

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 16-10 (2013036836801).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT,

Respondent.

Disciplinary Proceeding
No. 2013036836801

Hearing Officer - DRS

ORDER DENYING RESPONDENT'S RULE 9252 REQUEST

A. Introduction

The Complaint charges Respondent with (1) receiving unauthorized loans from two customers, in violation of FINRA Rules 3240¹ and 2010; (2) participating in outside business activities without first providing written notice to his member firm employer of his participation in those activities, in violation of FINRA Rules 3270 and 2010; (3) making false statements on his firm's annual compliance questionnaires about the alleged loans and outside business activities, in violation of FINRA Rule 2010; (4) failing to provide documents and information to FINRA staff, in violation of FINRA Rules 8210 and 2010; and (5) failing to appear and complete his on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

Respondent answered the Complaint and denied the charges. In his Answer, Respondent stated that he did not agree to settle this matter because, if he did, FINRA would then "not have the truth, people who are corrupt who are involved will continue their corrupt practices, essentially you will be closing your eyes to the truth. I am also certain that several people at Morgan Stanley and Merrill Lynch would love to close this up." Further, he added, "[t]hey are only hoping to distract long enough to retire and I have information that will ruin their lives as they know them. My intention is not to ruin anyone, only to get the truth."

By request dated January 14, 2016 ("Request"), Respondent asks that Enforcement provide him with the following:

From William Brewer of the Morgan Stanley Office in Office in Bend OR documents that reflect the detailed returns of the internally devised funds

¹ The title of this cause of action misidentifies the alleged rule violation as FINRA Rule 3270, instead of FINRA Rule 3240, as referenced in the body of the Complaint. Compl. ¶¶ 27-28.

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managed by he and Jeff Harding as well as other Bend Morgan Stanley employees. My purpose is not re-visit or infringe on previous agreements entered into with Morgan Stanley by Jeff Respondent.

I have previously attempted to access these documents through legal channels and the Morgan Stanley attorneys "stonewalled" my request.²

On February 10, 2016, Enforcement opposed the Request ("Opposition"), arguing that it failed to comply with FINRA Rule 9252, which governs requests by respondents that Enforcement invoke Rule 8210 to compel the production of information from third parties. Specifically, Enforcement maintains that the Request is vague, unclear, overbroad and, thus, unreasonable because it does not include a time frame limitation and does not identify the referenced "internally devised funds;" that Respondent fails to show that the documents he seeks are relevant, material, and non-cumulative; and that he fails to adequately represent that he engaged in a good faith attempt to obtain the documents through other means.

Respondent replied to the Opposition on February 11, 2016 ("Reply").³ In the Reply, he added a time frame limitation for the requested documents (January 2011 through February 11, 2016) and explained that he had attempted unsuccessfully to obtain them over the past three years, primarily through Morgan Stanley's attorneys. He represented that he needs the documents "[t]o provide evidence that proves that key information that exists within this office and possibly extending to the Portland Oregon office is intentionally mishandled and detrimental to investors as well as employees who have grievances." Continuing, he wrote that if the authentic documents are provided, they "will show not only the origin date but the last date [that] a given annual statement was modified." These documents are important to this case, Rogers asserted, because they "will demonstrate a history of mishandled or ignored information that this office did not want to become publically available."

On February 26, Enforcement filed a sur-reply reiterating that I should deny the Request because, notwithstanding the additional explanation Respondent provided in the Reply, he still failed to show that the requested documents are relevant or material and still failed to explain adequately his previous efforts to otherwise obtain the information.

As explained below, I deny the Request.

² Rogers first sought these documents in an earlier request, dated January 2, 2016. The January 2, 2016 request also asked that I "compel the FINRA Department of Enforcement to invoke rule 8210 pursuant to Rule 9252 for the production of all testimony and documents at the hearing." On February 7, 2016, Respondent retracted that portion of the January 2, 2016 request seeking the "production of all testimony and documents at the hearing."

³ Entitled "Motion to Compel," Respondent' filing was more in the nature of a reply. I accepted the Reply, although Respondent had filed it without first obtaining my permission to do so, and directed Enforcement to file a sur-reply. *See* Order Permitting Reply and Directing Enforcement to File Response (Feb. 19, 2016).

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B. Applicable Standards

Rule 9252 establishes the procedures for a respondent to request that FINRA invoke its authority under Rule 8210 to compel the production of documents or testimony from member firms or associated persons. Under this Rule, the request must:

describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party’s previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to [FINRA’s] jurisdiction.⁴

Additionally, the Hearing Officer may grant the request only if:

the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to [FINRA’s] jurisdiction.

Finally, the Rule directs the Hearing Officer to “consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.”⁵

C. Discussion

The Request does not meet the requirements under FINRA Rule 9252, even taking into account the additional information Respondent provided in the Reply. It appears that the requested documents relate to Rodger’s assertions of “corrupt practices” at Morgan Stanley. But this case involves charges concerning alleged customer loans, outside business activities, false statements, and failing to provide documents and information to FINRA. Respondent does not explain—and it is not otherwise apparent to me—how documents that would “demonstrate a history of mishandled or ignored information” are relevant to the charges in the Complaint, any cognizable defense, or sanctions. Additionally, the Request and the Reply contain insufficient specificity regarding Respondent’s attempts to obtain the documents. They fail to reference the dates he requested the documents, the persons to whom he directed his requests, the number of attempts he made, and the responses, if any, he received from Morgan Stanley’s attorneys or from anyone else who received his requests.

⁴ Rule 9252(a).

⁵ Rule 9252(b).

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Accordingly, the Request is **DENIED**.

SO ORDERED.

David R. Sonnenberg
Hearing Officer

Dated: March 4, 2016