

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TIMOTHY P. HIGGINS
(CRD No. 2282547),

Respondent.

Disciplinary Proceeding
No. 2018056490303

Hearing Officer–MC

DEFAULT DECISION

September 21, 2022

Respondent Timothy P. Higgins is barred from associating with any FINRA member firm in any capacity for failing to appear and provide testimony as required when requested pursuant to FINRA Rule 8210.

Appearances

For the Complainant: Vaishali Shetty, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Conducting an investigation, FINRA staff twice requested that Respondent Timothy P. Higgins appear and provide testimony. Higgins did not comply with the requests. Consequently, the Department of Enforcement issued the Complaint charging him with violating FINRA Rules 8210 and 2010. Although Enforcement properly served Higgins with the Complaint, Higgins did not file an answer or respond in any manner. Hence, Enforcement filed a motion for entry of a default decision (“Default Motion”) with supporting documents, including a memorandum of law (“Enforcement’s Memorandum”), the declaration of Enforcement counsel Vaishali Shetty (“Shetty Decl.”), and exhibits. Higgins has not responded to the Default Motion.

Therefore, as explained below, I find Higgins in default, deem the allegations in the Complaint admitted, and grant the Default Motion.¹ After considering the facts, Enforcement’s

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

recommendations, and applying FINRA’s Sanction Guidelines, I find it appropriate to bar Higgins from associating with any FINRA member firm for violating FINRA Rules 8210 and 2010.

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background and FINRA’s Jurisdiction

Higgins entered the securities industry in 1993 and registered as a General Securities Representative. He maintained his registration through various FINRA member firms until April 2015 when he registered as a General Securities Representative through member firm Spartan Capital Securities, LLC. On July 7, 2020, Spartan terminated Higgins’s registration when it filed a Uniform Termination Notice for Securities Industry Registration. He is not currently registered with FINRA or associated with a member firm.²

Enforcement filed the Complaint on June 17, 2022. The misconduct alleged in the Complaint occurred in April and May 2022.³ Thus both the alleged misconduct and the filing of the Complaint occurred before the expiration of FINRA’s jurisdiction, which would have happened two years after Spartan terminated Higgins’s registration.⁴ Therefore, pursuant to Article V, Section 4 of FINRA’s By-Laws, Higgins remains subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding.

B. Origin of the Investigation

Higgins came to the attention of FINRA staff during an examination of Spartan Capital Securities, LLC in 2018. The examination focused on possible excessive trading and churning by the firm’s registered representatives. FINRA staff subsequently found evidence indicating that Higgins may have traded excessively in two customer accounts from January 2017 to August 2019.⁵ This prompted the staff to investigate Higgins’s trading in the accounts.

C. Respondent Failed to Appear and Provide Testimony

To pursue its investigation, the staff issued a request under FINRA Rule 8210 for Higgins to appear to provide testimony in an on-the-record interview (“OTR”) on April 13, 2022. The staff sent the request by certified mail, return receipt requested, as well as by first-class mail, to both Higgins’s home address as it appears in FINRA’s Central Registration Depository (“CRD address”) and a second address the staff found in a Lexis-Nexis search.⁶ The documents sent by

² Complaint (“Compl.”) ¶¶ 2–5; Shetty Decl. ¶¶ 8–10.

³ Compl. ¶¶ 15, 19.

⁴ Shetty Decl. ¶ 12.

⁵ *Id.* ¶ 4.

⁶ Compl. ¶¶ 12–13.

certified mail were returned, but those sent by first-class mail were not.⁷ Higgins did not respond, did not ask for an alternative date, and did not appear on April 13.⁸

Consequently, the staff sent a second Rule 8210 request for Higgins to testify at an OTR set for May 3, 2022. As before, the staff sent the request by certified and first-class mail to both Higgins's CRD address and the second address. This time, all four mailings were returned undelivered. Also as before, Higgins did not contact the staff to reschedule, and did not appear at the OTR.⁹

Rule 8210(d) states that a notice to provide testimony "shall be deemed received" by a "currently or formerly registered person" when, as here, it is mailed to "the last known residential address of the person as reflected in the Central Registration Depository." Thus, FINRA staff properly served Higgins with its Rule 8210 requests.¹⁰

FINRA Rule 8210(a)(1) requires all persons within FINRA's jurisdiction, when asked by FINRA investigative staff, "to testify at a location specified by FINRA staff, under oath . . . with respect to any matter involved in the investigation." Rule 8210(c) reiterates unambiguously that nobody subject to FINRA's jurisdiction "shall fail to provide information or testimony" when requested. By failing to appear and testify at the OTRs in April and May 2022, Higgins violated Rule 8210. Furthermore, by violating Rule 8210 Higgins also violated his ethical obligations under Rule 2010.¹¹

D. Respondent's Default

In a single cause of action, the Complaint charges Higgins with failing to appear and testify. Enforcement served the Complaint and Notice of Complaint on Higgins by U.S. Postal Service first-class certified mail, and by first-class mail, at his CRD address and the second address.¹² The documents sent by certified mail to both addresses were returned; the first-class mailings were not.¹³

When Higgins did not answer the Complaint or respond to it within the prescribed time, Enforcement served Higgins with the Complaint and Second Notice of Complaint at the same two addresses by the same means as before. This time, both the documents sent by certified mail

⁷ Compl. ¶ 14.

⁸ Compl. ¶ 15.

⁹ Compl. ¶¶ 16–19.

¹⁰ *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *16 (July 27, 2015).

¹¹ *Id.* at *11.

¹² Shetty Decl. ¶¶ 13, 14, 16.

¹³ *Id.* ¶¶ 18–19.

and those sent by first-class mail were returned.¹⁴ Once again, Higgins did not file an Answer or otherwise respond.¹⁵

As these facts demonstrate, Enforcement's service of the Complaint complied with FINRA Rules 9131 and 9134. By not filing an answer or any other response to the Complaint, Higgins defaulted.

III. Sanctions

For these violations, Enforcement asks that Higgins be barred from associating with any FINRA member in any capacity.¹⁶

FINRA's Sanction Guidelines state that a bar should be the standard sanction for violating Rule 8210. The applicable Principal Consideration in Determining Sanctions for failure to respond to a Rule 8210 request is the importance of the information requested, from FINRA's perspective.¹⁷ Enforcement represents that the staff needed Higgins's testimony to determine whether he engaged in excessive trading in the accounts of two customers.¹⁸ Thus, the information FINRA staff sought to elicit from Higgins was important and necessary to the investigation, and this is an aggravating factor. Higgins's failure to testify stymied the investigation. There are no countervailing mitigating factors in the record of this case.

Therefore, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent Timothy P. Higgins violated FINRA Rules 8210 and 2010 when he failed to provide testimony as he was required to do when requested by FINRA staff. For this misconduct, he is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Matthew Campbell
Hearing Officer

¹⁴ *Id.* ¶¶ 25–26.

¹⁵ *Id.* ¶¶ 27–29.

¹⁶ Enforcement's Memorandum 10.

¹⁷ FINRA Sanction Guidelines at 33 (Oct. 2021), <https://www.finra.org/sanctionguidelines>.

¹⁸ Enforcement's Memorandum 10.

Copies to:

Timothy P. Higgins (via FedEx and first-class mail)

Vaishali Shetty, Esq. (via email)

Matthew Minerva, Esq. (via email)

Jennifer L. Crawford, Esq. (via email)