third 8210 Request, Felix has not provided any information or documents in response to those requests as of the date of the filing of this Complaint.

CAUSE OF ACTION
Failure to Provide Information and Documents to FINRA
(FINRA Rules 8210 and 2010)

39. The Department of Enforcement realleges and incorporates by reference all previous paragraphs.

40. FINRA Rule 8210(a)(1) provides that FINRA staff may “require a . . . person . . . subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in [an] investigation, complaint, examination or proceeding[.]”

41. FINRA Rule 8210(c) provides that “[n]o member or person shall fail to provide information . . . pursuant to this Rule.”

42. FINRA Rule 8210(d) states that a notice “shall be deemed received” by the person to whom it is directed when sent to “the last known residential address of the person as reflected in the Central Registration Depository” (CRD).

43. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”

44. The Initial 8210 Request, the Second 8210 Request, and the Third 8210 Request sought information and documents that were material to FINRA’s 2020 firm examination of Primex. The requested information and documents—the firm’s general ledger and 2019 audit—were necessary for basic member firm oversight purposes, particularly in light of Primex’s apparent decision to cease operations as a broker-dealer and to wind down its operations. The requested information and documents were also necessary to determine if Felix and Primex continued to misclassify Felix’s personal expenses as expenses of Primex, which is the misconduct that gave rise to the violations found in the OHO Decision.

45. By failing to produce information and documents requested pursuant to FINRA Rule 8210, Felix violated FINRA Rules 8210 and 2010.

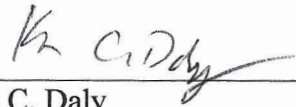
RELIEF REQUESTED

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

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 3, 2020



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