BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John Joseph Plunkett Brooklyn, NY, Respondent.	DECISION Complaint No. 2006005259801 Dated: February 21, 2012

Respondent removed his firm's books and records, erased the firm's electronic files and computer servers, and failed to respond to FINRA requests for information and documents. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Elisa Meth Kestin, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: John Joseph Plunkett, Pro Se

Decision

A Review Subcommittee of the National Adjudicatory Council called this matter for discretionary review to examine the sanctions imposed on John Joseph Plunkett in a Hearing Panel decision issued on January 4, 2011. The Hearing Panel found that, when Plunkett resigned from his firm, he took the firm's books and records and erased the firm's electronic files and computer servers. The Hearing Panel also found that Plunkett failed to respond to requests for information and documents issued by FINRA staff. The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records, and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents. After an independent review of the record, we eliminate the fines and suspensions that the Hearing Panel assessed and impose a bar for each cause of action.

I. Factual Background

A. Plunkett

Plunkett entered the securities industry in August 1993. Between August 1993 and January 2010, Plunkett remained registered with FINRA continuously, associating with several current and former FINRA firms. Plunkett has not registered with FINRA, or associated with another FINRA firm, since the termination of his registration in January 2010.

B. Lempert Brothers

At the time of the conduct in this case, Plunkett was associated with former FINRA firm, Lempert Brothers International USA, Inc. ("Lempert Brothers"). Lempert Brothers was a limited liability company based in New York and a wholly owned subsidiary of a holding company based in Liechtenstein. Although the European holding company maintained legal ownership of Lempert Brothers, de facto ownership of the firm rested with two Ukrainian brothers, Roman and Eduard Orlov. The Orlovs resided in Austria and operated several broker-dealers throughout Europe. The Orlovs authorized their nephew, George Milter, to act as their representative in the United States.[1]

C. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

In August 2003, Lempert Brothers hired Plunkett to assist the company in establishing its operations in the United States. He served as Lempert Brothers' president and chief compliance officer and registered through the firm as a general securities representative and principal.

1. Lempert Brothers Stops Paying Plunkett

Lempert Brothers was never profitable, and, by early 2005, there was not sufficient capital for the firm to satisfy its ongoing obligations and pay its employees. Accordingly, in March 2005, Lempert Brothers ceased funding salaries and expenses for all Lempert Brothers' personnel, including Plunkett.

Around that time, Plunkett and several other registered representatives at Lempert Brothers met with Milter to discuss the firm's dire financial situation. They informed Milter, at that meeting, that they intended to leave Lempert Brothers if the firm's financial situation did not improve. In early to mid-2005, Plunkett and the other registered representatives at Lempert Brothers began to search for other employment opportunities.

2. Plunkett Establishes Emerald Investments

In the summer of 2005, while Plunkett was employed with Lempert Brothers as president and chief compliance officer, he and two other registered representatives began forming a new

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[1] Lempert Brothers was a member of FINRA from February 2004 until June 2010.

broker-dealer, Emerald Investments, Inc. ("Emerald Investments").[2] Plunkett did not disclose his involvement with Emerald Investments to the Orlovs or their representative, Milter.

Plunkett intended to remain at Lempert Brothers to continue growing its business, and then transfer that business to Emerald Investments upon his departure from the firm. In September 2005, for example, Plunkett and the other founding principals of Emerald Investments identified investors for Emerald Investments and entered into an agreement with the investors for the capitalization of the firm. Among other representations and warranties, Plunkett agreed to "maintain the current base of operations [at Lempert Brothers] for as long as possible in order to maintain the various businesses as long as possible and to facilitate ease of transfer to the new broker-dealer." Plunkett even projected that he and the other founding principals of Emerald Investments would have sufficient business from their existing platform at Lempert Brothers to fund the new broker-dealer without additional cash infusions.

Throughout late 2005 and early 2006, Plunkett and the founding principals of Emerald Investments arranged to establish the new broker-dealer and sever ties with Lempert Brothers. By March 2006, Emerald Investments had secured office space, executed a service agreement with a clearing firm, and applied for FINRA membership.[3]

3. Lempert Brothers Prepares to Fire Plunkett

As Plunkett and the founding principals of Emerald Investments continued their preparations to build Emerald Investments' business and leave Lempert Brothers, Plunkett's relationship with the Orlovs began to deteriorate, and the Orlovs decided to terminate Plunkett.

On or about March 16, 2006, an attorney representing the Orlovs and Milter prepared a draft resolution for Lempert Brothers' board of directors' approval and emailed the draft to Milter for his review. The resolution called for the "immediate" removal and dismissal of Plunkett as president of Lempert Brothers. On March 30, 2006, after the same attorney and Plunkett had a disagreement about the production of certain documents in preparation for a routine compliance examination, the attorney sent an email to the Orlovs and Milter, explaining the circumstances of the disagreement and the compromise he had reached with Plunkett. As the attorney concluded the summary of what had transpired, he noted, "[t]his of course may all be academic as we will soon be relieving [Plunkett] of his position." Plunkett, as Lempert Brothers' chief compliance officer, reviewed all Lempert Brothers' email correspondence. Plunkett admitted that he saw the aforementioned emails in late March 2006, and knew that the Orlovs intended to fire him.

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[2] From October 2005 to April 2006, Plunkett served as president and chief compliance officer of both Lempert Brothers and Emerald Investments.

[3] In January 2006, Emerald Investments filed a Uniform Application for Broker-Dealer Registration ("Form BD"), requesting FINRA membership. Plunkett signed the Form BD as Emerald Investments' president. FINRA approved Emerald Investments' membership application in June 2006.

4. Plunkett Takes Lempert Brothers' Books and Records

Faced with his imminent termination, Plunkett expedited his departure from Lempert Brothers. Plunkett met outside of the Lempert Brothers' offices with the firm's sales supervisor and seven or eight of the firm's registered representatives. At that meeting, Plunkett explained his plan and timeframe to leave Lempert Brothers. Everyone in attendance agreed to join Plunkett and associate with Emerald Investments.

On April 3, 2006, Plunkett and the departing personnel prepared and tendered letters of resignation to Lempert Brothers and the Orlovs. A Lempert Brothers' employee also filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Plunkett and each of the resigning registered representatives.

On the evening of April 3, 2006, Plunkett and the resigning employees waited for Lempert Brothers' remaining personnel to leave for the day. After these individuals left, Plunkett and the other resigning personnel took all of Lempert Brothers' books and records, except for those that were located in the offices of three other employees.[4]

At Plunkett's direction, the former employees of Lempert Brothers took the firm's accounting documents, bank and brokerage statements, compliance manuals, customer files, employee records, incorporation documents, order tickets, documents concerning pending investment deals, and all electronic records, including the firm's FOCUS Reports. Plunkett and the other resigning employees also took office supplies and Lempert Brothers' checkbook and check register. Before departing, they erased Lempert Brothers' electronic files and computer servers. When the remaining Lempert Brothers employees arrived for work on April 4, 2006, they discovered the cleared-out offices. Lempert Brothers contacted the police to report the incident.

Within 24 hours, Plunkett and the other registered representatives who had left Lempert Brothers contacted all of their customers and sent follow-up letters to provide the customers with information concerning Emerald Investments. Virtually all of Lempert Brothers' customers transferred their accounts to Emerald Investments.

5. Plunkett's Misconduct Shuts Down Lempert Brothers for Four Months

Lempert Brothers hired a consultant to reconstruct the firm's missing books and records. It took one week for Lempert Brothers to obtain customer account numbers to access the records maintained at its clearing firm. After working with the clearing firm for two weeks, Lempert Brothers obtained copies of trading records.

Lempert Brothers also engaged the services of an attorney. From April through June 2006, the attorney attempted to negotiate the return of the stolen books and records. Plunkett,

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[4] Plunkett and the other resigning employees did not remove anything from Milter's office or the offices of two registered representatives who intended to remain at the firm.

however, refused to return the documents until Lempert Brothers agreed to provide each of the former employees with back pay.

In the midst of these negotiations, Plunkett contacted FINRA staff to give his account of what had transpired at Lempert Brothers. When FINRA staff learned that Lempert Brothers no longer had access to its books and records, the staff informed the firm that it could only engage in "liquidating transactions" until the firm could confirm its net capital compliance. Lempert Brothers did not resume full operations until August 2006.

6. A FINRA Arbitration Panel Compels Plunkett to Return Lempert Brothers' Books and Records

In June 2006, Plunkett, Emerald Investments, and several of Lempert Brothers' former registered representatives filed arbitration claims against Lempert Brothers and its owners, seeking approximately $300,000 in damages related to Lempert Brothers' failure to pay salaries in 2005 and 2006.[5] Lempert Brothers and its owners filed a counterclaim against Plunkett and the other claimants, alleging, among other claims, that Plunkett and the former representatives had stolen Lempert Brothers' personal and intellectual property.

During the arbitration proceedings, Lempert Brothers twice moved to compel the production of the books and records that Plunkett and the resigning employees had removed on April 3, 2006. The first set of documents was returned on October 25, 2006, after Lempert Brothers filed its initial motion to compel. Additional records were produced to Lempert Brothers in response to the firm's subsequent motion to compel, but only after the arbitrators issued a production order. Although a majority of the documents were returned to Lempert Brothers during the course of the arbitration, some documents were never produced.

The arbitration panel issued its decision on May 16, 2007. The panel denied the claims that Plunkett, Emerald Investments, and the other claimants had asserted during the arbitration proceedings, and ordered them to pay fees and compensatory and punitive damages of approximately $550,000 to Lempert Brothers and its owners.

D. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

On May 8, 2009, Enforcement sent Plunkett and his attorney a Wells Notice, informing them that FINRA had made a preliminary determination to initiate formal disciplinary proceedings against Plunkett for his conduct involving Lempert Brothers' books and records. Plunkett submitted a response to the Wells Notice on June 29, 2009. Plunkett's response explained the circumstances surrounding his departure from Lempert Brothers. The response also referred to documents, which he did not attach to the submission, and individuals that he did not identify by name.

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[5] *See Emerald Invs., Inc. v. Lempert Bros. Int'l USA, Inc.*, Case No. 06-03216, 2007 NASD Arb. LEXIS 531, at *1 (NASD Arbitration May 16, 2007).

On July 15, 2009, FINRA staff sent to Plunkett a request for information and documents made pursuant to FINRA Rule 8210. The request asked Plunkett to provide copies of the documents and identify the individuals referenced in his response to the Wells Notice. The letter requested a response by July 27, 2009. On July 27, 2009, Plunkett requested an extension of time to respond to the request. He stated that he required additional time to search for the documents. The staff granted Plunkett an extension until August 10, 2009. Plunkett, however, did not respond to the request by August 10, 2009. On August 11, 2009, Plunkett requested additional time to respond. He stated that he could not respond at that time because he was ill.

On August 20, 2009, FINRA staff sent Plunkett a second request for information and documents made pursuant to FINRA Rule 8210. The second request enclosed a copy of the original request from July 15, 2009, and required Plunkett to respond no later than September 3, 2009. Plunkett submitted a written narrative response to the request for information and documents seven months later, on April 29, 2010. Plunkett did not provide any documents with the response.

II. Procedural Background

FINRA initiated the investigation of this matter after Plunkett met with FINRA staff in April 2006 to explain his departure from Lempert Brothers and his rationale for taking the firm's books and records. Enforcement filed the complaint on December 1, 2009, alleging that Plunkett's misconduct involving Lempert Brothers' books and records violated NASD Rule 2110. Enforcement also alleged that Plunkett failed to respond to FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010. A two-day hearing took place in New York in September 2010. Plunkett, a FINRA examiner, and a representative of Lempert Brothers testified at the hearing.

The Hearing Panel issued its decision in January 2011, finding that Plunkett violated FINRA's rules, as alleged in the complaint. The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents.

III. Legal Findings

Although our consideration of this case focuses primarily on sanctions, we briefly review, and affirm, the Hearing Panel's findings and conclusions related to Plunkett's misconduct.

A. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

When Lempert Brothers stopped funding the salaries of its employees, Plunkett decided to leave the firm to establish his own broker-dealer, Emerald Investments. As Plunkett arranged for this transition from Lempert Brothers to Emerald Investments, he learned that Lempert Brothers intended to fire him and hastened his departure from the firm. During his departure, Plunkett implemented an exit strategy, which was guaranteed to cripple Lempert Brothers.

Plunkett summoned the other resigning employees of Lempert Brothers, and at Plunkett's direction, the resigning employees took nearly all of Lempert Brothers' books and records. Plunkett also directed the resigning employees to erase the firm's electronic files and computer servers. In one day, Plunkett rendered Lempert Brothers inoperable for months and succeeded in granting himself exclusive access to Lempert Brothers' customers, without regard to the effect of his actions on the firm or its customers.

Plunkett's conduct in this case represented a gross deviation from the standards expected of those employed in the securities industry, trampled ethical boundaries and standards of commercial honor, and violated NASD Rule 2110.[6]

B. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

FINRA staff properly served Plunkett with requests for information and documents on July 15 and August 20, 2009. Despite Plunkett's admitted receipt of these requests, he did not provide a response for nine months, until April 2010. When Plunkett finally responded to the requests for information and documents, he supplied only a written narrative. He did not proffer any documents. By failing to provide the information and documents by the date prescribed in FINRA's requests, Plunkett violated FINRA Rules 8210 and 2010.[7] *See PAZ Secs., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008) ("The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

IV. Sanctions

The Hearing Panel fined Plunkett $20,000 and suspended him in all capacities for two years for the misconduct involving the firm's books and records and imposed an additional $5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents. Our review of the record in this case, however, suggests that the Hearing Panel grossly misjudged the gravity of Plunkett's misconduct and the effect of that

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[6] We discuss the rules in effect when the conduct occurred. NASD Rule 2110 states that, "[A] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The rule is not limited to legal conduct, but incorporates broad ethical principles. *See Jay Frederick Keeton*, 50 S.E.C. 1128, 1134 (1992). NASD Rule 0115 subjects associated persons to all rules applicable to FINRA firms.

[7] A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade, and violates FINRA Rule 2010. *See Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *13 n.12 (Sept. 10, 2010), *appeal docketed*, No. 10-4566 (2d Cir. Nov. 15, 2010). NASD Rule 2110 was transferred without change to FINRA's consolidated rulebook and codified as FINRA Rule 2010, which became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50, at *32-33 (Oct. 2008). Associated persons are subject to the duties and obligations of FINRA Rule 2010 pursuant to FINRA Rule 0140.

misconduct on Lempert Brothers' customers, the firm, and FINRA. As discussed in further detail below, we bar Plunkett for each cause of action.

A. Plunkett's Disciplinary History

We note that the Hearing Panel failed to consider Plunkett's relevant disciplinary history, which is an aggravating factor applicable to each violation.[8] In May 2000, without admitting or denying the allegations, Plunkett consented to a settlement with FINRA for acting as a general securities principal without the proper qualifications and registrations. FINRA fined Plunkett $7,500 and suspended him in all principal capacities for 15 days for the violation.

Plunkett experienced an additional disciplinary event more recently, in January 2010, one month after Enforcement filed the complaint in this matter. In January 2010, FINRA initiated proceedings against Plunkett because he failed to pay the arbitration award entered in favor of Lempert Brothers. As a result of the proceedings, Plunkett is suspended from associating with any FINRA member, and will remain so, until he pays the arbitration award. Mindful that FINRA's Sanction Guidelines ("Guidelines") favor more severe disciplinary sanctions for recidivists, we examine the specific causes of action at issue in this case.

B. Plunkett's Misconduct Involving Lempert Brothers' Books and Records

Enforcement recommends that we consider the Guidelines for recordkeeping violations to inform our sanctions determination.[9] We, however, find that the application of the Guidelines for recordkeeping violations is not helpful here. To characterize Plunkett's actions as a recordkeeping violation oversimplifies the misconduct and fails to capture the essence of what had transpired between Plunkett and Lempert Brothers. When Plunkett decided to resign from Lempert Brothers, he took the firm's books and records and erased the firm's electronic files and computer servers, guaranteeing that Lempert Brothers would be inoperable when he left. While Plunkett's misconduct generally involves books and records, this is not a recordkeeping violation, and we decline to apply those Guidelines in this context. Rather, we rely on the "General Principles Applicable to All Sanction Determinations" and the "Principal Considerations in Determining Sanctions," which we apply in every disciplinary case, to assist our formulation of sanctions here.[10]

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[8] *See FINRA Sanction Guidelines*, at 6 (2011) (Principal Considerations in Determining Sanctions, No. 1) (considering respondent's disciplinary history), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

[9] *See id.* at 1 (Overview) ("For violations that are not addressed specifically, [a]djudicators are encouraged to look to the guidelines for analogous violations"), 29 (Recordkeeping Violations).

[10] *See id.* at 2-5 (General Principles Applicable to All Sanction Determinations), 6-7 (Principal Considerations in Determining Sanctions).

As we review the Hearing Panel's decision, we are concerned that the decision and the resulting sanctions do not adequately address the harm caused by Plunkett's misconduct. The injurious effects of Plunkett's misconduct on Lempert Brothers are obvious. Less obvious, however, is the substantial risk that Plunkett's misconduct imposed on Lempert Brothers' customers.[11] Plunkett's misconduct impeded the Lempert Brothers' ability to comply with basic requirements necessary for customer protection. For example, without access to its books and records, the firm was unable to ensure that it had sufficient capital to meet net capital requirements and could not conduct the due diligence necessary to provide customers with investment advice or respond to their requests.[12]

We also are troubled by the fact that Plunkett transferred the customer files and accounts from Lempert Brothers to Emerald Investments without notifying the customers that he intended to do so. Although many of the former customers of Lempert Brothers agreed to move their accounts with Plunkett to Emerald Investments, they did so after Plunkett already had removed the records from Lempert Brothers' offices. The fact that Plunkett assumed control of customers' records without their consent, risked their assets to transfer their accounts to Emerald Investments, and held their records hostage for his personal gain is intolerable and presents a significant aggravating factor under the circumstances presented.

That being said, we are mindful of the effect of Plunkett's misconduct on Lempert Brothers and note that the misconduct not only rendered the firm inoperable for four months, but also hindered the firm's ability to comply with a host of financial and operational rules.[13] Lempert Brothers had to engage in extraordinary and costly measures to regain possession of its books and records from Plunkett. The fact that, despite these efforts, Plunkett never returned several documents is problematic and aggravating.

We also consider the intentional and self-serving nature of Plunkett's misconduct.[14] Throughout the proceedings before the Hearing Panel, Plunkett asserted that he took Lempert Brothers' books and records because he had concerns that the Orlovs were engaged in fraudulent activities abroad, and he wanted to protect the interests of his customers.[15] The evidence,

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[11] *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering whether misconduct resulted in direct or indirect injury to investing public).

[12] After Plunkett removed the books and records, Lempert Brothers could not identify its customers.

[13] *See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering whether misconduct resulted in injury to firm).

[14] *See id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 13, 17) (considering whether misconduct was intentional and resulted in monetary or other gain).

[15] In March 2006, Plunkett received reports that the Orlovs were engaged in fraud in their European operations. Plunkett received letters from a Latvian attorney and investor, claiming that the Orlovs were the subject of criminal fraud proceedings in Austria. FINRA received similar correspondence from a Latvian investor around this same time and forwarded the letter to Plunkett for his review. We, like the Hearing Panel, make no findings with respect to the

[Footnote continued on next page]

however, supports the conclusion that Plunkett's motivation for the misconduct was financial, not altruistic, and that his concern about the Orlovs' activities was nothing more than a post hoc justification for his prior economic decision.

We highlight the temporal proximity of Plunkett's review of emails in late March 2006, revealing his imminent termination from Lempert Brothers, with his departure from the firm in April 2006, and conclude that Plunkett left Lempert Brothers in anticipation of his discharge.

We also consider the violation and note how it benefitted Emerald Investments, and consequently, Plunkett. The books and records that Plunkett took from Lempert Brothers, including customer account records and histories, provided Emerald Investments with an established base of customers. Other documents that Plunkett removed, such as compliance manuals and employee records, assisted Emerald Investments' launch as a full-functioning broker-dealer.

Indeed, if there were any doubt about Plunkett's motivation, we need only consider the fact that he erased Lempert Brothers' electronic files and computer servers, an act intended to provide him with exclusive access to Lempert Brothers' customers. If Plunkett believed that the Orlovs were engaged in fraudulent activities, as he claims, he had far less drastic alternatives at his disposal to address the situation, including notifying FINRA or the Commission.[16] Instead, he initiated an intentional and risky course of conduct, which by design benefitted him and his newly-formed broker-dealer, at the expense of Lempert Brothers and its customers. Our review of this case leads us to conclude that the Hearing Panel's sanctions are inadequate to remedy Plunkett's misconduct and insufficient to deter Plunkett from engaging, again, in the type of misconduct presented here. We therefore bar Plunkett for his misconduct involving Lempert Brothers' books and records.

C. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents

As we turn to the issue of sanctions for Plunkett's failure to respond to FINRA's requests for information and documents, we note that Plunkett did not respond to the information requests until April 2010, four months after Enforcement had filed the complaint in this matter. When a respondent does not respond to a request for information and documents until after FINRA files a complaint, the Guidelines instruct adjudicators to apply the presumption that the respondent's

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validity of the claims against the Orlovs because the accusations in the letters were not supported by any further evidence. In addition, to the extent the allegations are true, they do not mitigate Plunkett's misconduct. *See Dist. Bus. Conduct Comm. v. Aspen Capital Group*, Complaint No. C3A940064, 1997 NASD Discip. LEXIS 53, at *11 (NASD NBCC Sept. 19, 1997) (explaining that third-party's potential wrongdoing had no bearing on respondent's misconduct).

[16] In late March and early April 2006, Lempert Brothers was the subject of a routine Commission examination.

failure constitutes a complete failure to respond.[17] Consistent with the Guidelines, we apply the presumption here.

The Guidelines state that a bar is standard when an individual fails to respond in any manner to a request for information and documents.[18] Where mitigation exists, the Guidelines suggest a suspension in any or all capacities for up to two years and a fine of $25,000 to $50,000.[19] In assessing sanctions, the Guidelines advise adjudicators to consider the importance of the information requested as viewed from FINRA's perspective.[20]

In this instance, the information and documents that FINRA requested not only were important to determine whether FINRA should proceed with formal disciplinary action against Plunkett, but also to assist FINRA's investigation of the Orlovs. When Plunkett provided FINRA with the response to his Wells Notice, he asserted that there were individuals and documents that substantiated his claims against the Orlovs and supported his rationale for leaving the firm and taking the firm's books and records with him. Plunkett's failure to provide the requested information and documents frustrated FINRA's investigation and curtailed FINRA's ability to verify Plunkett's claims, particularly as it related to the Orlovs' purportedly fraudulent activities.

We also examined the record for evidence of mitigation, but conclude that no such evidence exists. In so holding, we carefully considered the explanations that Plunkett proffered for his failure to respond to the requests. Plunkett noted that his secretary's departure from the firm, the misfiling of some documents, the offsite storage of other documents, and the general disarray of his office left him unable to comply with the requests for information and documents issued in this case. These considerations, however, are not mitigating and have no bearing on Plunkett's compliance obligations under FINRA Rule 8210.[21] We expect individuals, as well as FINRA firms, to assign the utmost priority to responding to FINRA's Rule 8210 requests.[22]

As we consider the importance of the information that FINRA sought and the dearth of evidence of mitigation, we conclude that the record supports assessing Plunkett with the standard sanction for failing to respond in any manner to a request for information and documents. We

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17 *See Ricupero*, 2010 SEC LEXIS 2988, at *12; *Guidelines*, at 33 n.1 (Failure to Respond to Requests Made Pursuant to FINRA Rule 8210).

18 *See Guidelines*, at 33.

19 *See id.*

20 *See id.*

21 *See Ricupero*, 2010 SEC LEXIS 2988, at *20 (rejecting applicant's claim that his inability to locate documents should lessen severity of his violation of FINRA Rule 8210).

22 *See Wedbush Secs., Inc.*, 48 S.E.C. 963, 971-972 (1988) (rejecting applicant's contention personnel shortages and the disarray of firm records mitigated delay in responding to FINRA's requests for information and documents).

therefore bar Plunkett for failing to respond to FINRA's requests for information and documents.[23]

V. Conclusion

Plunkett removed his firm's books and records and erased the firm's electronic files and computer servers. In so doing, he violated NASD Rule 2110. Plunkett also failed to respond to FINRA's requests for information and documents, in violation of FINRA Rules 8210 and 2010. We bar Plunkett for each violation and affirm the Hearing Panel's order that he pay costs of $4,004.85. We have considered, and reject without discussion, all other arguments of the parties.

On behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

[23] Plunkett's misconduct involving Lempert Brothers' books and records, and his failure to respond to FINRA's requests for information and documents, present distinct violations, which are different in nature and raise separate public interest concerns. Accordingly, we have concluded that it is appropriate in this case to impose a bar for each cause of action presented. *See generally, Michael Frederick Siegel*, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459, at *46 (Oct. 6, 2008), *aff'd in relevant part*, 592 F.3d 147, 157-158 (D.C. Cir. 2010).