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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN S. HUDNALL (CRD No. 4200298), Respondent.	Disciplinary Proceeding No. 201303641201 Hearing Officer – RES

ORDER GRANTING IN PART AND DENYING IN PART ENFORCEMENT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

I. Introduction

In this disciplinary proceeding, Department of Enforcement charges Respondent John Hudnall with violations of FINRA Rules in that he allegedly: (1) participated in an unapproved and undisclosed private securities transaction; (2) made two unapproved and undisclosed financial sales promotions; (3) recommended and sold an unsuitable variable annuity product; and (4) provided false information in response to a FINRA information request in violation of FINRA Rules 8210 and 2010. With regard to the charge of providing false information, the first item of alleged false information was denying, in response to a FINRA information request, that Hudnall had ever provided cashier's checks to any customers of his employer member firm.[1] The second item of alleged false information was representing to FINRA, after admitting cashier's checks were in fact provided to two customers, that the cashier's checks were an accommodation to respond to a misunderstanding on the part of the customers with regard to the terms of annuities they had purchased through Hudnall.

In his Answer, Hudnall generally denied that he violated any FINRA Rules and asserted that in every instance of alleged violation he had the best interests of his customers in mind.[2] With regard to the charge of providing false information, Hudnall averred "Respondent admits that his initial response to FINRA was not accurate, but denies that it was intentionally false, and attempted to mitigate the initial response once he determined that it was inaccurate."[3] Hudnall

[1] Complaint ("Compl.") ¶¶ 39-40.

[2] Answer ("Ans."), at 1.

[3] Ans. ¶ 5.

denied that his representation that the cashier's checks were an accommodation to resolve the customers' misunderstanding was false.[4]

Enforcement has filed a FINRA Rule 9264 motion for partial summary disposition as to liability and sanctions with regard to the fourth cause of action alleging Hudnall provided false information to FINRA (the "Motion"). The Motion was supported by a memorandum of law, a statement of undisputed facts, and a declaration with supporting exhibits. After being granted a one-week extension of his deadline, Hudnall filed an opposition to the Motion (the "Opposition"). The Opposition was supported by a memorandum of law, but did not include a counter-statement of disputed facts, any exhibits, or a declaration other than a 1.5-page declaration executed by Hudnall's attorney. Eleven days past the extended deadline, Hudnall filed a counter-statement of disputed facts.

The gist of the Opposition is that Hudnall's liability and sanctions for allegedly providing false information are subject to genuine disputes of material fact because Hudnall suffers from post-traumatic stress disorder ("PTSD") as a result of years working as a firefighter before he became a registered representative. In his counter-statement of disputed facts, he also relies on his on-the-record testimony to the effect that he thought the question, "Did you ever provide cashier's checks to any Firm customers," was related to three other questions in FINRA's information request, to all of which he answered "no."

For the reasons stated below, the Hearing Panel grants the Motion in part and finds Hudnall liable for providing false information to FINRA. No genuine dispute of material fact exists that Hudnall acted as charged and violated FINRA Rules 8210 and 2010. On the other hand, the Hearing Panel denies the Motion in part with regard to sanctions. Adopting a cautious approach, and cognizant of a respondent's right to a fair hearing, the Hearing Panel reserves decision on sanctions until a full evidentiary record has been made.

II. The Undisputed Facts

Comparing Enforcement's Statement of Undisputed Facts with Hudnall's Counter-Statement of Disputed Facts shows the following facts to be undisputed. In the few instances where a dispute exists, the Hearing Panel resolves the dispute in Hudnall's favor.

Hudnall entered the securities industry in 2000 and was associated with four member firms before joining BancWest Investment Services, Inc. ("BancWest") and then U.S. Bancorp Investments, Inc. ("U.S. Bancorp").[5] Hudnall was discharged from U.S. Bancorp for failing to report that he had been contacted by a regulatory body.[6]

[4] Compl. ¶ 42; Ans. ¶ 42.

[5] Enforcement's Statement of Undisputed Facts ("ESOF") ¶¶ 1, 2; Hudnall's Counter-Statement of Disputed Facts ("HSOF") ¶¶ 1, 2.

[6] ESOF ¶ 3; HSOF ¶ 3.

As a registered representative at BancWest, Hudnall sold Jackson National fixed annuities. These included a return-of-premium guarantee allowing the owner to surrender the annuity within the first few years of ownership and receive the return of her initial premium payment without incurring a surrender fee.[7] In addition to this guarantee, Hudnall informed two customers, BC and FM, that they would be paid one percent annual interest if they held their annuities for a full year.[8] After BC and FM did so, upon surrender of their annuities Hudnall made the one-percent interest payments using cashier's checks drawn on his personal account.[9]

In particular, based on Hudnall's recommendation, BC bought a total of $250,000 in Jackson National Optimax 4 fixed annuities.[10] As a result, Hudnall generated a gross commission of $13,750 and received a net payout of $4,565.[11] A year later, BC surrendered her annuities.[12] Hudnall had his bank issue two cashier's checks totaling $3,376.17 made payable to BC and drawn on his personal account, and provided those checks to BC.[13] Hudnall's name and checking account number initially appeared on the face of each check next to the designation "NAME OF REMITTER," but Hudnall obscured this information.[14]

Based on Hudnall's recommendation, FM bought a total of $127,000 Jackson National Optimax 4 fixed annuities.[15] As a result, Hudnall generated a gross commission of $6,985 and received a net payout of $2,474.[16] A year later, FM surrendered her annuities.[17] Hudnall concealed from FM the fact that he was personally the source of her one-percent interest payment. In his Counter-Statement of Disputed Facts, he points out that he gave both BC and FM "Official Checks" instead of "cashier's checks," but apparently does not dispute that, as with BC, he obscured his name and bank account number on the Official Check he provided to FM.[18]

Hudnall did not disclose to BancWest his one-percent interest offers to BC and FM or his payments of interest to them.[19]

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[7] ESOF ¶ 4; HSOF ¶ 4.

[8] ESOF ¶ 5; HSOF ¶ 5; Ans. ¶ 20.

[9] ESOF ¶ 6; HSOF ¶ 6.

[10] ESOF ¶ 7; HSOF ¶ 7.

[11] ESOF ¶ 8; HSOF ¶ 8.

[12] ESOF ¶ 9; HSOF ¶ 9.

[13] ESOF ¶ 10; HSOF ¶ 10.

[14] ESOF ¶ 11; HSOF ¶ 11; CX-4.

[15] ESOF ¶ 12; HSOF ¶ 12.

[16] ESOF ¶ 13; HSOF ¶ 13.

[17] ESOF ¶ 14; HSOF ¶ 14.

[18] HSOF ¶ 15. *See* Compl. ¶ 30; Ans. ¶ 30.

[19] ESOF ¶ 16; HSOF ¶ 16.

In May 2013, and in the course of an investigation, FINRA staff sent Hudnall a Rule 8210 request for information including the following questions: "Did you ever provide cashier's checks to any Firm customers? If so, what was the reason for providing the cashier checks? How much money was provided to the customer(s)?"[20] The information request asked three other short sets of questions.[21] Nine days later, Hudnall submitted a response (the "First Response") in which, among other things, he answered "no," he had not provided cashier's checks to Firm customers.[22] In his on-the-record testimony, Hudnall explained why he answered "no" to FINRA's question:

> Q. Okay. Here, if you look down at the bottom, can you tell me how you answered the question with respect to: Did you ever provide cashier's checks to any firm customer?
>
> A. I do see that.
>
> Q. Okay. How did you answer it?
>
> A. It says, "No."
>
> Q. Okay. Can you give us any understanding as to why you answered "no," given the earlier information you imparted to us about [BC] and the other customer.
>
> A. Yes.
>
> When I got this letter, I replied "no" to all four questions. And a couple of months later, we did change that answer to "yes."
>
> When I first read this letter, which is separate from the other issue here, I probably didn't take the time to read it properly or correctly. I saw all four questions as being sort of together as a group of questions related to each other, and I should have taken more time to read the letter more carefully.
>
> Of course, subsequent—after that, we did correct it, and we amended that to an answer of "yes."[23]

In his Counter-Statement of Disputed Facts, Hudnall also relies on the following passage from his on-the-record testimony:

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[20] ESOF ¶ 17; HSOF ¶ 17. The request warned Hudnall that "[u]nder FINRA Rule 8210, you are obligated to respond to this request fully, promptly, and without qualification." CX-6, at 1.

[21] CX-6, at 1.

[22] ESOF ¶ 18; HSOF ¶ 18.

[23] Hudnall on-the-record testimony, CX-1, at 94-95.

> Q. Okay. But the question—but now the question is: At the time you read question No. 1, did you have in mind or did you remember that you had written cashier's checks to [BC] and the other—the other woman, the other customer?
>
> A. I couldn't specifically remember any incidences of that. You know, I had provided checks to people.
>
> But there's two—two things here. There's that issue and then my misreading of the letter. That's as best as I can explain it.
>
> Q. Okay. So you're saying that there were some things—some other things in the other questions that led you to believe that this involved or this dealt with some other issue aside from being the cashier's checks?
>
> A. Yes, because I was taking the questions together, outside opportunities, investment losses suffered—there were no losses suffered—outside business activities, et cetera. So I just saw them as one general inquiry taken together.
>
> And again, I did—you know, once I realized that they are to be taken separately, I did amend my answer.[24]

The answer "no" in the First Response was false because Hudnall had provided cashier's checks to BC and FM.[25] In a supplemental response letter Hudnall's counsel sent to FINRA four months later (the "Second Response"), counsel admitted that the First Response was not accurate and that Hudnall in fact gave cashier's checks to two customers.[26] The Second Response represented that Hudnall

> provided both customers with these [cashier's] checks to respond to a misunderstanding by these clients regarding the terms of an annuity surrender. Both clients misunderstood features of their respective annuities. In an effort to satisfy his customers, [he] provided both individuals an amount of money equivalent to the interest the customers believed was owed.[27]

Hudnall gave on-the-record testimony about the Second Response and whether BC and FM had a misunderstanding about the one-percent interest payment. He testified that he obtained a cashier's check for BC because "I wanted to give [BC] the option to get out of Jackson with some interest. And, therefore, I deposited these checks into her bank account."[28] When directed

[24] Hudnall on-the-record testimony, CX-1, at 100-01.

[25] ESOF ¶ 19; HSOF ¶ 19; Ans. ¶¶ 41, 42.

[26] ESOF ¶ 20; HSOF ¶ 20.

[27] ESOF ¶ 21; HSOF ¶ 21; Ans. ¶¶ 41, 42.

[28] Hudnall on-the-record testimony, CX-1, at 69.

to the representation in the Second Response that the cashier's checks were an accommodation to respond to a misunderstanding, Hudnall testified that

> I don't know if "misunderstanding" is the best word.
>
> I mean, this is a letter trying to explain what happened, and trying to explain what happened in more detail. Of course, that's why we're here today.
>
> But the—what happened with these two is that they were under the impression that they could get the interest out early if they—after a year or stay with the annuity.
>
> So was that a misunderstanding? It could be a semantic situation here, but—[29]

Hudnall further testified he did not tell his employer member firm about his one-percent interest offer to BC and FM because it was not part of the Jackson National annuity product:

> Q. Mr. Hudnall, why didn't you tell the firm about your—this deal with the customer, this offer for lack of a better word?
>
> A. I'm trying to think back. You know, my motivation at the time was to help the client have an option to get out early with some interest. I didn't tell the firm because it wasn't part of the product. And that's what happened.[30]

In his Answer, Hudnall denied that the Second Response was false.[31]

III. Discussion

Enforcement is granted summary disposition as a matter of law with respect to Hudnall's liability for the fourth cause of action in the Complaint, alleging violations of FINRA Rules 8210 and 2010. FINRA Rule 9264(e) provides that a FINRA Hearing Panel "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law." In response to a motion for summary disposition, the Hearing Panel assumes as true the facts alleged in the pleadings of the party against whom the motion is made (in this case Hudnall), except as

[29] Hudnall on-the-record testimony, CX-1, at 104-05.

[30] Hudnall on-the-record testimony, CX-1, at 86-87.

[31] Compl. ¶ 42; Ans. ¶ 42.

modified by stipulations or admissions made by the non-moving party, by uncontested affidavits or declarations, or by facts officially noticed under Rule 9145.[32]

The Hearing Panel may find guidance in Rule 56 of the Federal Rules of Civil Procedure and court decisions interpreting it.[33] Following that guidance here, the Hearing Panel views all inferences in the light most favorable to Hudnall as the non-moving party.[34] Summary disposition is denied "if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed."[35]

As the movant, Enforcement has the burden of showing the absence of a genuine dispute of material fact.[36] Enforcement is required to inform the Hearing Panel "of the basis for its motion" and to identify "those portions of 'the pleadings, depositions … and admissions on file, together with the affidavits, if any,' which it believes demonstrates the absence of a genuine issue of material fact."[37] Once Enforcement has done that, the opposing party, Hudnall, must "come forward with 'specific facts showing that there exists a *genuine issue*' for hearing."[38] Hudnall's success depends on "whether the evidence presents a disagreement sufficient to require submission to fact finding."[39]

Hudnall's opposition is marred by a failure of proof. The only evidential matter he has submitted is a 1.5-page declaration, executed by his attorney, averring that he suffers from PTSD as a result of years serving as a firefighter before becoming a registered representative. But, for several reasons, this declaration does not give rise to a genuine dispute of material fact with respect to Hudnall's liability for violating FINRA Rules 8210 and 2010. First, even if applicable law recognized Hudnall's claimed PTSD as a valid defense to a finding of liability (something the Hearing Panel does not decide here), Hudnall is foreclosed from raising that defense now

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[32] OHO Order 15-07 (2013036217601) (Apr. 2, 2015), http://www.finra.org/sites/default/files/OHO-Order-15-07-ProceedingNo.2013036217601.pdf (granting in part and denying in part summary disposition based on the standards established in FINRA Rule 9264).

[33] *Dep't of Enforcement v. Respondent*, No. C02050006, 2007 NASD Discip. LEXIS 13, at *12 n.9 (NAC Feb. 12, 2007). FINRA's disciplinary proceedings are governed by its own procedures and rules, as promulgated in the FINRA Rule 9000 Series. Neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence are binding in disciplinary proceedings, but FINRA adjudicators may consult them and related case law for guidance. OHO Order 12-02 (2011029760201) (Apr. 5, 2012), at 5, http://www.finra.org/sites/default/files/OHODecision/p126070.pdf.

[34] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986); OHO Order 15-07 (2013036217601) (Apr. 2, 2015), at 4-5, http://www.finra.org/sites/default/files/OHO-Order-15-07-Proceeding No. 2013036217601.pdf; OHO Order 07-37 (2005001919501) (Oct. 16, 2007), at 10, http://www.finra.org/sites/default/files/OHODecision/p037809.pdf.

[35] *Ideal Dairy Farms, Inc. v. John Labatt, Ltd*., 90 F.3d 737, 744 (3d Cir. 1996).

[36] *Dep't of Enforcement v. Respondent*, 2007 NASD Discip. LEXIS 13, at *12.

[37] *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

[38] *Id.* (emphasis original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. at 587).

[39] *Id.* at *13.

because he did not identify it as an affirmative defense in his Answer.[40] Second, the declaration does not establish the attorney has the medical expertise to diagnose Hudnall's PTSD or opine on the effects it might have on his ability to conform to the requirements of FINRA Rules 8210 and 2010. Third, the attorney does not purport to have observed the effects of Hudnall's PTSD at the time of the First Response in May 2013 and therefore is not competent to testify even as a lay observer or percipient witness. Fourth, the attorney cannot testify about Hudnall's PTSD at the time of the Second Response without possibly waiving the attorney-client privilege and opening himself up to cross-examination as to his interactions with and observations of Hudnall. Fifth, the attorney cannot testify on Hudnall's behalf at all without creating a conflict of interest and putting himself in the ethically untenable position of vouching for his own credibility before the Hearing Panel.[41] Sixth, the attorney does not appear on the Witness List that Hudnall recently filed, and it would frustrate the purpose of FINRA Rule 9264 to allow a party to avoid summary disposition by filing no more than the declaration of a person who will not testify at the hearing. Thus, the attorney's declaration is not competent and is insufficient to create a genuine dispute of material fact.

Turning to the evidence filed by Enforcement, it is undisputed that Hudnall provided false information to FINRA in the course of its investigation. Rule 8210 requires that an associated or registered person respond fully, completely, and truthfully to a request for information from FINRA.[42] The requirements of the Rule "are unequivocal and unqualified, and compliance is mandatory."[43] "An associated person who provides false or misleading information to [FINRA] in the course of an investigation violates Rule 8210."[44]

Hudnall's first representation to FINRA was admittedly false. The question to which he answered "no" was: "Did you ever provide cashier's checks to any Firm customers?"[45] The fact

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[40] *Dep't of Enforcement v. Respondent*, No. 2014040968501, 2015 FINRA Discip. LEXIS 78, at *4 (OHO Dec. 22, 2015). Nor did Hudnall mention PTSD in his on-the-record testimony as a reason why he answered the way he did in his First and Second Responses. *See* Hudnall on-the-record testimony, CX-1, at 94-95, 100-01, 104-05.

[41] *Dep't of Enforcement v. Respondent*, No. 2009019042402, 2013 FINRA Discip. LEXIS 52, at *4 (OHO June 3, 2013) ("[c]ombining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client") (quoting Model Rules of Professional Conduct, Rule 3.7, ABA Comment).

[42] *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2016 FINRA Discip. LEXIS 7, at *67-68 (OHO Mar. 18, 2016).

[43] *Dep't of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *12 (NAC Feb. 18, 2016). *Accord Dep't of Enforcement v. North Woodward Financial Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *19 (NAC July 21, 2014) (same).

[44] *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008). A violation of FINRA Rule 8210 also "constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010." *Dep't of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *36 (NAC Oct. 5, 2015) (quoting *Dep't of Enforcement v. North Woodward Financial Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *13 (May 8, 2015). And "providing false information to FINRA is an independent violation of FINRA Rule 2010." *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *16 (NAC Mar. 9, 2015).

[45] CX-6, at 1.

of the matter is, he provided cashier's checks to customers. Although he claims he read the question and three other questions as "being sort of together as a group of questions related to each other," and that he saw all four questions "as one general inquiry taken together,"[46] this does not give rise to a genuine dispute of material fact. First, the information that he provided to FINRA was still false. Second, a respondent cannot create a genuine dispute of fact with nothing more than his own self-serving testimony that he misread or misunderstood a question that is simple, straightforward and unambiguous, and which does not lend itself to misinterpretation.[47] Third, Hudnall's *ex poste facto* explanation that he read the four questions as one general inquiry is not supported by the First Response, in which he answered all four questions individually.[48] Fourth, *scienter* is not an element of a FINRA Rule 8210 violation.[49] Fifth, in reference to Rule 8210, the Opposition states that "Mr. Hudnall admits to rule violations in connection with his conduct."[50]

Hudnall's second representation—that he gave the cashier's checks to the customers to resolve a misunderstanding with them—is also false. Contrary to Enforcement's contention, Hudnall's on-the-record testimony and his Answer fall short of an express admission that the Second Response was false.[51] Still, Enforcement has presented evidence, in the form of Hudnall's prior testimony, that he provided cashier's checks to BC because he wanted to give her "the option to get out of Jackson with some interest" and that, with respect to both BC and FM, "my motivation at the time was to help the client have an option to get out early with some interest."[52] In the face of this evidence, Hudnall had the burden of producing evidence that there was in fact a misunderstanding, but he failed to do so. The fact of the matter is, Hudnall gave the

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[46] Hudnall on-the-record testimony, CX-1, at 95, 101.

[47] *See Dep't of Enforcement v. Elgart*, No. 2013035211801, 2016 FINRA Discip. LEXIS 30 (OHO June 3, 2016) (finding not credible respondent's claim that he intended to be truthful in an annual compliance questionnaire because "the wording of the … question is simple, straightforward, and unambiguous. It does not lend itself to [respondent's] claimed misinterpretation").

[48] CX-7, at 3.

[49] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *39 (Nov. 14, 2008). In his on-the-record testimony, Hudnall did not claim to be confused by Enforcement's use of the phrase "cashier's checks" as opposed to "Official Checks" in its request for information. In fact, in the Opposition, Hudnall seeks credit for cooperating with FINRA in that "[h]e did not nit-pick, FINRA's error referring to checks as 'cashier's checks' when they [were] designated 'official checks.'" Opposition at 11-12. *Accord id*. at 2 n.1 ("If Mr. Hudnall intended to mislead FINRA he would have … testified FINRA never asked him about 'Official Checks' hence [his] answer was accurate.").

[50] Opposition at 11.

[51] The argument might be made that Enforcement's Complaint did not give Hudnall sufficient notice that the Second Response constituted a separate violation of FINRA Rules 8210 and 2010. The Complaint shows that the fourth cause of action makes reference only to the falsehood in the First Response. Compl. ¶¶ 53-55. But in the "Facts" section of the Complaint, in the sub-section titled "False Responses to Rule 8210 Requests," Enforcement alleges that in his on-the-record testimony "Hudnall testified before Enforcement and admitted that he had given the customers cashier's checks not as an accommodation to respond to a misunderstanding, but rather in fulfillment of the unapproved Promotional Offer." Compl. ¶ 42. This is sufficient notice to Hudnall that he could be found liable for violating FINRA Rules 8210 and 2010 with respect to the Second Request.

[52] Hudnall on-the-record testimony, CX-1, at 69, 86-87.

cashier's checks to BC and FM to enable them to "get out of Jackson with some interest" after he had informed them, when they were deciding whether to invest, that they would be paid one percent interest if they held their annuities for a full year.[53] Because no genuine dispute of fact exists, Enforcement is entitled to summary disposition as to liability on the fourth cause of action of the Complaint.

In order to afford Hudnall the full exercise of his right to a fair hearing, the Hearing Panel denies Enforcement's motion for partial summary disposition as to sanctions and reserves decision until development of a full record. *If* proved by competent evidence, Hudnall's claimed PTSD *might* be relevant as a mitigating factor with regard to sanctions.[54] But if Hudnall pursues that avenue at the hearing, the opening available to him does not appear to be very wide, for the following reasons:

- In the absence of strong mitigating factors, the Sanction Guidelines "treat a failure to respond truthfully to a Rule 8210 request as equivalent to a complete failure to respond, and provide that a bar is standard for such violations."[55]

- In general, such factors as extreme emotional stress do not mitigate violations of FINRA Rules and, in the rare cases in which they have, the respondent presented evidence that the factors directly interfered with his ability to comply with the Rules.[56]

- In general, a party claiming a medical condition such as PTSD must demonstrate the condition based on expert evidence.[57]

[53] HSOF ¶ 5; Ans. ¶ 20.

[54] *Dep't of Enforcement v. Gadelkareem*, No. 2014040968501, 2016 FINRA Discip. LEXIS 9, *30 (May 2, 2016) ("We also consider Gadelkareem's psychiatric condition to be mitigating, as his lengthy history of bipolar disorder presumably exacerbated or at least contributed to his improper conduct.").

[55] *Dep't of Enforcement v. Harari*, 2015 FINRA Discip. LEXIS 2, at *31. *Accord Dep't of Enforcement v. Taboada*, 2016 FINRA Discip. LEXIS 7, at *77 ("For failing to respond to a Rule 8210 request, or failing to respond truthfully, the Guidelines … state that a bar should be standard.").

[56] *Dep't of Enforcement v. Saad*, No. 20060067055601r, 2015 FINRA Discip. LEXIS 49, at *21 (NAC Mar. 16, 2015) ("In general, personal problems such as stress and health issues do not mitigate violations of FINRA rules."); *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226 (1994) (rejecting as mitigating the argument that an associated person who converted customer funds was "under extreme emotional stress as a result of severe financial problems and his parents' and children's ill health"). *See Dep't of Enforcement v. Respondent*, No. 2014040968501, 2015 FINRA Discip. LEXIS 78, at *2-3 (OHO Dec. 22, 2015) (a serious medical condition can be mitigating if "such problems interfered with an ability to comply with FINRA rules or …violations resulted from, or were exacerbated by, such problems") (quoting *Dep't of Enforcement v. Saad*, 2015 FINRA Discip. 49, at *23).

[57] *Barnes v. BTN, Inc.*, Case No. 1:12cv34HSO-RHW, 2013 U.S. Dist. LEXIS 40158, at *4 (S.D. Miss. Mar. 22, 2013) ("any testimony regarding Plaintiff's medical diagnoses or prognoses … falls within the scope of expert testimony under Rule 702" of the Federal Rules of Evidence).

- The deadline for filing motions for leave to present expert testimony was September 2, 2016—over five weeks ago.[58]

- In his recently filed Witness List, Hudnall did not identify a medical expert, treating physician, psychiatrist, or psychologist.

IV. Order

This Order is issued to document the Hearing Panel's ruling that Respondent John Hudnall is liable for violating FINRA Rules 8210 and 2010 by providing false information to FINRA. The hearing in this proceeding shall be limited to the first three causes of action and sanctions as to all four causes of action.[59]

SO ORDERED.

For The Hearing Panel

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Richard E. Simpson

Dated: October 14, 2016

[58] Scheduling and Case Management Order at 2.

[59] Enforcement moved for an order striking the declaration of Hudnall's attorney. The Hearing Officer will issue an Order deciding that motion in the time allowed by the FINRA Rule 9000 Series.