

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TITAN SECURITIES
(CRD No. 131392),

BRAD C. BROOKS
(CRD No. 1584633),

and

RICHARD WAYNE DEMETRIOU
(CRD No. 828433),

Respondents.

Disciplinary Proceeding
No. 2013035345701

Hearing Officer– RES

**ORDER SUSTAINING DEPARTMENT OF ENFORCEMENT'S OBJECTION TO
RESPONDENTS' INCLUSION OF ERIN VOCKE ON THEIR PROPOSED WITNESS
LIST**

The hearing in this disciplinary proceeding begins April 16, 2018 and will last two weeks. The multi-count Complaint alleges the following:

- Respondent Richard Demetriou, while associated with Respondent Titan Securities, made false and misleading misrepresentations of material fact to potential investors in RBC Preferred, LLC ("RBCP"), a Mississippi company engaged in a real estate project known as "Riverbend," and did not undertake an independent investigation of the information principals of RBCP provided him.¹
- Demetriou engaged in an undisclosed outside business activity by managing and promoting RBCP.²

¹ Complaint ("Compl.") ¶ 1.

² Compl. ¶ 1.

- Demetriou did not obtain Titan Securities' approval of RBCP-related emails and investment summaries he sent to investors.³
- Demetriou used three private email addresses to conduct securities business.⁴
- Titan Securities and Respondent Brad Brooks, the firm's owner, Chief Executive Officer, President, and Chief Compliance Officer, did not supervise Demetriou's RBCP activity in a reasonable manner despite numerous red flags.⁵
- Titan Securities and Brooks did not establish and enforce adequate written supervisory procedures prohibiting the firm's registered persons from using private email addresses for securities-related correspondence.⁶
- In a "minimum-maximum" private placement offering of limited partnership units, Titan and Brooks counted the General Partner's purchases of units to meet the required minimum amount of purchases and prematurely released investor funds from an escrow account.⁷

Respondents deny the allegations.

The Department of Enforcement has filed an objection (the "Objection") to Respondents' inclusion of Erin Vocke on their proposed witness list. Ms. Vocke is a FINRA Vice President and District Director of the Dallas and New Orleans District Offices. In their witness list, Respondents aver that Ms. Vocke will testify about the applicability of certain FINRA Rules to outside business activities:

Ms. Vocke is expected to testify about the applicability of certain FINRA Rules to Outside Business Activities of Associated Persons based upon her regulatory experience and FINRA published guidance; and guidance provided to FINRA member firms and or FINRA staff, by FINRA regarding the application of FINRA Rule 2210 and 2010.

Respondents did not file a response to the Objection.

FINRA Rule 9263 provides that "[t]he Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly

³ Compl. ¶ 3.

⁴ Compl. ¶ 6.

⁵ Compl. ¶¶ 4, 10.

⁶ Compl. ¶ 5.

⁷ Compl. ¶ 7.

prejudicial.”⁸ This Rule confers broad discretion in the Hearing Officer to accept or reject proposed evidence.⁹ The Federal Rules of Evidence define relevant evidence as that “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”¹⁰ A fact is of consequence when its existence would provide the fact-finder with a basis for making an inference about an issue necessary to the decision.¹¹ The standard of relevance is not high.¹²

With the above general standards in mind, the Hearing Officer sustains the Objection, for three reasons.

First, the proposed testimony of Ms. Vocke would be irrelevant and immaterial. She is not a percipient witness of the facts. Her testimony would not make any fact that is of consequence to the proceeding more probable or less probable.

Second, the proposed testimony will not be necessary. The Hearing Panel includes two industry members and thus will act as an expert body whose businesspersons’ judgment is based on their collective experience in the securities industry. The Hearing Panel will be able, without the compelled testimony of a FINRA District Director, to issue informed findings whether Demetriou engaged in an undisclosed outside business activity and whether his communications to the public were false and misleading. These issues will not entail a detailed examination of unusual facts, statutes, or rules but, instead, will focus on Respondents’ compliance with fairly standard FINRA, NASD, and SEC requirements.¹³ To the extent there is an ambiguity in the facts, Enforcement bears the burden of proving its case by a preponderance of the evidence.

⁸ FINRA Rule 9263(a); *accord* OHO Order 16-04 (2012033393401) (Feb. 3, 2016), at 2, finra.org/sites/default/files/OHO_Order16-04_2012033393401.pdf.

⁹ *Dep’t of Enforcement v. Brookstone Securities, Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *110 (NAC Apr. 16, 2015) (“The Hearing Officer is granted broad discretion to accept or reject evidence under this rule.”).

¹⁰ Fed. R. Evid. 401. Federal and state rules of evidence do not apply in FINRA disciplinary proceedings, FINRA Rule 9145(a), but the Federal Rules of Evidence are instructive for a FINRA Hearing Officer deciding evidentiary issues, *see Dep’t of Market Regulation v. Respondent*, No. 20090174025-02, 2015 FINRA Discip. LEXIS 41, at *2 (OHO Aug. 19, 2015).

¹¹ *United States v. McVeigh*, 153 F.3d 1166, 1190 (10th Cir. 1998) (a fact is of consequence “when its existence would provide the fact-finder with a basis for making some inference, or a chain of inferences, about an issue that is necessary” to a decision).

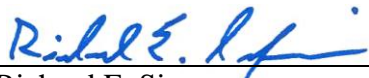
¹² *United States v. Southland Corp.*, 760 F.2d 1366, 1375 (2d Cir. 1985) (the “standard of relevance established by the Federal Rules of Evidence is not high”) (quoting *Carter v. Hewitt*, 617 F.2d 961, 966 (3d Cir. 1980)).

¹³ *Meyer Blinder*, 50 S.E.C. 1215, 1222 n.32 (1992) (the Hearing Panelists’ “‘businessman’s judgment’ may be brought to bear in reaching its decision”); OHO Order 17-05 (201504421601) (Mar. 16, 2017), at 2 (“A hearing panel therefore acts as an ‘expert’ body whose ‘businessman’s judgment’ is based on the panel’s collective experience in the securities industry.”); OHO Order 17-03 (2014042059701) (Feb. 24, 2017), at 3 (“The issues in this case do not require a detailed examination of unusual rules or statutes, but rather an assessment of Respondent’s compliance with FINRA by-laws and rules governing required disclosures.”).

Third, the proposed testimony would impermissibly supplant the role of the Hearing Panel. Insofar as Enforcement's claims raise questions of law, FINRA's disciplinary process assigns to the Hearing Officer the role of advising the Hearing Panel on those questions.¹⁴ Factual issues like an alleged outside business activity and communications to the public are assigned to the Hearing Panelists for decision.

For the above three reasons, the Objection is sustained.

SO ORDERED.


Richard E. Simpson
Hearing Officer

Dated: November 13, 2017

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¹⁴ OHO Order 11-04 (2009017798201) (Mar. 24, 2011), at 5, finra.org/sites/default/files/OHODecision/p123470_0.pdf (“FINRA’s disciplinary process reserves to the Hearing Officer the role of adjudicating the law for the benefit of the industry panelists.”).