

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GUSTAVO TRUJILLO FRANCO
(CRD No. 6793684),

Respondent.

Disciplinary Proceeding

No. 2019064884501

Hearing Officer–RES

DEFAULT DECISION

May 28, 2020

Respondent is barred from associating with any FINRA member in any capacity for failing to appear for on-the-record testimony as required by FINRA Rule 8210.

Appearances

For Complainant: J. Loyd Gattis, Esq., Michael P. Manly, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint on February 26, 2020 against Respondent Gustavo Trujillo Franco, formerly a registered foreign associate of a FINRA member firm. In a single cause of action, the Complaint alleges that Respondent twice failed to appear and provide on-the-record (“OTR”) testimony as directed by two FINRA Rule 8210 requests sent by FINRA’s Department of Member Supervision (“Member Supervision”).¹ According to the Complaint, this alleged misconduct violated FINRA Rules 8210 and 2010.²

After Enforcement served Respondent with the Complaint, the First Notice of Complaint, and the Second Notice of Complaint, Respondent failed to file an Answer. At my direction, Enforcement filed a motion for entry of default decision (“Default Motion”). Respondent did not

¹ Complaint (“Compl.”) ¶ 1.

² Compl. ¶ 1.

file an opposition or otherwise respond to Enforcement’s Default Motion. For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Background

Respondent Gustavo Trujillo Franco was registered with FINRA as a foreign associate from May 11, 2017 through March 15, 2018, and he associated with a FINRA member firm, Global Strategic Investments, LLC (“GSI”), in the same period.³ Respondent is not presently registered with FINRA or associated with a FINRA member firm.

B. Jurisdiction

Although Respondent is no longer registered or associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction under Article V, Section 4 of FINRA’s By-Laws for purposes of this proceeding because the Complaint (1) was filed within two years of the effective date of the termination of Respondent’s registration through GSI, and (2) charges Respondent with failure to appear for OTR testimony in the two-year period after the date on which he ceased to be registered or associated with a FINRA member firm.⁴

C. Origin of the Investigation

The investigation originated from a routine examination of a FINRA member firm (“Firm A”) conducted by Member Supervision.⁵ That examination led to the discovery of certain dealings between Firm A and Respondent, which prompted Member Supervision to request Respondent’s testimony under FINRA Rule 8210.⁶

D. Respondent’s Default

Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint by first-class and certified mail at Respondent’s last known residential address as reflected in FINRA’s Central Registration Depository (“CRD”), in accordance with FINRA Rule 9134(a)(2) and (b)(1).⁷ Respondent failed to file an Answer by April 16, 2020, as required by

³ Declaration of J. Loyd Gattis, executed April 28, 2020 (“Gattis Decl.”) ¶ 3. GSI is now known as LevelX Capital LLC. *Id.*

⁴ Gattis Decl. ¶¶ 3-4; FINRA By-Laws, Art. V, Sec. 4.

⁵ Gattis Decl. ¶ 2.

⁶ Gattis Decl. ¶ 2.

⁷ Gattis Decl. ¶¶ 5, 7, 10, 12.

FINRA Rule 9215, or otherwise respond to the Complaint.⁸ Based on these circumstances, I find that Respondent defaulted.

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to file an Answer to the Complaint within the time afforded by FINRA Rule 9215.⁹ Respondent had the opportunity to file an Answer but he did not. Respondent was warned of the possible consequences of not answering the Complaint.¹⁰ I therefore find a default decision is warranted.¹¹ Once I find a respondent in default, I am authorized by FINRA Rules 9215(f) and 9269 to treat the allegations of the Complaint as admitted. As described below, I find that Respondent committed the violation charged in the Complaint and bar him from associating in any capacity with any FINRA member firm.

E. Respondent Failed to Appear for On-The-Record Testimony, in Violation of FINRA Rules 8210 and 2010

1. Governing Law

Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 by failing to appear and provide OTR testimony as directed by a FINRA Rule 8210 request. FINRA Rule 8210 requires that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”¹² The Rule is indispensable to FINRA’s ability to investigate possible misconduct by its members and associated persons.¹³ Because FINRA lacks subpoena power, it relies on the Rule to obtain from its members and associated persons testimony, documents, and information necessary to conduct investigations.¹⁴ Failure to appear for OTR testimony establishes a prima facie violation of FINRA Rule 8210.¹⁵

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.¹⁶

⁸ Gattis Decl. ¶¶ 9, 14.

⁹ FINRA Rule 9269(a).

¹⁰ Gattis Decl. ¶ 12.

¹¹ Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

¹² FINRA Rule 8210(c).

¹³ *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *21 (July 17, 2019).

¹⁴ *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *90 (Feb. 13, 2015).

¹⁵ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *27 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

¹⁶ *Howard Brett Berger*, Exchange Act Release No. 58590, 2008 SEC LEXIS 3141, at *2-3 n.2 (Nov. 14, 2008) (“A violation of another NASD rule, such as Rule 8210, constitutes a violation of Conduct Rule 2110.”); *accord Dep’t of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4,

2. Facts Showing a Violation

In August 2018, Member Supervision began an examination of Firm A, with which Respondent had dealings.¹⁷ That examination addressed, among other things, Firm A's allegedly fraudulent wire transfers of customers' funds to a certain shell company with which Respondent was affiliated, and Firm A's dealings with two foreign investment advisors with which Respondent was affiliated and that had allegedly falsified customers' documents and engaged in suspicious trading activity.¹⁸

To better understand Firm A's dealings with Respondent, on October 2019, Member Supervision sent Respondent a written request under FINRA Rule 8210 directing him to appear for his OTR at FINRA's District Office in Boca Raton, Florida, on November 18, 2019.¹⁹ A request for testimony under FINRA Rule 8210 to a formerly registered person must be sent to the "last known residential address of the person reflected in the [CRD]."²⁰ In compliance with this requirement, Member Supervision sent the FINRA Rule 8210 request by Federal Express and first-class mail to Respondent's last known address as reflected in CRD, which was in Guyaquil, Ecuador.²¹

Although Member Supervision did not have actual knowledge that Respondent's address of record in CRD was out of date or inaccurate, it conducted a search via LEXIS for other addresses for Respondent.²² That search yielded an address for Respondent in Weston, Florida, and Member Supervision served a FINRA Rule 8210 request by certified mail and first-class mail to that address as well.²³ Before serving the FINRA Rule 8210 request, Member Supervision contacted an attorney who represented Respondent in a pending federal criminal case (but who did not represent Respondent in the examination that led to this disciplinary proceeding).²⁴ That attorney refused to accept service of the FINRA Rule 8210 request for Respondent or to divulge any information about Respondent's whereabouts.²⁵

2018) ("A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010"), *aff'd*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

¹⁷ Compl. ¶ 4.

¹⁸ Compl. ¶ 4.

¹⁹ Compl. ¶ 5.

²⁰ FINRA Rule 8210(d).

²¹ Compl. ¶ 6.

²² Compl. ¶ 7.

²³ Compl. ¶ 7.

²⁴ Compl. ¶ 8.

²⁵ Compl. ¶ 8.

Respondent failed to appear for his OTR on November 18, 2019.²⁶ Member Supervision prepared a second FINRA Rule 8210 request directing Respondent to appear for his OTR at FINRA's District Office in Boca Raton, Florida on December 16, 2019.²⁷ Member Supervision served this second FINRA Rule 8210 request by Federal Express to Respondent's last known address as reflected in CRD, which was the same address in Guyaquil, Ecuador.²⁸

Member Supervision conducted a second search via LEXIS for other addresses for Respondent.²⁹ That search indicated that the Weston, Florida address was associated with Respondent, but LEXIS no longer characterized that address as current.³⁰ Nevertheless, Member Supervision also served the second FINRA Rule 8210 request by certified mail and first-class mail to that Weston, Florida address.³¹

Respondent failed to appear for testimony on December 16, 2019.³² Respondent did not respond in any way to the two FINRA Rule 8210 requests directing him to appear and provide testimony.³³

These facts show that, at times when Respondent was subject to FINRA's jurisdiction, he failed to appear and provide OTR testimony as directed by two FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010.

III. Sanctions

According to FINRA's Sanction Guidelines, the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³⁴ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Sanction Guideline for Failure to Respond to Requests for Testimony Made Pursuant to FINRA Rule 8210 recommends a fine of \$25,000 to \$77,000.³⁵ If the respondent did not

²⁶ Compl. ¶ 9.

²⁷ Compl. ¶ 10.

²⁸ Compl. ¶ 11.

²⁹ Compl. ¶ 12.

³⁰ Compl. ¶ 12.

³¹ Compl. ¶ 12.

³² Compl. ¶ 13.

³³ Compl. ¶ 14.

³⁴ FINRA Sanction Guidelines ("Guidelines") at 2 (General Principle No. 1) (2019), <http://www.finra.org/industry/sanction-guidelines>.

³⁵ Guidelines at 33.

respond in any manner, a bar should be standard.³⁶ The single specific consideration is the importance of the information requested as viewed from FINRA's perspective.³⁷ Failure to comply with a FINRA Rule 8210 request is a serious violation justifying stringent sanctions because it subverts FINRA's ability to execute its regulatory functions.³⁸

The subjects about which Respondent failed to provide OTR testimony were important as viewed from FINRA's perspective. In a routine examination, Member Supervision discovered that Firm A had certain dealings with Respondent.³⁹ Member Supervision discovered that Firm A had transferred several customers' funds to a shell company that was affiliated with Respondent, where the funds purportedly were misappropriated.⁴⁰ Member Supervision also discovered that Firm A had handled transactions for two foreign investment advisors that were affiliated with Respondent and that had allegedly falsified customers' documents and engaged in suspicious trading activity.⁴¹ To better understand Firm A's dealings with Respondent and to evaluate its responsibility, if any, for the harm that apparently resulted from those dealings, Member Supervision requested Respondent's testimony under FINRA Rule 8210.⁴² Respondent's failure to appear and testify hampered Member Supervision's ability to investigate Firm A and remedy any harm caused to customers.

Considering these facts and circumstances, and the applicable Sanction Guideline, for Respondent's failure to appear and provide OTR testimony as directed by two FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating with any FINRA member in any capacity. I do not impose a fine.⁴³

IV. Order

Respondent Gustavo Trujillo Franco violated FINRA Rules 8210 and 2010 by failing to provide OTR testimony as directed by two FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010. For this misconduct, Respondent is barred from associating with any

³⁶ Guidelines at 33; *Evansen*, 2014 FINRA Discip. LEXIS 10, at *47.

³⁷ Guidelines at 33.

³⁸ *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *80 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

³⁹ Declaration of Laura Wilson, executed April 20, 2020 ("Wilson Decl.") ¶ 3.

⁴⁰ Wilson Decl. ¶ 3.

⁴¹ Wilson Decl. ¶ 3.

⁴² Wilson Decl. ¶ 4.

⁴³ Guidelines at 10 ("Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.").

FINRA member firm in any capacity. The bar shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Richard E. Simpson
Hearing Officer

Copies to:

Gustavo Trujillo Franco (via first-class mail and overnight courier)
J. Loyd Gattis, Esq. (via email)
Michael P. Manly, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)