

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALAN CASHAW, JR.  
(CRD No. 4574278),

Respondent.

Disciplinary Proceeding  
No. 2014041884602

Hearing Officer–LOM

**DEFAULT DECISION**

April 18, 2016

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide timely responses to two written requests for information and documents pursuant to FINRA Rule 8210. Respondent is separately barred for failing to provide any response to either of two subsequent written requests for information and documents pursuant to FINRA Rule 8210.**

For the Complainant: Matt T. Morley, Esq., and Jennifer J. Schulp, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: no appearance by or on behalf of Alan Cashaw, Jr.

**DECISION**

**I. Introduction**

The Department of Enforcement filed its Complaint on October 29, 2015. The First Cause of Action alleges that Respondent Alan Cashaw, Jr. failed to timely respond to two requests for information, in violation of FINRA Rules 8210 and 2010. The Second Cause of Action alleges that Cashaw failed to respond to two subsequent requests for information, in violation of FINRA Rules 8210 and 2010.

Respondent did not file an Answer or otherwise respond to the Complaint.

On February 3, 2016, Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration (“Decl.”) in support of the motion, and 18 supporting exhibits (CX-1 through CX-18). Respondent did not respond to the motion. Thus, the

Hearing Officer grants Enforcement's motion and deems the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

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

### **A. Respondent's Background**

Alan Cashaw, Jr. was first registered with a FINRA member firm in August 2002 as an Investment Company Products/Variable Contracts Representative.<sup>1</sup> Respondent registered with FSC Securities Corporation ("FSC") on October 8, 2008.<sup>2</sup> On July 9, 2014, FSC filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating the Respondent's employment and FINRA registration.<sup>3</sup> Respondent has not since been registered or associated with any FINRA member.<sup>4</sup>

### **B. FINRA's Jurisdiction**

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.

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

FINRA's investigation of Respondent began on July 11, 2014, following the filing of the July 9, 2014 Form U5 by FSC. The Form U5 disclosed that Respondent had been discharged for "violation of firm policies and procedures regarding availability and frequency of client contact" and "failure to properly maintain/retain and secure firm books and records."<sup>5</sup>

Pursuant to FINRA Rule 8210, Enforcement served a series of four written requests for information on Respondent. These requests were essential to Enforcement's investigation of, amount other things, whether Respondent failed to properly maintain, retain, and secure customer records as required by FINRA Rule 4511 and Securities Exchange Act Rule 17a-3.

### **D. Respondent's Default**

Enforcement served Respondent with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement

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<sup>1</sup> Decl. ¶ 8; CX-2.

<sup>2</sup> Decl. ¶ 9; CX-2.

<sup>3</sup> Decl. ¶ 6; CX-1.

<sup>4</sup> CX-2.

<sup>5</sup> Decl. ¶¶ 6-7; CX-1.

served the Complaint and First Notice of Complaint on October 29, 2015, and the Complaint and Second Notice of Complaint on December 3, 2015.<sup>6</sup> In each instance, Enforcement served Respondent by first-class certified mail addressed to his last known residential address recorded in the Central Registration Depository (“CRD”).<sup>7</sup> Thus, Respondent received valid constructive notice of this proceeding.<sup>8</sup>

Pursuant to Rule 9215, Respondent’s Answer was due by December 21, 2015. Accordingly, the Hearing Officer finds that Respondent is in default.<sup>9</sup> On January 4, 2016, the Hearing Officer issued an Order holding Respondent in default for failing to file an Answer.

**E. Failure To Timely Respond to First Two Requests for Information – First Cause of Action**

FINRA Rule 8210 states that FINRA “may require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information ... with respect to any matter involved in the investigation, complaint, examination or proceeding.”<sup>10</sup> It is well settled that violating the duty to cooperate under Rule 8210 is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

As part of its investigation, on August 4, 2015, FINRA staff requested by letter pursuant to FINRA Rule 8210 that Respondent provide, among other things, a signed statement in response to the allegation in the Form U5 (the “First Request”). Respondent did not respond to this letter.

On October 2, 2014, FINRA staff sent another letter pursuant to FINRA Rule 8210 to Respondent’s CRD address (the “Second Request”) seeking the same information sought in the First Request. Respondent did not respond to the Second Request.

On January 30, 2015, FINRA staff initiated an expedited proceeding (“January 30 Letter”) against Respondent pursuant to FINRA Rule 9552, notifying Respondent that he would be suspended on February 23, 2015, from associating with any FINRA member in any capacity because he had failed to respond to two FINRA Rule 8210 requests for information unless he

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<sup>6</sup> Decl. ¶¶ 14, 20.

<sup>7</sup> Decl. ¶¶ 15, 21.

<sup>8</sup> See, e.g., *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at \*21 n.21 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015). Enforcement also sent copies of the Complaint to Respondent at an email address he had used previously to communicate with FINRA staff.

<sup>9</sup> Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>10</sup> Complaint (“Compl.”) ¶ 7.

took corrective action before that date.<sup>11</sup> Respondent did not respond to the January 30 Letter. Thus, on February 23, 2015, FINRA staff notified Respondent by letter that he was suspended with a bar from association with any FINRA member firm to take effect on May 4, 2015, unless he took corrective action before that time.<sup>12</sup>

On May 1, 2015, Respondent provided a written response to the First and Second Requests. Accordingly, Respondent's registration was reinstated on May 5, 2015.<sup>13</sup>

Respondent failed to timely respond to the First and Second Requests, responding only after having been suspended pursuant to FINRA Rule 9552. Respondent's untimely response to the First and Second Requests is a violation of FINRA Rules 8210 and 2010.

**F. Respondent Failed To Respond to Third and Fourth Requests for Information – Second Cause of Action**

Following the termination of Respondent's suspension on May 5, 2015, FINRA renewed its investigation of Respondent's potential misconduct.

The information sought from Respondent was critical to FINRA's investigation into, among other things, allegations that Respondent had not properly made and preserved books, accounts, records, memoranda, and correspondence as required by FINRA Rule 4511 and Securities Exchange Rule 17a-3.

On August 7, 2015, FINRA staff sent the Third Request to Respondent pursuant to FINRA Rule 8210, requesting further information in connection with its investigation. Respondent did not respond to the Third Request.<sup>14</sup>

On September 1, 2015, FINRA staff sent the Fourth Request to Respondent pursuant to FINRA Rule 8210, requesting the same information set forth in the Third Request. Respondent did not respond to the Fourth Request.<sup>15</sup>

By failing to respond to the Third and Fourth Requests, Respondent violated FINRA Rules 8210 and 2010.

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<sup>11</sup> Compl. ¶ 11.

<sup>12</sup> Compl. ¶ 13.

<sup>13</sup> Compl. ¶ 14.

<sup>14</sup> Compl. ¶ 22.

<sup>15</sup> Compl. ¶ 22.

### **III. Sanction**

FINRA's Sanction Guidelines ("Guidelines") recommend that where an individual does not respond in any manner a bar in all capacities should be standard.<sup>16</sup> The Guidelines further provide that, 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>17</sup> Additionally, the Guidelines contain certain principal considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA's perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained a valid reasons) for deficiencies in the response.<sup>18</sup>

#### **A. First Cause of Action**

Here, Respondent responded to FINRA staff's initial two requests for information only after an expedited proceeding was filed and a suspension against him was pending. Thus, I apply the Guidelines for a partial, rather than complete, failure to respond. The evidence reflects a number of aggravating factors, including the fact that a high degree of regulatory pressure was required to obtain a response. Thus, I conclude that the appropriate sanction is a bar in all capacities.

#### **B. Second Cause of Action**

Here, Respondent did not respond at all to FINRA staff's subsequent two requests for information. Thus, I apply the Guidelines for a complete failure to respond.<sup>19</sup> The evidence reflects a number of aggravating factors. Among others, the conduct under investigation was serious and FINRA staff made a number of requests. Thus, I conclude that the appropriate sanction is a bar in all capacities.

### **IV. Order**

Respondent Alan Cashaw, Jr. is barred from associating with any member firm in any capacity for failing to timely comply with the first two requests for information and documents, in violation of FINRA Rules 8210 and 2010. He is separately barred from associating with any member firm in any capacity for failing to respond in any manner to the subsequent two requests

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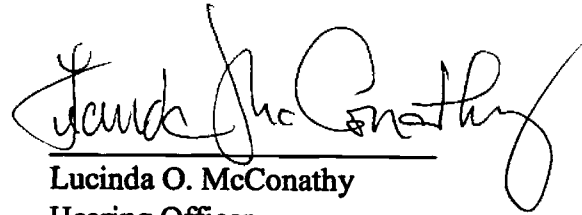
<sup>16</sup> Guidelines at 33.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at \*55-56 (June 14, 2013) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at \*25 & \*27 (Dec. 20, 2011)).

for information and documents, in violation of FIRNA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.

A handwritten signature in black ink, appearing to read "Lucinda O. McConathy", written over a horizontal line.

**Lucinda O. McConathy**  
**Hearing Officer**

**Copies to:**

- Alan Cashaw (via electronic and first-class mail)**
- Matt T. Morley, Esq. (via electronic and first-class mail)**
- Jennifer Schulp, Esq. (via electronic mail)**
- Jeffrey Pariser, Esq. (via electronic mail)**

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Alan Cashaw, Jr. (CRD No. 4574278)

Respondent.

DISCIPLINARY PROCEEDING  
No. 2014041884602

HEARING OFFICER:

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between August 2014 and May 2015, Respondent Alan Cashaw, Jr. failed to timely respond to two written information requests sent pursuant to FINRA Rule 8210. Subsequently, between August 2015 and October 2015, Respondent failed to respond in any way to two further written information requests sent pursuant to FINRA Rule 8210. Accordingly, Respondent violated FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. Respondent entered the securities industry in August 8, 2002, when he was registered with a FINRA member firm. From on or about November 2004 through on or about August 2008, Respondent was registered at a different FINRA member firm.

3. From October 8, 2008 through June 24, 2014, Respondent was registered at FINRA member FSC Securities Corporation as a General Securities Representative and an Investment Company Products/Variable Contracts Representative.
4. On July 9, 2014, FSC Securities Corporation filed a Form U5 terminating Respondent's registration and disclosing that Respondent had been terminated for violating "firm policies and procedures regarding availability and frequency of client contact, and failure to properly maintain, retain and secure firm books and records."
5. Although Respondent 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 (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with FSC Securities Corporation, namely, July 9, 2014; and (2) the Complaint charges Respondent with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION**

**Failure to Timely Respond to Requests for Information**

**(FINRA Rules 8210 and 2010))**

6. The Department realleges and incorporates by reference paragraphs 1-5, above.
7. FINRA Rule 8210 requires members and associated persons, if requested by FINRA staff, "to provide information orally, in writing or electronically . . . with respect to any matter involved in the investigation, complaint, examination or proceeding . . . ."



8. After receipt of the U5 filing, FINRA Staff opened an investigation into whether Respondent had failed to properly maintain, retain, and secure customer records as required by FINRA Rule 4511 and Securities Exchange Act Rule 17a-3. In connection with that investigation, FINRA Staff sent a letter on August 4, 2014 requesting information from Respondent pursuant to FINRA Rule 8210 (the "First Request"). The First Request was sent by first class and certified mail to Respondent's CRD address.
9. On October 2, 2014, FINRA Staff sent another letter to Respondent, pursuant to FINRA Rule 8210 (the "Second Request"), requesting the same information sought in the First Request. The Second Request was sent by first class and certified mail to Respondent's CRD address.
10. Respondent did not respond to the First or Second Requests.
11. After Respondent failed to respond to the First and Second Requests, FINRA Staff initiated an expedited proceeding against Respondent pursuant to FINRA Rule 9552. By letter dated January 30, 2015, Respondent was notified that because he had failed to provide the requested information, he would be suspended on February 23, 2015 from associating with any FINRA member in any capacity unless he took corrective action before the suspension date.
12. Respondent did not respond to the January 30, 2015 letter.
13. Pursuant to FINRA Rule 9552, FINRA Staff notified Respondent by letter sent on February 23, 2015 that he was suspended from associating with any FINRA member

in any capacity, with a bar from such association to take effect on May 4, 2015 unless he took corrective action before that time.

14. On May 1, 2015, FINRA staff received Respondent's written response dated April 20, 2015 to the First and Second Requests. Accordingly, Respondent's suspension was terminated on May 5, 2015.
15. By failing to timely respond to FINRA's requests for information, Respondent violated FINRA Rules 8210 and 2010.

**SECOND CAUSE OF ACTION**  
**Failure to Respond to Requests for Information**  
**(FINRA Rules 8210 and 2010)**

16. The Department realleges and incorporates by reference paragraphs 1–15, above.
17. Following the termination of Respondent's suspension, FINRA Staff renewed its investigation of Respondent's potential misconduct.
18. On August 7, 2015, FINRA Staff sent a letter to Respondent, pursuant to FINRA Rule 8210, requesting further information in connection with its investigation (the "Third Request"). The Third Request was sent by first class and by certified mail to Respondent's CRD address and included a due date of August 25, 2015.
19. The first class mailing of the Third Request was not returned. The certified return receipt of the Third Request was returned to FINRA having been signed illegibly and dated August [illegible], 2015.
20. On September 1, 2015, FINRA Staff sent another letter to Respondent, pursuant to FINRA Rule 8210 (the "Fourth Request"), requesting the same information sought in

the Third Request. The Fourth Request was sent by first class and by certified mail to the CRD address and included a due date of September 15, 2015. The Fourth Request was also sent via e-mail to Respondent at an e-mail address identified by FINRA Staff.

21. The first class mailing of the Fourth Request was not returned. The certified mailing of the Fourth Request was returned to FINRA by the U.S. Postal Service, marked "UNCLAIMED."
22. Respondent never provided the information and documents requested in the Third or Fourth Requests.
23. By failing to respond to FINRA's requests for information and documents, Respondent violated FINRA Rules 8210 and 2010.

#### **RELIEF REQUESTED**

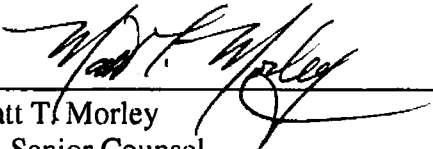
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

- C. order that Respondent 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 29, 2015

  
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