

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JORGE A. REYES
(CRD No. 4256834),

Respondent.

Disciplinary Proceeding
No. 2016051493704

Hearing Officer–DW

**ORDER GRANTING IN PART ENFORCEMENT'S
MOTION FOR A RULE-COMPLIANT ANSWER**

I. Background

In this matter, the Department of Enforcement's Complaint alleges that Respondent Jorge Reyes engaged in fraud in connection with three private placement offerings, misappropriated customer funds, and engaged in other misconduct. Reyes denies participating in any of the alleged misconduct.

Enforcement moves for an order requiring Reyes to file an amended Answer that complies with FINRA Rule 9215(b) (the "Rule"). Reyes denied certain of the Complaint's allegations in his Answer by disavowing sufficient information or knowledge to respond. Enforcement claims this was improper. In particular, Enforcement notes that it referred to several customers in the Complaint by their initials to avoid publically identifying those individuals. Despite Enforcement's disclosure of the identity of those customers to Reyes in a separately provided index, Reyes asserts in response to a number of allegations that he is unable to admit or deny several allegations of the Complaint because "he is uncertain as to the identity of the customers initials referenced in the Complaint."¹ Enforcement maintains that Reyes' refusal to utilize the index is improper and he should be compelled to file an amended Answer consistent with the information available to him. Enforcement also requests that it be permitted to delay its discovery obligations until an amended Answer is filed.

¹ Enforcement's Motion at 4. Enforcement identifies eleven paragraphs where Reyes denied an allegation on this basis. Reyes denied an additional thirty-seven allegations based on a general lack of knowledge, and Enforcement states that it cannot discern whether "putative confusion over customer identity is the information that is necessary for Reyes to answer these specific allegations."

For the reasons explained below, the motion will be granted in part.

II. Discussion

Rule 9215(b) requires that an Answer admit or deny each allegation of a Complaint, or state in the alternative that a respondent does not have and is unable to obtain sufficient information to admit or deny the allegation. “The Rule contemplates that the pleadings will clarify whether each allegation (as reflected in separately numbered paragraphs of the Complaint) or some portion thereof, is disputed.”² The purpose of exchanging pleadings is to “provide notice to the other side of the facts and issues to be litigated at the hearing.”³

By its express language the Rule permits denial of an allegation based upon a lack of knowledge only where a respondent “does not have and is unable to obtain sufficient information” to respond. Enforcement maintains that Reyes is clearly able to obtain sufficient information regarding the identities of the customers here, because it provided him an index of those very names. In describing its effort to meet and confer with counsel on the issue, Enforcement reports that in an email Reyes’ counsel stated:

“[Enforcement] provided a kind of ‘cheat sheet’ which Mr. Reyes could consult and ‘learn’ the identity of the individuals. This is unusual at best. Given the issues of this case, and the fact that Mr. Reyes’ knowledge will be at issue, Mr. Reyes will not agree to this education. Mr. Reyes’ answer will stand.”⁴

In his opposition, Reyes argues that Enforcement should have identified the customers in its Complaint, and that the Complaint is otherwise inadequately detailed.⁵ There is scant explanation as to the basis for Reyes’ claim of insufficient information to identify the customers in light of Enforcement’s index beyond the bald assertion that the Rule permits him to make that claim.⁶

Reyes’ contentions are without merit. Whether the customers are identified in the Complaint or not, they have been identified to Reyes. If there is authority for the proposition that a pleading must identify third parties by name, it is not cited in Reyes’ opposition. And while Reyes broadly questions the amount of detail found in Enforcement’s allegations, if he believes that the Complaint is not pled in reasonable detail his remedy is to file a motion pursuant to FINRA Rule 9215(c). To date, he has filed no such motion.

² OHO Order 18-03 (2014042606902) (Jan. 10, 2018), at 1-2, https://www.finra.org/sites/default/files/OHO_Order_18-03_2014042606902_0_0.pdf.

³ *Id.* at 2.

⁴ Enforcement’s Motion at 2.

⁵ Respondent’s Opposition at 2-3, 4-5.

⁶ Respondent’s Opposition at 3-4.

As to the central issue, while Reyes is correct that the Rule permits him to deny an allegation by claiming a lack of knowledge, his ability to do so is not unbounded. Cases interpreting the analogous rule under the Federal Rules of Civil Procedure hold that a party responding to a complaint “may not deny sufficient information or knowledge with impunity, but is subject to the requirements of honesty in pleading.”⁷ That requirement is equally applicable to this forum.⁸

Consistent with this obligation, a party “may not deny having knowledge or information if the necessary facts or data involved are within his knowledge or can easily be brought within his knowledge.”⁹ Although a respondent need not go out of his way to learn information, he has a “duty to make a reasonable inquiry before denying a complaint[’s] allegation”¹⁰ and must undertake at least a “modest expenditure of effort” to ascertain facts in question before denying an allegation on that basis.¹¹ A party certainly may not decline an “education” on straightforward, uncontroversial facts such as proper names corresponding to initials, and interpose denials for that reason.¹²

III. Conclusion

I find that Enforcement has adequately demonstrated that Reyes’ Answer fails to comply with Rule 9215(b). I therefore order Reyes to file an Amended Answer that specifically admits or denies to each of the allegations of the Complaint. Where Reyes denies only part of an allegation, he shall admit the part of an allegation that is true and deny the rest. Where Reyes denies an allegation (or part of an allegation) on the basis that he lacks sufficient information, such a denial shall only be made after a reasonable investigation.

Enforcement also requests that its discovery obligations be stayed until Reyes files a proper Answer. This aspect of the motion is denied. Even a non-compliant Answer is generally sufficient to trigger the discovery timing provisions of FINRA Rule 9251(d).¹³ Moreover, the discovery materials are likely to facilitate Reyes’ reasonable investigation as to the Complaint’s

⁷ *Djourabchi v. Self*, 240 F.R.D. 5, 12 (D.D.C. 2006) (quoting *David v. Crompton & Knowles Corp.*, 58 F.R.D. 444, 446 (E.D. Pa. 1973)).

⁸ FINRA Rule 9137(b).

⁹ *Sibley v. Choice Hotels, Int’l, Inc.*, 304 F.R.D. 125, 134 (E.D.N.Y. 2015) (quotation omitted).

¹⁰ *Bank of Am., N.A. v. Malibu Canyon Investors, LLC*, 2012 U.S. Dist. LEXIS 4627, at *10 (D. Nev. Jan. 13, 2012).

¹¹ *Certain Underwriters at Lloyd’s v. SSDD, LLC*, No. 4:13 - CV-193 CAS, 2013 U.S. Dist. LEXIS 179806, at *9 (E.D.Mo. Dec. 23, 2013), (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice And Procedure* § 1262 (3d ed. 2010)).

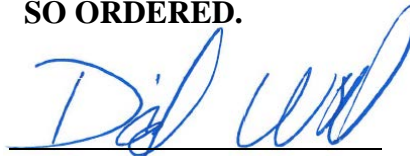
¹² See *Cornerstone Staffing Solutions, Inc. v. James*, No. C-12-01527 RS, 2013 U.S. Dist. LEXIS 194813, at *14 (N.D. Cal. April 29, 2013) (defendant must, among other things, review documents in their possession before denying on the basis of lack of knowledge).

¹³ See OHO Order 17-14 (2016047565702) (Dec. 20, 2017), at *2-3, http://www.finra.org/sites/default/files/OHO_Order_17-22_2016047565702.pdf.

allegations and aid in the process of clarifying which of the Complaint's factual or legal assertions will actually be contested at the hearing.

Accordingly, for good cause shown, **I GRANT IN PART** Enforcement's motion. Respondent is hereby **ORDERED** to file, by **March 22, 2019**, an Amended Answer that complies with FINRA Rule 9215(b).

SO ORDERED.



David Williams
Hearing Officer

Dated: March 1, 2019

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