This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 22-12 (2019061528001).

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SPARTAN CAPITAL SECURITIES, LLC (CRD No. 146251), JOHN D. LOWRY (CRD No. 4336146), and KIM M. MONCHIK (CRD No. 2528972), Respondents.	Disciplinary Proceeding No. 2019061528001 Hearing Officer–MJD

ORDER GRANTING ENFORCEMENT'S MOTION TO SEQUESTER WITNESSES

On June 30, 2022, the Department of Enforcement filed a Motion to Sequester Witnesses ("Motion"), except for Respondents John D. Lowry and Kim M. Monchik and Enforcement's case agent, Kristin Karopchinsky. Enforcement also requests that I preclude all hearing participants, including all witnesses and counsel, from disclosing the substance of any witness's testimony to any other witness before the conclusion of the hearing. Enforcement further requests that I preclude witnesses from attending the hearing except when the witness is testifying.[1]

As grounds, Enforcement cites the nature of the allegations against Respondents, which involve multiple failures to make required disclosures for Spartan Capital Securities, LLC's (the "Firm") registered representatives, and Lowry's and Monchik's failures to disclose customer arbitrations filed against them. Because of the allegations, Enforcement argues, the "fact pattern and related violations alleged in the Complaint are intertwined, and most of the witnesses will

[1] Department of Enforcement's Motion to Sequester Witnesses ("Mot.") 1, 4.

provide overlapping testimony."[2] As a result, Enforcement asserts that the potential for tailoring testimony, whether consciously or unconsciously, is "significant."[3]

On July 6, 2022, Respondents filed an opposition to the Motion. They do not oppose precluding non-party witnesses from attending the hearing when they are not testifying and to exempting the parties from sequestration. However, Respondents argue that there should be no prohibition on communications between the parties and non-party Firm employees so that Respondents may assemble possible rebuttal evidence.[4] Respondents also argue that there should be no prohibition, or sequestration, "with regard to discussions with any witness who has provided FINRA" on-the-record testimony because their testimony has already been "locked in."[5] Respondents further state that they should not be prohibited from communicating with their attorney witnesses because they are counsel to the Firm, and so "they are subject to [a] higher standard pursuant to attorney conduct rules."[6]

After careful consideration of the parties' arguments, I grant the Motion. Respondents have not established good cause for denying the sequestration of witnesses in this proceeding or for exempting additional categories of witnesses from sequestration. First, Enforcement's Motion does not seek to prohibit Respondents from communicating with Firm employees about assembling potential rebuttal evidence. And this Order does not prevent Respondents from doing this. Second, I am not aware of any authority (and Respondents cite none) that prohibits, or even disfavors, sequestration of witnesses who have provided prior sworn statements or of attorney witnesses on the grounds that attorneys are obligated to abide by the rules of professional conduct.[7]

Sequestration is commonly used in courtrooms and in FINRA disciplinary hearings to ensure that a witness's testimony is not influenced by the testimony of other witnesses or by

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[2] Mot. 3. Respondents have identified as potential witnesses at the hearing five persons who work or worked in the Firm's compliance department, six outside counsel who provided legal advice to Respondents about their obligations to report certain events, and two securities industry consultants.

[3] *Id.*

[4] Respondents' Opposition to DOE's Motion to Sequester ("Opp.") 1.

[5] Opp. 2.

[6] Opp. 2.

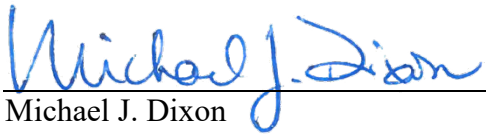
[7] Respondents also state that there should be no prohibition on discussions with witnesses before the commencement of the hearing. Opp. 2. By its terms, this Order does not prohibit communications with witnesses before the hearing begins.

conversations with others during breaks and adjournments in the hearing.[8] Sequestration discourages collusion, fabrication, tailoring of testimony, and providing inaccurate testimony.[9]

I find that sequestration of witnesses in this proceeding is proper. Therefore, for good cause shown, the Motion is **GRANTED**. All witnesses shall be sequestered in the hearing and shall not be allowed to discuss with anyone (other than their own counsel) their testimony or the facts of this proceeding, until after the conclusion of the hearing. The party calling the witness subject to sequestration shall inform the witness of this prohibition. Individuals on either party's witness list shall not be allowed in the hearing room except when they are testifying.

Respondents and Enforcement's case agent are excepted from this Order and shall be permitted to be present during the hearing.

SO ORDERED.



Michael J. Dixon
Hearing Officer

Dated: July 11, 2022

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[8] A request for the sequestration of witnesses is so well known in federal, state, and administrative adjudication that counsel routinely call upon a court or administrative body to "invoke the Rule" on witnesses to accomplish witness sequestration. OHO Order 06-53 (EAF0300770001) (Nov. 9, 2006), at 1, https://www.finra.org/sites/default/files/OHODecision/p018443_0.pdf.

[9] OHO Order 06-22 (CAF040079) (Mar. 9, 2006), at 2, https://www.finra.org/sites/default/files/OHODecision/p017561_0_0.pdf.