

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILFREDO FELIX
(CRD No. 2693672),

Respondent.

Disciplinary Proceeding
No. 2020065128501

Hearing Officer–BEK

DEFAULT DECISION

April 27, 2021

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

Appearances

For the Complainant: Karen C. Daly, Esq., and Kevin M. Hartzell, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement properly served Respondent Wilfredo Felix, Jr. with two Notices of Complaint and the Complaint. Felix did not file an Answer. Enforcement was ordered to file a motion for entry of default decision (“Default Motion”) and did so after serving Felix with two additional Notices of Complaint and the Complaint. The Default Motion is supported by the Declaration of Enforcement counsel Karen C. Daly (“Daly Decl.”) and 20 exhibits (Ex. 1 through Ex. 20). Felix did not respond to the Default Motion. Accordingly, the allegations in the Complaint are deemed admitted, Enforcement’s Default Motion is granted,¹ and Felix is barred from associating with any FINRA member in any capacity.

¹ FINRA Rule 9269. Felix 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

Felix entered the securities industry in 1995.² After working for several FINRA member firms, Felix purchased Primex Prime Electronic Execution, Inc. d/b/a Primex (CRD No. 29394) (Primex) in 2001.³ From 2001 until May 27, 2020—when FINRA canceled Primex's membership⁴—Felix was registered with FINRA through Primex as a Corporate Securities Representative and a General Securities Principal.⁵ He served as Primex's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and Financial and Operations Principal ("FINOP"), among other roles.⁶ Felix's registrations lapsed when FINRA canceled Primex's membership.⁷

Relevant to the importance of the information requested by FINRA, Felix and his company, Primex, were respondents in a previous FINRA disciplinary proceeding, which resulted in a hearing panel decision issued on July 1, 2020.⁸ The panel found that Felix failed to provide a personal tax-related document requested pursuant to FINRA Rule 8210 and that Primex had provided untimely information.⁹ The panel also found that Felix and Primex had made and preserved inaccurate and false expense records, causing Primex to maintain an inaccurate general ledger and file inaccurate quarterly FOCUS reports.¹⁰ The panel decision barred Felix in all capacities for the failure to provide the personal tax-related documents requested pursuant to FINRA Rule 8210, and imposed a censure and fine against Primex for its violations.¹¹ Primex did not appeal that decision and it became final as to Primex on August 18,

² Complaint ("Compl.") ¶ 2; Ex. 1, at 10 (CRD).

³ Compl. ¶ 2; Ex. 1.

⁴ Primex's membership with FINRA was canceled for failure to pay arbitration and other fees due to FINRA. Compl. ¶¶ 13-14.

⁵ Compl. ¶ 4; Ex. 1, at 4-5.

⁶ Compl. ¶ 2.

⁷ Compl. ¶ 2; Ex. 1, at 4.

⁸ Compl. ¶ 4; Ex. 2.

⁹ Compl. ¶¶ 4, 6; Ex. 2.

¹⁰ Compl. ¶ 5; Ex. 2.

¹¹ Compl. ¶¶ 4, 7; Ex. 2.

2020.¹² Felix, however, did appeal that decision to the National Adjudicatory Counsel (NAC), which appeal stayed the bar.¹³ That appeal is still pending with the NAC.¹⁴

B. FINRA’s Jurisdiction

Although Felix 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 after May 27, 2020, which was the effective date of termination of Felix’s registration with FINRA through Primex, and (2) the Complaint charges Felix 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.

C. Origin of the Investigation

FINRA staff initiated a routine examination of Primex in early 2020.¹⁵ During the examination, they issued several requests, directed to Felix’s attention, for documents and information.¹⁶ Among the documents sought were the general ledger and annual audit, basic documents integral to FINRA staff’s routine examination as well as determining whether Felix and Primex had continued to make and preserve inaccurate books and records.¹⁷ Felix failed to produce the requested documents or otherwise comply with the requests, resulting in this proceeding.¹⁸

D. Respondent’s Default

Enforcement served Felix with several Notices of Complaint and Complaint in accordance with FINRA Rules 9131 and 9134. Specifically, Enforcement sent the Complaint and the first and second Notices of Complaint by first-class certified mail, return receipt requested, on December 3, 2020, and January 4, 2021, to his current residence as reflected in the Central Registration Depository (“CRD address”).¹⁹ Because Felix was no longer registered through or associated with any FINRA member, no business address was listed for him in CRD.²⁰ Upon

¹² Compl. ¶ 8.

¹³ Compl. ¶ 4; *see also* FINRA Rule 9311(b) (an appeal to the NAC of a hearing panel decision operates as a stay).

¹⁴ Compl. ¶ 4; Daly Decl. ¶ 11; *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2020 FINRA Discip. LEXIS 32 (OHO July 1, 2020), *appeal docketed* (NAC July 27, 2020).

¹⁵ Compl. ¶ 9.

¹⁶ Compl. ¶ 10.

¹⁷ Compl. ¶¶ 10, 44; Daly Decl. ¶ 65.

¹⁸ Daly Decl. ¶ 18.

¹⁹ Daly Decl. ¶¶ 26, 36.

²⁰ Daly Decl. ¶ 27.

being informed by the U.S. Postal Service that the January 4 Notice of Complaint had been lost in the mail, Enforcement verified that Felix’s CRD address had not been changed, and sent a third Notice of Complaint and Complaint on February 3, 2021, by U.S. Postal Service Express Mail, to his CRD address.²¹ This third mailing was refused by an address occupant who represented that Felix “was not known at the delivery address.”²²

Enforcement thereafter ran a Lexis report to verify Felix’s address, which report listed Felix’s CRD address and an address associated with Primex as his current addresses.²³ On February 24, Enforcement mailed yet a fourth notice of Complaint and Complaint to Felix at both his CRD address and the Primex address via first-class mail and Express Mail, respectively.²⁴ The first-class mail was not returned, and the Express Mail was unable to be delivered “because the address was vacant and/or the business was no longer operating at the location.”²⁵ In addition to the above four mailings, Enforcement also emailed the Notice of Complaint and Complaint to Felix’s email address.²⁶ Moreover, in accordance with FINRA Rule 9215(f), Enforcement’s second, third, and fourth Notices of Complaint informed Felix that his failure to answer the Complaint would allow the Hearing Officer, in the exercise of his discretion, to treat as admitted, the Complaint’s allegations and to issue a default decision against him.²⁷

Pursuant to FINRA Rule 9134(a)(2) and (b)(1) and (3), service of a complaint may be accomplished, inter alia, by U.S. Postal Service first-class mail, first-class certified mail, or Express Mail, at a person’s CRD address, and service is complete upon mailing. As noted above, when a respondent does not file an answer to the initial complaint, a second notice of complaint must be served notifying the respondent that failure to respond could result in a default decision against him. Here, Enforcement served Felix four times at his CRD address, with the second, third, and fourth Notices providing the required default notification. Moreover, on learning that the third mailing had been rejected, Enforcement attempted to find other addresses for Felix, confirmed that his CRD address was still listed as current by Lexis (as was the Primex business address), and mailed a fourth Notice of Complaint and Complaint to his CRD address and the Primex address.

²¹ Daly Decl. ¶¶ 44-45.

²² Daly Decl. ¶ 48.

²³ Daly Decl. ¶¶ 51-53.

²⁴ Daly Decl. ¶ 54.

²⁵ Daly Decl. ¶¶ 57-58; Ex. 20, at 1.

²⁶ Daly Decl. ¶¶ 28, 37, 46, 55.

²⁷ Ex. 11, 14, 18.

In sum, Enforcement has properly served Felix.²⁸ He has not filed an Answer or otherwise responded to the Complaint. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted and the Default Motion is granted.

E. Felix Failed to Respond to Requests for Information

FINRA Rule 8210 requires anyone subject to FINRA jurisdiction to provide the information requested by FINRA staff and “is at the heart of the self-regulatory system for the securities industry.”²⁹ Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information necessary to conduct “its investigations and fulfill its regulatory mandate.”³⁰ Rule 2010 requires FINRA members and associated persons to “observ[e] 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.”³¹

On July 8, July 27, and August 28, 2020, Enforcement staff sent Felix requests pursuant to Rule 8210 for Primex’s general ledger from March 2019 through May 2020 and its 2019 annual audit.³² 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.³³ All three requests were sent to Felix by first-class certified mail, return receipt requested, to his CRD address.³⁴ Additionally, the third request was also sent by regular first-class mail (not certified).³⁵ Coincident with all three mailings, copies were also sent to Felix’s business email account.³⁶ The first two certified mailings were both returned to FINRA as unclaimed.³⁷ The first-class (not certified) mailing of the third request was not returned, and none of the emails were returned or

²⁸ *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)).

²⁹ *Dep’t of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *10-11 (NAC May 26, 2017) (internal quotations omitted).

³⁰ *Id.*

³¹ *Id.*

³² Compl. ¶¶ 15, 23, 29.

³³ Compl. ¶ 16.

³⁴ Compl. ¶¶ 17, 24, 30.

³⁵ Compl. ¶ 30.

³⁶ Compl. ¶¶ 18, 24, 30.

³⁷ Compl. ¶¶ 20, 26.

rejected.³⁸ The first-class certified mailing containing the third request, however, was left with an individual whose name was recorded by the U.S. Postal Service as “Mr. Wilfredo.”³⁹

Presumably, “Mr. Wilfredo” is the Respondent, but even if he is not, notices sent under FINRA Rule 8210 are presumed to have been received by the associated person when the notices are sent to the associated person’s CRD address, as is the case here.⁴⁰ Felix failed to reply or otherwise produce the requested documents and information.⁴¹

Thus, Respondent violated FINRA Rules 8210 and 2010.

III. Sanctions

Citing FINRA’s Sanctions Guidelines (“Guidelines”), Enforcement seeks to bar Felix from associating with any FINRA member firm. As discussed below, to protect the investing public⁴² and deter future misconduct,⁴³ a bar is appropriate in this case.

The Guidelines recommend that, if an individual did not respond in any manner to Rule 8210 requests, a bar in all capacities should be standard.⁴⁴ Although the requests for information arose out of a routine examination, the requested documents—the general ledger and annual audit—were highly relevant and necessary to basic member firm oversight as well as to FINRA staff’s routine examination.⁴⁵ Additionally, Felix had recently undergone a disciplinary proceeding for misclassifying personal expenses as expenses of his firm, Primex. He appealed that decision and the bar was stayed. Under the circumstances, however, the requested documents were also highly relevant to determining whether Felix continued to misclassify personal expenses while the previous disciplinary decision was (and still is) on appeal.⁴⁶ Moreover, Enforcement is not aware of any factors mitigating Felix’s failure to provide the requested documents,⁴⁷ and none are apparent from the record.

³⁸ Compl. ¶¶ 21, 27, 33-34.

³⁹ Compl. ¶¶ 35-36.

⁴⁰ FINRA Rule 8210(d).

⁴¹ Compl. ¶¶ 22, 28, 37-38.

⁴² Guidelines at 1 (“The regulatory mission of FINRA is to protect investors and strengthen market integrity . . .”).

⁴³ *Id.* at 2 (General Principle No. 1).

⁴⁴ *Id.* at 33.

⁴⁵ Compl. ¶ 44; Daly Decl. ¶ 65.

⁴⁶ Compl. ¶ 44; Daly Decl. ¶ 65.

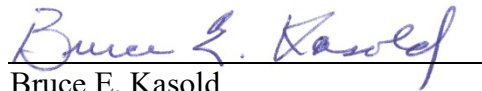
⁴⁷ Daly Decl. ¶ 63.

In light of the importance of the requested information to FINRA's examination,⁴⁸ and in the absence of any mitigating factors, the appropriate sanction is a bar in all capacities.

IV. Order

Respondent Wilfredo Felix, Jr. is barred from associating with any FINRA member firm in any capacity for failing to provide information 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:

Wilfredo Felix, Jr. (via email, overnight courier, and first-class mail)
Karen C. Daly, Esq. (via email)
Kevin M. Hartzell, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁴⁸ 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).