

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEK SECURITIES CORP.
(CRD No. 33135),

and

CHARLES FREDERIK LEK
(CRD No. 4672129),

Respondents.

Disciplinary Proceeding
No. 2021071137001

Hearing Officer—RES

**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION
TO PRECLUDE FINRA FROM USING TESTIMONY PROCURED THROUGH
RULE 8210 AND FOR SANCTIONS PURSUANT TO RULE 9280**

I. Introduction

FINRA's Department of Enforcement filed a six-count Complaint against Respondents Lek Securities Corporation ("Lek Securities") and Charles Frederik Lek ("Lek"). The Complaint alleges three general categories of conduct in violation of FINRA Rules and federal securities laws and regulations. First, Respondents violated the terms of an Order Accepting Offer of Settlement with FINRA by failing to immediately implement a business line suspension, failing to follow the recommendations of an Independent Consultant, and making false certifications and representations to FINRA to the effect that they had complied with the Independent Consultant's recommendations.¹ Second, Respondents failed to establish, implement, and maintain a reasonable anti-money laundering program, and failed to supervise Lek Securities' microcap securities business.² Third, Lek Securities is alleged to have willfully failed to retain books and records when the firm allowed its registered representatives to use unauthorized

¹ Complaint ("Compl.") ¶¶ 1-2.

² Compl. ¶¶ 4-7.

electronic means of communication with each other and firm customers that the firm did not save in its electronic storage systems.³

In their Answer, Respondents deny Enforcement's factual allegations and deny violating FINRA Rules and federal securities laws and regulations. In an affirmative defense, Respondents contend they conducted themselves in a commercially reasonable manner consistent with all applicable laws, rules, and regulations.⁴ Respondents dispute the conduct alleged in the Complaint violated such laws, rules, or regulations.⁵ Respondents had supervisory procedures in place and used these procedures to prevent unauthorized communications.⁶

II. Respondents' Motion to Preclude and Enforcement's Opposition

The three-week hearing in this disciplinary proceeding is scheduled to begin July 24 and end August 10, 2023. The parties filed and served their pre-hearing submissions, including pre-hearing briefs, exhibit lists, and witness lists. Before the exchange of pre-hearing submissions, Respondents filed a motion ("Motion") to preclude Enforcement from using certain testimony obtained through FINRA Rule 8210 and for sanctions under FINRA Rule 9280.⁷

The gist of Respondents' Motion is that Enforcement continues to serve FINRA Rule 8210 requests on Respondent Charles Lek for on-the-record testimony in other investigations.⁸ Respondents contend that Enforcement served the most recent FINRA Rule 8210 request at the same time Lek was working with counsel to prepare his defense in this proceeding, including the organization and review of exhibits and substantive preparation for the defense.⁹ This request sought testimony from Lek on June 22, 2023.¹⁰ According to Respondents, I should preclude Enforcement from using in this proceeding any information learned from any portion of Lek's testimony taken after January 16, 2023.¹¹ I should also impose sanctions under FINRA Rule 9280 because, Respondents claim, Enforcement has ignored the clear and unequivocal orders of the predecessor Hearing Officer as well as disregarded fundamental notions of fairness and due process.¹²

³ Compl. ¶ 8.

⁴ Answer ("Ans.") 29 (Fifth Affirmative Defense).

⁵ Ans. 29 (Fourth Affirmative Defense).

⁶ Ans. 28 (Second Affirmative Defense).

⁷ Motion to Preclude FINRA From Using Testimony Procured Through Rule 8210 and for Sanctions Pursuant to Rule 9280 ("Mot.") 1.

⁸ Mot. 1.

⁹ Mot. 2.

¹⁰ Mot. 1.

¹¹ Mot. 3.

¹² Mot. 3.

Enforcement filed an Opposition (“Opposition”) to Respondents’ Motion. In its Opposition, Enforcement states it served FINRA 8210 requests for testimony to Lek in three unrelated investigations at the same time this disciplinary proceeding has been pending.¹³ Two of these investigations concern potentially manipulative trading on exchanges through Respondent Lek Securities as recently as July 2022.¹⁴ The focus of the third investigation is a transaction facilitated on behalf of a Lek Securities customer that Lek allegedly reviewed and approved.¹⁵ Enforcement argues that its decision to issue FINRA Rule 8210 requests to Lek in other investigations is entitled to “judicial deference.”¹⁶

III. Discussion

Section 15A of the Securities Exchange Act of 1934 requires that FINRA conduct its disciplinary proceedings in accordance with fair procedures.¹⁷ I have the authority to limit Enforcement’s ability to issue FINRA Rule 8210 requests when it is necessary to “ensure the disciplinary proceeding is conducted fairly.”¹⁸ I also can do all things necessary and appropriate to discharge my duties.¹⁹ I find a significant risk in this proceeding that the goal of fair procedures might be compromised if Respondent Charles Lek is distracted and occupied by having to prepare for, appear at, and testify in on-the-record testimony at the same time he has to defend himself in a three-week, in-person disciplinary hearing, or in the handful of days left before the hearing begins. For these reasons, I preclude Enforcement from taking Lek’s on-the-record testimony until a reasonable time after the close of the hearing.

Respondents also ask that I impose sanctions on Enforcement for serving FINRA Rule 8210 requests on Lek. FINRA Rule 9280 provides, “If a Party . . . engages in conduct in violation of an order of a Hearing Officer . . . or other contemptuous conduct during a proceeding, a Hearing Officer . . . may: (1) subject the Party . . . to the sanctions set forth in paragraph (b).”²⁰ The sanctions set forth in paragraph (b) include: (1) designating facts favorable to the moving party as true for the purpose of the proceeding; (2) prohibiting the disobedient

¹³ Enforcement’s Opposition to Respondents’ Motion to Preclude and for Sanctions (“Opp.”) 1.

¹⁴ Opp. 2.

¹⁵ Opp. 3.

¹⁶ Opp. 6.

¹⁷ 15 U.S.C. § 78o-3(b)(8); accord *Dep’t of Enforcement v. Vungarala*, No. 2014042291901, 2018 FINRA Discip. LEXIS 26, at *106 (NAC Oct. 2, 2018), *aff’d*, Exchange Act Release No. 90476, 2020 SEC LEXIS 4938 (Nov. 20, 2020).

¹⁸ OHO Order 01-01 (C10000172) (Jan. 23, 2001), at 3, https://www.finra.org/sites/default/files/OHODecision/p007922_0_0.pdf.

¹⁹ *Dep’t of Enforcement v. Titan Sec.*, No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at *42 (NAC June 2, 2021), *appeal docketed*, No. 3-20387 (SEC June 29, 2021).

²⁰ FINRA Rule 9280(a); accord *Dep’t of Enforcement v. Henderson*, No. 2017053462401, 2022 FINRA Discip. LEXIS 15, at *38 (NAC Dec. 29, 2022).

party from supporting or opposing designated claims or defenses; and (3) striking pleadings or specified parts of pleadings.²¹

Having reviewed Respondents' Motion, Enforcement's Opposition, and the record of this proceeding, I conclude that Enforcement did not engage in conduct violating the Case Management and Scheduling Order ("CMSO") or any other order issued by the predecessor Hearing Officer or me, and that Enforcement did not engage in other contemptuous conduct. The CMSO's deadline for serving FINRA Rule 8210 requests is extremely broad and prohibitive. It provides, "Deadline for Enforcement to issue requests for information or documents under Rule 8210 (other than attendance of witnesses at the hearing)."²² Read literally, the deadline would mean Enforcement could not serve FINRA Rule 8210 requests in *any* investigation, regardless of whether such requests pertained to this proceeding or not. Fortunately, interpretative assistance is provided by FINRA Rule 9251. It provides that Enforcement must make available to Respondents information obtained through post-Complaint FINRA Rule 8210 requests "*issued under the same investigative file number.*"²³ I will read the CMSO the same way—to the effect that the deadline applies only to post-Complaint FINRA Rule 8210 requests issued under the same investigative file number. Here, the requests were issued under investigative file numbers other than that for this proceeding.

Other factors weigh against a finding that Enforcement engaged in contempt of Hearing Officer orders. It seems that trial counsel for Enforcement did not initially know other Enforcement attorneys were issuing FINRA Rule 8210 requests to Lek in other investigations. In addition, in Enforcement's pre-hearing submissions, it did not designate any of Lek's post-Complaint on-the-record testimony as a hearing exhibit.

For these reasons, I deny Respondents' request for sanctions under FINRA Rule 9280.

²¹ FINRA Rule 9280(b).

²² CMSO 2, "Activity" for January 16, 2023.

²³ FINRA Rule 9251(a)(2) (emphasis added).

IV. Conclusion

I **GRANT** Respondents' Motion in part. Enforcement shall not require Respondent Charles Lek to appear for on-the-record testimony at any time from the date of this Order until the tenth calendar day following the close of the hearing. Thus, if the hearing closes August 10, 2023 as planned, Enforcement is precluded up to and including Sunday, August 20, 2023. I find Enforcement's issuance of FINRA Rule 8210 requests to Lek was not "contemptuous conduct." As a result, I **DENY** the Motion in all other respects.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: July 19, 2023

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