

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HUGUES GUIRAND
(CRD No. 3045595),

Respondent.

Disciplinary Proceeding
No. 2020068395801

Hearing Officer–BEK

DEFAULT DECISION

July 26, 2021

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide documents and information requested by FINRA and failing to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Complainant: Gina Petrocelli, Esq., Daniel Hibshoosh, Esq., and W. Robert Fair, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) properly served Respondent Hugues Guirand with two Notices of Complaint and the Complaint. Guirand did not file an Answer. Enforcement filed a motion for entry of default decision (“Default Motion”) supported by the Declaration of Enforcement counsel W. Robert Fair (“Fair Decl.”) and 15 exhibits. Guirand did not respond to the Default Motion. Accordingly, the allegations in the Complaint are deemed admitted and Enforcement’s Default Motion is granted,¹ and Guirand is barred from associating with any FINRA member firm in any capacity.

¹ FINRA Rule 9269. Guirand is hereby notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Guirand entered the securities industry in 1997.² From July 2007 until April 2019, he was registered as a Corporate Securities Representative through an association with FINRA member firm Woodstock Financial Group Inc. (“Woodstock”).³ On April 23, 2019, Woodstock filed a Uniform Termination Notice for Securities Industry Registration (Form U5), stating that Guirand had been discharged on April 23, 2019.⁴

B. FINRA's Jurisdiction

Although Guirand 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(a) of FINRA's By-Laws. This is because (1) the Complaint was filed within two years of the effective date of termination of Guirand's registration, and (2) the Complaint charges Guirand with failing to respond to FINRA requests for information and on-the record (“OTR”) testimony during the two-year period after the date on which he ceased to be registered or associated with a FINRA member firm.

C. Origin of the Investigation

In October 2020, Guirand's former customer (the “Customer”) filed a statement of claim with FINRA Dispute Resolution Services alleging that Guirand had solicited the Customer's investment in real estate transactions without Woodstock's approval.⁵ Thereafter, FINRA staff initiated an investigation into Guirand's conduct in connection with the real estate transactions, which conduct could constitute unauthorized outside business activities or private securities transactions.⁶

As part of Enforcement's investigation and pursuant to FINRA Rule 8210, FINRA staff issued several requests for information and documents, as well as for OTR testimony.⁷ Guirand failed to provide the requested information and documents and failed to appear and provide OTR testimony, resulting in this proceeding.⁸

² Complaint (“Compl.”) ¶ 2.

³ Compl. ¶ 2.

⁴ Compl. ¶ 2.

⁵ Compl. ¶ 7.

⁶ Compl. ¶ 7; *see also* Compl. ¶ 34 (noting that FINRA's investigation involved allegations that Guirand had engaged in outside business activities or private securities transactions).

⁷ Compl. ¶¶ 8-32.

⁸ Compl. ¶¶ 25, 27, 32.

D. Respondent's Default

Enforcement served Guirand with a Notice of Complaint and Complaint in accordance with FINRA Rules 9131 and 9134. Specifically, Enforcement sent the Notice and Complaint by first-class and certified mail, return receipt requested, on April 12, 2021, to his current residence as reflected in the Central Registration Depository ("CRD Address").⁹ After receiving no Answer, Enforcement sent a Second Notice of Complaint and Complaint by first-class certified mail, return receipt requested, on May 11, 2021, to Guirand at his CRD Address.¹⁰ Again, Guirand failed to file an Answer.¹¹

Enforcement is not aware of any other address used by Guirand and has no reason to believe that Guirand's CRD Address is out of date.¹² Enforcement also sent courtesy copies of the Notices of Complaint and Complaint to Guirand's email address.¹³ Moreover, in accordance with FINRA Rule 9215(f), the Second Notice of Complaint informed Guirand that his failure to answer the Complaint could result in a default decision against him.

Pursuant to FINRA Rule 9134, service of a complaint may be accomplished, *inter alia*, by U.S. Postal Service first-class mail, first-class certified mail, first-class registered mail, or Express Mail, at a respondent's CRD address. Service is then complete upon mailing.¹⁴ Here, Enforcement served Guirand twice at his CRD Address, with the Second Notice providing the required default notification.

In sum, Enforcement has properly served Guirand. He has not filed an answer or otherwise responded to the Complaint. Accordingly, pursuant to FINRA Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted and the Default Motion is granted.

E. Respondent Failed to Respond to Requests for Information and Failed to Provide OTR Testimony in Violation of FINRA Rules 8210 and 2010

FINRA Rule 8210 requires anyone subject to FINRA jurisdiction to provide the information and testimony requested by FINRA staff and "is at the heart of the self-regulatory

⁹ Fair Decl. ¶¶ 8-9; Complainant's Exhibit ("CX-") 2.

¹⁰ Fair Decl. ¶ 11; CX-5.

¹¹ Fair Decl. ¶ 12.

¹² Fair Decl. ¶ 8.

¹³ Fair Decl. ¶¶ 9, 11.

¹⁴ See also *Dep't of Enforcement v. Sylvester*, No. C8A980054, 1999 NASD Discip. LEXIS 33, at *5 (NAC Nov. 5, 1999) ("It is well settled that Procedural Rule 9134(b)(3) provides for constructive notice by mailing a complaint to the respondent's most recent CRD address.") (citing *Lubeck v. SEC*, No. 97-70537, 1998 U.S. App. LEXIS 18849, at *19-20 (9th Cir. Aug. 12, 1998)).

system for the securities industry.”¹⁵ Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information necessary to “carry out its investigations and fulfill its regulatory mandate.”¹⁶ FINRA Rule 2010 charges FINRA members with “observ[ing] high standards of commercial honor and just and equitable principles of trade.” And a “violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010.”¹⁷

1. Respondent Failed to Respond to Requests for Information

On November 13, 2020, in connection with its investigation and pursuant to FINRA Rule 8210, FINRA staff sent Guirand a request for information relating to the allegations that he had participated in solicited real estate transactions without Woodstock’s approval.¹⁸ Guirand, through counsel, denied participating in the solicited real estate transactions.¹⁹ In light of Guirand’s denial, FINRA staff issued another Rule 8210 request on February 4, 2021, this time through Guirand’s counsel, for additional information and documents materially related to the investigation.²⁰ Specifically, the request sought (i) copies of Guirand’s tax returns and bank account statements; (ii) communications between Guirand and the Customer; (iii) a statement regarding Guirand’s involvement in the entities that the Customer alleged were involved in real estate transactions; and (iv) documents related to the real estate transactions.²¹

After Guirand failed to respond, FINRA staff sent Guirand’s counsel another Rule 8210 request on February 26, 2021, for the same information and documents requested in the February 4 request.²² A copy of the February 4 request also was included.²³ The February 26 request required Guirand to provide information and documents by March 5, 2021.²⁴ Guirand’s counsel acknowledged receipt of this request on February 26, but on March 3 he notified FINRA staff that he no longer represented Guirand.²⁵ That same day, Guirand notified FINRA staff that he had retained new counsel, and later that day his new counsel contacted FINRA staff by telephone

¹⁵ *Dep’t of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *10-11 (NAC May 26, 2017) (citing *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008)).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Compl. ¶ 8.

¹⁹ Compl. ¶ 9.

²⁰ Compl. ¶¶ 10, 11, 13.

²¹ Compl. ¶ 13.

²² Compl. ¶ 17.

²³ Compl. ¶ 18.

²⁴ Compl. ¶ 18.

²⁵ Compl. ¶¶ 20-21.

and confirmed the representation.²⁶ During that telephone conversation, FINRA staff advised Guirand's new counsel of the outstanding requests for information and testimony, and copies of these requests were sent to his new counsel by email that same day.²⁷

On March 8, Guirand's new counsel informed FINRA staff that she did not represent Guirand in connection with FINRA's investigation.²⁸ Guirand has not provided the information and documents requested by FINRA staff,²⁹ and his failure to do so is a violation of FINRA Rules 8210 and 2010.

2. Respondent Failed to Provide OTR Testimony

Coincident with its requests for information and documents, and also pursuant to FINRA Rule 8210, on February 24, 2021, FINRA staff requested, through counsel, that Guirand appear and provide OTR testimony on March 8, 2021.³⁰ This request notified Guirand and his counsel that the failure to appear could violate Rule 8210 and be the basis for initiating a disciplinary action.³¹ Guirand's counsel acknowledged receipt of this request on February 26, but on March 3 he notified FINRA staff that he no longer represented Guirand.³²

On March 3, Guirand's new counsel was notified of the scheduled March 8 OTR testimony during a telephone conversation with FINRA staff, and a copy of the February 24 request was emailed to his new counsel that same date.³³

Guirand did not appear for his March 8 scheduled OTR testimony, and that same day Guirand's counsel informed FINRA staff that she did not represent Guirand in connection with FINRA's investigation.³⁴ Also that same day, FINRA staff sent Guirand another 8210 request to appear and provide OTR testimony on March 15, 2021.³⁵ This request included a copy of the February 24 Rule 8210 request for testimony.³⁶ During a March 12 telephone conversation with FINRA staff, Guirand acknowledged receipt of the OTR testimony request and stated that he

²⁶ Compl. ¶¶ 22-23.

²⁷ Compl. ¶ 23.

²⁸ Compl. ¶ 27.

²⁹ Compl. ¶¶ 24-25; Fair Decl. ¶ 12.

³⁰ Compl. ¶ 14.

³¹ Compl. ¶ 15; CX-10.

³² Compl. ¶¶ 20-21.

³³ Compl. ¶¶ 26-27.

³⁴ Compl. ¶¶ 26-27.

³⁵ Compl. ¶ 28.

³⁶ Compl. ¶ 29.

planned to appear and provide testimony on March 15.³⁷ Despite his agreement to appear, he did not do so.³⁸

Thus, Guirand violated FINRA Rules 8210 and 2010.

III. Sanctions

Citing FINRA's Sanction Guidelines ("Guidelines"),³⁹ Enforcement seeks to bar Guirand from associating with any FINRA member firm.⁴⁰ As discussed below, to protect the investing public⁴¹ and deter and prevent future misconduct,⁴² imposing a bar in all capacities is appropriate in this case.

The Guidelines recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.⁴³ Here, the requested information and documents were material to FINRA's investigation.⁴⁴ Guirand's failure to provide the requested information and documents, and his failure to appear and provide OTR testimony, impeded FINRA's investigation of the allegations that Guirand had engaged in outside business activities or private security transactions by soliciting a customer's investment in real estate transactions without Woodstock's approval.⁴⁵ Enforcement is not aware of any mitigating factors⁴⁶ and none are discerned from the record.

In light of the importance of the requested information to FINRA's examination,⁴⁷ and lacking any mitigating factors, the appropriate sanction is a bar in all capacities.

³⁷ Compl. ¶ 31.

³⁸ Compl. ¶ 32.

³⁹ FINRA Sanction Guidelines (2020), <http://www.finra.org/sanctionguidelines>.

⁴⁰ Although Guirand's failure to provide documents and failure to provide OTR testimony constitute separate violations of FINRA Rules 8210 and 2010, Enforcement has combined them as one cause of action in its Complaint. Even if brought as separate causes of action, the violations would be aggregated because they arise from a common cause, and a unitary sanction would be appropriate. Guidelines at 4 (General Principle No. 4); *see also Dep't of Enforcement v. Respondent Firm I*, No. C8A990071, 2001 NASD Discip. LEXIS 6, at *30-31 (NAC Apr. 19, 2001) (approving a unitary sanction for violations with a common underlying cause).

⁴¹ Guidelines at 1 ("The regulatory mission of FINRA is to protect investors and strengthen market integrity . . .").

⁴² *Id.* at 2 (General Principle No. 1).

⁴³ *Id.* at 33.

⁴⁴ Compl. ¶¶ 13, 33.

⁴⁵ Compl. ¶¶ 33-34.

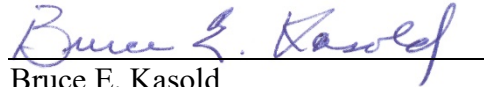
⁴⁶ Fair Decl. ¶ 32.

⁴⁷ Guidelines at 33 (noting the importance of the requested information from FINRA's perspective as a specific consideration related to a failure to provide information).

IV. Order

Respondent Hugues Guirand is barred from associating with any FINRA member firm in any capacity for failing to provide information and appear for testimony as alleged in the Complaint and in violation of FINRA Rules 8210 and 2010.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Bruce E. Kasold
Hearing Officer

Copies to:

Hugues Guirand (via overnight courier, first-class mail, and email)
Gina Petrocelli, Esq. (via email)
Daniel Hibshoosh, Esq. (via email)
W. Robert Fair, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)