

**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 ENFORCEMENT'S MOTION FOR LEAVE
TO OFFER EXPERT TESTIMONY**

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. Motion

Enforcement seeks to offer the expert testimony of Neil Broom (“Broom”). Mr. Broom is experienced and knowledgeable in the field of computer forensics and network security. Enforcement represents that it intends to present as evidence metadata associated with emails sent and received from Sutherland’s email addresses and other Innovation Partners email addresses during the relevant period. Enforcement expects Mr. Broom to testify about Sutherland’s emails before and during the relevant period coming from unique “IP” addresses, servers, and mail clients, tending to prove that Sutherland was the sender of the emails at issue. Enforcement represents that Mr. Broom’s specialized testimony will help the Hearing Panel evaluate the voluminous technical information produced by Innovation Partners. Enforcement asserts it also will help the Hearing Panel determine central issues in the case. Specifically, Mr. Broom’s testimony will address whether Sutherland continued to access his Innovation Partners and related email accounts to send and receive securities-related email during the relevant period, whether Innovation Partners and Lawrence were aware of his access, and what steps, if any, they took to limit his access.

Respondents do not object to Enforcement’s motion. The parties participated in a pre-hearing conference regarding the motion on June 19, 2019.

III. Discussion

Hearing Officers have broad discretion to accept or reject expert testimony if the expert is qualified to give expert testimony on the specified topics and the evidence meets the general standard for admissibility set forth in FINRA Rule 9263.¹ The proponent of the testimony bears the burden to show that the testimony satisfies the conditions for admission.² While the Federal Rules of Evidence are not applicable to FINRA proceedings, those rules and the case law

¹ See *Dep’t of Enforcement v. Brookstone Securities, Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *113 (NAC Apr. 16, 2015) (“the Hearing Officer’s discretion to accept or reject expert testimony is particularly broad”) (quoting *Dep’t of Enforcement v. Fiero*, No. CAF980002, 2002 NASD Discip. LEXIS 16, at *89 (NAC Oct. 28, 2002)); see OHO Order 17-07 (2013035817701) (Mar. 21, 2017), at 1 (“Hearing Officers have broad discretion to accept or reject expert testimony if the expert is qualified to address the proposed topics and the evidence meets the general standard for admissibility set forth in FINRA Rule 9263.”), finra.org/sites/default/files/OHO_Order_17-07_2013035817701.pdf; OHO Order 16-20 (20120342425-01) (July 28, 2016), at 4 (“The Hearing Officer has broad discretion to determine whether to permit expert testimony.”), finra.org/sites/default/files/OHO_Order16-20_20120342425-01_0.pdf.

² OHO Order 17-05 (201504421601) (Mar. 16, 2017), at 2, finra.org/sites/default/files/OHO_Order_17-05_201504421601.pdf.

applying them can provide guidance on the issue of expert testimony.³ Rule 702 of the Federal Rules of Evidence specifies that a witness who is “qualified as an expert by knowledge, skill, experience, training, or education” may give opinion testimony if his or her “specialized knowledge will help the trier of fact” and the testimony meets certain measures of reliability. An overarching and critical factor is whether the proposed testimony would be helpful to the Hearing Panel.⁴ The inquiry focuses on whether the expert will testify from a base of scientific knowledge that will help the trier of fact understand or determine a fact in issue.⁵

With these standards as guidance, I grant Enforcement’s motion. Mr. Broom is qualified to testify as an expert witness. Over the course of his career, he has provided training on computer forensics and information security to thousands of individuals in the United States government, the military, intelligence agencies, and Fortune 500 companies. He serves on the Ethical Standards Committee of the International Society of Forensic Computer Examiners and served on the National Leadership Assembly of the American Society of Digital Forensics and eDiscovery. He served as the Chairman of the Digital Evidence Subcommittee for the International Association for Identification, and Vice President of the Atlanta Chapter of the International Information Systems Forensics Association. Mr. Broom was the recipient of the Fall 2009 Certified Computer Examiner Excellence Award. He holds numerous professional certifications and licenses, including the following: (1) Certified Computer Examiner; (2) Certified Fraud Examiner; (3) Certified Information Systems Security Professional; (4) EnCase Certified Examiner; (5) AccessData Certified Examiner; (6) Computer Hacking Forensic Investigator; and (7) Cellebrite Certified Operator and Physical Analyst.

IV. Conclusion

I grant Enforcement’s motion for leave to introduce the expert testimony of Neil Broom. On or before July 23, 2019, Enforcement shall provide Respondents with a copy of Mr. Broom’s written report. On or before August 19, 2019, Enforcement shall file with the Office of Hearing Officers Mr. Broom’s written report and a statement setting forth his proposed testimony in sufficient detail so that, at the discretion of the Hearing Officer or Hearing Panel, it may serve as his direct testimony.

³ See OHO Order 17-03 (2014042059701) (Feb. 24, 2017), at 2, http://www.finra.org/sites/default/files/OHO_Order_17-03_2014042059701.pdf.

⁴ See OHO Order 17-07 (2013035817701), at 2-3; OHO Order 17-03 (2014042059701), at 2-3 (internal citations omitted).

⁵ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993) (the threshold inquiry is “whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue”). The Case Management Order and Scheduling Order, issued February 28, 2019, requires motions for permission to offer expert testimony to include: (1) a statement of the witness’s qualifications; (2) a summary of each opinion the witness is expected to express; (3) a list of other proceedings in which the witness has given expert testimony in the last four years; (4) a list of publications the witness has authored in the last ten years; (5) a statement establishing that the witness’s opinion will help the Hearing Panel understand the evidence or determine a material fact in issue; and (6) if the witness is a former FINRA officer, a statement that the witness is not subject to the restriction imposed by FINRA Rule 9141(c). Enforcement has satisfied these conditions by attaching Mr. Broom’s curriculum vitae to the motion.

On or before July 3, 2019, Respondents may move to offer rebuttal expert testimony. Oppositions to any such motions are due on or before July 10, 2019.

SO ORDERED.



Carla Carloni
Hearing Officer

Date: June 19, 2015

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