

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LESLIE GEORGE MARKUS, JR.
(CRD No. 2688964),

Respondent.

Expedited Proceeding
No. ARB210008

STAR No. 20210709929

Hearing Officer–DDM

**ORDER DENYING RESPONDENT'S POST-HEARING MOTION FOR ADMISSION
OF ADDITIONAL EXHIBITS**

A. Introduction

This is an expedited proceeding resulting from Respondent Leslie George Markus, Jr.'s failure to pay a FINRA arbitration award ("the Award"). FINRA notified Markus that FINRA intended to suspend him on April 9, 2021 from associating with any FINRA member firm for his failure to pay the Award. Markus stayed that suspension by requesting a hearing and alleging that he was unable to pay the Award.

We held a hearing on Markus's inability-to-pay defense on June 29, 2021. At the hearing, Markus testified and 21 joint exhibits ("JX -") were admitted into evidence, along with stipulations by the parties. One of the exhibits, JX-18, contains 217 pages of information regarding Markus's credit cards, and another exhibit, JX-19, summarized that information. The parties stipulated that JX-19 accurately summarized the information in JX-18 "regarding minimum payments, balances, credit limits and available credit for the credit cards listed as of May 2021."¹

Now, more than three weeks after the hearing, Markus has filed a "Post-Hearing Motion to Supplement the Record." The motion is just an exhibit list, and Markus attached to his motion six "post-hearing exhibits to be used" in this case, captioned AX-01 through AX-06. The first exhibit restates Markus's motion, while the other five exhibits consist of statements from

¹ Stipulations ("Stip.") ¶ 27.

Markus's various credit cards. Enforcement opposes Markus's motion, arguing that it fails "to meet the applicable standard for post-hearing admission of additional evidence."²

Markus's motion is denied. He failed to show that the additional evidence is material, or that his failure to introduce it at the hearing was reasonable.

B. Discussion

As they do in disciplinary proceedings, Hearing Officers in expedited proceedings can "do all things necessary and appropriate to discharge [their] duties."³ That includes, under FINRA Rule 9235(a)(5), the power to reopen a hearing before a decision is issued. FINRA based its Rule 9235(a) on SEC Rule of Practice 111.⁴ And SEC Administrative Law judges applying that rule have relied on the standards set forth in SEC Rule of Practice 452, which governs the submission of additional evidence in proceedings before the SEC.⁵ Rule 452 requires a movant to "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."⁶ I apply that two-pronged test here.

Markus failed to satisfy either prong. First, he failed to show that his proffered exhibits are material. AX-01 is simply a list of the additional exhibits he would like to introduce after the hearing concluded. That list has no probative value. The other additional exhibits (marked AX-02 through AX-06) consist of Markus's credit card statements. Although he does not explicitly say so in his motion, presumably Markus views these as relevant to his contention that he cannot use his credit cards to pay off the Award. This issue was extensively covered at the hearing. Markus testified at length on this issue. Stipulations cover it. And JX-18 contains the relevant credit card statements, the most recent set before the hearing. The remainder of Markus's additional exhibits are stale or cumulative. Indeed, portions of Markus's additional exhibits were already entered into evidence, as part of JX-18.⁷

² Department of Enforcement's Opposition to Respondent's Post-Hearing Motion to Submit Additional Evidence, at 2.

³ FINRA Rule 9235(a). This rule applies not only to disciplinary proceedings, but also to expedited proceedings like this one. See FINRA Rule 9559(d)(4).

⁴ *Dep't of Enforcement v. Holaday*, No. 2012032519101, 2015 FINRA Discip. LEXIS 17, at *26 (OHO May 21, 2015), *rev'd and vacated*, 2016 FINRA Discip. LEXIS 64 (NAC Oct. 3, 2016).

⁵ See *Michael J. Fee*, Administrative Proceedings Rulings Release No. 358, 1989 SEC LEXIS 5151, at *4-6 (Nov. 28, 1989) (applying Rule 21(d), the predecessor to Rule 452); *Ernst & Whinney*, Administrative Proceedings Rulings Release No. 277, 1987 SEC LEXIS 4690, at *4-6 (June 17, 1987) (same).

⁶ 17 C.F.R. §201.452 (2013).

⁷ Pages 1 and 5 of AX-04 are the summary pages of credit card statements, and were entered into evidence in JX-18, at 27-28. Similarly, page 1 of AX-05 is the summary page of a credit card statement that was entered into evidence in JX-18, at 213. Page 7 of AX-05 is a letter dated January 15, 2021 from a collection agency confirming a payment from Markus on his Citi Mastercard, while page 206 of JX-18 is a January 19, 2021 letter from the same collection

Markus also failed to show that he had reasonable grounds for failing to offer the additional exhibits previously. He agreed to stipulations and joint exhibits regarding his credit cards before the hearing. He had ample time to designate and use the additional exhibits at the hearing, which was continued three times at his request. Before the hearing, he had or controlled the additional exhibits he now seeks to introduce, some of which Enforcement asserts he did not produce despite repeated demands for them. In short, Markus has failed to explain why he was unable to identify the additional exhibits before the hearing or offer them into evidence during the hearing. For these reasons, his motion is **DENIED**.

SO ORDERED.



Daniel D. McClain
Hearing Officer

Dated: July 29, 2021

Copies to:

Leslie George Markus, Jr. (via email)
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Michael P. Manning, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

agency thanking Markus for his payment. Finally, pages 1 and 3 of AX-06 are the summary pages of other credit card statements, and both are already in evidence as pages 86 and 93 of JX-18.