

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BELIVEAU BAYS
(CRD No. 6034987),

Respondent.

Disciplinary Proceeding
No. 2021070734301

Hearing Officer–MJD

DEFAULT DECISION

March 28, 2024

Respondent is barred from associating with any FINRA member firm in any capacity for providing FINRA with false, misleading, and incomplete information and testimony during an investigation, giving insurance companies false information in connection with life insurance applications, forging customer signatures on account documents, and causing his firm to maintain inaccurate books and records.

Appearances

For the Complainant: Robert Kennedy, Esq., Mark S. Geiger, Esq., and John R. Baraniak, Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

In March 2021, Respondent Beliveau Bays’s employer, a FINRA member firm, terminated him for allegedly providing the firm with false statements during an internal investigation. The firm had also received customer complaints that Bays had forged their signatures on account applications. FINRA staff immediately began an investigation that led to the filing of the Complaint in this disciplinary proceeding.

The Department of Enforcement properly served Bays with two Notices of Complaint and the Complaint. Bays did not file an Answer to the Complaint. On January 10, 2024, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Enforcement counsel Robert Kennedy (“Kennedy Decl.”) and 11 exhibits (CX-1 through CX-11). Bays did not respond to the Default Motion.

For the reasons set forth below, I find Bays in default. I grant Enforcement’s Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a). I bar Bays from associating with any FINRA member firm in any capacity.

I. Findings of Fact and Conclusions of Law

A. Background

Bays entered the securities industry in 2012.¹ He was registered with LPL Financial LLC (“LPL”) from July 2019 to March 2021 as a general securities representative.² While associated with LPL, Bays was also an insurance agent.³ On March 12, 2021, LPL filed a Uniform Termination Notice for Securities Industry Registration (Form U5) ending Bays’s registration because he had allegedly made misrepresentations to LPL during its investigation into his handling of life insurance applications.⁴ Six days later, on March 18, LPL filed a Form U5 amendment for Bays disclosing that two customers had complained that he had forged their signatures on account applications.⁵ From May 13, 2021 to October 23, 2021, Bays was registered with another FINRA member firm.⁶

Bays formed Bays Capital Management, Inc. (“Bays Capital”) in June 2019, which he used as his “doing-business-as” entity while registered with LPL. He was the president and 100 percent owner of Bays Capital.⁷ Besides Bays himself, there were only two other employees of Bays Capital. Both employees became associated with LPL in January 2020.⁸

B. Jurisdiction

Bays was last registered with FINRA on October 23, 2021.⁹ Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (i) the Complaint was filed on October 17, 2023, within two years of the effective date of the Form U5 that terminated Bays’s association with a member firm, and (ii) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm and with providing false documents and testimony in response to requests for information made pursuant to FINRA Rule

¹ Complaint (“Compl.”) ¶ 4; Kennedy Decl. ¶ 7.

² Compl. ¶ 4; Kennedy Decl. ¶ 8.

³ Compl. ¶ 12; Complainant’s Exhibit (“CX-”) 2, at 7.

⁴ Compl. ¶ 5; Kennedy Decl. ¶ 9.

⁵ Compl. ¶ 6; Kennedy Decl. ¶ 10.

⁶ Compl. ¶ 7; Kennedy Decl. ¶ 11.

⁷ Compl. ¶¶ 9-11; CX-1, at 8-9.

⁸ Compl. ¶ 13.

⁹ Kennedy Decl. ¶ 12.

8210 during the two-year period after the date he was last registered or associated with a FINRA member.¹⁰

C. Origin of the Investigation

FINRA commenced an investigation into Bays's alleged misconduct in March 2021.¹¹ FINRA staff found evidence that Bays had forged customer signatures on account applications and an account transfer form which also caused LPL to maintain false books and records. The investigation also looked into whether Bays may have been engaged in insurance fraud and the operation of an undisclosed outside business.¹² During the investigation, according to the Complaint, Bays provided false, incomplete, or misleading written responses and testimony to FINRA. The investigation led to the filing of the Complaint in this matter.

D. Bays Defaulted by Failing to Answer the Complaint

Enforcement served Bays with the First and Second Notices of Complaint and the Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the First Notice of Complaint and Complaint on October 17, 2023, and the Second Notice of Complaint and Complaint on November 15, 2023. In each case, Enforcement served Bays by first-class certified mail at his residential address recorded in the Central Registration Depository ("CRD")¹³ and an additional address in Montreal, Canada.¹⁴ Bays thus received valid constructive notice of this proceeding.¹⁵

¹⁰ Compl. ¶ 8; Kennedy Decl. ¶ 14.

¹¹ Compl. ¶ 42; Kennedy Decl. ¶ 4.

¹² Kennedy Decl. ¶¶ 4, 6.

¹³ Kennedy Decl. ¶¶ 20-21, 27-28. In September 2022, Bays submitted to FINRA a signed form entitled "FINRA Background Questionnaire and Information Regarding Your Testimony." On the form, Bays confirmed that his address at the time was the address recorded in CRD. Kennedy Decl. ¶ 16; CX-2, at 1.

¹⁴ In a June 2023 filing submitted to FINRA's Office of Dispute Resolution, Bays identified an address in Montreal, Canada, as his then current address. Kennedy Decl. ¶ 17; CX-3, at 15. Accordingly, Enforcement also sent the First and Second Notices of Complaint and Complaint to the Montreal address via Express Mail. Kennedy Decl. ¶¶ 20, 27. It also emailed copies of the First and Second Notices of Complaint and Complaint to Bays at an email address he used to communicate with FINRA staff during the investigation. Kennedy Decl. ¶¶ 20, 27; *see also* CX-4; CX-5.

Enforcement is not aware of any other addresses for Bays besides the one recorded in CRD and the one in Montreal. In August 2023, Enforcement asked Bays if he had any other addresses besides the one in CRD and the Montreal address; he did not respond. Kennedy Decl. ¶ 19; CX-5, at 1.

¹⁵ *See, e.g., Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 & n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015) (finding that respondent received constructive notice when FINRA staff sent requests for information to residential address as recorded in CRD). *See also Dennis A Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *23-24 (Dec. 11, 2006) ("It is the responsibility of . . . associated persons to keep [FINRA] apprised of any changes in their addresses . . .").

Pursuant to FINRA Rule 9215, Bays was required to file an Answer or otherwise respond to the Complaint by December 4, 2023. Bays did not respond to the Complaint. I thus find that Bays defaulted.

On December 11, 2023, I issued an Order instructing Enforcement to file a Default Motion. On January 10, 2024, Enforcement filed its Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,¹⁶ and deem the allegations in the Complaint admitted.

E. Bays Forged Customer Signatures on Account Documents and Caused His Firm to Maintain False Books and Records (Causes One and Four)

1. Governing Law

Cause one alleges that Bays violated FINRA Rule 2010 by forging the signatures of four customers on six account applications and one account transfer form without the customers' knowledge or permission.¹⁷ Cause four alleges that Bays caused LPL to make and preserve inaccurate books and records, in violation of FINRA Rules 4511 and 2010, when he forged customer signatures and overstated three customers' income and net worth on new account forms.¹⁸

FINRA Rule 2010 states that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." The Rule applies to all business-related misconduct even if it does not involve securities or a securities transaction.¹⁹ The Securities and Exchange Commission has repeatedly stated that forgery is a violation of FINRA Rule 2010 "when the misconduct defrauds a customer or otherwise benefits the forger."²⁰

FINRA Rule 4511(a) requires FINRA members to "make and preserve books and records as required under the FINRA rules, the [Securities] Exchange Act [of 1934] and the applicable Exchange Act rules." Those applicable rules include Section 17(a) of the Exchange Act, which requires broker-dealers to make and preserve records of customer brokerage accounts.²¹ An

¹⁶ Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

¹⁷ Compl. ¶¶ 72-76.

¹⁸ Compl. ¶¶ 94-100.

¹⁹ *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *31 (Feb. 7, 2020) (internal quotations omitted), *petition dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021).

²⁰ *Dep't of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *30 (NAC Dec. 17, 2015) (quoting *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *16 (Aug. 22, 2008)).

²¹ Specifically, Exchange Act Rule 17a-3(a)(17) requires firms to maintain records of customer brokerage accounts.

associated person who causes a firm to maintain false books and records violates FINRA Rule 4511.²²

2. Facts Showing Violations

When opening an account at LPL in July 2019, customers had the option to electronically sign documents, including their account applications and account transfer forms. To do so, an LPL representative uploaded documents to a secure third-party platform and entered an email address for the customer.²³ The secure platform then emailed a link to the email address that the LPL representative entered for the customer. The customer could then review documents on the platform and click on an icon to sign electronically. An electronic signature was as binding as a traditional signature.²⁴

In July 2019, Bays transferred the accounts of four customers from his former firm to LPL. As the customers' registered representative, he prepared the account application and transfer forms for his customers' electronic signatures.²⁵ Bays entered counterfeit email addresses into the secure platform that appeared similar to the four customers' real email addresses. The four customers did not know about the fake email addresses.²⁶

In July 2019, without the customers' knowledge or consent, Bays electronically signed the four customers' names to six account applications and one account transfer form. He also overstated the income and net worth on the account applications of three of the customers.²⁷

Based on the allegations of the Complaint, I find that Bays forged his customers' signatures by electronically signing their names in seven instances (on six account applications and one account transfer form) without the customers' permission and misstated the income and net worth of three of the customers on account documents. The forgeries and false statements about income and net worth harmed the customers because they did not know that Bays was transferring their accounts and misstating their financial condition on brokerage documents. I find that Bays's misconduct violated FINRA Rule 2010, as alleged in cause one.

I also find that Bays caused LPL to make and preserve inaccurate books and records when he forged the four customers' signatures and overstated the income and net worth of three

²² *Dep't of Enforcement v. Mellon*, No. 2017052760001, 2022 FINRA Discip. LEXIS 11, at *21-22 (NAC Oct. 18, 2022) (respondent violated Rule 4511 by submitting false expense reimbursement requests to her firm causing it to maintain inaccurate books and records), *application for review dismissed*, Exchange Act Release No. 97623, 2023 SEC LEXIS 1440 (May 31, 2023).

²³ Compl. ¶ 14.

²⁴ Compl. ¶ 14.

²⁵ Compl. ¶ 15.

²⁶ Compl. ¶¶ 16-17.

²⁷ Compl. ¶ 18.

of the customers on new account forms. Bays's misconduct violated FINRA Rules 4511 and 2010, as alleged in cause four.²⁸

F. Bays Provided False, Incomplete and Misleading Responses and Testimony to FINRA (Cause Two)

1. Governing Law

Cause two alleges that in 2022 Bays violated FINRA Rules 8210 and 2010 by submitting written responses to FINRA staff's requests for documents and information that contained false and misleading statements.²⁹ Cause two also alleges that in September 2022 Bays provided false and misleading investigative testimony during an on-the-record interview ("OTR").³⁰

Rule 8210 requires persons subject to FINRA's jurisdiction to provide information to FINRA upon request. Rule 8210(a)(2) authorizes FINRA to "inspect and copy the books, records, and accounts" of persons subject to its jurisdiction "with respect to any matter involved in [an] investigation . . . that is in such . . . person's possession, custody or control." Rule 8210(c) provides that "[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule."

Rule 8210 "is at the heart of the self-regulatory system for the securities industry" and "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."³¹ "FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."³² Associated persons must cooperate fully in providing FINRA with information.³³ It is therefore a violation of Rule 8210 for a person to fail to provide

²⁸ A violation of FINRA Rule 4511 constitutes a violation of FINRA Rule 2010. *See, e.g., Fox & Co. Invs., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *12 n.19 (Oct. 28, 2005) (finding that respondent's violation of the predecessor record keeping rule NASD Rule 3110 was also a violation of just and equitable principles of trade).

²⁹ Compl. ¶¶ 78-86.

³⁰ Compl. ¶¶ 85-86.

³¹ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009).

³² *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

³³ *See CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (member firms and their associated persons have an obligation to respond to FINRA's request for information "fully and promptly"). *See also Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019) (Rule 8210 "requires associated persons to comply fully with FINRA's requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.").

information sought by FINRA.³⁴ A person formerly associated with a member firm must respond to FINRA Rule 8210 requests issued within two years after the termination of registration.³⁵ It is a violation of Rule 8210 to provide false, misleading or incomplete information.³⁶

2. Facts Showing a Violation

In connection with the investigation, FINRA staff issued three requests to Bays for documents and information. Two requests were made pursuant to FINRA Rule 8210—in February 2022 (the “February 2022 Request”) and July 2022 (the “July 2022 Request”).³⁷ An earlier request, made in May 2021 (the “May 2021 Request”), did not cite FINRA Rule 8210. Bays’s written responses to the three requests contained false and inaccurate statements.

The February 2022 Request, made pursuant to Rule 8210, asked Bays to list all his personal and business bank accounts that he controlled or had access to during the period January 2020 to March 2020 and produce copies of monthly accounts statements that he identified. He responded that he had access to just two bank accounts during that period. Bays’s answer was false and incomplete because in fact he controlled or had access to four additional bank accounts, including two accounts in the name of Bays Capital.³⁸

The February 2022 Request also asked Bays for a list of personal and business brokerage accounts that he controlled or had access to for the period January 2020 to March 2020. Bays answered that he had access to just two brokerage accounts. This answer was false and incomplete because during the period he had access to four additional brokerage accounts, including one in the name of “Bryan C. Bays.”³⁹

The July 2022 Request, also made pursuant to Rule 8210, asked Bays to identify the dates insurance policies were sold to two Bays Capital employees and the commissions he earned from the sales. Bays answered that he was “not aware” of any life insurance policies being sold to the employees or having earned any commissions from the sales.⁴⁰ This answer

³⁴ See *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *20 (NAC May 26, 2021) (respondent violated Rule 8210 by failing to produce his Internal Revenue Service wage and income transcript), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

³⁵ *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *14 (Jan. 21, 2022).

³⁶ *Dep’t of Enforcement v. Milberger*, No. 2015047303901, 2020 FINRA Discip. LEXIS 24, at *17 (NAC Mar. 27, 2020) (“It is well settled that providing false information to FINRA in response to a FINRA Rule 8210 request is a violation of FINRA Rules 8210 and 2010.”) (citing *Ortiz*, 2008 SEC LEXIS 2401, at *23-24).

³⁷ Compl. ¶ 43.

³⁸ Compl. ¶¶ 53-55.

³⁹ Compl. ¶¶ 56-58.

⁴⁰ Compl. ¶¶ 47-48.

was false because Bays had earned over \$1,200 in commissions from life insurance policies he sold to the two employees.⁴¹

Another question on the July 2022 Request asked Bays to explain why he or Bays Capital were the named beneficiaries on the insurance policies issued to the two employees. Bays answered that he was “not aware” that he or Bays Capital were the named beneficiaries of the life insurance policies issued to the two employees.⁴² This answer was false and misleading. Bays was the beneficiary of two policies issued by two insurance companies to the two employees. Bays knew this because he was the agent of record and signed both insurance policies.⁴³

During his OTR on September 29, 2022, Bays testified that he was not aware of any life insurance policies in effect for one of the Bays Capital employees. This testimony was false because there were three insurance policies on the employee’s life, which Bays knew about because he had paid the premiums.⁴⁴

Bays falsely testified that Bays Capital had one bank account when it in fact had three bank accounts.⁴⁵ He also testified that, while he had communicated with two of his customers via text messages in the past, he did not still have the texts with them. This testimony was false because he had in his possession over 125 text messages with the two customers.⁴⁶

During the OTR, Bays was asked about an insurance application he submitted that identified one of the Bays Capital employees as a key person of Bays Capital. In the application, Bays stated that Bays Capital had gross sales of \$1.5 million, which was a figure far greater than the commissions Bays earned in his securities business.⁴⁷ During the OTR, Bays was unable to explain the source of Bays Capital’s income and testified that a third person was the primary income earner for Bays Capital. This statement was misleading and incomplete because that person was not in fact the primary income earner for Bays Capital.⁴⁸

⁴¹ Compl. ¶ 49.

⁴² Compl. ¶¶ 50-51.

⁴³ Compl. ¶ 52.

⁴⁴ Compl. ¶¶ 59-61.

⁴⁵ Compl. ¶¶ 62-63.

⁴⁶ Compl. ¶¶ 64-65.

⁴⁷ Compl. ¶ 66.

⁴⁸ Compl. ¶¶ 67-68.

During the OTR, Bays also testified that he had never used the name “Bryan Bays.” This testimony was false because Bays originally registered with FINRA under that name and changed his first name to Beliveau in 2015.⁴⁹

By providing false, misleading, and incomplete written responses to the February 2022 Request and the July 2022 Request and giving false testimony in September 2022, I find that Bays violated FINRA Rules 8210 and 2010, as alleged in cause two.⁵⁰

G. Bays Violated FINRA Rule 2010 by Providing False Information to FINRA and to Insurance Companies (Cause Three)

1. Governing Law

Cause three alleges that Bays violated Rule 2010 when he gave FINRA investigators false and misleading information in response to the May 2021 Request, which was not made pursuant to FINRA Rule 8210.⁵¹ Providing false information in response to a FINRA request, including requests that do not specifically cite Rule 8210, is inconsistent with high standards of commercial honor and just and equitable principles of trade, and thus constitutes a violation of Rule 2010.⁵²

Cause three also alleges that Bays violated FINRA Rule 2010 by providing false and misleading information to insurance companies on insurance applications and in an email communication in January and February 2020.⁵³ Rule 2010 applies to all business-related misconduct even if it does not involve securities or a securities transaction.⁵⁴ The Rule prohibits

⁴⁹ Compl. ¶¶ 69-70.

⁵⁰ It is well established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst'l Trading, LLC*, 2009 SEC LEXIS 215, at *29-30; *Stephen J. Gluckman*, Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at *22-23 (July 20, 1999).

⁵¹ Compl. ¶¶ 90-92.

⁵² *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *32-33 (NAC Mar. 16, 2017) (“Providing false information in response to a FINRA request, including requests that do not specifically cite FINRA Rule 8210, is inconsistent with high standards of commercial honor and just and equitable principles of trade.”). *See also Michael A. Rooms*, Exchange Act Release No. 51467, 2005 SEC LEXIS 728, at *13 (Apr. 1, 2005) (finding that attempted obstruction of NASD investigation violated NASD Rule 2110), *aff'd*, 444 F.3d 1208 (10th Cir. 2006); *Mkt. Regulation Comm. v. Zubkis*, No. CMS950129, 1997 NASD Discip. LEXIS 47, at *3 n.2 (NBCC Aug. 12, 1997) (finding that FINRA staff are not required to cite Rule 8210 to hold a person liable for failure to cooperate with a FINRA investigation), *aff'd*, Exchange Act Release No. 40409, 1998 SEC LEXIS 1904 (Sept. 8, 1998).

⁵³ Compl. ¶¶ 88-92. The Complaint also sets forth facts that support an allegation that Bays gave LPL two documents, purportedly prepared by two insurance companies, that falsely stated certain insurance policies for the Bays Capital employees had been cancelled. *See* Compl. ¶¶ 36-41. The Complaint, however, does not specifically plead that Bays gave LPL false information. *See* Compl. ¶¶ 88-92. Accordingly, I do not find that Bays violated FINRA Rule 2010 by providing LPL with false information.

⁵⁴ *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *31.

misconduct that reflects poorly on an associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duty in handling other people's money.⁵⁵ These ethical standards go beyond legal requirements and depend on general rules of fair dealing, the reasonable expectations of the parties, marketplace practices, and the relationship between the parties.⁵⁶ FINRA has found that providing false documents to a state insurance regulator violates FINRA Rule 2010.⁵⁷

2. Facts Showing Violations of FINRA Rule 2010

FINRA's May 2021 Request, which was not issued pursuant to FINRA Rule 8210, asked Bays to explain why LPL terminated him. The firm had investigated the circumstances surrounding Bays's life insurance applications for the Bays Capital employees. In a signed letter to FINRA, Bays stated that the employees "were simply my friends and not clients because they did not have accounts under my management at LPL."⁵⁸ Bays's written statement was false because one of the employees in fact held an account at LPL from July 2019 to March 2021.

In January 2020, Bays electronically signed and submitted an application to an insurance company for a \$5 million life insurance policy on the life of one of the Bays Capital employees. In signing the application, Bays represented that the information he had submitted was true and correct to the best of his knowledge and belief. One question on the application asked if the applicant had applied for any life insurance or had life insurance pending. Bays answered "No."⁵⁹ This answer was false because the employee had applied for life insurance with another insurance company the day before. Bays knew this was false because he was the insurance agent for that policy and submitted the application on the employee's behalf.⁶⁰

In February 2020, Bays signed and submitted documents, including a professional profile form, to be appointed a producer with an insurance company. On the professional profile form, Bays represented that he was not registered with FINRA and was not associated with a broker-dealer. These statements were false because he was registered with FINRA through his association with LPL.⁶¹ The same form asked Bays whether he had been terminated by any insurance company or financial services employer for any reason other than low production. Bays falsely answered "No." In 2016, he had been terminated by a member firm for allegedly

⁵⁵ *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *15 (Dec. 4, 2015), *petition for review denied*, 663 F. App'x 353 (5th Cir. Oct. 19, 2016).

⁵⁶ *Dep't of Enforcement v. Potter*, No. 2017052871401, 2021 FINRA Discip. LEXIS 8, at *35 (NAC May 27, 2021).

⁵⁷ *See Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NAC Feb. 27, 2007).

⁵⁸ Compl. ¶¶ 44-45.

⁵⁹ Compl. ¶¶ 21-22.

⁶⁰ Compl. ¶ 23.

⁶¹ Compl. ¶¶ 24-26.

exercising discretion in a non-discretionary account and discussing an annuity purchase with an unauthorized family member.⁶²

In February 2020, an insurance company informed Bays that it had learned that one of the Bays Capital employees had recently applied for life insurance with another insurance company. It asked Bays to explain.⁶³ Bays told the insurance company that the employee had initialed an application but did not complete it and the application was then cancelled. This answer was misleading because, at the time, the person had life insurance applications pending with four other insurance companies.⁶⁴

In March 2020, Bays submitted an application to an insurance company for a \$5 million term life insurance policy on the life of one of the Bays Capital employees. The application identified Bays Capital as the sole beneficiary.⁶⁵ The application asked whether the applicant had applied for or was seeking reinstatement of a life insurance policy with any other insurance company. Bays answered “No.” This response was false because at the time the employee had insurance applications pending with five other insurance companies.⁶⁶

Based on the allegations set forth in cause three, I find that Bays violated FINRA Rule 2010 by providing false and misleading information to FINRA and to insurance companies.

II. Sanctions

A. Bays is Barred for Forging Customer Signatures and Recordkeeping Violations

I impose a unitary sanction under causes one and four for Bays’s forgeries and causing LPL to maintain inaccurate books and records because the violations are based on the same facts and conduct. FINRA’s Sanction Guidelines⁶⁷ permit an adjudicator to aggregate or batch multiple similar violations for purposes of sanctions if the violations resulted from a single systemic problem or cause.⁶⁸

⁶² Compl. ¶¶ 27-28; CX-1, at 13.

⁶³ Compl. ¶ 29.

⁶⁴ Compl. ¶¶ 30-31.

⁶⁵ Compl. ¶ 32.

⁶⁶ Compl. ¶¶ 33-34.

⁶⁷ FINRA Sanction Guidelines (2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

⁶⁸ Guidelines at 4 (General Principle Applicable to All Sanctions Determinations No. 4). *See also Milberger, 2020 FINRA Discip. LEXIS 24, at *19* (imposing a unitary sanction for falsification of wire transfer request forms and recordkeeping violations that were caused by providing the forms to firm because the violations were based on same facts).

In arriving at a unitary sanction, I considered the applicable Guidelines for forgery, unauthorized use of signatures, or falsification of records⁶⁹ and recordkeeping violations.⁷⁰ The Guidelines for forgery by an individual, in cases where some aggravating factors exist, provide for suspending the respondent for a period of two months to two years. Where aggravating factors predominate, particularly in cases resulting in customer harm, an adjudicator should consider suspending a respondent for a period of six months to two years or barring the individual. The Guidelines also recommend a fine ranging from \$5,000 to \$40,000.⁷¹ Relevant violation-specific principal considerations are the nature of the documents signed or falsified, whether the respondent had a good-faith, but mistaken, belief of express or implied authority, and whether the customer re-signed the document or otherwise approved the signature after the fact.⁷²

The Guidelines for an individual's recordkeeping violations of FINRA Rule 4511 recommend consideration of a suspension of up to two years or a bar where aggravating factors predominate. In other cases, an adjudicator should consider suspending the respondent in any or all capacities for a period of 10 business days to three months. The Guidelines also recommend a fine ranging from \$2,500 to \$40,000.⁷³ The relevant principal considerations specific to recordkeeping violations include the nature and materiality of the inaccurate or missing information, whether the inaccurate information was omitted intentionally, and whether the violations allowed other misconduct to occur or to escape detection.⁷⁴

I find that the appropriate sanction for Bays's forgery and the recordkeeping violations is a bar.⁷⁵ He signed account applications and account transfer forms without his four customers' knowledge or consent. He did not have a good faith belief that he could sign his customers' names. He took elaborate steps to conceal the forgery by creating false email addresses for the customers.⁷⁶ Bays also inserted inflated income and net worth figures on the account applications for three of the customers.⁷⁷ Causing a firm to maintain false books and records is a serious

⁶⁹ Guidelines at 97.

⁷⁰ Guidelines at 91.

⁷¹ Guidelines at 97. The Guidelines for forgery also provide for suspending the respondent for 10 business days to six months in cases where mitigating factors predominate—including, for example, signatures and falsifications in connection with authorized transactions and instances when the customer re-signed the document or otherwise approved the signature after the fact. *Id.* In this case, the forgeries did not involve authorized transactions and no customers approved the forged signatures after the fact.

⁷² Guidelines at 97.

⁷³ Guidelines at 91.

⁷⁴ Guidelines at 91. *See also* Guidelines at 7 (Principal Consideration in Determining Sanctions No. 2) (whether an individual respondent accepted responsibility for and acknowledged the misconduct prior to detection).

⁷⁵ Enforcement states that it is not aware of any mitigating factors relevant to sanctions. Kennedy Decl. ¶ 35.

⁷⁶ Compl. ¶¶ 16-17.

⁷⁷ Compl. ¶ 18.

offense. It undermines a firm’s ability to conduct proper supervision of its registered representative.⁷⁸ Bays has also failed to accept responsibility for his misconduct. As of July 2023, Bays was seeking to expunge complaints filed by two of the customers from CRD.⁷⁹

B. Bays is Barred for Providing False, Misleading, and Incomplete Information to FINRA and Insurance Companies

I also impose a unitary sanction under causes two and three because the misconduct alleged was motivated by the same objective: Bays’s desire to evade detection of his activities.

For failing to respond in any manner to FINRA’s requests for information made pursuant to Rule 8210, the Guidelines state that a bar is standard.⁸⁰ Failing to provide truthful answers to FINRA is treated as a failure to respond at all.⁸¹ In cases involving a failure to respond truthfully, the principal consideration is the importance of the information requested as viewed from FINRA’s perspective.⁸²

The Guidelines also provide that in cases where a respondent provided a partial but incomplete response, “a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.” If mitigation exists, the adjudicator should consider suspending the respondent in all capacities for up to two years.⁸³ The principal considerations for a partial but incomplete response are: (i) the importance of the information requested that was not provided as viewed from FINRA’s perspective; (ii) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (iii) the reasons the respondent offered to justify the partial but incomplete response.⁸⁴

FINRA was investigating potentially serious misconduct by Bays—forging customer signatures on account documents, falsifying account applications, and engaging in potentially fraudulent activities involving life insurance policies. I find that the information FINRA requested was necessary to assist in its investigation and Bays’s failure to provide truthful and

⁷⁸ A FINRA member’s books and records are the keystone of surveillance of brokers and dealers by the SEC and the securities industry’s self-regulatory bodies. *Dep’t of Enforcement v. Jones*, No. 2015044782401, 2020 FINRA Discip. LEXIS 45, at *31 (NAC Dec. 17, 2020), *appeal docketed*, No. 3-20209 (SEC Jan. 23, 2021).

⁷⁹ CX-11, at 1-17.

⁸⁰ Guidelines at 93.

⁸¹ *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015). For a failure to respond or to respond truthfully, the Guidelines also provide for a fine between \$10,000 and \$50,000. Guidelines at 93.

⁸² Guidelines at 93.

⁸³ Guidelines at 93. In cases involving a partial but incomplete response, the Guidelines suggest that an appropriate fine is between \$5,000 and \$20,000. Guidelines at 93.

⁸⁴ Guidelines 93.

complete responses to the staff's inquiries prevented FINRA from fulfilling its regulatory responsibilities.

There are no Guidelines specifically applicable to making misrepresentations to a non-member third party such as an insurance company in connection with insurance policy applications. When the Guidelines do not address the specific violation committed, the adjudicator should consider the most analogous Guideline.⁸⁵ I find the Guidelines for fraud, misrepresentations, or omissions of material fact to be appropriate in this case.⁸⁶

The Guidelines recommend a fine of \$5,000 to \$50,000 for an individual's negligent misconduct and a fine of \$10,000 to \$100,000 for intentional or reckless misconduct. Where a respondent's misconduct is negligent the adjudicator should consider suspending the respondent in any or all capacities for a period of one month to two years. When the conduct is intentional or reckless, as the case is here, the adjudicator should strongly consider barring the respondent. If mitigating factors predominate, adjudicators should consider suspending the respondent in any or all capacities for a period of six months to two years.⁸⁷

Bays's misrepresentations in connections with his dealings with insurance companies involve aggravating factors. He is a licensed insurance agent. He made multiple material misrepresentations when applying for insurance coverage for his Bays Capital employees and in response to insurance companies' follow-up inquiries about the insurance applications Bays submitted. Two life insurance policies were for large amounts—\$5 million. Bays acted intentionally and his misconduct enabled him to obtain an actual financial gain by way of commissions and additional potential financial gain had the insurance companies not questioned his insurance applications.⁸⁸

I find no mitigating factors. Thus, the appropriate sanction for providing false and misleading statements to FINRA and making material misrepresentations to the insurance companies is a bar in all capacities. The bar is remedial because it will protect the investing public by encouraging the cooperation essential to the investigation and remediation of industry misconduct.

III. Order

Respondent Beliveau Bays is barred from associating with any FINRA member firm in any capacity for forging customer signatures in violation of FINRA Rule 2010 and causing his

⁸⁵ *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *31 (Feb. 24, 2012) (endorsing FINRA's use of analogous guidelines in disciplinary cases involving member firms and associated persons).

⁸⁶ Guidelines at 116.

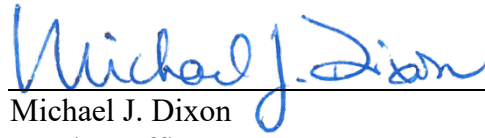
⁸⁷ Guidelines at 116.

⁸⁸ Guidelines, at 8 (Principal Consideration Nos. 13 and 16) (whether respondent's misconduct was the result of an intentional act, recklessness or negligence; whether the misconduct resulted in potential for monetary or other gain).

FINRA member firm to maintain incorrect books and records, in violation of FINRA Rules 4511 and 2010, as alleged in causes one and four.

Bays is also barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010, as alleged in cause two, by providing false, misleading, and incomplete information to FINRA staff and for providing false and misleading information to insurance companies and FINRA, in violation of FINRA Rule 2010, as alleged in cause three.

The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

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