

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASON LYNN DIPAOLO  
(CRD No. 2648836),

Respondent.

Disciplinary Proceeding  
No. 2018057274302

Hearing Officer—MC

**ORDER SUSTAINING DEPARTMENT OF ENFORCEMENT'S OBJECTIONS TO  
ENFORCEMENT ATTORNEY GARY CHODOSH BEING CALLED AS A WITNESS,  
AND GRANTING MOTION IN LIMINE**

**I. Background**

There are three causes of action in the Complaint the Department of Enforcement filed against Respondent Jason DiPaola in this disciplinary proceeding. The first alleges that Respondent violated NASD Rule 3050(c) and FINRA Rule 2010 by failing to disclose to his employer firm that he engaged in discretionary trading in a securities account he controlled that was owned by his mother and maintained at another firm. The second alleges that he violated FINRA Rule 2010 when he submitted misleading answers to his employer firm about his trading activities on two employee certification questionnaires. The third charges that Respondent violated FINRA Rules 8210 and 2010 by failing to comply with two FINRA Rule 8210 requests to provide on-the-record ("OTR") testimony.

In Respondent's Answer, he denies that (i) he had any control over his mother's account, and (ii) that he submitted misleading answers on his firm's questionnaires. Respondent asserts that he was under no obligation to comply with the Rule 8210 requests because he had testified previously, after which Enforcement issued him a Wells Notice signaling it had concluded its investigation.

At the hearing, Respondent seeks to call Enforcement's Senior Counsel Gary Chodosh as a witness. Respondent's Witness List proffers that Chodosh "is expected to testify about FINRA's investigation of Jason DiPaola and the allegations in the Complaint."

Enforcement objects to Chodosh being called as a witness. It filed a motion to strike him from Respondent's witness list and a motion in limine to preclude him from testifying.

Enforcement represents that Chodosh participated in the investigation leading to the Complaint and is one of two Enforcement attorneys representing Enforcement at the hearing. Respondent has filed an opposition to Enforcement's objections, asserting a compelling need for Chodosh to testify.

For the reasons given below, Enforcement's objections to Chodosh's proposed testimony are sustained, and its motion in limine is granted.

## II. Discussion

With few exceptions, an attorney cannot act as an advocate and testify at a trial or hearing.<sup>1</sup> A party seeking to call as a witness an attorney defending or prosecuting a case must demonstrate that the attorney's testimony is "vital" to the case, and that there is "a compelling need for the testimony" because there is not an alternative witness or source available to provide the evidence the party seeks to elicit from the attorney.<sup>2</sup>

Respondent's assertion of a compelling need for Chodosh's testimony stems from his argument that Enforcement's issuance of Rule 8210 requests to obtain his OTR testimony, underlying the third cause of action, were improper. He argues that during the investigation leading to the Complaint, Respondent provided OTR testimony to Enforcement for two days after which Enforcement served a Wells Notice on him. Respondent claims that "[a]ll regulatory literature suggests that a FINRA Rule 8210 request is only appropriately issued and responded to post Wells Notice *if* Enforcement receives new information from the Respondent, such as a Wells Submission."<sup>3</sup> Because he did not make a Wells Submission, Respondent argues, Enforcement's Rule 8210 requests were impermissible. Respondent contends that he has a compelling need for Chodosh to testify to show "Enforcement's reasons and motives for engaging in its egregious and unsupported abuse of the FINRA Rule 8210 process."<sup>4</sup> Respondent claims that he needs Chodosh to testify because of his "personal knowledge . . . related to Enforcement's third cause of action."<sup>5</sup>

However, Enforcement has listed among its witnesses two FINRA staff members with personal knowledge of the investigation leading to the Complaint. In its Witness List, Enforcement proffers that staff member William Park is expected to testify about Enforcement's request for Respondent's OTR testimony and Principal Examiner Joshua Roundy is expected to

<sup>1</sup> See Rule 3.7 of the ABA Model Rules of Professional Conduct; *United States v. Jones*, 600 F.3d 847, at \*861-62 (7th Cir. 2010), *cert. denied*, 562 U.S. 915 (2010); *United States v. Ross*, No. 05-398, 2007 U.S. Dist. LEXIS 65096, at \*56 (E.D. Pa. Aug. 31, 2007)

<sup>2</sup> *United States v. Watson*, 952 F.2d 982, 986 (8th Cir. 1991); *United States v. Thomson*, No. 5:11CR00002, 2011 U.S. Dist. LEXIS 70210, at \*3 (W.D. Va. June 24, 2011).

<sup>3</sup> Respondent's Opposition to Enforcement's Motion to Strike, Motion in Limine and Objections to Witness List, at 3. Respondent cites no supporting authority for this contention.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

testify about the investigation leading to the filing of the Complaint and the allegations in each of the three causes of action—precisely the areas of inquiry Respondent wishes to pursue through Chodosh.

Respondent's ability to cross examine these witnesses obviates any claim of a compelling need to call Chodosh to testify about the investigation and the issuance of the Rule 8210 requests to obtain Respondent's investigative testimony. Indeed, it appears, based on the representations of the parties, that Chodosh's proffered testimony about the investigation would be cumulative to the testimony of Park and Roundy. Thus, there is no compelling need to require Chodosh to testify and render him unable to serve as one of the two Enforcement attorneys assigned to litigate this case.

For the reasons stated above, it is hereby **ORDERED** that the Department of Enforcement's objections to Enforcement Attorney Gary Chodosh being called as a witness by Respondent are **SUSTAINED**. Furthermore, Enforcement's motion to strike him from Respondent's witness list, and its motion in limine, are also **GRANTED**.

**SO ORDERED.**



Matthew Campbell  
Hearing Officer

Dated: November 10, 2021

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