

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

INNOVATION PARTNERS LLC
(CRD No. 146344),

PATRICK EMANUEL SUTHERLAND
(CRD No. 3042322),

and

YANIQUE LAWRENCE
(CRD No. 3234186),

Respondents.

Disciplinary Proceeding
No. 2016050957901

Hearing Officer—CC

ORDER GRANTING RESPONDENTS' RULES 9252 AND 9253 MOTIONS

I. Background

FINRA's Department of Enforcement ("Enforcement") filed a five-cause Complaint on November 26, 2018. Cause one alleges that Respondent Patrick Emanuel Sutherland ("Sutherland") violated NASD Rule 1021, FINRA Rule 2010, and Article III, Section 3(b) of FINRA's By-Laws by associating with Respondent Innovation Partners LLC ("Innovation Partners") and functioning as a general securities principal while subject to statutory disqualification. Cause two alleges that Innovation Partners and Respondent Yanique Lawrence ("Lawrence") violated NASD Rule 1021, FINRA Rules 8311 and 2010, and Article III, Section 3(b) of FINRA's By-Laws by permitting Sutherland to associate with the firm and engage in activities requiring registration while he was disqualified from the industry. Cause three alleges that Innovation Partners and Lawrence violated FINRA Rules 3110 and 2010 by failing to establish, maintain, and enforce a supervisory system reasonably designed to ensure regulatory compliance. Cause four alleges that Sutherland violated FINRA Rules 8210 and 2010 by providing false and misleading testimony to FINRA. Cause five alleges that Lawrence violated FINRA Rules 8210 and 2010 by failing to respond timely and completely to FINRA Rule 8210 requests for information and documents.

Respondents filed an Answer in which they deny the allegations of the Complaint. Sutherland also contends that FINRA lacks jurisdiction to bring this action. Lawrence denies that she had possession, custody, or control of the documents that Enforcement requested and states that she suffers from serious medical issues, which this case has exacerbated.

II. Innovation Partners' and Lawrence's Rule 9252 Motion

On June 17, 2019, Respondents Innovation Partners and Lawrence filed a motion to invoke Rule 8210 to require Enforcement to issue a FINRA Rule 8210 request for hearing testimony to Jesse Michael Scudder-Cotherman ("Scudder-Cotherman"). Respondents contend that Scudder-Cotherman was associated with Innovation Partners from April 2, 2016 through October 22, 2018. Although Scudder-Cotherman is no longer in the securities industry, Respondents represent that he remains subject to FINRA's jurisdiction. Respondents state that Scudder-Cotherman provided on-the-record ("OTR") testimony on November 15, 2018. They represent that Scudder-Cotherman's OTR testimony indicates that he possesses first-hand knowledge to rebut many of the allegations in the Complaint. Specifically, Respondents represent that Scudder-Cotherman will testify about his experience monitoring emails on behalf of Innovation Partners, Lawrence's role as his supervisor, his observations of changes at the firm throughout the relevant period, his experience at Innovation Partners with the firm's email review software, his interactions with Sutherland during the relevant period, and other relevant matters.

The parties participated in a June 19, 2019 pre-hearing conference, during which Enforcement represented that it does not oppose Respondents' motion. Enforcement indicated that it too intends to include Scudder-Cotherman on its witness list. Sutherland also does not oppose the motion.

Under Rule 9252, a respondent may request that FINRA invoke Rule 8210 to compel the production of documents or testimony from entities or individuals that are subject to FINRA's jurisdiction. Rule 9252(a) states that the request must describe with specificity the testimony, sought, state why it is material, describe the requesting party's previous good faith efforts to obtain the testimony through other means, and state whether the person requested to testify is subject to FINRA's jurisdiction. Pursuant to Rule 9252(b), "[t]he Hearing Officer may grant such a request only upon a showing that the information sought is relevant, material, and non-cumulative; that the requesting party has previously attempted to obtain the documents or testimony through other means, but has been unsuccessful; and that the person from whom the documents or testimony is sought is subject to FINRA jurisdiction."¹ In addition, Rule 9252(b) requires the Hearing Officer to consider "whether the request is unreasonable, oppressive,

¹ OHO Order 17-10 (2014042524301), at 3 (Apr. 11, 2017) http://www.finra.org/sites/default/files/OHO_Order_17-10_2014042524301_0_0.pdf (citing OHO Order 08-12 (2005003188901) (Aug. 27, 2008), at 2, http://www.finra.org/sites/default/files/OHODecision/p118011_0_0_0_0.pdf).

excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.”²

Respondents have demonstrated that Scudder-Cotherman’s anticipated testimony is relevant and material and that he remains subject to FINRA’s jurisdiction. Respondents have not demonstrated their efforts to contact Scudder-Cotherman, and state that they no longer have contact with him. In light of Enforcement’s failure to object and its intention to call Scudder-Cotherman as an Enforcement witness as well, I will not require Respondents to attempt to contact Scudder-Cotherman directly.

Accordingly, I grant Respondents’ motion. I order Enforcement, on or before June 21, 2019, to issue a Rule 8210 request for Scudder-Cotherman to appear and testify at the hearing scheduled in this matter.

III. Innovation Partners’ and Lawrence’s Rule 9253 Motion

On June 17, 2019, Respondents Innovation Partners and Lawrence filed a motion pursuant to FINRA Rule 9253 for Enforcement to produce certain witness statements and statements prepared by members of FINRA staff.

Neither Enforcement nor Respondent Sutherland objected to the motion.

FINRA Rule 9253 requires Enforcement to produce certain types of “witness statements.” Rule 9253(a)(1) requires Enforcement to produce any document containing a substantially verbatim transcription of a statement made by a potential witness, where the transcription was made contemporaneously with the making of the statement. Rule 9253(a)(1) is FINRA’s analogue to the Jencks Act, 18 U.S.C. § 3500(e)(2).

During the June 19, 2019 pre-hearing conference, Enforcement represented that it has already produced to all Respondents all documents responsive to subsection (a)(1) of Rule 9253.

Rule 9253(a)(2) requires Enforcement to produce a contemporaneously written statement made by an interested FINRA staff member during a routine exam or inspection about the substance of oral statements made by a non-FINRA person if either person is called as a witness and the statement for which production is sought directly relates to that person’s testimony.

Enforcement represented at the pre-hearing conference that it does not possess documents responsive to this request. Enforcement also represented that it has notes prepared by a FINRA investigator of the investigator’s conversations with potential witnesses and one non-witness. Rule 9253(a)(2) requires Enforcement to produce contemporaneously written statements prepared by interested FINRA staff about the substance of oral statements made by a non-FINRA person *only if made during a routine exam or inspection* and *only if either person is*

² OHO Order 15-05 (2012034936005) (Jan. 27, 2015), at 7, http://www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005_0_0_0.pdf.

called as a witness and the statement directly relates to that person's testimony. Enforcement stated that the notes in its possession were *not prepared during a routine exam or inspection* and therefore are not subject to production. Enforcement, nonetheless, voluntarily offered to produce the statements, redacted in accordance with Rule 9251(b), on or before July 10, 2019.

Accordingly, in light of Enforcement's representations and voluntary offer to produce additional statements, Respondents' Rule 9253 motion is moot.

IV. Conclusion

I grant Respondents' motion to invoke Rule 8210 to require Enforcement to issue a FINRA Rule 8210 request for hearing testimony to Jesse Michael Scudder-Cotherman. On or before June 21, 2019, Enforcement shall issue a Rule 8210 request for Scudder-Cotherman to appear and testify at the hearing scheduled in this matter.

Respondents' motion pursuant to FINRA Rule 9253 for Enforcement to produce certain witness statements and statements prepared by members of FINRA staff is moot, in light of Enforcement's representations and offer voluntarily to produce, on or before July 10, 2019, statements that do not fall within the scope of Rule 9253.

SO ORDERED.



Carla Carloni
Hearing Officer

Date: June 20, 2019

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