

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM JOSEPH KIELCZEWSKI
(CRD No. 4034356),

Respondent.

Disciplinary Proceeding
No. 2017054405401

Hearing Officer—RES

**ORDER DENYING RESPONDENT WILLIAM KIELCZEWSKI'S REQUEST FOR THE
ISSUANCE OF A REQUEST FOR DOCUMENTS**

I. The Complaint and Answer

The Department of Enforcement has filed a three-cause Complaint against former registered representative William Joseph Kielczewski. The Complaint alleges that Respondent violated FINRA Rules by not disclosing to his employer firm, Huntington Investment Company (“Huntington”), his involvement in a hedge fund. The first cause of action alleges that from January 2014 through May 2017, Respondent made false statements to Huntington about his involvement, in violation of FINRA Rule 2010.¹ The second cause of action alleges that Respondent engaged in private securities transactions by promoting the hedge fund and other actions, in violation of NASD Rule 3040, and FINRA Rules 3280 and 2010.² The third cause of action alleges that Respondent caused Huntington to make a false statement in Respondent's Uniform Application for Securities Industry Registration or Transfer (“Form U4”), and in four Form U4 amendments, in willful violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.³

Respondent has filed an Answer in which he denies committing the alleged violations. Respondent asserts eight affirmative defenses, including: that FINRA allegedly lacks jurisdiction over Respondent; that the Complaint is barred by the applicable statutes of limitations; that

¹ Complaint (“Compl.”) ¶¶ 1-2, 89-93.

² Compl. ¶¶ 1-2, 98-103. NASD Rule 3040 was effective until September 21, 2015, when it was superseded by FINRA Rule 3280.

³ Compl. ¶¶ 1-2, 107-09.

Huntington was fully aware of Respondent's conduct and ratified it; and that any non-compliance with FINRA Rules was unintentional and not deliberate.⁴

II. Respondent's Request for the Issuance of a Request for Documents under FINRA Rules

On the day after I issued an order scheduling the Initial Pre-Hearing Conference in this proceeding, Respondent's counsel filed a FINRA Rule 9252 Request Letter ("Request") seeking an order requiring "Huntington to provide certain records relating to advancement and indemnification of legal and other expenses arising from this action pursuant to [the hearing officer's] authority under the FINRA Rules."⁵ In particular, Respondent requested that I compel Huntington to produce:

- Respondent's employment contract;
- the Huntington employee handbook applicable to the period of Respondent's employment;
- any documents setting forth Huntington's applicable policies and/or procedures regarding its providing a defense in regulatory matters to employees for their work for Huntington;
- a copy of Huntington's Directors & Officers insurance policy; and
- any other documents that refer or relate to Huntington's practice or policies in providing advancement of legal fees or indemnification for its employees.⁶

III. Enforcement's Opposition to Respondent's Request for the Issuance of a Request for Documents

Enforcement has filed an opposition to the Request ("Opposition") in which it points out that the documents requested by Respondent are not linked in any way to the allegations in the Complaint or sanctions and are not relevant or material to the resolution of the charges against Respondent.⁷ Enforcement contends that Respondent seeks to use FINRA disciplinary procedures to acquire discovery about an unrelated dispute to which Enforcement is not a party—namely, whether Huntington is obliged to pay Respondent's attorneys' fees.⁸

⁴ Answer ("Ans."), second, third, fifth, and seventh affirmative defenses.

⁵ Letter, dated June 21, 2019, from Andrew St. Laurent to Richard E. Simpson ("Request"). Enforcement was copied on the Request. The usual practice is for a party to make a request to the hearing officer in the form of a motion, not a letter.

⁶ Request at 2.

⁷ Opposition at 1-2.

⁸ Opposition at 4.

After reviewing the Request, the Opposition, and the FINRA Rules, I DENY the Request. Enforcement will not be compelled to issue a request for Huntington's documents. The reasons for my ruling are set forth below.

IV. Discussion

FINRA Rule 9252 allows a respondent to request a hearing officer to order Enforcement to invoke FINRA Rule 8210 to compel the production of documents from third-party entities that are subject to FINRA's jurisdiction.⁹ Among other things, the respondent must describe the requested documents with specificity; state why the documents are material; and describe his previous efforts to obtain the documents through other means.¹⁰ The hearing officer shall grant a FINRA Rule 9252 request only upon a showing that, among other things, the requested documents are relevant, material, and non-cumulative; and that the respondent has previously attempted in good faith to obtain the documents through other means.¹¹ The hearing officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome.¹²

The documents that Respondent requests are not relevant to the causes of action in the Complaint. Rule 401 of the Federal Rules of Evidence defines 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."¹³ A fact is "of consequence" when its existence would provide the fact finder with a basis for making an inference about an issue that is necessary to a decision.¹⁴ The facts that are of consequence in this proceeding are those concerning whether Respondent falsely represented to Huntington his role as only a passive investor in a hedge fund, engaged in private securities transactions without providing written notice to Huntington, or willfully caused Huntington to make five false Form U4 filings in which Respondent was described as a passive investor.

⁹ OHO Order 17-11 (2014044985401) (Apr. 11, 2017), at 2, www.finra.org/sites/default/files/OHO_Order_17-11_2014044985401.pdf.

¹⁰ FINRA Rule 9252(a); *See* OHO Order 16-34 (2014042690502) (Dec. 28, 2016), at 2, www.finra.org/sites/default/files/OHO_Order%2016-34_2014042690502.pdf.

¹¹ FINRA Rule 9252(b); OHO Order 16-14 (2015044379701) (Mar. 25, 2016), at 2, www.finra.org/sites/default/files/OHO_Order16-14_2015044379701_0_0_0.pdf; *See* OHO Order 16-10 (2013036836801) (Mar. 4, 2016), at 3, www.finra.org/sites/default/files/OHO-Order-16-10-2013036836801_0_0_0.pdf.

¹² FINRA Rule 9252(b); *See* OHO Order 15-05 (2012034936005) (Jan. 27, 2015), at 7, www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005_0_0_0_0.pdf. If the hearing officer determines that a FINRA Rule 9252 request is unreasonable, oppressive, excessive in scope, or unduly burdensome, she shall deny the request or grant it only upon such conditions as fairness requires. FINRA Rule 9252(b); *See* OHO Order 14-03 (2010023218601) (Jan. 24, 2014), at 5, www.finra.org/sites/default/files/OHO_Order_14-03_ProceedingNo.2010023218601_0.pdf.

¹³ Fed. R. Evid. 401. Although the Federal Rules of Evidence applicable in federal courts do not apply in FINRA disciplinary proceedings, they can provide helpful guidance. *See* OHO Order 16-14, at 3.

¹⁴ OHO Order 16-14, at 3.

The requested documents do not make these facts of consequence more or less probable, but instead pertain to whether Huntington is obliged to pay Respondent's attorneys' fees. Nor are the documents relevant to any of Respondent's affirmative defenses. Respondent makes no showing that the documents have any bearing on the issues to be decided in this proceeding. The requested documents are not relevant or material within the meaning of FINRA Rule 9252.¹⁵

Therefore, I decline to order Enforcement to issue a FINRA Rule 8210 request requiring Huntington to produce the requested documents.

V. Conclusion

For the reasons stated above, the Request is **DENIED**.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: July 8, 2019

Copies to:

Andrew St. Laurent, Esq. (via email and first-class mail)
Kevin E. Pogue, Esq. (via email and first-class mail)
David M. Monachino, Esq. (via email)
Ralph DeSena, Esq. (via email)
James E. Day, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

¹⁵ Because I decide the requested documents are not relevant or material, I need not decide whether the Request meets the other requirements of FINRA Rule 9252.