

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHE D. JEAN
(CRD No. 5918186),

Respondent.

Disciplinary Proceeding
No. 2022076975901

Hearing Officer–DRS

DEFAULT DECISION

June 27, 2023

Respondent is barred from associating with any FINRA member in any capacity for failing to provide information and documents and appear for on-the-record testimony that FINRA requested in connection with an investigation.

Appearances

For the Complainant: Matthew M. Ryan, Esq., Melissa J. Turitz, Esq., and Jeff Fauci, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint against Respondent Miche D. Jean alleging that he failed to provide information and documents and appear for on-the-record testimony that FINRA requested as part of an investigation into whether he converted money from his customer. As a result, the Complaint alleged, Jean violated FINRA Rules 8210 and 2010. When Jean failed to answer the Complaint, I ordered Enforcement to file a motion for entry of default decision supported by a memorandum of law and declaration.

On June 5, 2023, Enforcement filed its motion for entry of default decision (“Default Motion”), together with a declaration from Enforcement counsel Matthew M. Ryan, Esq. (“Ryan Decl.”) in support of the Default Motion and 16 supporting exhibits (CX-1 through CX-16). And on June 14, 2023, Enforcement filed a supplemental declaration executed by Ryan (“Ryan Supp. Decl.”). Jean did not respond to the Default Motion. For the reasons set forth below, I grant the

Default Motion and issue this Default Decision barring Jean from associating with any FINRA member in any capacity.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Jean first registered with FINRA in December 2015 as a General Securities Representative through his association with Morgan Stanley.¹ He remained registered through his association with that firm through November 12, 2020.² On that date, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that it had discharged Jean due to concerns regarding his “trading strategy for certain clients, whether [he] exercised unauthorized discretion in certain accounts, and if [he] communicated fully and timely with same clients regarding transactions.”³ On March 30, 2021, the firm filed an amended Form U5 disclosing that a customer had complained that, while associated with the firm, Jean engaged in “unauthorized trading with respect to exchange traded funds.”⁴ Jean has not been registered or associated with any FINRA member since November 12, 2020.⁵

B. FINRA's Jurisdiction

Enforcement filed the Complaint within two years after the date of an amendment to Jean's notice of termination. The amendment, which was filed within two years of his original notice of termination, disclosed that Jean may have engaged in conduct actionable under any applicable statute, rule, or regulation. Also, the Complaint charges Jean with failing to respond to FINRA requests for information and failing to appear for on-the-record testimony during the two-year period after the date on which Morgan Stanley filed the amendment to Jean's Form U5. Therefore, although Jean is no longer registered or associated with a FINRA member, FINRA retains jurisdiction over him under Article V, Section 4(a) of FINRA's By-Laws for the purposes of this disciplinary proceeding.⁶

C. Origin of the Investigation

This disciplinary proceeding arose from an investigation FINRA began after reviewing a Consent Order issued by the Maryland Securities Commissioner. In that order, Jean consented to findings that, while associated with Morgan Stanley, he fraudulently initiated four ACH (Automated Clearing House) transfers from a Morgan Stanley customer's brokerage account to

¹ Ryan Decl. ¶ 5; Complaint (“Compl.”) ¶ 2; CX-1, at 3.

² Ryan Decl. ¶ 5; CX-1, at 3.

³ Ryan Decl. ¶ 6; Compl. ¶ 3; CX-2, at 2.

⁴ Ryan Decl. ¶ 8; Compl. ¶ 4; CX-3, at 6.

⁵ Ryan Decl. ¶ 7; CX-1, at 3.

⁶ Ryan Decl. ¶ 10.

pay his personal credit card bill.⁷ The Consent Order imposed sanctions that, among other things, barred Jean from engaging in the securities or investment advisory business in Maryland.

D. Respondent's Default

Under FINRA Rules 9131(b) and 9134(a)(2) and (b)(1), a Complaint may be served on a natural person by U.S. Postal Service first class certified mail at the person's residential address, as reflected in the Central Registration Depository ("CRD"). But if the serving party has actual knowledge that the person's CRD address is outdated, that party must serve duplicate copies to the person's last known residential address and the business address in the CRD of the entity with which the person is employed or affiliated. Enforcement served Jean with the Complaint and Notice of Complaint, and later, with the Complaint and Second Notice of Complaint, by sending them by U.S. Postal Service first class certified mail, return receipt requested, to two residential addresses reflected in CRD as current addresses for him.⁸ Enforcement represents that it lacks actual knowledge that either of those two addresses are or were out of date.⁹ Accordingly, Enforcement served the Complaint in accordance with FINRA's applicable rules.

Jean did not file an answer or otherwise respond to the Complaint. I therefore find that he defaulted.¹⁰ And, as a result, I deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a)(2).

E. Governing Law

The Complaint charges Jean with violating FINRA Rule 8210. This rule authorizes FINRA, with respect to any matter involved in an investigation, to: (1) "require a . . . person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff . . ." ¹¹ and (2) "inspect and copy the books, records, and accounts of such . . . person . . . that is in such . . . person's possession, custody or control."¹² Also, "[n]o . . . person shall fail to provide information or testimony . . . pursuant to" that rule.¹³

⁷ Ryan Decl. ¶ 4; CX-4, at 3–5 *see also* CX-5, at 2.

⁸ Ryan Decl. ¶ 11, 13, 22; CX-6; CX-7, at 1; CX-16, at 1. CRD shows Jean residing at one address beginning in February 2019. CX-6. On December 24, 2021, an additional residential address was added to CRD reflecting that he began residing at that new address in December 2021. CX-6; CX-1, at 9. CRD indicates that Jean presently resides at both addresses.

⁹ Ryan Decl. ¶ 12; Ryan Supp. Decl. ¶¶ 5, 7.

¹⁰ Jean is notified that he may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

¹¹ FINRA Rule 8210(a)(1).

¹² FINRA Rule 8210(a)(2).

¹³ FINRA Rule 8210(c).

Constructive notice of the request, not actual notice of it, “is all that FINRA Rule 8210 demands.”¹⁴ Under that rule, a formerly registered person is deemed to have received a FINRA Rule 8210 request if it was mailed or otherwise transmitted to their “the last known residential address . . . as reflected in [CRD].” But if the FINRA staff responsible for sending the request actually knows “that the address in [CRD] is out of date or inaccurate” and knows of another “more current address,” then it must also mail or transmit a copy of the request to that other address.¹⁵

Jean is also charged with violating FINRA Rule 2010, which requires a FINRA member “in the conduct of its business” to “observe high standards of commercial honor and just and equitable principles of trade.” This Rule also applies to persons associated with a member, as they “have the same duties and obligations as a member under the Rules.”¹⁶ “A violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010.”¹⁷

F. Jean Failed to Provide Information and Documents Requested Under FINRA Rule 8210.

On December 23, 2022, FINRA sent Jean a letter, under FINRA Rule 8210, requesting that he provide documents and information in connection with its investigation into whether he converted funds from a customer’s brokerage account.¹⁸ The request sought, among other things, information identifying all debit card, credit card, and/or charge accounts he used or maintained, and copies of monthly statements for such debit card, credit card, and/or charge accounts.¹⁹ FINRA sent the request by Federal Express to Jean’s last known residential address as reflected in CRD.²⁰ FINRA also sent a copy of the December 23 request to his personal email address that he had previously used to communicate with FINRA.²¹ Jean replied to FINRA’s December 23 email that same day, acknowledging that he had received the request.²²

¹⁴ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *36 (NAC June. 3, 2014).

¹⁵ FINRA Rule 8210(d). As noted above, CRD lists two current residential addresses for Jean. *See* n.8. I find that for the purposes of applying FINRA Rule 8210(d) in this case, the most recently added address is Jean’s last known residential address as reflected in CRD. Ryan Decl. ¶ 11; Ryan Supp. Decl. ¶ 4; CX-6.

¹⁶ FINRA Rule 0140(a).

¹⁷ *Dep’t of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *37 n.18 (NAC Mar. 23, 2023) (citing *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *41 n.49 (Sept. 24, 2015)).

¹⁸ Compl. ¶ 8.

¹⁹ Compl. ¶ 8.

²⁰ Compl. ¶ 9; CX-6.

²¹ Compl. ¶ 11.

²² Compl. ¶ 12.

Jean, however, failed to respond by the deadline specified in the request or seek an extension of the deadline.²³ So FINRA sent him a second request on January 11, 2023, also under FINRA Rule 8210, for the documents and information requested on December 23.²⁴ FINRA sent the request by U.S. Postal Service first class mail and Federal Express to his last known residential address as reflected in CRD.²⁵

Jean also failed to respond to the second request by the deadline specified in it or seek an extension of the deadline.²⁶ Therefore, on January 26, 2023, FINRA sent him a third request under FINRA Rule 8210. This request, like the second one, sought the information and documents requested on December 23.²⁷ FINRA sent the third request by U.S. Postal Service first class mail and Federal Express to his last known residential address as reflected in CRD.²⁸ Jean failed to respond to the third request, as well, by the specified due date or request an extension.²⁹

To date, Jean has failed to provide any information or documents in response to the December 23, January 11, or January 26 information requests.³⁰

G. Jean Failed to Appear for On-the-Record Testimony Requested Under FINRA Rule 8210.

In addition to requesting information and documents from Jean, Enforcement sought his on-the-record testimony. On December 23, 2022, in connection with its investigation, FINRA requested, under FINRA Rule 8210, that Jean appear for testimony on January 19, 2023.³¹ FINRA sent the December 23 testimony request by Federal Express to Jean's last known residential address as reflected in CRD.³² Jean did not appear for his scheduled testimony on January 19, 2023, nor did he request an extension of that deadline.³³

When Jean did not appear for his scheduled testimony on January 19, FINRA sent him another request that day under FINRA Rule 8210 for his testimony in connection with its

²³ Compl. ¶ 13.

²⁴ Compl. ¶ 14.

²⁵ Compl. ¶ 15.

²⁶ Compl. ¶ 21.

²⁷ Compl. ¶ 22.

²⁸ Compl. ¶ 23.

²⁹ Compl. ¶ 28.

³⁰ Compl. ¶ 29.

³¹ Compl. ¶ 30.

³² Compl. ¶ 31.

³³ Compl. ¶ 38.

investigation.³⁴ The request scheduled his testimony for January 25, 2023.³⁵ FINRA sent Jean the January 19 testimony request by U.S. Postal Service first class mail and Federal Express to his last known residential address as reflected in CRD.³⁶ Jean did not appear for testimony on January 25, 2023, nor did he request an extension of that testimony date.³⁷

H. Jean Violated FINRA Rules 8210 and 2010 by Failing to Provide Information and Documents and to Appear for Testimony Requested Under FINRA Rule 8210.

FINRA served the December 23, 2022, January 11 and 26, 2023 information requests and the December 23, 2022 and January 19, 2023 testimony requests pursuant to the service provisions of FINRA Rule 8210(d). Enforcement (1) mailed or otherwise transmitted the requests to Jean's last known residential address as reflected in CRD and (2) lacked actual knowledge that this address was outdated or inaccurate.³⁸ As a result, I deem Jean to have received the requests.³⁹ I further find that Jean received actual notice of the December 23, 2022 information request because he responded to the email sending it to him, acknowledging receipt of the request.

Accordingly, I find that by failing to provide any information or documents in response to the December 23, January 11, or January 26 information requests, and by failing to appear for testimony as directed by the December 23, 2022 and January 19, 2023 FINRA Rule 8210 requests, Jean violated FINRA Rules 8210 and 2010.

III. Sanctions

Under FINRA's Sanction Guidelines ("Guidelines"), if an individual did not respond in any manner to a request made under FINRA Rule 8210, a bar is standard.⁴⁰ The Guidelines also recommend a fine of \$10,000 to \$50,000.⁴¹ The sole principal consideration in determining sanctions for failing to respond is "[t]he importance of the information requested as viewed from FINRA's perspective."⁴² The information, documents, and testimony FINRA sought were material to FINRA's investigation; they were relevant to determining whether Jean had converted funds from a

³⁴ Compl. ¶ 39.

³⁵ Compl. ¶ 39.

³⁶ Compl. ¶ 40.

³⁷ Compl. ¶ 45.

³⁸ Ryan Decl. ¶ 12; Ryan Supp. Decl. ¶ 5.

³⁹ *Dep't of Enforcement v. Felix*, No. 2020065128501, 2022 FINRA Discip. LEXIS 13, at*16 (NAC Oct. 13, 2022) ("Because FINRA properly served the FINRA Rule 8210 requests, Felix is deemed to have received them. See FINRA Rule 8210(d).").

⁴⁰ Guidelines at 93 (2022) https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

⁴¹ *Id.*

⁴² *Id.*

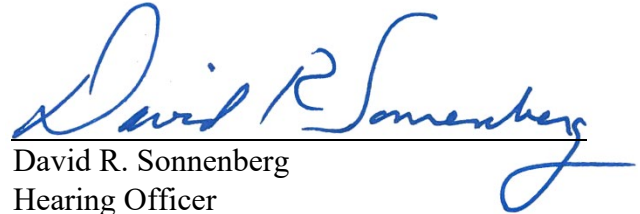
Morgan Stanley customer's account, according to Enforcement.⁴³ And, Enforcement maintains, his failure to comply with the requests impeded the investigation.⁴⁴ Thus, the information Enforcement requested was important to the investigation.

In light of the foregoing, and because I find that there are no mitigating factors, Jean should be barred from associating with any FINRA member in any capacity. But, in light of the bar, I do not also impose a fine.⁴⁵

IV. Order

Enforcement's Default Motion is **GRANTED**. For violating FINRA Rules 8210 and 2010 by failing to provide information and documents and to appear for on-the-record testimony as required by FINRA Rule 8210, Respondent Miche D. Jean is barred from associating with any FINRA member firm in any capacity. The bar shall be effective immediately if this Default Decision becomes FINRA's final action.

SO ORDERED.


David R. Sonnenberg
Hearing Officer

Copies to:

Miche D. Jean (via first-class mail, overnight courier, and email)
Matthew M. Ryan, Esq. (via email)
Melissa J. Turitz, Esq. (via email)
Jeff Fauci, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁴³ Compl. ¶¶ 52, 59.

⁴⁴ Compl. ¶¶ 52, 59.

⁴⁵ Guidelines at 9 (Technical Matters) (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”). The record did not demonstrate customer loss.