

FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SUZANNE MARIE CAPELLINI  
(CRD No. 1357703),

Respondent.

Disciplinary Proceeding  
No. 2020066627202

Hearing Officer–DDM

**ORDER DENYING RESPONDENT'S MOTION TO STRIKE**

Respondent Suzanne Marie Capellini moves to strike portions of Enforcement's opposition to her motion for summary disposition.<sup>1</sup> She seeks to strike references in Enforcement's opposition brief and exhibits to (1) disclosure of certain customer complaints on the Central Registration Depository ("CRD") record of her husband, RB, who traded through accounts at First Manhattan Co. ("First Manhattan"), where Capellini was the AML Compliance Officer; and (2) a civil suit filed by the SEC against RB and others, including Capellini's brother, TC. Respondent argues that these references are immaterial and would lead to an "irrelevant sideshow" about the validity of the CRD disclosures and SEC allegations. Enforcement opposes the motion to strike and argues that this information is relevant.

Motions to strike are governed by FINRA Rule 9136(e). This rule allows a Hearing Officer to strike "[a]ny scandalous or impertinent matter" from a filing. "'Scandalous' matter 'casts a derogatory light on someone, usually a party to the action,' and 'impertinent' matter is 'not responsive or relevant to the issues involved.'"<sup>2</sup> The term "'[s]candalous' includes allegations that cast a cruelly derogatory light on a party or other person."<sup>3</sup> Hearing Officers

<sup>1</sup> In this Order, I cite Respondent's motion to strike as "Mot. Strike." I cite Enforcement's opposition to the motion to strike as "Enf. Opp. Mot. Strike."

<sup>2</sup> OHO Order 12-06 (2011026664301) (Oct. 23, 2012), at 2 (quoting *Egan-Jones Rating Company*, 2012 SEC LEXIS 2204, at \*4 (July 13, 2012), [http://www.finra.org/sites/default/files/OHODecision/p229429\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p229429_0.pdf)). See also OHO Order 98-20 (CAF970002) (Feb. 25, 1998), at 14 (quoting *Skadegaard v. Farrell*, 578 F. Supp. 1209, 1221 (D. N.J. 1984) (defining a scandalous pleading as one that reflects cruelly upon a party's moral character, uses repulsive language, or detracts from the dignity of the court), [http://www.finra.org/sites/default/files/OHODecision/p007753\\_0\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p007753_0_0_0.pdf)).

<sup>3</sup> *In re TheMart.com, Inc. Sec. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000).

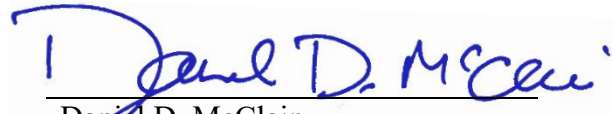
generally do not grant motions to strike unless the matter to be stricken could have no possible bearing on the subject of the litigation.<sup>4</sup>

Capellini argues that the CRD disclosures and SEC allegations are immaterial to the case, particularly to her motion for summary disposition. This case is about her conduct, she argues, not stale complaints supposedly made against her husband, or unproven and contested allegations by the SEC. Letting this information into the record will lead to an “irrelevant sideshow” about the validity of the CRD disclosures and SEC allegations, Capellini argues.<sup>5</sup> On the other hand, Enforcement argues that the disclosures and SEC allegations “are relevant to assessing whether Respondent reasonably responded to red flags of suspicious trading in [RB’s] accounts.”<sup>6</sup>

While Capellini raises legitimate questions about the possible relevance and admissibility of the customer complaints and SEC allegations at a hearing, those questions are appropriately decided after prehearing submissions, objections, and evidentiary motions. I cannot say now that the disclosures and SEC allegations have no possible bearing on any issues about the case.<sup>7</sup> Indeed, Enforcement has not yet identified what exhibits and testimony it will seek to present at hearing. And Capellini has not demonstrated any prejudice from *not* striking the material. I decided her motion for summary disposition -- and concluded that genuine issues of material fact require a hearing -- without regard to the disclosures or SEC allegations. Striking material related to the disclosures and SEC allegations from Enforcement’s opposition filing is therefore unnecessary.<sup>8</sup> Capellini may move to preclude the introduction of evidence related to the customer complaints and SEC allegations before or during the hearing.

Capellini’s motion to strike is **DENIED**.

**SO ORDERED.**

  
Daniel D. McClain  
Hearing Officer

Dated: January 13, 2023

<sup>4</sup> See OHO Order 17-01 (2013037401001) (Jan 30, 2017), at 2, [http://www.finra.org/sites/default/files/OHO\\_Order-17-01\\_2013037401001.pdf](http://www.finra.org/sites/default/files/OHO_Order-17-01_2013037401001.pdf).

<sup>5</sup> Mot. Strike. 2.

<sup>6</sup> Enf. Opp. Mot. Strike 2.

<sup>7</sup> See *Porter v. U.S. Dep't of Army*, 1995 U.S. Dist. LEXIS 10864, at \*14 (N.D. Ill. July 17, 1995) (noting that motions to strike are viewed with disfavor for various reasons, including “the risk that something may be discarded that may turn out to be material”); OHO Order 18-05 (2014041860801) (Jan. 10, 2018), at 8 n.46, [http://www.finra.org/sites/default/files/OHO\\_Order\\_18-05\\_2014041860801.pdf](http://www.finra.org/sites/default/files/OHO_Order_18-05_2014041860801.pdf).

<sup>8</sup> See *Illinois Tool Works Inc v. ESAB Group, Inc.*, 2016 U.S. Dist. LEXIS 184333, at \*4 (E.D. Wis. Sept. 13, 2016) (declining “to embark on the largely academic exercise of editing a defendants’ pleadings” because plaintiff failed to “identify some actual prejudice it could expect to sustain as a result of the offending pleading”); OHO Order 18-05, at 9 n.51.

Copies to:

Ian McLoughlin, Esq. (via email)  
Thomas McCabe, Esq. (via email)  
Amanda E. Fein, Esq. (via email)  
Jeff Fauci, Esq. (via email)  
Savvas A. Foukas, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)