

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

Department of Enforcement,

Complainant,

v.

Daniel J. Arcuri, Jr. (CRD No. 2200431),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2017056688202

Hearing Officer:

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In January 2018, FINRA opened an investigation into Daniel J. Arcuri, Jr.'s ("Arcuri" or "Respondent") potential misuse of customer funds and undisclosed outside business activities related to a client's estate. In connection with its investigation, on June 20, 2019 and July 16, 2019, FINRA requested that Arcuri appear and provide testimony pursuant to FINRA Rule 8210. To date, Arcuri has failed to respond to FINRA's June 2019 and July 2019 requests; his failure to do so violates FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. From September 2, 1992 to December 8, 2017, Arcuri was registered with FINRA as an Investment Company and Variable Contracts Products Representative through his association with Thrivent Investment Management, Inc. (the "Firm"), a FINRA-regulated broker-dealer.

3. On December 8, 2017, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) stating that Arcuri’s employment had been terminated on December 5, 2017 for failing to “seek and obtain Firm approval to engage in an outside business activity as the representative of the estate of a deceased client.” The Form U5 further noted that the Firm was investigating whether Arcuri had properly distributed funds from the estate.

4. Although Arcuri is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint (1) was filed within two years after the date upon which he ceased to be registered or associated with a FINRA member, and (2) charges him with failing to respond to FINRA's requests to appear for on-the-record testimony ("OTR") during the two-year period after Arcuri ceased to be registered or associated with a FINRA member firm.

### **FACTS**

5. On January 19, 2018, FINRA’s Preliminary Investigations Unit (“PI Unit”) sent Arcuri a request for documents and information pursuant to FINRA Rule 8210 concerning among other things, the allegations in the Form U5. The request called upon Arcuri to produce the requested documents and information by February 2, 2018. Arcuri did not provide the requested documents and information.

6. On February 14, 2018, FINRA’s PI Unit sent Arcuri a second request for the same documents and information pursuant to FINRA Rule 8210. This second PI Unit request called upon Arcuri to produce the requested documents and information by February

28, 2018. Arcuri did not provide the requested documents and information.

7. On March 6, 2018, as a result of Arcuri's two failures to produce the documents and information requested by the PI Unit, FINRA Staff issued a Notice of Suspension pursuant to FINRA Rule 9552, informing Arcuri that he would be suspended unless he provided the requested documents and information on or before March 30, 2018.

8. By April 19, 2018, while his response to the PI Unit's requests remained incomplete, Arcuri eventually produced sufficient documents and information to have the Notice of Suspension withdrawn.

#### **Arcuri's Failure to Respond**

9. On June 20, 2019, as part of its investigation, FINRA Enforcement Staff mailed a letter to Arcuri (the "June 20 Request"), pursuant to FINRA Rule 8210, requesting that he appear and provide OTR testimony on July 16, 2019.

10. Staff sent the June 20 Request to Arcuri by certified mail and by first class U.S. mail at his last known residential address, as identified in the Central Registration Depository (the "CRD Address"). The copy of the June 20 Request sent to the CRD Address by certified mail was returned to Enforcement marked "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD," contained notations by the U.S. Postal Service that notices were left at the CRD Address on June 25, 2019 and July 1, 2019, and was returned on July 10, 2019. The certified mail receipt was returned to Enforcement unsigned. The copy of the June 20 Request sent to the CRD Address by first class U.S. mail was not returned to Enforcement.

11. On June 21, 2019, FINRA Staff spoke with Arcuri via telephone to confirm that he intended to appear for testimony on July 16, 2019 as requested. During that call, FINRA

Staff confirmed with Arcuri that his CRD Address was his current address and Arcuri also provided Staff with an active email address (the “Email Address”) by which it could communicate with him. During the call, FINRA Staff informed Arcuri that it had sent him the June 20 Request and Arcuri responded that he may request an extension of the date set for his OTR testimony by the June 20 Request.

12. Arcuri did not request an extension from FINRA Staff of the date of the OTR appearance for testimony specified in the June 20 Request.

13. Arcuri failed to appear and provide testimony on July 16, 2019.

14. On July 16, 2019, Enforcement Staff sent a second letter to Arcuri, pursuant to FINRA Rule 8210 (the “July 16 Request”), requesting that Arcuri appear for OTR testimony on July 30, 2019.

15. Staff sent the July 16 Request to Arcuri by certified mail and by first class U.S. mail to the CRD Address and by email to the Email Address.

16. The copy of the July 16 Request sent to the CRD Address by certified mail was returned to Enforcement marked “RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD” and according to U.S. Postal Service records, a notice of delivery attempt was left at the CRD Address on July 20, 2019. The certified mail receipt was returned to Enforcement unsigned. The copy of the July 16 Request sent to the CRD Address by first class U.S. mail was not returned to Enforcement. The copy of the July 16 Request sent to Arcuri’s Email Address was also not returned to Enforcement.

17. Arcuri failed to appear and provide testimony on July 30, 2019.

18. Enforcement Staff has sent multiple requests for Arcuri to appear and provide testimony pursuant to FINRA Rule 8210 to Arcuri’s CRD Address and the Email Address.

To date, Arcuri has failed to appear and provide testimony to Enforcement.

#### CAUSE OF ACTION

#### **Failure to Provide Testimony (FINRA Rules 8210 and 2010)**

19. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 18 above.

20. FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA Staff has the right to require a person subject to FINRA's jurisdiction ... to testify at a location specified by FINRA Staff ... with respect to any matter involved in the investigation.

21. FINRA Rule 8210(c) provides that "[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule."

22. FINRA Rule 8210(d) specifies that notice under Rule 8210 shall be deemed received by a current or former registered representative to whom it is directed by mailing or otherwise transmitting the notice to the last known residential address of the registered representative as reflected in the Central Registration Depository.

23. FINRA Rule 2010 requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade. Failing to respond to FINRA Staff requests to provide testimony issued pursuant to Rule 8210 is conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade and, thus, violates Rule 2010.

24. FINRA Staff's requests for Arcuri's OTR testimony in the June 20 Request and the July 16 Request were material to FINRA Staff's investigation of Arcuri's potential rule violations and were necessary for FINRA to complete its regulatory mandate to fully investigate potential rule violations.

25. The requests to provide testimony included in the June 20 Request and the July 16 Request were made pursuant to FINRA Rule 8210.

26. The June 20 Request and the July 16 Request each stated that any failure to answer FINRA Staff's questions at his OTR could expose Arcuri to sanctions, including a bar from the securities industry.

27. Arcuri's failures to appear and testify on July 16, 2019 and July 30, 2019, as requested, constitute separate and distinct violations of FINRA Rules 8210 and 2010.

**RELIEF REQUESTED**

**WHEREFORE**, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Arcuri committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed; and
- C. order that Arcuri bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

**FINRA DEPARTMENT OF  
ENFORCEMENT**

Date: October 22, 2019



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