

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

Department of Enforcement,

Complainant,

v.

Damian M. Baird,
CRD No. 3097243,

Respondent.

Disciplinary Proceeding
No. 2023077669201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In 2023, Respondent Damian M. Baird failed to provide information and documents and failed to appear for on-the-record testimony that FINRA requested pursuant to FINRA Rule 8210 as part of two separate FINRA investigations into his conduct. As a result, Baird violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Baird first registered with FINRA in July 1998 as an Investment Company and Variable Contracts Products Representative. From November 16, 2018 to May 22, 2020 he was registered with FINRA through an association with Morgan Stanley, and from June 5, 2020 to February 27, 2023 he was registered with FINRA through an association with Moors & Cabot, Inc.

3. On February 27, 2023, Moors & Cabot filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that Baird voluntarily resigned from Moors & Cabot on February 24, 2023.

4. On March 20, 2023, Moors & Cabot filed an amendment to Baird's Form U5 (the March U5 Amendment) disclosing a customer complaint received on March 1, 2023.

5. The March U5 Amendment stated that two of Baird's customers (a married couple) "wrote a check for \$50,000 . . . for deposit" into their account serviced by Baird, and the "[b]ank's fraud department [had] contacted [them] with concerns that the check which was presented for payment on February 24, 2023[,] may have been altered and was made payable to Damian Baird."

6. 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: (i) the Complaint was filed within two years after February 27, 2023, which was the effective date of termination of Respondent's registration with Moor & Cabot; and (ii) the Complaint charges him with failing to respond to FINRA's requests for information and for failing to appear for on-the-record testimony during the two-year period after the date on which he ceased to be registered or associated with a FINRA member.

FACTS

A. FINRA Investigates Baird in Connection with an Industry Arbitration

7. On or about July 23, 2020, Baird was named as the respondent in a FINRA arbitration filed by Morgan Stanley for alleged breach of promissory notes.

8. On October 3, 2022, the arbitration panel levied a fine on Baird for failure to comply with a discovery order dated August 3, 2022.

9. In January 2023, FINRA opened an investigation (No. 20230776692) to investigate whether Baird had failed to comply with his discovery obligations in that arbitration.

10. On March 22, 2023, in connection with its investigation, FINRA requested, pursuant to FINRA Rule 8210, that Baird provide documents and information including, but not limited to, his communications with Morgan Stanley and with FINRA's Dispute Resolution Services Department relating to that arbitration, as well as written statements regarding why he failed to produce certain discovery materials sought by the firm, why he failed to provide the identities of witnesses and copies of exhibits to the firm in advance of a fact hearing, and why he failed to comply with the arbitration panel's discovery order dated August 3, 2022 (March 22 Information Request). FINRA requested a response by April 6, 2023.

11. FINRA served the March 22 Information Request by certified mail and first-class mail to Baird's last known residential address as reflected in the Central Registration Depository (Baird's CRD Address).

12. On March 22, 2023, FINRA also sent a copy of the March 22 Information Request to Baird's personal email address, which he had previously used to communicate with FINRA's Dispute Resolution Services Department.

13. FINRA's certified mailing was returned and received by FINRA on March 30, 2023. The proof of delivery from the U.S. Postal Service (USPS) stated that the March 22 Information Request was returned to FINRA "due to Intended Recipient's delivery instructions on file." The first-class mailing also was returned to FINRA.

14. FINRA did not receive any notification that the March 22 Information Request it sent electronically to Baird at his personal email address was undeliverable.

15. Although Baird's response to the March 22 Information Request was due on or before April 6, 2023, he did not provide any information or documents by that date, nor did he request an extension of that deadline.

16. As a result, on April 10, 2023, FINRA sent a second letter pursuant to FINRA Rule 8210, again requesting that Baird provide the documents and information requested in the March 22 Information Request in connection with FINRA's investigation of Baird's conduct in the arbitration (March 22 Second Request). FINRA requested a response by May 1, 2023.

17. FINRA served the March 22 Second Request by certified mail and first-class mail to Baird's CRD Address and sent a copy to Baird's personal e-mail address.

18. According to the USPS's online tracking portal, the USPS attempted to deliver the certified mailing of the March 22 Second Request at Baird's CRD Address but found that address "vacant" on April 13, 2023. The USPS subsequently returned the first-class mailing to FINRA.

19. FINRA did not receive any notification that the copy of the March 22 Second Request sent electronically to Baird at his personal email address was undeliverable.

20. Although Baird's response to the March 22 Second Request was due on or before May 1, 2023, he did not provide any information or documents by that date, nor did he request an extension of that deadline.

B. FINRA Investigates Baird in Connection with the March U5 Amendment

21. In March 2023, FINRA opened a second matter (No. 20230782402) to investigate the allegations against Baird in the March U5 Amendment.

22. On March 23, 2023, in connection with that matter, FINRA requested, pursuant to FINRA Rule 8210, that Baird provide documents and information relating to, among other things, account statements for his bank and brokerage accounts, and any alterations he may have made to a check made by the complaining customers (March 23 Information Request). FINRA requested a response by April 7, 2023.

23. FINRA served the March 23 Information Request by certified mail and first-class mail to Baird's CRD Address and sent a copy to Baird's personal e-mail address.

24. FINRA's certified mailing was returned and received by FINRA on April 7, 2023. The proof of delivery from the USPS stated that the March 23 Information Request was returned to FINRA "due to Intended Recipient's delivery instructions on file." The first-class mailing also was returned to FINRA.

25. FINRA did not receive any notification that the March 23 Information Request it sent electronically to Baird at his personal email address was undeliverable.

26. Baird did not provide any information or documents in response to the March 23 Information Request by the April 7, 2023 deadline, nor did he request an extension of that deadline.

27. As a result, on April 10, 2023, FINRA sent a second letter pursuant to FINRA Rule 8210, again requesting that Baird provide the documents and information requested in the

March 23 Information Request in connection with FINRA's investigation of the allegations against Baird contained in the March U5 Amendment (March 23 Second Request). FINRA requested a response by May 1, 2023.

28. FINRA served the March 23 Second Request by certified mail and first-class mail to Baird's CRD Address and sent a copy to Baird's personal e-mail address.

29. According to the USPS's online tracking portal, the USPS attempted to deliver the certified mailing of the March 23 Second Request at Baird's CRD Address but found that address "vacant" on April 13, 2023. The USPS subsequently returned both the first-class and certified mailings to FINRA.

30. FINRA did not receive any notification that the March 23 Second Request it sent electronically to Baird at his personal email address was undeliverable.

31. Although Baird's response to the March 23 Second Request was due on or before May 1, 2023, Baird did not provide any information or documents by the May 1, 2023 deadline, nor did he request an extension of that deadline.

C. Baird Failed to Appear for Testimony

32. On March 23, 2023, in connection with its investigation of the allegations in the March U5 Amendment, FINRA requested, pursuant to FINRA Rule 8210, that Baird appear for on-the-record testimony (OTR) by videoconference at 9:30 a.m. Eastern Time on April 17, 2023 (March 23 OTR Request).

33. FINRA served its March 23 OTR Request by certified mail and first-class mail to Baird's CRD Address and sent a copy to Baird's personal e-mail address.

34. FINRA's certified mailing was returned and received by FINRA on April 7, 2023. The proof of delivery from the USPS stated that the March 23 OTR Request was returned to FINRA "due to Intended Recipient's delivery instructions on file."

35. FINRA did not receive any notification that the March 23 OTR Request it sent electronically to Baird at his personal email address was undeliverable.

36. Baird did not appear for testimony on April 17, 2023, nor did he request an adjournment of his testimony.

37. On April 18, 2023, pursuant to FINRA Rule 8210, FINRA sent Baird a second request to appear for an OTR by videoconference at 9:30 a.m. Eastern Time on May 1, 2023 (Second OTR Request).

38. FINRA served its Second OTR Request by certified mail and first-class mail to Baird's CRD Address and sent a copy to Baird's personal e-mail address.

39. According to the USPS's online tracking portal, the USPS attempted to deliver the certified mailing of the Second OTR Request at Baird's CRD Address but found that address "vacant" on April 21, 2023. FINRA's certified mailing was returned and received by FINRA Enforcement on July 14, 2023.

40. FINRA did not receive any notification that the Second OTR Request it sent electronically to Baird at his personal email address was undeliverable.

41. Baird did not appear for testimony on May 1, 2023, nor did he request an adjournment of his testimony.

42. At all relevant times, FINRA staff had no actual knowledge that Baird's CRD Address was out of date or inaccurate. In March 2023 and again in July 2023, FINRA staff confirmed through Lexis and CLEAR searches that Baird's CRD Address was current and that no alternate address was listed as current.

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

43. The Department of Enforcement realleges and incorporates by reference all preceding paragraphs.

44. 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.”

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

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

47. 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” in the conduct of their business.

48. While subject to FINRA’s jurisdiction, Baird failed to comply in any way with Department of Enforcement’s requests for documents and information made pursuant to FINRA Rule 8210 on two separate occasions—the March 22 Information Request and the March 23 Information Request.

49. The March 22 Information Request and the March 23 Information Request requested documents and information that were material to FINRA’s investigations in two separate matters. The requested documents and information were relevant to determining, among

other things, whether Baird violated FINRA Rules concerning discovery in FINRA arbitrations and, separately, whether he altered a customer check and attempted to convert customer funds. His failure to provide the requested documents and information impeded FINRA's investigations.

50. By virtue of the foregoing, Baird violated FINRA Rules 8210 and 2010.

**SECOND CAUSE OF ACTION
Failure to Appear for Testimony
(FINRA Rules 8210 and 2010)**

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

52. FINRA Rule 8210(a)(1) provides that FINRA 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, complaint, examination, or proceeding[.]"

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

54. 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" in the conduct of their business.

55. While subject to FINRA's jurisdiction, Baird failed to appear and provide testimony requested pursuant to FINRA Rule 8210.

56. Baird's testimony was material to FINRA's investigation concerning whether he altered a customer check and attempted to convert customer funds. Baird's failure to appear for testimony pursuant to Rule 8210 impeded FINRA's investigation.

57. By virtue of the foregoing, Baird violated FINRA Rules 8210 and 2010.

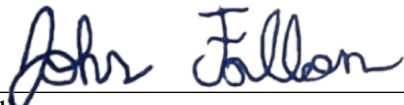
RELIEF REQUESTED

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

- A. make findings of fact and conclusions of law that Baird 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 Baird 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: September 29, 2023



John Fallon
Attorney
FINRA Department of Enforcement
200 Liberty Street
New York, NY 10281
Phone: 212-858-3901
E-mail: john.fallon@finra.org

Elissa Meth Kestin
Senior Director
FINRA Department of Enforcement
10 Harborside Plaza
3 Second Street, Suite 900
Jersey City, NJ 07302
Phone: 212-858-4702
E-mail: elissa.methkestin@finra.org