

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GARY FRANCIS HARPE
(CRD No. 2983634),

Respondent.

Disciplinary Proceeding
No. 2023077591501

Hearing Officer–BDC

DEFAULT DECISION

September 12, 2024

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

Appearances

For the Complainant: Ashley Morris, Esq., Michael Manning, Esq., and Jennifer Crawford, 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 Gary Francis Harpe alleging that he failed to provide documents and information that Enforcement requested in connection with an investigation into Harpe’s termination from his employing member firm. As a result, the Complaint alleged, Harpe violated FINRA Rules 8210 and 2010. When Harpe failed to answer the Complaint, the original Hearing Officer in this matter ordered Enforcement to file a motion for entry of a default decision supported by a memorandum of law and a declaration.¹

On July 22, 2024, Enforcement filed its motion for entry of a default decision (“Default Motion”) along with a memorandum of law, a declaration from Enforcement Principal Litigation

¹ The Chief Hearing Officer reassigned this matter to me on July 30, 2024.

Counsel Ashley Morris (“Morris Decl.”), and 15 exhibits (CX-1 through CX-15) in support of the Default Motion. Harpe did not respond to the Default Motion.

For the reasons set forth below, I grant the Default Motion, deem the allegations in the Complaint admitted, and bar Harpe from associating with any FINRA member in any capacity.

II. Findings of Fact and Conclusions of Law

A. Background

Harpe first became registered with FINRA through his association with FINRA member firm PFS Investments, Inc. (“PFS”) in 1998.² He was registered with PFS as an Investment Company and Variable Contracts Products Representative from February 5, 1998 to January 10, 2023, and as an Investment Company Products and Variable Contracts Products Principal from October 12, 2000 to January 10, 2023.³ PFS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on January 10, 2023 disclosing that it terminated its association with Harpe “due to the nature of the disclosure event” on his Form U5, which references a felony charge of larceny.⁴

B. Jurisdiction

Harpe has not been registered with a FINRA member firm since January 10, 2023.⁵ 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 (1) Enforcement filed the Complaint within two years of the effective date of the Form U5 that terminated Harpe’s association with a member firm, and (2) the Complaint charges him with failing to comply with requests for documents and information issued by FINRA staff within two years of the termination of his registration.⁶

C. Origin of the Investigation

On January 10, 2023, FINRA commenced an investigation into the circumstances of Harpe’s termination after PFS filed a Form U5 disclosing that it had discharged Harpe based on a criminal disclosure.⁷ As part of its investigation, FINRA staff sought information from Harpe

² Complaint (“Compl.”) ¶ 2; Morris Decl. ¶ 7; CX-1.

³ Compl. ¶ 2; Morris Decl. ¶ 7.

⁴ Compl. ¶ 3; Morris Decl. ¶¶ 4, 8; CX-2.

⁵ Compl. ¶ 3; Morris Decl. ¶¶ 8, 9; CX-1.

⁶ Compl. ¶ 4; Morris Decl. ¶ 11. The Morris Decl. contains two consecutive paragraphs numbered 11. This reference is to the first paragraph 11 in Section II.

⁷ Compl. ¶ 5; Morris Decl. ¶ 4.

regarding the nature of the criminal charge, as well as potential bankruptcies, judgments and liens filed against him.⁸

D. Respondent Defaulted by Failing to Answer the Complaint

Enforcement served the First Notice of Complaint and Complaint on April 26, 2024,⁹ and the Second Notice of Complaint and Complaint on May 31, 2024.¹⁰ In each case, Enforcement served Harpe by United States Postal Service (“USPS”) certified mail and first-class mail at his last known residential address recorded in the Central Registration Depository (“CRD”) and at an alternate address identified through a LexisNexis search, in accordance with FINRA Rules 9134(a)(2) and (b)(1).¹¹

Pursuant to FINRA Rule 9215, Harpe was required to file an Answer or otherwise respond to the Complaint by June 17, 2024. Harpe did not respond to the Complaint. As a result, I find Harpe in default and deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a)(2).¹²

E. Governing Law

The Complaint charges Harpe with violating FINRA Rule 8210. This rule requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request for the purpose of an investigation, complaint, examination, or proceeding.¹³ 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.”

Constructive notice of the request, not actual notice of it, “is all that FINRA Rule 8210 demands.”¹⁴ Under Rule 8210, a formerly registered person is deemed to have received a FINRA Rule 8210 request if it was mailed or otherwise transmitted to their “last known residential address . . . as reflected in [CRD].”¹⁵ If the FINRA staff responsible for sending the request

⁸ Compl. ¶ 6; Morris Decl. ¶ 11 (Section III); CX-4.

⁹ Morris Decl. ¶¶ 27, 28; CX-10; CX-11.

¹⁰ Morris Decl. ¶¶ 35, 36; CX-14; CX-15.

¹¹ Morris Decl. ¶¶ 27, 28, 35, 36; CX-10; CX-11; CX-12; CX-13; CX-14; CX-15.

¹² Harpe is notified that he may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

¹³ FINRA Rule 8210(a), (c).

¹⁴ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *36 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

¹⁵ FINRA Rule 8210(d).

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.¹⁶

Rule 8210 “is at the heart of the self-regulatory system for the securities industry.”¹⁷ It “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”¹⁸ The rule “is unequivocal and grants FINRA broad authority to obtain information concerning an associated person’s securities-related business ventures.”¹⁹ Associated persons must cooperate fully in providing FINRA with information.²⁰ It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.²¹

Harpe 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.”²² This Rule also applies to persons associated with a member, as they “have the same duties and obligations as a member under the Rules.”²³ It is well established that “[a] violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010.”²⁴

¹⁶ *Id.*

¹⁷ *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).

¹⁸ *Id.* (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993)).

¹⁹ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

²⁰ *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.”).

²¹ *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).

²² FINRA Rule 2010.

²³ FINRA Rule 0140(a).

²⁴ *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)), *appeal docketed*, No. 3-21402 (SEC May 1, 2023).

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

1. First Request

On May 8, 2023, FINRA staff sent Harpe a letter pursuant to Rule 8210 requesting documents and information related to (1) the nature of his criminal charge, and (2) the identification and disclosure of bankruptcies, judgments, liens, and compromises with creditors (“the First Request”).²⁵ Enforcement sent the First Request via USPS certified and first-class mail to Harpe’s last known residential address in CRD and provided a due date of May 22, 2023.²⁶ FINRA staff did not have actual knowledge that Harpe’s CRD address was out of date or inaccurate at the time it sent the First Request.²⁷ FINRA staff also confirmed through a LexisNexis search that there was no other, more current, address for Harpe at that time.²⁸ The USPS was unable to locate delivery information in its records for the certified mailing and the first-class mailing was not returned to FINRA.²⁹ Harpe failed to respond to the First Request and did not request an extension of time to respond.³⁰

2. Second Request

On June 5, 2023, FINRA staff sent Harpe a second written request for information and documents, pursuant to Rule 8210 (“the Second Request”), repeating the request it made on May 8, 2023.³¹ Enforcement sent the Second Request via USPS certified and first-class mail to the CRD address and to another address in Farmington Hills, Michigan that FINRA staff identified through a LexisNexis search as a potential current address at that time (“the Farmington Hills Address”).³² Enforcement provided a due date of June 20, 2023.³³ The certified mailing sent to the CRD address was returned to FINRA and marked as “Not Deliverable as Addressed. Unable to Forward.”³⁴ The first-class mailing sent to the CRD address was not returned to FINRA.³⁵ The certified mailing of the Second Request sent to the Farmington Hills Address was returned to FINRA and the first-class mailing was returned and marked “Not Deliverable as Addressed.

²⁵ Compl. ¶ 6; Morris Decl. ¶ 11 (Section III); CX-4.

²⁶ Compl. ¶¶ 6, 7; Morris Decl. ¶¶ 11 (Section III), 12; CX-4.

²⁷ Compl. ¶ 7; Morris Decl. ¶ 13.

²⁸ Compl. ¶ 7; Morris Decl. ¶ 13.

²⁹ Compl. ¶ 8; Morris Decl. ¶ 14.

³⁰ Compl. ¶ 9; Morris Decl. ¶ 15.

³¹ Compl. ¶ 10; Morris Decl. ¶ 16; CX-5.

³² Compl. ¶ 11; Morris Decl. ¶ 17; CX-5.

³³ Compl. ¶ 10; Morris Decl. ¶ 16; CX-5.

³⁴ Compl. ¶ 12; Morris Decl. ¶ 18.

³⁵ Compl. ¶ 12; Morris Decl. ¶ 18.

Unable to Forward.”³⁶ Harpe failed to respond to the Second Request and did not request an extension of time to respond.³⁷

3. Third Request

On July 27, 2023, FINRA staff sent Harpe a third written request for information and documents, pursuant to Rule 8210 (“the Third Request”), along with copies of the two prior requests.³⁸ Enforcement sent the Third Request via USPS certified and first-class mail, and FedEx, to the CRD address and the Farmington Hills Address.³⁹ FINRA staff confirmed through a LexisNexis search that there were no other, more current, addresses for Harpe at that time.⁴⁰ Enforcement provided a due date of August 10, 2023.⁴¹ The certified mailing of the Third Request sent to the CRD address was returned to FINRA and marked with the notation, “Notice Left (No Authorized Recipient Available).”⁴² The first-class mailing sent to the CRD address was not returned.⁴³ The certified mailing sent to the Farmington Hills Address was returned to FINRA and marked “Not Deliverable as Addressed. Unable to Forward” and the first-class mailing was not returned to FINRA.⁴⁴ Harpe failed to respond to the Third Request and did not request an extension of time to respond.⁴⁵

G. Harpe Violated FINRA Rules 8210 and 2010 by Failing to Respond to FINRA’s Requests for Documents and Information

FINRA properly served the First Request pursuant to the service provisions of FINRA Rule 8210(d). Enforcement (1) mailed or otherwise transmitted the request to Harpe’s last known residential address as reflected in CRD and (2) lacked actual knowledge that the address was outdated or inaccurate.⁴⁶ At the time it served the Second and Third Requests, FINRA had learned of another potential current address for Harpe so it mailed those requests to both the

³⁶ Compl. ¶ 13; Morris Decl. ¶ 19.

³⁷ Compl. ¶ 14; Morris Decl. ¶ 20.

³⁸ Compl. ¶ 15; Morris Decl. ¶ 21; CX-6.

³⁹ Compl. ¶ 16; Morris Decl. ¶ 22; CX-6.

⁴⁰ Compl. ¶ 16; Morris Decl. ¶ 22.

⁴¹ Compl. ¶ 15; Morris Decl. ¶ 21; CX-6.

⁴² Compl. ¶ 17; Morris Decl. ¶ 23.

⁴³ Compl. ¶ 17; Morris Decl. ¶ 23. FedEx tracking information obtained by FINRA indicates that the FedEx mailing to Harpe’s CRD address was scheduled to be returned to FINRA, though the status remained “pending” as of the date of FINRA’s Default Motion. Compl. ¶ 17; Morris Decl. ¶ 23.

⁴⁴ Compl. ¶ 18; Morris Decl. ¶ 24. FedEx tracking information obtained by FINRA indicates that the FedEx mailing to the Farmington Hills Address remains “pending.” Compl. ¶ 18; Morris Decl. ¶ 24.

⁴⁵ Compl. ¶ 19; Morris Decl. ¶ 25.

⁴⁶ Compl. ¶¶ 7, 20; Morris Decl. ¶¶ 12, 13.

CRD address and the Farmington Hills Address pursuant to FINRA Rule 8210(d).⁴⁷ As a result, I deem Harpe to have received constructive notice of the requests.⁴⁸

By failing to produce the documents and information requested by FINRA staff, Harpe violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines recommend that if an individual does not respond in any manner to a request for information made pursuant to Rule 8210, a bar should be standard.⁴⁹ The Principal Consideration in determining sanctions for failing to respond in any manner to a request made under Rule 8210 is the "importance of the information requested as viewed from FINRA's perspective."⁵⁰

Between May and July 2023, in connection with its investigation of Harpe, Enforcement sent him three requests for documents and information. The requests were sent pursuant to Rule 8210. Among other things, FINRA staff sought a written statement from Harpe, relevant court documents related to the criminal charge referenced on his Form U5, and information regarding any bankruptcies, judgments, liens, and compromises with creditors. The documents and information requested were material and necessary to Enforcement's investigation into whether Harpe violated FINRA Rules.⁵¹ Enforcement maintains that Harpe's failure to respond to the requests significantly impeded its investigation because it deprived FINRA of material information.⁵²

Considering the foregoing, and because I find there are no mitigating factors, the appropriate sanction is a bar in all capacities. In light of the bar, I do not also impose a fine.⁵³

⁴⁷ Compl. ¶¶ 11, 16; Morris Decl. ¶¶ 17, 22.

⁴⁸ *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)."), *aff'd*, Exchange Act Release No. 100662, 2024 SEC LEXIS 1860 (Aug. 6, 2024).

⁴⁹ FINRA's Sanctions Guidelines (2024) ("Guidelines") at 93, https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

⁵⁰ *Id.*

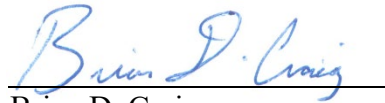
⁵¹ Compl. ¶ 28; Morris Decl. ¶ 51.

⁵² Morris Decl. ¶ 51.

⁵³ 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 in this case did not demonstrate customer loss.

IV. Order

Enforcement's Default Motion is **GRANTED**. For violating FINRA Rules 8210 and 2010 by failing to provide documents and information as required by FINRA Rule 8210, Respondent Gary Francis Harpe is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Brian D. Craig
Hearing Officer

Copies to:

Gary Francis Harpe (via first-class mail and overnight courier)
Ashley Morris, Esq. (via email)
Michael Manning, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)