

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICKY ALAN MANTEI
(CRD No. 1098981),

Respondent.

Disciplinary Proceeding
No. 2015045257501

Hearing Officer–DDM

ORDER REGARDING MOTION FOR LEAVE TO WITHHOLD CERTAIN EMAILS

On November 27, 2019, the Department of Enforcement filed a motion seeking leave to withhold 131 emails from production to Respondent Ricky A. Mantei (the "Motion"). The 131 emails were produced to FINRA by a now-defunct broker-dealer, J.P. Turner & Company ("J.P. Turner"). J.P. Turner produced the 131 emails, along with other documents and emails, in response to a Rule 8210 request issued by FINRA during the investigation that led to the institution of this proceeding. The 131 emails are therefore subject to production to Mantei under FINRA Rule 9251(a)(1). Enforcement has completed its production to Respondent under Rule 9251(a) with the exception of these 131 emails.

In its Motion, Enforcement invokes FINRA Rule 9251(b)(1)(D), which provides that Enforcement may seek leave from the Hearing Officer "to withhold [from production in discovery] a document or category of documents as not relevant to the subject matter of the proceeding, or for other good cause shown." Enforcement argues that the 131 emails are not relevant to the subject matter of this proceeding. Enforcement divides the 131 emails into five different subject matter categories that Enforcement contends are irrelevant to the charges in the Complaint, Mantei's defenses, and sanctions. Indeed, according to Enforcement's description, some of the emails appear to have been generated as a result of separate and unrelated investigations by the Securities & Exchange Commission and FINRA. In addition, Enforcement asserts, none of the 131 emails were sent to or from Mantei, and most were transmitted weeks before the first set of trades cited in the Complaint. Finally, Enforcement argues, "good cause" exists to withhold the 131 emails under Rule 9251(b)(1)(D), because J.P. Turner has asserted

attorney-client privilege over them, and “FINRA recognizes the importance of giving consideration to the asserting of attorney-client privilege.”¹

Enforcement attached to its Motion, as Exhibit A, a 14-page log that identifies each of the 131 emails by date, time, sender, subject line, and recipient. The log also contains a brief description of each email by J.P. Turner and its privilege claim. In addition, FINRA added a brief description of each email in a column in the log.

Mantei responded on December 4, 2019 in opposition to Enforcement’s Motion. Mantei asserts that the documents are relevant to his defense that J.P. Turner management and compliance personnel, which reviewed and approved the trades at issue in the Complaint, “were well aware of how he conducted his business.”² He also offers several arguments about how J.P. Turner waived attorney-client privilege for the 131 emails by producing them to FINRA, and how Enforcement does not have standing to assert a privilege that belongs to J.P. Turner.

It is clear from the papers that each side has a dramatically different view of whether the 131 emails are relevant, an issue that is the crux of Enforcement’s Motion. I have decided that an in-camera review is necessary to evaluate properly the arguments by both parties and decide the Motion. To that end, Enforcement is **ORDERED** to produce to the Office of Hearing Officers (“OHO”) an electronic copy of the 131 emails that are the subject of Enforcement’s Motion. The copy should be indexed and correlate to Exhibit A of Enforcement’s motion. The copy should be produced to OHO by sending it via encrypted CD to April Blackwood, Case Administrator, with a separate email containing the password for the CD.

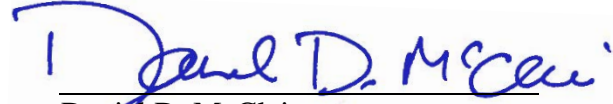
The deadline for producing the documents for an in-camera review is **Monday, December 9, 2019**. Concurrent with its production of the documents for an in-camera review, Enforcement should file with OHO and serve on Mantei a notice of its filing that attaches the log contained in Exhibit A of Enforcement’s Motion.

¹ Enforcement’s Motion for Leave to Withhold Certain Irrelevant Emails, at 3 (citing Order Approving Proposed Rule Change, SEC Release No. 38908, 1997 SEC LEXIS 1617, at *59, *131 n.192 (Aug. 7, 1997).

² Respondent’s Opposition to Enforcement’s Motion to Withhold Documents, at 7.

After I have conducted an in-camera review of the 131 emails, I will issue an order deciding the Motion.

SO ORDERED.



Daniel D. McClain
Hearing Officer

Date: December 5, 2019

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