

**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–DW

DEFAULT DECISION

February 7, 2020

For twice failing to appear and provide on-the-record testimony during an investigation as required by FINRA Rule 8210, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For the Complainant: Elson Ho, Esq., Eric Hansen, Esq., and Richard Chin, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Respondent Daniel J. Arcuri, Jr. (“Arcuri”) was registered as an Investment Company and Variable Contracts Products Representative until the FINRA member firm (“Firm”) that he associated with terminated his employment. On December 8, 2017, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) disclosing that it terminated Arcuri 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.” Since then, Arcuri has not associated with a FINRA member.

After the Firm filed the Form U5, FINRA’s Department of Enforcement (“Enforcement”) opened an investigation into Arcuri’s outside business activities and potential misuse of customer funds. As part of that investigation, on June 20, 2019, Enforcement staff sent Arcuri a request to appear for on-the-record (“OTR”) testimony under FINRA Rule 8210. Arcuri did not appear for

his scheduled testimony on July 16, 2019. That same day, the staff sent him another request for his testimony, this time on July 30, 2019. He failed to appear again.

Enforcement filed a one-cause Complaint on October 22, 2019, alleging that Arcuri violated FINRA Rules 8210 and 2010, by twice failing to appear and give his OTR testimony. Enforcement filed and served the Complaint, Notice of the Complaint, and a Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. To date, Arcuri has not answered or otherwise challenged the charges against him.

Enforcement later filed and served a motion for entry of default decision under FINRA Rules 9215(f) and 9269, together with the Declaration of Elson Ho (“Declaration”) in support of the motion, and supporting exhibits. Arcuri did not respond to the motion.

For the reasons set forth below, I grant Enforcement’s motion. Because Arcuri failed to respond, he is in default. Through his default, Arcuri admits the allegations of the Complaint as provided by FINRA Rule 9269(a)(2). Based on the facts pled in the Complaint and now admitted by Arcuri, along with the sworn evidence provided by the Declaration, I find that Arcuri committed the violations alleged in the Complaint and, as set forth below, impose sanctions consistent with FINRA’s Sanction Guidelines.

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background

Arcuri first became registered with FINRA in September 1992 as an Investment Company Products and Variable Contracts Representative. From that time until December 2017, he was registered with a FINRA member firm in that capacity. The Firm terminated his employment on December 5, 2017, and filed a Form U5 disclosing the termination on December 8, 2017. The Firm disclosed that it terminated Arcuri 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.”¹

Arcuri is not currently registered or associated with a FINRA member.²

B. FINRA’s Jurisdiction

FINRA has jurisdiction over Arcuri in this matter under Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed its Complaint within two years after the effective date of

¹ Complaint (“Compl.”) ¶¶ 2–3; Declaration (“Decl.”) ¶¶ 4–5, Decl. Exhibits (“Ex”)-1, Ex-2.

² Compl. ¶ 4; Decl. ¶ 6.

termination of his FINRA registration, and the Complaint charges Arcuri with failing to respond to requests for information during the two-year period after the termination of his registration.³

C. Origin of the Investigation

FINRA started investigating Arcuri shortly after the Firm filed the Form U5. The investigation concerned Arcuri's potential misuse of customer funds and undisclosed outside business activities related to his client's estate.⁴

D. Respondent's Default

Enforcement served Arcuri with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on October 22, 2019, and the Complaint and Second Notice of Complaint on November 21, 2019. In each case, Enforcement served Arcuri by first-class certified mail addressed to his last known residential address recorded in FINRA's Central Registration Depository ("CRD") and also electronically at his email address. In each case, the certified mail envelope receipt was returned to FINRA signed for by Arcuri's spouse. The email sent to Arcuri was not returned, nor did Arcuri respond.⁵

Thus, Arcuri received valid constructive notice of this proceeding.

Under Rule 9215, Arcuri's Answer was due by December 9, 2019. To date, Arcuri has not filed an Answer to the Complaint and Second Notice of Complaint. Thus, Arcuri is in default.⁶

E. Arcuri Violated FINRA Rules 8210 and 2010 by Failing to Appear and Provide Testimony.

The Complaint's sole cause of action alleges that Arcuri violated FINRA Rules 8210 and 2010 by failing to comply with two requests to appear and provide testimony under oath in connection with Enforcement's investigation.

Rule 8210 requires persons subject to FINRA's jurisdiction to provide information to FINRA upon request. The Rule "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."⁷ The Rule is indispensable to

³ Compl. ¶ 4; Decl. ¶ 7.

⁴ Compl. ¶ 3, 1; Decl. ¶ 8.

⁵ Decl. ¶¶ 12-19; Ex-12-Ex-18.

⁶ Arcuri may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

⁷ *Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019).

FINRA's ability to carry out its regulatory mandate.⁸ Because FINRA lacks subpoena power, it must rely on the Rule to police the activities of associated persons.⁹ An associated person violates the Rule when he fails to provide full and prompt cooperation to FINRA in response to a request for information.¹⁰ The Rule is unequivocal in requiring an associated person to cooperate.¹¹ "Failure to comply with FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010."¹²

At the outset of the investigation, FINRA's Preliminary Investigations Unit ("PI Unit") sent Arcuri a request for documents and information on January 19, 2018. Arcuri failed to produce documents in response to this request, so the PI Unit sent a second request. When Arcuri failed to respond to the second request, FINRA staff issued a Notice of Suspension under FINRA Rule 9552. But by April 19, 2018, Arcuri produced sufficient documents and information to have the Notice of Suspension withdrawn.¹³ Later in that same investigation, FINRA staff sought Arcuri's in-person OTR testimony. As explained in more detail below, Arcuri twice failed to appear.

1. Arcuri Failed to Appear and Provide Testimony on July 16, 2019.

On June 20, 2019, Enforcement issued its first request to Arcuri to appear and provide testimony under oath as a part of its investigation. The request, issued under Rule 8210, scheduled Arcuri's testimony for July 16, 2019. The request notified Arcuri that failing to appear on the scheduled date could violate Rule 8210 and might lead to a disciplinary proceeding that could result in his being sanctioned, and possibly barred from the securities industry.¹⁴

Enforcement sent the request to Arcuri's CRD address by first class and certified mail. The copy sent certified mail was returned to Enforcement undelivered, but the copy sent first class mail was not returned. On June 21, 2019, Enforcement staff spoke to Arcuri via telephone to confirm that he intended to appear on July 16, 2019. On that call, Enforcement staff confirmed that Arcuri's CRD address was current, and Arcuri also provided an email address. When told about the June 20, 2019 request, Arcuri indicated that he might request an extension of the date

⁸ *Dep't of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *44 (NAC Jan. 8, 2019), *appeal docketed*, SEC Admin. Proc. No. 3-18989 (Feb. 6, 2019).

⁹ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

¹⁰ *Dep't of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019), *appeal docketed*, SEC Admin. Proc. No. 3-19589 (Oct. 10, 2019).

¹¹ *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *44 (NAC July 24, 2017).

¹² *Vedovino*, 2019 FINRA Discip. LEXIS 20, at *20-21.

¹³ Compl. ¶¶ 5-8.

¹⁴ Ex-3.

of his testimony. Arcuri never requested an extension, and never appeared for his testimony on July 16, 2019.¹⁵

2. Arcuri Again Failed to Appear on July 30, 2019.

When Arcuri failed to appear on July 16, 2019, Enforcement sent a second request to him to appear and provide testimony under Rule 8210 on July 30, 2019. This request, too, contained a warning that failing to comply with the request would violate Rule 8210.¹⁶

As with the first request, Enforcement sent the second request to Arcuri's CRD address by first class and certified mail. Enforcement also sent the request electronically to the email address provided by Arcuri. Once again, the copy sent certified mail was returned to Enforcement undelivered, but the copy sent first class mail was not returned. The copy sent electronically was also not returned.¹⁷ And when the time for his testimony came on July 30, 2019, Arcuri again never requested any extension and simply failed to appear without excuse or justification.

By failing to comply with the requests to appear and testify on two separate occasions, Arcuri violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that if an individual does not respond in any manner to a request for information a bar in all capacities should be standard.¹⁸ The Guidelines further provide that when an individual fails to respond the principal consideration in determining sanctions is the importance of the information requested as viewed from FINRA's perspective.¹⁹

FINRA needed the information it requested from Arcuri to perform its regulatory function and fully investigate potential misconduct. Enforcement was investigating allegations that Arcuri had potentially misused customer funds and failed to disclose outside business activities related to his client's estate. Arcuri's failure to provide testimony deprived FINRA of his evidence and frustrated its ability to fulfill its regulatory responsibilities.²⁰ There is no evident excuse or justification for Arcuri's repeated failure to respond to FINRA's requests.

¹⁵ Compl. ¶¶ 9-13; Decl. ¶ 10; Ex-3–Ex-5.

¹⁶ Ex. 6.

¹⁷ Compl. ¶¶ 14-18; Decl. ¶ 10, Ex-6–10.

¹⁸ FINRA Sanction Guidelines at 33 (2019), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

¹⁹ *Id.*

²⁰ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities), *aff'd, sanctions modified*, Exchange Act Release No. 55046, 2007 SEC Lexis 13 (Jan. 5, 2001).

Under these circumstances, I can find no mitigating factors. I therefore conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent Daniel J. Arcuri, Jr. is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



David Williams
Hearing Officer

Copies to:

Daniel J. Arcuri, Jr. (via first-class mail)
Elson Ho, Esq. (via email and first-class mail)
Eric Hansen, Esq. (via email)
Richard Chin, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)