

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

Department of Enforcement,

Complainant,

v.

Ben Jen (CRD No. 7701847)

and

Ray Rohne (CRD No. 1942268),

Respondents.

Disciplinary Proceeding
No. 2022075977501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondents Ben Jen and Ray Rohne failed to cooperate, or fully cooperate, in FINRA's investigation into their activities regarding a failed sale of shares in a private space exploration company. Jen failed to produce certain documents and information FINRA requested pursuant to FINRA Rule 8210. Rohne failed to appear and provide testimony FINRA requested pursuant to FINRA Rule 8210. As a result, Jen and Rohne each separately violated FINRA Rules 8210 and 2010.

RESPONDENTS AND JURISDICTION

Ben Jen

2. From January 2021 to July 2023, Jen, who indirectly owned former FINRA member firm Windward Capital Inc. (CRD No. 142245), was associated with Windward. He engaged in

the investment banking and securities business of the firm and was directly or indirectly controlling or controlled by Windward.

3. Among other things, Jen changed the firm's business from acting as placement agent for small and mid-sized private companies to facilitating private secondary transactions in shares of large private companies; paid firm expenses from his personal funds; and discussed potential securities transactions with counterparties and potential investors. Jen also made hiring decisions, such as choosing a Chief Compliance Officer (CCO) for Windward, and causing four other individuals who worked at one of his other entities to be registered with FINRA through an association with Windward. Jen hired his last two registered representatives for Windward in November and December 2022. In January 2023, Jen caused the then-President of Windward to resign from the firm. As late as July 2023, Jen was involved in discussions with the firm's CCO about the payment of firm expenses out of the firm's account and also had ongoing conversations with a registered representative at Windward about securities and investment banking business.

4. Through at least July 8, 2023, Jen remained associated with Windward, including by remaining a signatory authority over the firm's checking account as of that date and having responsibility for paying the firm's expenses.

5. Although Jen has never registered with FINRA and is no longer associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4(a)(iii) of FINRA's By-Laws, because: (i) the Complaint was filed within two years after July 8, 2023, which was the date upon which he ceased to be associated with a FINRA member; and (ii) the Complaint charges Jen with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA

requests for information during the two year period after the date on which he ceased to be associated with a FINRA member.

Raymond Rohne

6. From at least June 2021 to November 2022, Rohne was associated with Windward. He engaged in the investment banking and securities business of the firm and was controlled directly or indirectly by Windward.

7. Among other things, Rohne held himself out as a director of the firm and engaged in the firm's securities and investment banking business by meeting and corresponding with firm clients about investment opportunities; helping the firm's president solicit and advise firm clients about investment banking; creating marketing materials for Windward's investment banking and securities business, some of which Windward's president received, edited and/or reviewed; discussing potential securities transactions with, and distributing transaction-related documents to, counterparties and investors; and meeting with the firm's president to advise on selling Windward to Jen. Through at least November 9, 2022, Rohne was emailing counterparties about a potential securities transaction on behalf of Windward.

8. Although Rohne has never registered with FINRA and is no longer associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4(a)(iii) of FINRA's By-Laws, because: (i) the Complaint was filed within two years after November 9, 2022, which was the date upon which he ceased to be associated with a FINRA member; and (ii) the Complaint charges Rohne with failing to appear for on-the-record testimony during the two year period after the date on which he ceased to be associated with a FINRA member.

FACTS

A. Background

9. In or about March 2021, Jen founded a limited liability company (SPV) for the purpose of investing in shares of Company A.

10. Company A is a high-profile, privately-owned space exploration company, whose shares are hard to obtain.

11. In or about July 2022, SPV agreed to sell \$2.5 million of shares of Company A to an investor. Rohne was involved in the transaction.

12. The funds were wired into escrow by the buyer, but SPV failed to close on the transaction. After law enforcement was notified, the funds were returned to the buyer.

13. In August 2022, FINRA opened an investigation into Jen and Rohne's involvement in the failed transaction, including whether SPV actually owned any shares of Company A.

B. Jen and Rohne fail to cooperate or fully cooperate in a FINRA investigation.

14. On April 20, 2023, FINRA staff sent Jen a request letter for documents and information pursuant to FINRA Rule 8210. Among other things, request no. 4 requested "copies of all DocuSign envelopes for electronic signatures regarding [SPV] . . . and "transactions in [Company A]." In addition, request no. 7 requested certain electronic communications, including with Rohne and others, related to SPV, Windward, and a related entity.

15. FINRA staff sent the April 20 letter to Jen's address of record in the Central Registration Depository via first class and certified mail, and through FINRA's electronic request system to Jen's email. The response was due by May 4, 2023.

16. On May 4, 2023, Jen produced some, but not all, of his responsive documents and information, including in response to requests nos. 4 and 7.

17. On May 4, 2023, Jen also orally requested an extension of time to respond to FINRA's April 20 letter with additional documents and information, and FINRA staff granted via email an extension of time to respond until May 19, 2023.

18. Jen produced some additional documents and information on May 10, 2023.

19. On May 25, 2023, Jen informed staff via email that he had additional material to produce. He also produced certain additional responsive material and requested another extension of time to produce more responsive material.

20. That same day, FINRA staff approved Jen's request for an extension of time to respond to the April 20 letter until June 2, 2023.

21. Jen did not produce any additional documents or information by June 2, 2023 or anytime thereafter.

22. On June 20, 2023, through counsel, Jen represented via email to FINRA staff that he had "a significant number of additional email communications" that appeared to be responsive to the April 20 request.

23. Jen did not, however, produce any additional documents responsive to the April 20 letter or request an extension of time to respond.

24. On July 17, 2023, FINRA staff sent Jen a second written request pursuant to FINRA Rule 8210, requesting certain of the same documents and information previously requested in the April 20 request letter. Staff sent the July 17 letter to Jen's counsel via first class mail, certified mail and email. Jen's response was due by August 7, 2023.

25. Jen did not produce any additional documents or information in response to the April 20 or July 17 letters or request an extension of time to respond.

26. The documents and information that FINRA requested and which Jen failed to produce, specifically including DocuSign envelopes and electronic communications regarding SPV and the failed transaction involving Company A, were material to FINRA's investigation.

27. Among other things, the requested DocuSign envelopes and emails would have provided more information about Jen's involvement in Windward, SPV, and his interactions with and representations to counterparties and investors, including involving Company A.

28. On July 25, 2023, FINRA personally served Rohne with a request letter, dated July 21, 2023, requesting that he appear and provide testimony pursuant to FINRA Rule 8210 on August 2, 2023.

29. The letter was hand delivered to an adult occupant of Rohne's last known residential address.

30. Rohne failed to appear for his scheduled testimony on August 2, 2023, and did not request to postpone his testimony.

31. Between August 3 and August 28, 2023, FINRA made four additional, unsuccessful attempts to serve Rohne at his last known residential address with a second request letter to appear and provide testimony pursuant to FINRA Rule 8210.

32. During one such attempt, on August 14, 2023, an occupant at Rohne's last known residential address refused to accept service of the request and gave the process server a letter purporting to be from Rohne's lawyer, requesting all communications to be sent to the lawyer. That lawyer subsequently advised FINRA staff that he did not, in fact, represent Rohne.

33. On September 7, 2023, Enforcement personally served Rohne with a second request letter, dated September 5, 2023, requesting that he appear and provide testimony pursuant to FINRA Rule 8210 on September 14, 2023.

34. On that date, a process server knocked on the front door of Rohne's last known residential address, announced his presence to deliver the second request letter, and watched an adult occupant inside the residence walk away from the door.

35. The process server posted the second request letter by inserting it into the front doorjamb.

36. Rohne failed to appear for his scheduled testimony on September 14, 2023, and he did not request to postpone his testimony.

37. The information that FINRA would have sought to obtain through Rohne's testimony was important to FINRA's investigation, including, among other things, Rohne's handling and knowledge of documents related to the failed transaction involving Company A shares, his communications with counterparties and investors, and his relationship with Windward, SPV and related entities.

FIRST CAUSE OF ACTION
Failure to Provide Information
(Violations of FINRA Rules 8210 and 2010 by Ben Jen)

38. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

39. FINRA Rule 8210(a)(1) requires a "person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation."

40. FINRA Rule 8210(a)(2) provides that FINRA may “inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation . . . that is in such member’s or person’s possession, custody or control.”

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

42. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

43. As alleged above, on April 20, 2023, FINRA sent Jen a letter pursuant to FINRA Rule 8210 requesting certain documents and information. Jen’s response was due by May 4, 2023.

44. Among other things, the requests sought documents regarding electronic signatures for SPV and transactions in Company A shares (i.e., DocuSign envelopes), as well as electronic communications between Jen and certain individuals, including Rohne, regarding SPV, Windward, a related entity, and Jen and Rohne’s efforts to sell shares of Company A (or interests therein).

45. The documents and information were material to FINRA’s investigation. The requested documents and information related to Jen’s and Rohne’s representations to counterparties and potential investors regarding potential securities transactions, their handling of transaction-related documents, and their conduct at Windward.

46. Jen made a partial but substantially incomplete response to the April 20 letter request.

47. On May 25, 2023 and June 20, 2023, Jen represented to FINRA that he possessed additional responsive documents and information, including “a significant number” of additional emails.

48. On July 17, 2023, FINRA sent Jen, through counsel, a second letter pursuant to FINRA Rule 8210 requesting certain of the same documents and information that FINRA staff requested in the April 20 request letter. Jen's response was due by August 7, 2023.

49. Jen failed to produce any additional documents and information, including any additional email and any DocuSign envelopes, nor did Jen request an extension of time to produce the information and documents.

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

SECOND CAUSE OF ACTION
Failure to Appear for Testimony
(Violations of FINRA Rules 8210 and 2010 by Ray Rohne)

51. The Department of Enforcement realleges and incorporates by reference all prior paragraphs.

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

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

54. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

55. On July 25, 2023, FINRA properly personally served Rohne at his last known residential address with a letter requesting that he appear and provide testimony on August 2, 2023, pursuant to FINRA Rule 8210.

56. Rohne failed to appear and provide testimony on August 2, 2023, or request a postponement of this deadline.

57. On September 7, 2023, FINRA properly personally served Rohne at his last known residential address with a second letter requesting that he appear and provide testimony on September 14, 2023, pursuant to FINRA Rule 8210.

58. Rohne failed to appear and provide testimony on September 14, 2023, or request a postponement of this deadline.

59. Rohne's testimony was material to FINRA Staff's investigation of Rohne's potential rule violations and was necessary for FINRA to complete its regulatory mandate to fully investigate potential rule violations.

60. Rohne's failures to appear and provide testimony impaired FINRA's investigation of, among other things, his handling of documents related to the failed transaction involving Company A shares, representations to counterparties and investors regarding the offer and sale of securities, and his conduct and relationship with SPV, Windward, and related entities.

61. By failing to appear and provide testimony requested pursuant to FINRA Rule 8210, Rohne 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 Respondents 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 Respondents 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: August 1, 2024



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