

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH TODD ASHLEY  
(CRD No. 4096004),

Respondent.

Disciplinary Proceeding  
No. 2020068470002

Hearing Officer–MC

**ORDER DENYING RESPONDENT'S MOTION TO STAY PROCEEDING**

**I. Introduction**

This case originated when Respondent Keith Todd Ashley's former FINRA member firm employer terminated his employment in October 2020. The firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) asserting that it believed Ashley had engaged in undisclosed outside business activities. The Form U5 filing prompted FINRA staff to initiate an investigation in November 2020. Also that month, Ashley was indicted by a federal grand jury for wire fraud. Subsequently, a Texas grand jury indicted him for first degree murder. Ashley is detained in a Texas jail awaiting trial on both indictments.

In January 2021, in connection with its investigation into Ashley's outside business activities, FINRA served him with a request for information pursuant to FINRA Rule 8210. Ashley did not respond. In February 2021, FINRA again served Ashley with the request for information. Ashley again did not respond. On December 10, 2021, the Department of Enforcement filed the Complaint, whose sole cause of action charges Ashley with failing to provide information in violation of FINRA Rules 8210 and 2010. On February 23, 2022, in an email Ashley sent through a relative, he denied the allegations in the Complaint, stated that his attorney had asked "to have these proceedings continued until the finalization" of his criminal cases, and requested a hearing "at a later date."

The parties participated by telephone in a pre-hearing conference on May 10, 2022. Ashley, who is representing himself, requested an indefinite postponement of this proceeding until his criminal trials are concluded. According to one of Ashley's criminal defense lawyers, the federal wire fraud trial is scheduled to begin on July 5, 2022. The state murder trial is scheduled to commence on August 15, 2022.

Enforcement has filed a proposed scheduling order setting a videoconference hearing date for November 15, 2022. Included as an exhibit to the proposed scheduling order is a handwritten note from Ashley dated May 4, 2022, stating he cannot agree to any of the proposed dates in the order and reiterating his request for a continuance.

Enforcement opposes Ashley's request. Enforcement argues that the pendency of Ashley's criminal trials does not constitute a valid ground for a postponement. Furthermore, Enforcement asserts that a November hearing date provides sufficient time for him to prepare his defense and that the jail authorities have agreed to provide him with access to a computer to review his discovery and participate in a hearing held by videoconference. Enforcement stresses that FINRA's interest in investor protection and market integrity favors expeditious resolution of Ashley's alleged violations of FINRA Rule 8210,<sup>1</sup> and granting Ashley's request would "set a dangerous precedent and significantly impair . . . [FINRA's] ability to protect both the industry and the investing public."<sup>2</sup>

Ashley points out that his securities licenses will expire in November 2022 and that if he is convicted on any of his pending charges, he expects to be incarcerated for years.<sup>3</sup> He is concerned about being permitted sufficient time to review the discovery when the jail receives it, noting that his access to a computer to review discovery materials is controlled by the jail. Ashley states that the last time he made a request for time in the institution's library, it took two weeks to be approved and he was allowed to be there for only thirty minutes.<sup>4</sup>

## II. Discussion

### A. The Standards Governing Consideration of Postponement Requests

Hearing Officers possess well-established broad discretion to grant requests for postponement of a hearing.<sup>5</sup> This discretion is not, however, unlimited. FINRA Rule 9222 sets standards for granting or denying postponement requests. Rule 9222(a) allows a hearing officer to postpone or adjourn a hearing for good cause, consistent with Rule 9222(b), which permits postponement or adjournment "for a reasonable period of time." The factors to be considered in weighing a postponement motion listed in Rule 9222(b)(1) are: (1) the length of the proceeding thus far; (2) the number of previously granted postponement requests; (3) the stage of the proceeding when the request is made; (4) the potential harm to the investing public if the request is granted; and (5) the requirements of justice. Finally, Rule 9222(b)(2) limits postponements to

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<sup>1</sup> Department of Enforcement's Response to Respondent's Request for a Stay ("Enforcement's Response"), at 1.

<sup>2</sup> Enforcement's Response, at 10 (quoting OHO Order 19-18 (2015045312501), at 5 (Feb. 15, 2019)).

<sup>3</sup> Transcript of May 10, 2022, Initial Pre-Hearing Conference ("Tr.") 36-37.

<sup>4</sup> Tr. 22.

<sup>5</sup> *Dep't of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at \*18 (NAC Oct. 5, 2017) ("It is well-settled that a hearing officer has 'broad discretion as to whether or not a continuance should be granted.'"), *aff'd*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018).

no more than 28 days unless a hearing officer identifies “the reasons a longer period is necessary.”

### **1. The Length of the Proceeding**

In this case, Ashley initially requested postponement when he submitted his Answer on February 23, 2022. He repeated his request orally at the initial pre-hearing conference on May 10, 2022. As Enforcement has noted, by the time the logistical impediments to convening the initial pre-hearing conference were overcome, six months had passed since the Complaint was filed. If the hearing begins on November 15, the date in the proposed schedule submitted by Enforcement, eleven months will have elapsed since the Complaint's filing. As Enforcement observes, this is a lengthy period for a case whose single cause of action should take less than a day to try. This factor weighs against granting Ashley's request.

### **2. The Number of Requests**

In Enforcement's view, the fact that this is Ashley's first postponement request weighs in Ashley's favor.<sup>6</sup> But Ashley is not asking for a postponement to a date certain. His request is for an indefinite stay, until both the federal and state criminal cases pending against him are concluded.<sup>7</sup> There is no way to determine when that will be. If both trials are held as currently scheduled, and Ashley is acquitted of all charges, it could be as early as the end of August of this year. But trial schedules may change. And if he is convicted, sentencing will be set for some unknown date; if Ashley appeals the convictions, years could pass before the cases reach final resolution. Under these circumstances, the fact that this is Ashley's first postponement request is a negligible factor.

### **3. The Stage of the Proceeding**

Enforcement argues that consideration of the stage of the proceeding at the time Ashley made his request weighs in favor of denying it. Both Texas county jails holding Ashley since the initiation of this proceeding have stated their willingness and ability to enable him to review discovery and participate in telephone conferences and videoconference hearings. Enforcement reasons that because Ashley is currently housed in a jail that has made such allowances, the hearing should not be delayed.<sup>8</sup>

Discovery is a concern. At this stage of the proceeding, Enforcement has provided Ashley with an initial hardcopy package of discovery materials containing approximately 70 pages.<sup>9</sup> Not yet provided is a file that Enforcement represents consists of approximately 4,800 records totaling approximately 26,000 pages that it expects to deliver to Ashley in an electronic

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<sup>6</sup> Enforcement's Response, at 5.

<sup>7</sup> Tr. 20–21, 37.

<sup>8</sup> Enforcement's Response, at 7–8.

<sup>9</sup> Tr. 15–16.

format. According to Enforcement, the format will be compatible with the computer that Enforcement understands the jail will give Ashley access to, but not permit him to have in his cell.<sup>10</sup>

Enforcement discounts Ashley's concerns over whether the jail will permit him sufficient time with a computer to review this large volume of documents. Enforcement describes them as "electronic communications collected from Ashley's former member firm that do not pertain" to the Complaint's single cause of action, and "are not relevant to the salient issues in the Complaint." Enforcement contends that Ashley has already been given the "key documents" relevant to the case and is fully "conversant with all the facts."<sup>11</sup>

However, Ashley is entitled to review the entirety of the discovery. It is unclear just how and when Ashley, who is representing himself, will be allowed to do so. Furthermore, after Ashley's federal trial in July and state trial in August, it is unknown whether Ashley will continue to be held in a facility that will provide the accommodations he needs for him to prepare for and participate in the hearing of this matter. These factors make it uncertain whether Ashley's current circumstances, with what Enforcement describes as the "many accommodations now being offered to him," weigh as strongly in favor of denying his request as Enforcement contends.<sup>12</sup>

#### **4. Potential Harm to the Investing Public**

Citing long-established authority for the importance of enforcing compliance with Rule 8210 to effectuate FINRA's regulatory responsibilities, Enforcement insists that granting Ashley's request for a stay of the hearing in this matter would set a "dangerous precedent," and pose a threat to the investing public.<sup>13</sup> However, under the facts of this case, given Ashley's prospects of lengthy incarceration, lack of employment in the securities industry, and unregistered status, any threat to the investing public by granting Ashley's postponement request does not appear to weigh heavily against him.

#### **5. Requirements of Justice**

Arguing that the requirements of justice weigh in favor of denying Ashley's request, Enforcement cites language from previous orders issued by hearing officers denying requests made by respondents in similar contexts, who sought postponements until their pending criminal or civil proceedings were concluded. In those cases, hearing officers refused to grant indefinite stays, in some cases concluding that the interests served by prompt enforcement of FINRA rules to regulate the securities industry and protect investors would be compromised by awaiting the

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<sup>10</sup> Tr. 17–18.

<sup>11</sup> Enforcement's Response, at 8 and n.21.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 10.

outcomes of the other proceedings.<sup>14</sup>

Although the urgency for resolving this case quickly to protect investors and the integrity of the securities industry is not pressing, there are some elements present here that previously issued orders found persuasive, and that weigh against granting Ashley's request. Most important is the uncertainty as to when Ashley's criminal proceedings will be concluded. This makes it impossible to determine whether the indefinite stay he requests would allow us to comply with the requirement of Rule 9222(b) that a postponement be for a "reasonable period of time."

Furthermore, Ashley has requested the stay on the advice of his criminal defense attorneys.<sup>15</sup> Ashley's reliance on the advice that he not participate in this proceeding until his criminal trials have concluded is not a sufficient reason to stay this proceeding indefinitely.<sup>16</sup> His wish to resolve his criminal cases before proceeding to the hearing in this matter is evidently rooted in his desire to avoid having any aspect of this proceeding adversely impact on his defenses to the pending federal wire fraud and state murder charges.<sup>17</sup> As important as this may be to him, it is well established that concern over the possibility that participation in a FINRA disciplinary hearing might impact other pending litigation and compromise his privilege against self-incrimination does not justify postponing this FINRA disciplinary proceeding.<sup>18</sup>

## **B. Conclusions**

Ashley's incarceration and pending criminal trials pose challenges to the conduct of this disciplinary proceeding. In less than two months the federal wire fraud case is scheduled to begin, followed by the murder trial the next month. Enforcement expects to provide him with a voluminous discovery package in this case at the end of this month. It is reasonable to anticipate that Ashley may be unable to review all of the discovery and comply with pre-hearing filing deadlines in this case until after his August trial is over.

That said, it is also true that this matter is not complex. Even though Ashley represents himself, it is clear from his participation in the initial pre-hearing conference that he understands the charges in the Complaint. The transcript reflects that he is, as he described himself, a "pretty . . . educated person."<sup>19</sup> Enforcement has already provided Ashley with the documents that it represents are "the key documents from the investigative file that pertain to the allegations" in

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<sup>14</sup> *Id.* at 5–7, nn.15–19.

<sup>15</sup> Tr. 30.

<sup>16</sup> *Toni Valentino*, 57 S.E.C. 330, 338–39 (Feb. 13, 2004) (citing *Joseph G. Chiulli*, 54 S.E.C. 515, 524 (Jan. 28, 2000)); *Dep't of Enforcement v. Richard Stephen Levitov*, No. CAF980025, 1999 NASD Discip. LEXIS 30, \*15–16 (NAC Nov. 1, 1999).

<sup>17</sup> Tr. 14.

<sup>18</sup> *Levitov*, 1999 NASD Discip. LEXIS 30, at \*17.

<sup>19</sup> Tr. 38.

the Complaint<sup>20</sup> and “that most likely will be among the first of Enforcement’s exhibits” presented at the hearing.<sup>21</sup>

Given these facts and considering that, if the criminal trials proceed on their current schedule they will be concluded by the end of August, holding the hearing of this matter in mid-November should provide Ashley with sufficient time to prepare, and also satisfy Enforcement’s stated interest in being able “to litigate cases, to identify [adjudge] and sanction violations” of Rule 8210.<sup>22</sup>

For these reasons, I deny Ashley’s request for an indefinite postponement. I will issue a Case Management and Scheduling Order with some modifications to the proposed scheduling order submitted by Enforcement, taking into consideration the limitations imposed by Ashley’s confinement, and with the expectation that further modifications may be necessary to accommodate the parties’ needs under the circumstances of this proceeding.

**SO ORDERED.**



Matthew Campbell  
Hearing Officer

Dated: May 26, 2022

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<sup>20</sup> Enforcement’s Response, at 8.

<sup>21</sup> Tr. 26.

<sup>22</sup> Tr. 39.

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