

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALPINE SECURITIES CORP.
(CRD No. 14952),

Respondent.

Disciplinary Proceeding
No. 2019061232601

Hearing Officer– CC

**ORDER REGARDING ALPINE SECURITIES' DISCOVERY MOTION
RELATED TO CHRISTOPHER DOUBEK**

Although the evidentiary record in this case is closed, this order addresses Alpine Securities Corporation's outstanding discovery motion.

I. Background

The hearing occurred in Salt Lake City, Utah from February 18 through February 23, 2020, and by videoconference on August 13, 14, and 26, September 11, 2020, and September 20 through 30, 2021, when the hearing concluded.

During the period at issue in the Complaint, Christopher Doubek was Alpine Securities' Chief Executive Officer. Alpine Securities and FINRA's Department of Enforcement listed Doubek as a prospective witness, and both parties called Doubek to testify. Alpine Securities terminated Doubek on June 24, 2021, before either party called him as a witness. It reported on Doubek's Uniform Termination Notice for Securities Industry Registration (Form U5) that Doubek colluded with a customer to misappropriate firm funds and engaged in other conduct detrimental to the firm.

FINRA commenced an investigation of Alpine Securities' termination of Doubek in June 2021. In connection with that investigation and another ongoing investigation unrelated to this case, FINRA conducted a two-day on-the-record ("OTR") interview of Doubek on June 29 and 30, 2021.

On September 14, 2021, four business days before the hearing reconvened, Alpine Securities filed a FINRA Rule 9253(a) motion requesting that I order Enforcement to produce complete transcripts from both days of Doubek's OTR testimony.¹

The parties participated in oral argument related to the motion on September 15, 2021. Enforcement represented that FINRA staff did not ask Doubek questions intended to elicit responses related to the matters in this case, but that some of Doubek's answers nevertheless included such information.² Enforcement contended that it was unwilling to compromise active investigations by providing the transcripts to Alpine Securities, but was "willing" to enable me to review the transcripts to determine what should be produced.³ Given that the hearing was scheduled to reconvene in three business days, there was insufficient time for me to review the transcripts, order the production of portions, and provide Respondent with adequate time to review the production before Enforcement presented Doubek's testimony on September 20.

On September 16, 2021, I ordered Enforcement to produce both OTR transcripts in their entirety by 3:00 p.m. that day.⁴ The transcripts revealed that in 2019 Doubek surreptitiously recorded conversations between himself, John Hurry (Alpine Securities' indirect owner) and others. A few hours after Enforcement produced Doubek's OTR transcripts on September 16, it also produced five of the audio recordings surreptitiously made by Doubek and transcripts of the recordings.

On September 20, 2021, Alpine Securities filed a motion for sanctions under FINRA Rule 9280 arising from Enforcement's alleged failure to comply with its discovery obligations related to Doubek. Alpine Securities requested that I allow it to recall Doubek in its case presentation or delay Doubek's testimony entirely until September 27, 2021 (the start of the second of the two weeks remaining in the hearing). I granted Alpine Securities' request to recall Doubek on September 27. Accordingly, Doubek testified twice—on September 20 and September 27, 2021.

On September 20, 2021, Enforcement filed an opposition to Alpine Securities' motion for sanctions. Enforcement represented that Doubek's June 2021 OTR interview was part of two ongoing investigations that are separate and distinct from this case. Enforcement stated that the vast majority of Doubek's June 2021 OTR testimony was irrelevant to the issues in this case and

¹ Alpine Securities' motion also sought leave to amend its exhibit list. I addressed Alpine Securities' motion for leave to amend its exhibit list in a separate order.

² Transcript of Sept. 15, 2021 pre-hearing conference ("Sept. 15, 2021 PHC Tr.") 18-19. The attorneys representing Enforcement in this matter are not the members of FINRA staff who conducted the two-day OTR interview of Doubek in June 2021.

³ Sept. 15, 2021 PHC Tr. 18.

⁴ During oral argument, Enforcement represented that the transcripts contained Bank Secrecy Act ("BSA") Confidential Information. I asked Enforcement how long it would take to redact BSA Confidential Information from the transcripts. Enforcement represented that it should be "relatively easy" to complete the redaction and electronically produce the transcripts by 3:00 p.m. the following day. Sept. 15, 2021 PHC Tr. 38.

that Alpine Securities knew on June 28, 2021 that Doubek's OTR interview was scheduled for June 29, so it should have filed its motion for production earlier than four business days before the hearing reconvened.⁵ Enforcement stated that Alpine Securities also knew about Doubek's audio recordings and never requested copies. Enforcement further argued that the audio recordings are not relevant to this proceeding and were obtained as part of a separate, unrelated investigation.

At the commencement of day 12 of the hearing on September 21, 2021, Enforcement stated that, although it produced five audio recordings to Alpine Securities, it had in fact received eight from Doubek.⁶ FINRA staff determined in consultation with FINRA's Office of General Counsel that three of the eight recordings were not made in compliance with state privacy statutes requiring consent for the interception of oral communications.⁷ Enforcement represented that, as such, FINRA staff neither listened to nor transcribed three of the recordings, and Enforcement did not produce those three recordings to Alpine Securities.⁸ Alpine Securities immediately requested that I order Enforcement to produce the remaining three recordings.⁹ I declined, but agreed to consider Alpine Securities' written submission on the issue.

At the commencement of day 16 of the hearing on Monday, September 27, 2021, Alpine Securities stated that, in preparation for recalling Doubek as a witness that day, it reviewed the Doubek June 2021 OTR transcripts and determined that Doubek had prepared notes for his OTR testimony.¹⁰ On Sunday, September 26, Alpine Securities requested a copy from Enforcement and received a 10-page, singled-spaced narrative on the morning of September 27, the day that Alpine Securities was scheduled to present Doubek's testimony.¹¹ In order to provide Alpine Securities with the opportunity to review Doubek's narrative before he testified, I delayed the commencement of the hearing on September 27 by two hours.¹² Alpine Securities contends that Enforcement's belated production of Doubek's audio recordings and narrative is further support for its motion for sanctions.

The last two weeks of the hearing commenced the day after Alpine Securities filed its motion for sanctions, so the parties did not fully brief the underlying issue of whether

⁵ Enforcement also indicated that, had Alpine Securities conferred with it before filing the motion, as required by the Case Management and Scheduling Order, it would have agreed to Alpine Securities' recalling Doubek on September 27.

⁶ Hearing Transcript ("Tr.") 346-353.

⁷ Tr. 347-348.

⁸ Tr. 347-353.

⁹ Tr. 349.

¹⁰ Tr. 4140-4146.

¹¹ Tr. 4140-4147.

¹² Tr. 4147-4148.

Enforcement improperly withheld or delayed the production of recordings and documents until after the hearing ended.

II. The Parties' Briefs

A. Alpine Securities' Arguments

Alpine Securities argues that, through a pattern of inconsistent and untimely disclosures, Enforcement displayed an indifference to its discovery obligations and to ensuring a fair process. It argues that Enforcement engaged in gamesmanship by stating as a reason for not sharing Doubek's OTR transcript that his testimony was taken under a different investigation number, and willful blindness by ensuring that the Enforcement attorneys in this case did not read the Doubek OTR transcripts until forced to do so. Alpine Securities argues that, by refusing to produce any portion of Doubek's OTR transcripts until ordered to do so, Enforcement improperly failed to take reasonable steps to identify and produce prior witness statements that included relevant and materially exculpatory information.

Alpine Securities argues that its August 14, 2021 motion was timely. Alpine Securities states that although it knew on June 28, 2021 that FINRA staff issued a Rule 8210 request for Doubek's June 29 OTR appearance, it did not believe that the OTR interview would proceed on such short notice.¹³ Alpine Securities represents that Doubek's interactions with Alpine Securities led it to believe that he had not met with Enforcement in June.¹⁴ Alpine Securities contends that it learned during a conversation with Enforcement on September 10, 2021, that Doubek's OTR interview occurred on June 29 and 30, 2021, as scheduled.¹⁵ As of September 10, Enforcement's attorneys in this case had not reviewed Doubek's OTR transcripts.¹⁶ On September 13, 2021, Enforcement acknowledged to Alpine Securities that portions of Doubek's OTR testimony related to this proceeding.¹⁷ Alpine Securities represents that Enforcement refused to produce even those portions of the transcripts unless and until Alpine Securities agreed not to seek production of the complete transcripts pursuant to FINRA Rule 9253.¹⁸

Alpine Securities argues that Enforcement's discovery failures continued after I ordered it to produce Doubek's OTR transcripts. Although FINRA staff learned during the June 29 and 30 OTR interviews that Doubek made audio recordings, Enforcement in this case did not disclose the existence of the recordings to Alpine Securities until September 16, 2021, just days before the hearing reconvened. Then, after presenting Doubek's testimony on September 20, 2021, Enforcement disclosed to Alpine Securities for the first time that it actually possessed

¹³ Oct. 8, 2021 Declaration of Maranda Fritz in Support of Motion of Sanctions ("Fritz Decl.") ¶ 3.

¹⁴ Fritz Decl. ¶ 3.

¹⁵ Fritz Decl. ¶ 2.

¹⁶ Fritz Decl. ¶ 2.

¹⁷ Fritz Decl. ¶ 5.

¹⁸ Fritz Decl. ¶ 5.

eight audio recordings although it had produced only five.¹⁹ Still, Alpine Securities argues, Enforcement never disclosed that it possessed Doubek's 10-page narrative until it produced it on the morning of September 27, 2021, the same day that Alpine Securities planned to present Doubek's testimony.²⁰

Alpine Securities contends that Doubek reached out to Enforcement on the same day that the firm terminated him; volunteered to speak to Enforcement; attended an OTR interview on just a few days' notice; prepared a written narrative in connection with his testimony; and voluntarily provided Enforcement with the narrative. Alpine Securities argues that Doubek clearly sought to harm the firm and protect himself, and the discovery at issue constituted classic impeachment material that Enforcement should not have withheld.

Alpine Securities also argues that Enforcement misrepresented facts during the September 15, 2021 oral argument. I asked Enforcement if FINRA staff asked any questions that elicited responses related to the matters in this case. Alpine Securities argues that Enforcement responded that FINRA staff had not when, in fact, it had asked such questions.

Finally, Alpine Securities argues that Enforcement improperly concealed Doubek's unlawful audio recordings until after he testified in Enforcement's case. It argues that Doubek's audio recordings contain relevant, material, and potentially exculpatory information, and Enforcement should be ordered to produce all eight recordings (not just the five recorded in compliance with state privacy laws).²¹

B. Enforcement's Arguments

Enforcement argues that it fully complied with its discovery obligations. Enforcement argues that Alpine Securities' motion fails to accurately describe the applicable legal standards and the circumstances surrounding Enforcement's production of Doubek's OTR transcripts, audio recordings, and written narrative. Enforcement notes that Doubek's June 2021 OTR interview, audio recordings, and narrative involved FINRA investigations unrelated to this matter and were conducted by FINRA staff not involved in this case.

¹⁹ Fritz Decl. ¶ 9.

²⁰ Fritz Decl. ¶ 11.

²¹ Alpine Securities argues that, in addition to the discovery obligations imposed by FINRA Rules 9251 and 9253, the Case Management and Scheduling Order independently imposed the obligation for Enforcement to produce certain types of witness statements and exculpatory information regardless of whether Alpine Securities did or did not file Rule 9253 motions. On this point, Alpine Securities is mistaken. The Case Management and Scheduling Order outlines the parties' rights and responsibilities with respect to FINRA Rules 9251 through 9253 but does not independently impose additional discovery obligations on Enforcement.

Enforcement contends that Alpine Securities could have filed its Rule 9253 motion earlier, as it was fully aware, on June 29, 2021, that Doubek testified before FINRA.²² Because Doubek was still registered with Alpine Securities in June 2021, FINRA staff provided Alpine Securities with a copy of its June 28, 2021 Rule 8210 request for Doubek's testimony. Enforcement notes that, on June 28, Alpine Securities' attorney sought by email to participate in Doubek's OTR and, in responsive emails, both FINRA staff and Doubek declined to enable her to attend.²³ Neither email suggested that Doubek's June 29 OTR interview would not proceed.²⁴ Enforcement avers that the firm's attorney never requested copies of Doubek's OTR transcripts from FINRA staff who issued the June 28 OTR request (and copied her on the request), notwithstanding that they were the same individuals with whom she corresponded to ask to attend the OTR interview.²⁵

Enforcement disputes Alpine Securities' claim that it refused to produce even the relevant portions of Doubek's OTR transcripts unless Alpine Securities agreed not to seek production of the complete transcripts. Enforcement contends that counsel for both parties spoke on September 14, 2021, and Enforcement offered to produce the relevant portions of the transcript, but not the complete transcripts.²⁶ Alpine Securities wanted the complete transcripts and indicated it would file a motion later the same day. Accordingly, Enforcement argues, it held off on its production, assuming that I would decide the motion quickly given that the hearing reconvened in four business days.²⁷

Enforcement also disputes Alpine Securities' claim that Enforcement's counsel in this proceeding misrepresented whether FINRA staff asked Doubek questions related to this matter during the June 2021 OTR interview. Enforcement argues that FINRA staff clearly instructed Doubek at the start of each day of testimony that it was not seeking information related to this case and that Doubek should alert FINRA staff if its questions touched on those topics.²⁸ Consistent with those instructions, Enforcement argues, FINRA staff's questions focused on issues unrelated to matters in this case.²⁹

With respect to the audio recordings that Doubek surreptitiously made, Enforcement contends that Alpine Securities received copies of FINRA staff's July 6, 2021 Rule 8210 requests for the recordings (issued under investigation numbers unrelated to this proceeding) and

²² Oct. 15, 2021 Declaration of Savvas A. Foukas in Support of Opposition to Respondent's Motion for Sanctions ("Foukas Decl.") ¶ 13.

²³ Foukas Decl. ¶¶ 8, 10, 11, 12.

²⁴ See Exhibits C, D to Foukas Decl.

²⁵ Foukas Decl. ¶ 15.

²⁶ Foukas Decl. ¶ 27.

²⁷ Foukas Decl. ¶ 28.

²⁸ Foukas Decl. ¶ 23.

²⁹ Foukas Decl. ¶ 24.

never requested copies of the recordings.³⁰ Enforcement disputes that Alpine Securities learned of the recordings for the first time when its attorney reviewed Doubek's OTR transcripts.

Enforcement further argues that it properly produced only five of the eight recordings. On July 27, 2021, Doubek produced eight audio recordings in response to FINRA's Rule 8210 request in an investigation unrelated to this proceeding.³¹ He represented that he made the recordings in Illinois on October 23, 2019, New York, or New Jersey on October 24 and 25, 2019, and Massachusetts on October 25, 2019.³² Before listening to the recordings, FINRA staff sought guidance from FINRA's Office of General Counsel as to which, if any, of the recordings it could legally review and transcribe.³³ On August 23, 2021, the Office of General Counsel advised that it could review transcripts from the five recordings made in New York and New Jersey, but not the three made in Massachusetts and Illinois, unless it was clear to all parties in the meetings that Doubek was recording them.³⁴ Accordingly, FINRA staff reviewed and transcribed only five of the recordings.³⁵ No one at FINRA has listened to the remaining three recordings.³⁶

On September 16, 2021, after I ordered Enforcement to produce Doubek's OTR transcripts, Enforcement's attorney in this matter reviewed the transcripts from those five recordings to determine if they contained information relevant to this proceeding.³⁷ He determined that two passages arguably pertained to Doubek's testimony in this matter, but nonetheless produced all five recordings and transcripts, without waiting for a motion, on September 16, 2021, just seven days after anyone at FINRA listened to them.³⁸

On the issue of Doubek's "narrative," Enforcement argues that its discovery obligations did not include producing Doubek's narrative, but it nevertheless produced it when asked by Alpine Securities. During Doubek's June 2021 OTR testimony, Doubek stated that he had notes in front of him.³⁹ Although FINRA staff did not issue a Rule 8210 request for Doubek's notes, he provided a narrative in his July 27, 2021 cover letter response to staff's July 6, 2021 Rule 8210 request for production of documents and recordings in FINRA investigations unrelated to

³⁰ Foukas Decl. ¶¶ 35, 36, 48.

³¹ Foukas Decl. ¶ 37.

³² Foukas Decl. ¶ 37.

³³ Foukas Decl. ¶ 38.

³⁴ Foukas Decl. ¶ 39.

³⁵ Foukas Decl. ¶ 40. On September 9, 2021, FINRA staff obtained 459 transcript pages of the five audio recordings from a court reporting service. Foukas Decl. ¶ 41.

³⁶ Foukas Decl. ¶ 44.

³⁷ Foukas Decl. ¶ 45.

³⁸ Foukas Decl. ¶¶ 46, 47.

³⁹ Foukas Decl. ¶ 49.

this proceeding.⁴⁰ On the evening of September 26, 2021, Alpine Securities requested that Enforcement produce Doubek's notes referenced in his June 2021 OTR testimony.⁴¹ Early in the morning on September 27, 2021, Enforcement's attorney in this matter inquired of FINRA staff who conducted Doubek's June 2021 OTR whether it had requested Doubek's notes.⁴² Enforcement's attorney learned that FINRA staff had not requested notes, but received a copy of Doubek's cover letter and immediately produced it to Alpine Securities even though he did not believe he was obligated by FINRA's rules to do so.⁴³

III. Discussion

A. Underlying Facts

Alpine Securities terminated Doubek on June 24, 2021, and its attorney advised FINRA staff of the termination.⁴⁴ On June 28, 2021, FINRA's Department of Member Supervision issued a Rule 8210 request for Doubek to appear and testify under oath on June 29, 2021.⁴⁵ FINRA staff's Rule 8210 request bore two FINRA investigation numbers, neither of which was the investigation number associated with this case.⁴⁶ FINRA staff provided Alpine Securities' attorney with a copy of the Rule 8210 request.⁴⁷ Notwithstanding that Doubek received only 24 hours' notice of the OTR interview, he testified on June 29 and 30, 2021, as scheduled.⁴⁸

Counsel for both parties spoke on September 10, 2021, and Alpine Securities requested copies of the transcripts of Doubek's June OTR testimony.⁴⁹ At that time, Enforcement's attorney in this matter represented that he had not reviewed the transcripts to determine if Doubek's testimony was material and relevant to this proceeding.⁵⁰ Alpine Securities' attorney requested that Enforcement's attorney review the transcripts, and he did.⁵¹

⁴⁰ Foukas Decl. ¶¶ 50, 51.

⁴¹ Exhibit Q to Foukas Decl.; Foukas Decl. ¶ 52.

⁴² Foukas Decl. ¶ 53.

⁴³ Foukas Decl. ¶¶ 53, 54.

⁴⁴ Foukas Decl. ¶¶ 2, 3.

⁴⁵ Foukas Decl. ¶ 7.

⁴⁶ Foukas Decl. ¶¶ 4, 5, 7.

⁴⁷ Fritz Decl. ¶ 3; Foukas Decl. ¶ 8.

⁴⁸ Fritz Decl. ¶ 3; Foukas Decl. ¶ 14. On June 24, 2021, immediately after Alpine Securities terminated Doubek, he reached out to FINRA staff to state that he was "interested in talking with them." Foukas Decl. ¶ 6.

⁴⁹ Fritz Decl. ¶ 2; Foukas Decl. ¶ 17.

⁵⁰ Fritz Decl. ¶ 2; Foukas Decl. ¶ 19.

⁵¹ Fritz Decl. ¶ 4; Foukas Decl. ¶¶ 20, 21, 22.

In accordance with my order, Enforcement produced copies of Doubek's OTR transcripts on September 16, 2021.⁵² Doubek's June 2021 OTR transcripts revealed that Doubek had made audio recordings of conversations he had with John Hurry and others.⁵³ On September 16, 2021, Enforcement produced five of Doubek's audio recordings (and transcripts) to Alpine Securities.⁵⁴

On Sunday, September 26, 2021, Alpine Securities requested that Enforcement produce a copy of the notes that Doubek stated he prepared in conjunction with his June 2021 OTR testimony.⁵⁵ Although Enforcement did not possess Doubek's notes, on Monday, September 27, 2021, it produced a cover letter obtained from other FINRA staff that Doubek had submitted in connection with a Rule 8210 response.⁵⁶

B. Legal Standards for Sanctions under FINRA Rule 9280

Under FINRA Rule 9280, a hearing officer or the hearing panel may impose sanctions against a party or an attorney for a party who violates a hearing officer's order, engages in "other contemptuous conduct during a proceeding," or fails to disclose information required by the Rule 9250 Series.⁵⁷ Rule 9280 authorizes the entry of "such orders as are just" as to a party or an attorney for a party and provides examples of the various types of orders that could be entered.⁵⁸ The rule also authorizes the hearing officer or hearing panel to "exclude an attorney for a Party."

Alpine Securities requested in its motion that I delay Doubek's testimony until the week of September 27, 2021, or allow Doubek to testify twice—once on behalf of Enforcement on September 20, 2021, and a second time on September 27, 2021, when called as a witness by Alpine Securities. In the interest of fundamental fairness and not as a sanction, I ordered that Doubek testify twice. Accordingly, Alpine Securities' sanction request is moot.

I next turn to the issue of whether Enforcement complied with the discovery obligations of FINRA Rules 9251 through 9253.

⁵² Fritz Decl. ¶ 8; Foukas Decl. ¶ 30.

⁵³ Fritz Decl. ¶ 8; Foukas Decl. ¶ 31.

⁵⁴ Fritz Decl. ¶ 8; Foukas Decl. ¶ 47.

⁵⁵ Fritz Decl. ¶ 11.

⁵⁶ Foukas Decl. ¶¶ 51, 53, 54.

⁵⁷ FINRA Rule 9280(a) and (b).

⁵⁸ See FINRA Rule 9280(b).

C. FINRA's Discovery Rules

FINRA Rules 9251 through 9253 govern discovery in FINRA proceedings. The discovery parameters that these rules establish are substantially less than the scope of discovery permitted in federal courts under the Federal Rules of Civil Procedure.⁵⁹

FINRA Rule 9251(a)(1) addresses discovery of documents prepared or obtained before the filing of a complaint. Rule 9251(a) requires Enforcement to make available to a respondent the materials that it prepared or obtained in connection with its investigation regardless of materiality or relevance. Rule 9251(a)(2) deals with post-complaint discovery. Under Rule 9251(a)(2), Enforcement must make available for inspection and copying any documents "material and relevant to the disciplinary proceeding in which such Respondent is a Party" obtained in response to a post-complaint FINRA Rule 8210 request "issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted."

Notwithstanding Enforcement's obligation under Rule 9251(a), Enforcement is permitted to withhold certain categories of documents identified in FINRA Rule 9251(b). But even documents that fall within the categories outlined in Rule 9251(b) must be produced if they contain "material exculpatory evidence."⁶⁰ A respondent bears the burden of establishing a basis for claiming that Enforcement's withheld documents must be produced because they contain material exculpatory evidence. "Mere speculation from the Respondent that FINRA documents may contain material exculpatory information is not sufficient" to warrant production.⁶¹ Furthermore, a Hearing Officer has discretion to order production of any other document, even if production is not otherwise required under the rule.⁶²

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 a statement made by a potential witness where the transcription was made contemporaneously with the making of the statement.⁶³ The parties do not dispute that Doubek's June 2021 OTR transcripts contain some testimony related to the subject of the Complaint, and

⁵⁹ OHO Order 14-04 (2012032519101) (Sept. 30, 2014), at 4, https://www.finra.org/sites/default/files/OHO_Order_14-04_ProceedingNo.2012032519101_0_0_0_0.pdf.

⁶⁰ FINRA Rule 9251(b)(3).

⁶¹ OHO Order 14-04, at 5 (citing *In re Jett*, 52 S.E.C. 830, 830-832 (1996)).

⁶² FINRA Rule 9251(a)(3). Under Rule 9252, a respondent may request that the Hearing Officer order Enforcement to invoke Rule 8210 to compel the production of documents or testimony from entities or individuals that are subject to FINRA's jurisdiction. Given the issues raised in Alpine Securities' motion, Rule 9252 is inapplicable to my analysis.

⁶³ Rule 9253(a)(2) requires Enforcement to produce a contemporaneously written statement made by Interested FINRA Staff during a routine exam or inspection about the substance of oral statements made by a non-FINRA person if either person testifies as a witness and the statement for which production is sought directly relates to that person's testimony. Rule 9253(a)(2) is inapplicable here.

Doubek was expected to testify on those matters. As such, I concluded in my September 16, 2021 Order that Doubek's June 2021 OTR transcripts fell within the parameters of Rule 9253(a)(1) and ordered Enforcement to produce them to Alpine Securities.

D. Conclusions

1. Enforcement Fully Complied with Its Discovery Obligations

For the reasons outlined below, I reject Alpine Securities' claim that Enforcement failed to comply with its discovery obligations under FINRA's rules.

a. Rule 9251

To find that Rule 9251 required Enforcement to produce to Alpine Securities Doubek's June 2021 OTR transcripts, audio recordings, or written narrative, I must find that these items meet the parameters outlined in subsection (a)(2) for post-complaint discovery. Under subsection (a)(2), Enforcement must produce documents (and, in this case, recordings) received in response to a post-complaint Rule 8210 request "issued under the same investigative file number" as the investigation leading to the issuance of this Complaint if they are "material and relevant" to the proceeding. As represented by Enforcement, and not disputed by Alpine Securities, the Rule 8210 requests that led to Doubek's June 2021 OTR interview and production of audio recordings and a written narrative relate to two FINRA investigations that are not connected to the investigation that led to the filing of the Complaint here. Accordingly, Enforcement was not required by the language of Rule 9251(a)(2) to produce them.

Enforcement, however, must comply not only with the clear language of Rule 9251, but also with the intent of the rule. For example, Enforcement cannot issue post-complaint Rule 8210 requests under other investigation numbers when, in fact, its true purpose is to obtain information relating to a pending matter.⁶⁴ Here, there is no evidence to suggest that the Doubek OTR transcripts, audio recordings, and narrative were obtained through Rule 8210 requests that, while identified as associated with other investigations, were in reality additional discovery related to this case. FINRA staff told Doubek at the start of both interview sessions that it was not interested in exploring matters related to this case and instructed him to advise staff if the questions veered into related subject matter.⁶⁵ Additionally, Doubek's OTR transcripts are

⁶⁴ Cf. OHO Order 18-06 (2014041860801) (Apr. 24, 2018), at 5, https://www.finra.org/sites/default/files/OHO_Order_18-06_2014041860801.pdf (holding that fundamental fairness requires production of documents obtained by Enforcement post complaint from voluntary third-party productions if the third parties will be called as witnesses and the documents are relevant and material, even though Rule 9251 does not specifically require production); OHO Order 00-24 (C3A990071) (Aug. 28, 2000), at 6, https://www.finra.org/sites/default/files/OHODecision/p007930_0_0.pdf (holding that the fact that the documents that respondent requested do not "fall within one of the enumerated categories" of Rule 9251 "does not axiomatically mean that the documents are shielded from production upon reasonable request where fundamental fairness or the efficient administration of the proceeding requires").

⁶⁵ Exhibit E to Foukas Decl. at 9-11; Exhibit F to Foukas Decl. at 138.

replete with instances of FINRA staff redirecting Doubek back to the events of 2020 and 2021⁶⁶ if he began testifying about earlier time periods related to this case and as it asked specific questions.⁶⁷

I ordered Alpine Securities to append to its brief any transcript pages in which FINRA staff asked questions seemingly designed to elicit answers related to the subject matter of this case. Alpine Securities did not provide transcript pages as ordered but cited to several pages in the transcripts.⁶⁸ The cited pages do not demonstrate that FINRA staff asked questions designed to elicit responses related to this case. While one or two questions may have tangentially related to matters at issue here, and Doubek may have strayed into matters related to this case in his answers, overall, FINRA staff's questions were unrelated to this matter.⁶⁹

Similarly, Alpine Securities has not demonstrated that Doubek's audio recordings contain information material and relevant to this case. On September 16, 2021, after I ordered Enforcement to produce Doubek's June 2021 OTR transcripts, Enforcement reviewed the five legally created audio recordings and transcripts and produced them to Alpine Securities on the same day. Although Alpine Securities argues that the recordings and transcripts contain information material and relevant to this matter, it fails to identify any of the information by citing to and attaching pages of the transcripts.⁷⁰ In any event, Alpine Securities did not refer to the recordings during its examination of Doubek at the hearing or provide persuasive support for

⁶⁶ The Complaint in this case alleges that misconduct occurred at Alpine Securities in 2018 and 2019.

⁶⁷ See, e.g., Exhibits E and F to Foukas Decl. at 40-41 ("So in terms of time frame, was this occurring in the 2020 – 2021 time frame or only prior to that?"); 45 ("So, Mr. Doubek, maybe another way to frame it would be in 2020 – from 2020 forward . . ."); 45 ("From 2020 forward, have there been any instances where a position has been either unilaterally moved – or through negative consent . . ."); 49 (" . . . looking only at 2020 forward?"); 57 ("Was the DTC custody fee charged by Alpine to Scottsdale and Alpine customers from 2020 through the present?"); 65 ("Were these Worthless Securities Forms being sent to Alpine and Scottsdale customers in 2020 and 2021?"); 67 ("Did you have any conversations with Mr. Hurry about having customers sign Worthless Securities Forms to transfer those positions to Alpine in the 2020 to 2021 time frame?"); 71-72 ("Did Alpine ever make an effort to contact customers . . . to pay those fees in the 2020 to 2021 time frame?"); 74 ("Did you have any conversations like you're referring to now with Mr. Hurry in the 2020 to 2021 time frame on this topic?"); 74 ("Did you have any conversations of that nature with Mr. Hurry in the 2020 to 2021 time frame?"); 80 ("was the call volume of daily, like, relatively constant, or did it increase, say in 2021 versus 2020?"); 123 ("And I want to limit this question I'm about to ask to 2020 and 2021."); 124 ("But then if you get beyond 2019 and into 2020, I mean, those conversations to me, in that directive, carried over."); 126 ("So did you implement the DTC custody fee through the 2020/2021 time frame?"); 199 ("[B]etween the end of 2020 and June 2021, did Mr. Hurry . . ."); 314 (" . . . eight calls in 2020, the whole year.").

⁶⁸ Alpine Securities submitted the transcripts as proposed exhibits RX-255 and RX-256. Although RX-255 and RX-256 were not admitted as evidence in this case, I reviewed the pages that Alpine Securities cited because the transcripts are appended as exhibits E and F to the Foukas Decl.

⁶⁹ Alpine Securities also alleges in its motion that Enforcement's attorney in this case misrepresented the nature of FINRA staff's OTR interview questions of Doubek. For the reasons stated above, I reject this assertion.

⁷⁰ Alpine Securities cited to portions of the recordings themselves, but I do not have the recordings as they are not evidence in this case. See Brief in Support of Alpine Securities' Motion for Sanctions 9-10. Alpine Securities did not attach pages of the transcripts.

the suggestion that the recordings relate to this case. Simply put, FINRA staff obtained these recordings in connection with unrelated investigations and Alpine Securities has not shown a sufficient nexus to suggest that Enforcement should have produced them in this case under Rule 9251.

Finally, Alpine Securities has not provided support for its argument that Doubek's June 2020 OTR transcripts, audio recordings, and narrative include material exculpatory information.⁷¹ Indeed, Alpine Securities has not demonstrated that any of these items, all of which are in the firm's possession, include information material and relevant to this case, let alone material exculpatory evidence.

In sum, I find that Enforcement complied with the requirements of FINRA Rule 9251.

b. Rule 9253

Rule 9253 places the onus on the respondent to file a motion to seek production of witness statements under Rule 9253.⁷² The rule does not require production without a motion. Alpine Securities clearly knew on June 28, 2021 of Doubek's June 29 OTR interview.⁷³ If it suspected that the OTR interview had not proceeded as planned, it could have asked FINRA staff who conducted the OTR interview and with whom Alpine Securities' attorney corresponded, or Enforcement staff in this matter. It did not. It also did not request that FINRA staff who conducted Doubek's OTR interview provide it with the transcripts, and did not discuss the possible production of the transcripts with Enforcement in this case until September 10, 2021, notwithstanding that Alpine Securities received copies of FINRA staff's June 29, 2021 Rule 8210 requests (issued under investigation numbers unrelated to this proceeding).⁷⁴ Alpine Securities waited until September 14, 2021, to file a motion for the production of Doubek's OTR transcripts. I held oral argument on September 15 and ordered the production of Doubek's OTR transcripts on September 16. I reject the argument that Enforcement is responsible for any delay in the production of Doubek's June 2021 OTR transcripts.

Furthermore, Alpine Securities did not file a Rule 9253 motion for the production of Doubek's audio recordings, notwithstanding that it received a copy of the July 6, 2021 Rule 8210 request for the production of the audio recordings (issued under investigation numbers unrelated to this proceeding). Enforcement nevertheless produced the recordings on September 16, 2021.

⁷¹ See OHO Order 14-04, at 5 (stating that respondent bears the burden of establishing that withheld documents contain material exculpatory information). FINRA applies Rule 9251(b)(2) consonant with the principles enunciated by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963). See OHO Order 07-29 (2005001919501) (July 13, 2007), at 7, https://www.finra.org/sites/default/files/OHODecision/p037091_0_0_0_0.pdf. Under Rule 9251(b)(3), Enforcement must produce any document withheld under Rule 9251(b)(1) if it includes material exculpatory evidence.

⁷² See FINRA Rule 9253(a)(1) and (a)(2).

⁷³ Fritz Decl. ¶ 3; Foukas Decl. ¶¶ 8-12.

⁷⁴ Fritz Decl. ¶ 2-4; Foukas Decl. ¶¶ 15-17.

Doubek's narrative would not even fall within the parameters of Rule 9253 in that it is not a contemporaneous recording or verbatim transcription of Doubek's oral statement.

Accordingly, I find that Enforcement complied with the requirements of FINRA Rule 9253.

2. Alpine Securities' Request for the Production of Three Additional Recordings Is Denied

During the hearing, I denied Alpine Securities' request for copies of the three recordings that FINRA staff determined were made in contravention of Illinois and Massachusetts privacy statutes. I directed Alpine Securities to provide citation to authority for the proposition that my ordering such production would be permissible. Although it cited two criminal cases in its Brief in Support of Alpine Securities' Motion for Sanctions, neither was persuasive on this issue. Accordingly, I deny Alpine Securities request for the production of three additional Doubek audio recordings.⁷⁵

SO ORDERED.



Carla Carloni
Deputy Chief Hearing Officer

Dated: October 28, 2021

⁷⁵ See Mass. Gen. Laws Ch. 272, § 99(C)(3) (prohibiting the disclosure or use of any interception, which is defined in § 99(B)(4) as "secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication"); 720 Ill. Comp. Stat. 5/14-2(a)(5) (prohibiting the use or disclosure of any information obtained from a private conversation in violation of the article); 720 Ill. Comp. Stat. 5/14-2(a)(2) (prohibiting the use of "transmitting or recording all or any part of any private conversation to which he or she is a party unless he or she does so with the consent of all other parties to the private conversation").

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