

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KANE H. WALLER
(CRD No. 4537969),

Respondent.

Disciplinary Proceeding
No. 2017055164001

Hearing Officer–MJD

**ORDER DENYING RESPONDENT'S MOTION FOR
PRODUCTION OF WITNESS STATEMENTS UNDER RULE 9253**

I. Background

The Department of Enforcement's Complaint has two causes of action alleging that Respondent Kane H. Waller engaged in front running of block orders, in violation of FINRA Rules 5270 and 2010. They charge that Waller, a sales trader on his former firm's institutional trading desk, improperly shared material, non-public market information about three customer block orders with a Fund, a favored customer of the firm's prime brokerage unit. In each case, according to the Complaint, after giving the information to the Fund's trading representative, Waller executed trades for the Fund in the same securities that were the subject of his disclosure. In his Answer, Waller denies that he made any improper disclosures and that he engaged in misconduct.¹

Waller has moved for an order requiring Enforcement to produce witness statements under FINRA Rule 9253 ("Motion"). Enforcement filed a response stating that it has produced all witness statements required by the Rule.

For the reasons set forth below, I deny the Motion.

II. Discussion

FINRA Rule 9253 requires Enforcement to produce certain types of "witness statements." Rule 9253(a)(1) requires Enforcement to produce any document containing a substantially verbatim transcription of an oral statement made by a potential witness, where the

¹ See Complaint ¶¶ 14, 17, 22-23; Answer ¶¶ 14, 17, 22-23.

transcription was made contemporaneously with the making of the statement. Rule 9253(a)(1) is FINRA's analogue to the Jencks Act, 18 U.S.C. § 3500(e)(2). Rule 9253(a)(2) requires Enforcement to produce a contemporaneously written statement made by an interested FINRA staff member during a routine exam or inspection about the substance of oral statements made by a non-FINRA person if either person is called as a witness and the statement for which production is sought directly relates to that person's testimony.²

In his Motion, Waller specifically identifies five witnesses on Enforcement's witness list for whom it seeks the production of statements, two of whom formerly supervised Waller. He notes that based on emails produced by Enforcement, it appears that FINRA staff interviewed the two supervisors over the phone. Waller concedes that he does not know whether the staff made any written or verbatim statements of the supervisors but requests that I order their production, should any exist.³

Waller also asks that I order the production of statements of two other firm employees. He acknowledges that he does not know whether any discoverable statements were taken from these two persons. Finally, Waller seeks "written notes or statements" made by the FINRA employee who was involved in the initial review of, and investigation into, the Form U5 (Uniform Termination Notice for Securities Industry Registration) disclosure Waller's former firm made when it terminated him.⁴

In its response, Enforcement asserts that it has already produced all the statements it is required to produce under Rule 9253. Enforcement further states that the parties have identified on their lists of proposed exhibits three such witness statements as potential joint exhibits or as complainant's exhibits at the hearing of this matter.⁵

² OHO Order 15-05 (2012034936005) (Jan. 27, 2015), at 3, http://www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005_0_0_0.pdf. *See also* OHO Order 18-21 (2017052871401) (Nov. 23, 2018), at 3-4, https://www.finra.org/sites/default/files/2019-08/OHO_Order_18-21_2017052871401.pdf (denying motion for production of witness statements); OHO Order 09-02 (2007009461301) (Oct. 14, 2009), at 3-5, https://www.finra.org/sites/default/files/OHODecision/p120282_0_0_0.pdf (same).

³ Respondent's Memorandum in Support of Motion for Production of Witness Statements ("Respondent's Memorandum") 2-3.

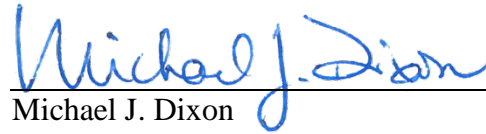
⁴ Respondent's Memorandum 3.

⁵ Department of Enforcement's Response to Respondent's Motion for the Production of Witness Statements 1.

III. Conclusion

Based on the papers the parties filed, I find no basis to order the production of witness statements under FINRA Rule 9253. Enforcement represents that it has satisfied its discovery obligations and does not have any statements it has not already produced pursuant to the Rule. Therefore, Respondent's Motion is **DENIED**.

SO ORDERED.



Michael J. Dixon
Hearing Officer

Dated: June 1, 2020

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