

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROGER BRAXTON II  
(CRD No. 6271694),

Respondent.

Disciplinary Proceeding  
No. 2020066388801

Hearing Officer–MJD

**DEFAULT DECISION**

April 14, 2022

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to comply with requests for information and documents during a FINRA investigation, in violation of FINRA Rules 8210 and 2010.**

*Appearances*

For the Complainant: Katherine Wyman, Esq., and Frank Mazzarelli, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

**DECISION**

FINRA opened an investigation into potentially falsified expense reports that Respondent Roger Braxton II submitted to his employer firm. As part of the investigation, FINRA staff sent Respondent four requests to provide information and documents pursuant to FINRA Rule 8210. Respondent did not produce all the information and documents requested.

The Department of Enforcement properly served Respondent with two Notices of Complaint and the Complaint. Respondent did not file an Answer to the Complaint. On March 11, 2022, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Enforcement counsel Katherine Wyman (“Wyman Decl.”) and 11 exhibits (CX-1 through CX-11). Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent 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). For violating FINRA Rules 8210 and 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

## **I. Findings of Fact and Conclusions of Law**

### **A. Background**

Respondent entered the securities industry in 2013. He was registered with NYLife Distributors LLC (“NYLife”) from March 2015 to April 2020 as an investment company and variable contracts products representative. On April 17, 2020, NYLife filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Respondent’s registration.<sup>1</sup>

### **B. Jurisdiction**

Respondent was last registered with FINRA on April 17, 2020. 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 within two years of the effective date of the Form U5 that terminated Respondent’s association with a member firm, and (ii) the Complaint charges him with failing to comply with requests for information from FINRA staff within two years of the termination of his registration.<sup>2</sup>

### **C. Origin of the Investigation**

FINRA commenced an investigation into Respondent’s expense reporting after NYLife terminated his registration. Respondent’s Form U5 stated that NYLife discharged Respondent after “an internal investigation that raised concerns regarding the accuracy of expense reporting he submitted.”<sup>3</sup> Submitting false expense reports could constitute conversion, which is a violation of FINRA Rule 2010. As part of its investigation, FINRA sought information and documents from Respondent about the expenses he submitted to NYLife. The investigation led to the filing of the Complaint in this matter.

### **D. Respondent Defaulted by Failing to Answer the Complaint**

Enforcement served Respondent 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 December 22, 2021, and the Second Notice of Complaint and Complaint on January 20, 2022. In each case, Enforcement served Respondent by first-class

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<sup>1</sup> Complaint (“Compl.”) ¶¶ 2-3; Wyman Decl. ¶ 5; CX-1; CX-2, at 3, 5.

<sup>2</sup> Compl. ¶ 4; Wyman Decl. ¶¶ 5-6.

<sup>3</sup> Compl. ¶ 9; Wyman Decl. ¶ 4; CX-1, at 2.

certified mail at his last known residential address recorded in the Central Registration Depository (“CRD”).<sup>4</sup> Respondent thus received valid constructive notice of this proceeding.<sup>5</sup>

Pursuant to FINRA Rule 9215, Respondent was required to file an Answer or otherwise respond to the Complaint by February 7, 2022. Respondent did not respond to the Complaint. I thus find that Respondent defaulted.

On February 14, 2022, I issued an Order instructing Enforcement to file a Default Motion. On March 11, 2022, Enforcement filed its Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,<sup>6</sup> and deem the allegations in the Complaint admitted.

#### **E. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Produce Information and Documents**

The Complaint contains one cause of action. It alleges that Respondent violated FINRA Rules 8210 and 2010 by failing to comply with FINRA staff’s requests to produce information and documents. The staff sent Respondent four requests for information pursuant to Rule 8210. Respondent provided a partial response to the first request which was dated June 22, 2021. He failed to respond at all to the three later requests dated August 20, September 17, and October 12, 2021. Each request sought information relating to expense reimbursement requests Respondent submitted to NYLife. The Complaint charges Respondent with failing to respond to the last three requests for information and documents.<sup>7</sup>

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.”<sup>8</sup> “FINRA Rule 8210 is unequivocal and grants

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<sup>4</sup> Wyman Decl. ¶¶ 9, 11, 16, 18. Enforcement also sent the First and Second Notices of Complaint and Complaint to Respondent’s email address. Wyman Decl. ¶¶ 10, 17. Enforcement is not aware of any other address for Respondent besides the one recorded in CRD. Wyman Decl. ¶¶ 7-8.

<sup>5</sup> 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).

<sup>6</sup> Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

<sup>7</sup> Compl. ¶¶ 27-28.

<sup>8</sup> *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).

FINRA broad authority to obtain information concerning an associated person's securities-related business ventures.”<sup>9</sup> Associated persons must cooperate fully in providing FINRA with information.<sup>10</sup> It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.<sup>11</sup>

On June 22, 2021, FINRA staff sent Respondent a letter pursuant to Rule 8210 asking that he provide documents identifying purchases that he made through Amazon.com, Amazon Prime Now, Amazon US Prime, and Amazon Marketplace (together “Amazon”), including receipts, invoices, and order confirmations, and submitted to NYLife for reimbursement from December 2018 to April 2020.<sup>12</sup> On July 26, through counsel he had retained to represent him for the investigation, Respondent provided a two-page Excel spreadsheet that he created listing 59 purchases he made from Amazon from December 2018 to March 2020. He did not provide any receipts, invoices, or order confirmations. Nor did Respondent identify what he purchased from Amazon or the purchase amounts. Respondent's counsel stated that Respondent could not download receipts because the purchases had occurred too long ago, even though they were made within the prior three years.<sup>13</sup>

On August 20, 2021, FINRA staff sent Respondent another written request, pursuant to Rule 8210, repeating the request it made on June 22 for information and documents. The staff further requested that he provide a statement describing the steps he took to identify and collect the documents that were potentially responsive to the June 22 request. FINRA also asked Respondent to produce copies of correspondence with Amazon, including screenshots or copies of webpages he accessed to identify and collect responsive documents.<sup>14</sup> Respondent did not respond to the August 20 request.<sup>15</sup>

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<sup>9</sup> *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at \*12 (NAC Dec. 12, 2012).

<sup>10</sup> 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.”).

<sup>11</sup> 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 June 28, 2021).

<sup>12</sup> Compl. ¶ 10; CX-7, at 1.

<sup>13</sup> Compl. ¶ 11; CX-8.

<sup>14</sup> Compl. ¶ 12; CX-9, at 2. FINRA staff sent the August 20 request to Respondent's counsel via certified mail, first-class mail, and email. Counsel confirmed he received the request during a telephone conference with staff. Compl. ¶ 13.

<sup>15</sup> Compl. ¶ 14.

Because Respondent did not respond to the August 20 request, on September 17, 2021, FINRA staff issued a third request, pursuant to Rule 8210, asking that Respondent produce the same information requested in the June 22 and August 20 requests.<sup>16</sup> Respondent did not respond to the September 17 request.<sup>17</sup>

On October 12, 2021, FINRA staff sent its fourth and final request to Respondent, pursuant to Rule 8210, requesting that he produce the same information and documents sought in each of the prior requests.<sup>18</sup> Respondent again failed to provide any information or documents.<sup>19</sup>

By failing to produce the information and documents requested by FINRA staff, Respondent violated FINRA Rules 8210 and 2010.<sup>20</sup>

## II. Sanctions

FINRA's Sanction Guidelines ("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.<sup>21</sup> In cases where an individual provides 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."<sup>22</sup> The principal considerations in determining sanctions for a partial but incomplete response to a Rule 8210 request are (i) the importance of the information requested that was not provided, as viewed from FINRA's perspective, and whether the information that was provided was relevant and responsive to the request; (ii) the number of requests FINRA made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (iii) whether respondent thoroughly explained valid

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<sup>16</sup> Compl. ¶ 15; CX-10, at 1-2, 5-7. FINRA staff sent the September 17 request for documents to Respondent's counsel via certified mail and email and, pursuant to Respondent's counsel's instructions, directly to Respondent at his CRD address via first-class mail and certified mail. The staff also sent a copy of the September 17 request to Respondent using an email address provided by his counsel. Compl. ¶¶ 16-18.

<sup>17</sup> Compl. ¶ 20.

<sup>18</sup> Compl. ¶ 21; CX-11, at 1-2, 7-9. FINRA staff sent the October 12 request for documents to Respondent's counsel via certified mail and email and, pursuant to Respondent's counsel's instructions, directly to Respondent at his CRD address via first-class mail and certified mail. The staff also sent a copy of the October 12 request to Respondent using the email address provided by his counsel. Compl. ¶¶ 16-18.

<sup>19</sup> Compl. ¶ 26.

<sup>20</sup> FINRA Rule 2010 requires a member to "observe high standards of commercial honor and just and equitable principles of trade." It is well established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst'l Trading*, 2009 SEC LEXIS 215, at \*29-30; *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

Respondent had constructive notice of the three requests. *See* FINRA Rule 8210(d) (stating that a notice issued under Rule 8210 is "deemed received" by a currently or formerly registered person when it is mailed to the person's last known residential address as reflected in CRD).

<sup>21</sup> FINRA Sanction Guidelines at 33 (2021), <http://www.finra.org/industry/sanction-guidelines>.

<sup>22</sup> *Id.*

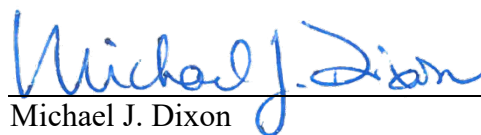
reasons for the deficiencies in the response.<sup>23</sup> The Guidelines also provide that where mitigation exists, or the person did not respond in a timely manner, an adjudicator should consider suspending the individual in any or all capacities for up to two years.<sup>24</sup>

I find that Respondent's limited production in response to the first request for information and documents dated June 22, 2021, was not responsive and therefore did not constitute substantial compliance with FINRA's requests. In material respects, FINRA's Rule 8210 requests for information and documents remained unfulfilled. Also, FINRA was investigating potentially serious misconduct by Respondent—the conversion of NYLife funds by submitting false expense reports.<sup>25</sup> I find that the information Respondent failed to provide was necessary to assist in FINRA's investigation of his reimbursement requests. Therefore, Respondent's failure to produce all the information and documents requested prevented FINRA from fulfilling its regulatory responsibilities.<sup>26</sup>

The evidence reveals no justification or excuse for Respondent's failure to completely respond to FINRA's requests. I find no mitigating factors. Thus, the appropriate sanction 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. The bar also will deter others from ignoring FINRA's information requests.

### III. Order

Respondent Roger Braxton II 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.

  
Michael J. Dixon  
Hearing Officer

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* The Guidelines also provide that in the case of a failure to respond, or to respond truthfully, an adjudicator may consider a fine of \$25,000 to \$77,000. In instances involving a partial but incomplete response, an adjudicator may consider a fine from \$10,000 to \$77,000. *Id.*

<sup>25</sup> *See, e.g., Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at \*22 (Sept. 30, 2016) (“[C]onversion casts doubt on a person's ‘ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money.’”) (citing *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002)).

<sup>26</sup> *See Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285, at \*37-38 (Apr. 1, 2016) (sustaining a bar for incomplete Rule 8210 responses under applicable Sanction Guidelines); *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*50-51 (Sept. 24, 2015) (same).

Copies to:

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