

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK SAM KOLTA
(CRD No. 5324620),

Respondent.

Disciplinary Proceeding
No. 2018057297102

Hearing Officer—MJD

**ORDER GRANTING IN PART RESPONDENT'S
MOTION TO CONTINUE HEARING DATES**

I. Complaint and Answer

On December 29, 2022, the Department of Enforcement initiated this disciplinary proceeding by filing a four-cause Complaint against Respondent Mark Sam Kolta. Cause one alleges that Kolta made unsuitable recommendations to 16 customers to purchase \$4.8 million in a non-traded real estate investment trust (“REIT”), in violation of FINRA Rules 2111 and 2010. According to the Complaint, the REIT was unsuitable based on the customers’ investment profiles, including their net worth, income, investment objectives, risk tolerance, and, for some customers, their ages. The recommended purchases also allegedly over-concentrated the customers’ investment portfolios in non-traded REITs.

Causes two and three allege that Kolta violated FINRA Rules 4511 and 2010 by causing his customers’ account records, updates to their records, and their REIT investment documents to contain false and inaccurate information so that they could qualify to purchase the REIT. Cause four alleges that Kolta circulated email communications to customers about the REIT that were not fair and balanced and contained misleading, unwarranted, and promissory statements and claims that violated FINRA Rules 2210 and 2010.

On February 15, 2023, Kolta filed an Answer in which he denied the allegations and asserted various affirmative defenses.

II. Discussion

On March 2, 2023, I held the initial pre-hearing conference (“IPHC”) in this proceeding. During the conference, Enforcement stated that it would commence production of discovery materials to Kolta by March 8, 2023—within the time required by FINRA Rule 9251(d) (*i.e.*, no

later than three weeks after a respondent files an Answer). Enforcement stated the discovery materials involved a “massive production” totaling more than 1.6 million documents.¹ Enforcement explained that the number of documents produced would not in fact amount to 1.6 million discrete documents. The database Enforcement uses to compile the materials overcounts files. Also, the documents are searchable, according to Enforcement. The bulk of the production, Enforcement said, is made up of emails produced by the firm that employed Kolta when he made the allegedly unsuitable recommendations.² Enforcement said it anticipated completing discovery production within four weeks after its initial production, or by April 5, 2023.³

Prior to the conference, I issued an order instructing the parties to submit a joint pre-hearing schedule, including dates for the hearing, or, if they could not agree on dates, separate proposed pre-hearing schedules. Neither party submitted a proposed schedule before the conference.

During the IPHC, Enforcement proposed a three-week hearing starting on October 2, 2023.⁴ Citing the volume of investigative documents in discovery mentioned by Enforcement, Kolta’s attorney objected, stating that he and his client would have to review thousands of documents per day to adequately prepare for the hearing. The attorney then countered with proposed hearing dates “in the end of 2025 or 2026.”⁵ I informed Kolta’s attorney that a hearing in late 2025 was not acceptable. He did not propose earlier hearing dates.

¹ Initial Pre-Hearing Conference Transcript (“IPHC Tr.”) 24.

² IPHC Tr. 46-48.

³ IPHC Tr. 24.

⁴ IPHC Tr. 29. In its Notice of Complaint, Enforcement proposed New York City as the location of the hearing. In his Answer, Kolta instead proposed Miami as the hearing location, citing his limited resources to travel to New York and medical concerns. He also stated that most of FINRA’s investigation occurred after Kolta moved to Florida. Respondent’s Answer 15. At the IPHC, Kolta’s attorney said Kolta has “medical issues” that limit his ability to travel. IPHC Tr. 63. He added, however, that he could not at the time specify Kolta’s medical condition. Tr. 65. Kolta did not address the hearing location in his Motion, but he raised the issue in his proposed pre-hearing schedule. In it, Kolta states that New York is “not indicative of proper personal jurisdiction” over him and it “is highly prejudicial” to have the hearing there. Respondent’s Proposed Pre-Hearing Schedule 4.

Applying the factors set forth FINRA Rule 9232(c) for designation of the primary regional committee, and without more information about Kolta’s medical condition, I find that New York City is the appropriate location for the hearing. *See* FINRA Rule 9232(c)(2) through (6). Kolta worked in the New York City area at the time of the alleged misconduct, all but one of the customer witnesses are located in the area, and Kolta’s former firm’s supervisory personnel are located in New York. IPHC Tr. 58-61. *See also* Enforcement’s Opposition to Respondent’s Motion to Continue and Response to Respondent’s Proposed Pre-Hearing Schedule (“Opp.”) 4-5; Declaration of Payne L. Templeton in Support of Opp. (“Templeton Decl.”), Ex.1, at 8-10; Ex. 2, at 1-2 (excerpts from Central Registration Depository records showing Kolta’s residential and employment addresses in New Jersey and New York City during the period of his alleged misconduct).

⁵ IPHC Tr. 54-56.

Given the two alternatives presented to me, I informed the parties during the IPHC that I would hold the hearing beginning October 2, 2023, the dates Enforcement proposed. I asked Enforcement to file a proposed pre-hearing schedule after it conferred with Kolta's attorney, with these hearing dates in mind.

On March 2, 2023, the same day as the IPHC, Kolta filed a motion to continue the hearing ("Motion"), requesting that I reconsider the October 2023 hearing dates in order to allow him "a reasonable and sufficient amount of time to review the documents . . . and present a defense."⁶ Kolta argues that because Enforcement has been investigating the matter for over six years it has had time to review the documents and prepare its case. He adds that Enforcement is seeking harsh sanctions for the alleged misconduct.⁷

On March 7, 2023, Enforcement filed its proposed pre-hearing schedule adopting October 2, 2023, as the hearing start date. On March 8, 2023, Kolta filed his pre-hearing schedule proposing a two-week hearing beginning October 27, 2025.

On March 13, 2023, Enforcement filed an opposition to the Motion. It argues that Kolta has failed to show good cause for the relief he requests and a two-year continuance of the hearing from October 2023 to October 2025 would undermine FINRA's mission of protecting investors.⁸ Enforcement insists Kolta's true motive is to "unnecessarily and unreasonably delay" the hearing.⁹

On March 14, 2023, I held a pre-hearing conference to address Kolta's Motion. During the conference, Kolta's attorney repeated his argument that the hearing should take place in late 2025 given the amount of investigative material to be reviewed. Over Kolta's objections, I continued the hearing for about four months—to February 5-16, 2024. Both parties confirmed they were available on these dates.

III. Legal Standard

A Hearing Officer has broad discretion to determine whether to grant a request for a continuance.¹⁰ That discretion is limited by FINRA Rule 9222. It provides that "[a] hearing shall begin at the time and place ordered, unless the Hearing Officer for good cause shown . . . postpones the commencement of the hearing . . . subject to the limitations in paragraph (b)(2)." FINRA Rule 9222(b)(2) provides that "[p]ostponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary." The Rule is primarily "intended to

⁶ Respondent's Motion to Continue ("Mot.") 2.

⁷ Mot. 1.

⁸ Opp. 1-2.

⁹ Opp. 4.

¹⁰ *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *20 (Oct. 31, 2018).

ensure prompt resolution of [FINRA's] disciplinary proceedings, which is necessary to enable [FINRA] to carry out its regulatory mandate and fulfill its responsibilities in protecting the public interest.”¹¹

Kolta's Motion seeks a continuance exceeding 28 days. If I were to grant the Motion, the hearing would be delayed a year and eight months (from February 2024).

FINRA Rule 9222(b)(1) identifies five factors that a Hearing Officer must consider when deciding whether to grant a continuance: (1) the length of the proceeding to date; (2) the number of postponements, adjournments, or extensions already granted; (3) the stage of the proceedings at the time of the request for a continuance; (4) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (5) such other matters as justice may require.

Three factors favor consideration of a postponement. First, the proceeding has not been pending long. Second, this is the first request for an extension. Third, the proceeding is still at an early stage. But I find that they do not support a continuance until October 2025.

The fourth factor, however, disfavors a postponement. The Complaint contains serious allegations of wrongdoing and customer harm. Although Kolta is not currently employed by a FINRA-member firm, this proceeding is important to customers who allegedly suffered monetary losses, as the Complaint alleges and as Enforcement points out in its opposition.¹² I note that Kolta has been registered with an investment adviser since early 2022.¹³

Application of the fifth factor (“such other matters as just may require”) favors an extension of some time. I note that Enforcement's investigative file involves a “massive production.” Enforcement did not begin producing discovery to Kolta until the week of March 6, 2023, and will not complete production until early April 2023.

After balancing these factors, I find that justice is served by giving Kolta an extension of the hearing dates, so he has an opportunity to review the large number of documents collected by Enforcement in its investigation. But an extension until October 2025 is much too long. Continuing the hearing for an additional four months to February 2024 provides Kolta and his attorney sufficient time to review the investigative file and prepare for the hearing.

¹¹ OHO Order 13-01 (2009019108901) (Jan. 2, 2013), at 8, https://www.finra.org/sites/default/files/OHODDecision/p229434_0_0.pdf (citing OHO Order 06-28 (CLI050007) (Mar. 23, 2006), https://www.finra.org/sites/default/files/OHODDecision/p017538_0_0.pdf).

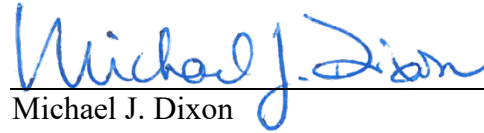
¹² Opp. 2-3.

¹³ Templeton Decl., Ex. 1, at 4.

IV. Order

Accordingly, Kolta's Motion is **GRANTED IN PART**. A Case Management and Scheduling Order will be issued setting the hearing for February 5-16, 2024.

SO ORDERED.



Michael J. Dixon
Hearing Officer

Dated: March 23, 2023

Copies to:

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