

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SPARTAN CAPITAL SECURITIES, LLC
(CRD No. 146251),

JOHN D. LOWRY
(CRD No. 4336146),

and

KIM M. MONCHIK
(CRD No. 2528972),

Respondents.

Disciplinary Proceeding
No. 2019061528001

Hearing Officer–MJD

**ORDER DENYING RESPONDENTS' MOTION
FOR A MORE DEFINITE STATEMENT**

The Department of Enforcement filed the Complaint in this disciplinary proceeding on October 19, 2021. On November 23, 2021, Respondents filed their Answer, together with a Motion for a More Definite Statement (the "Motion") under FINRA Rule 9215(c). Enforcement opposed the Motion. For the reasons set forth below, I deny Respondents' Motion.

I. Background

The Complaint contains three causes of action. Cause one alleges that in 223 instances Respondent Spartan Capital Securities, LLC ("Spartan" or the "Firm") willfully failed to file, or to timely file, amendments to the Uniform Application for Securities Industry Registration or Transfer (Form U4) or Uniform Termination Notice for Securities Industry Registration (Form U5) of approximately 70 current or former registered representatives. Specifically, Enforcement alleges that the Firm failed to file, or to timely file, 162 amendments relating to the filing and resolution of certain customer arbitrations in which the registered representatives were named as a respondent or as a subject of the claim. In ten other instances, the Firm failed to disclose ten other customer complaints that were not the subject of an arbitration. In 51 instances, according to the Complaint, Spartan did not disclose certain financial events, including bankruptcies and

unsatisfied judgments or liens, against registered representatives.¹ The Complaint charges that Spartan's misconduct violated Article V, Sections 2(c) and 3(b), of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Causes two and three charge Respondents John D. Lowry ("Lowry"), the Firm's CEO and sole owner, and Kim M. Monchik ("Monchik"), who at different times during the relevant period served as Spartan's chief compliance officer and who currently holds the position, with willfully failing to amend, or to timely amend, their own Forms U4 to disclose the filing or resolution of an arbitration claim in which they were a named respondent or the subject of the claim.² Enforcement alleges that Lowry failed to make required disclosures in 38 instances and that Monchik failed to do so in 15 instances. The Complaint charges that Lowry and Monchik violated Article V, Sections 2(c), of FINRA's By-Laws and FINRA Rules 1122 and 2010.³

In their Answer, to which they appended a seven-page counterstatement of fact, Respondents deny the allegations. Their chief defense to the charges in causes two and three is that Lowry and Monchik were not obligated to make disclosures to their own Forms U4 for the arbitration claims that Enforcement cites based on guidance they received from FINRA staff and advice given by other professionals.⁴ They also state that, as to certain of the allegations in cause one, the Firm was not obligated to disclose financial events about its registered representatives on their Forms U4 in instances the Firm was not made aware of the events.⁵ Respondents also state that they did not act willfully, as the Complaint alleges, but instead acted in good faith because they reasonably relied on the advice of the Firm's other chief compliance officers (when Monchik was not serving in that capacity) and outside counsel and on their discussions with FINRA staff.⁶ Finally, Respondents claim that their actions were consistent with industry practice.⁷

II. Argument

FINRA Rule 9212(a) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." Enforcement satisfies this pleading requirement if the allegations of the complaint provide "a respondent [with] sufficient notice to

¹ Complaint ("Compl.") ¶¶ 100-103.

² Compl. ¶¶ 108-118, 123-133.

³ Compl. ¶¶ 116, 120, 131, 135.

⁴ Answer ("Ans.") ¶¶ 45-46, 54-55, 58, 111, 126. *See also* Ans. 22-24 (counterstatement of facts).

⁵ Ans. ¶ 89.

⁶ Ans. 19-21 (Fourth, Fifth, Sixth, Eleventh and Eighteenth Separate Defenses), 22-24 (counterstatement of facts).

⁷ Ans. 19-20 (Seventh and Tenth Separate Defenses).

understand the charges and adequate opportunity to plan a defense.”⁸ Enforcement need not include evidentiary details in the complaint to meet this standard.⁹ If a complaint, “taken as a whole, fairly apprises the respondent of the charges and affords the respondent an adequate opportunity to plan a defense, a motion for more definite statement will not lie.”¹⁰

FINRA Rule 9215(c) permits a respondent to move for a “more definite statement of specified matters of fact or law to be considered or determined” in the matter. This provision allows a respondent to seek clarification where a complaint is ambiguous, confusing, or lacks sufficient specificity and detail to permit the respondent to defend himself.¹¹ A motion for a more definite statement may not be used as a discovery device.¹²

In their Motion, Respondents ask that I order Enforcement to “provide detail of the specific allegations contained in each Arbitration complaint that [Enforcement] contends constitutes a reportable sales practice violation.” They state that the information is necessary for Respondents to “properly defend this action and its disclosure will expedite the adjudication of this matter.”¹³ Respondents further state—as they did in their Answer—that Lowry and Monchik were not required to disclose the subject arbitrations on their own Forms U4 because they were named as respondents only because they were part of Spartan’s management, and not because they were involved in the underlying securities transactions that gave rise to the customers’ complaints.¹⁴

Respondents rely on the language of Question 14I of Form U4. It requires an individual to disclose an “investment-related, consumer-initiated arbitration” that alleges the individual was “involved in one or more sales practice violations.” Respondents thus ask that I order

⁸ OHO Order 16-28 (2014042524301) (Oct. 31, 2016), at 4, http://www.finra.org/sites/default/files/OHO_Order16-28_2014042524301_0.pdf (citing *Dist. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NBCC July 28, 1997)).

⁹ OHO Order 09-05 (2008012955301) (Dec. 16, 2009), at 3, http://www.finra.org/sites/default/files/OHODecision/p121082_0_0_0.pdf.

¹⁰ OHO Order 05-23 (C05050015) (June 7, 2005), at 2, http://www.finra.org/sites/default/files/OHODecision/p015987_0_0_0.pdf.

¹¹ OHO Order 07-28 (2005000323905) (July 2, 2007), at 2, http://www.finra.org/sites/default/files/OHODecision/p037092_0_0_0.pdf.

¹² OHO Order 00-06 (C3A990067) (Mar. 10, 2000), at 3, http://www.finra.org/sites/default/files/OHODecision/p007878_0_0_0.pdf. Furthermore, a motion for a more definite statement is disfavored when the information sought is within the movant’s own knowledge, which mitigates against granting the motion. *See, e.g.*, OHO Order 10-04 (2008014621701) (July 12, 2010), at 2-3 http://www.finra.org/sites/default/files/OHODecision/p122653_0_0_0_0.pdf (denying motion for more definite statement where allegations involve information within respondent’s knowledge); *Wheeler v. U.S. Postal Service*, 120 F.R.D. 487, 488 (M.D. Pa. 1987) (motion for more definite statement under Fed. R. Civ. P. 12(e) denied where information about the extent and nature of plaintiffs’ claims are within defendant’s knowledge).

¹³ Respondents’ Motion for More Definite Statement (“Mot.”) 1.

¹⁴ Mot. 1-2.

Enforcement “to provide a statement of the language in each [arbitration] Statement of Claim which implicates a ‘sales practice violation’ by Respondents.”¹⁵ According to Respondents, Enforcement will be required to identify such language during the presentation of its evidence at the hearing and the “immediate production of this information” will “vastly expedite” the adjudication of this matter.¹⁶

Enforcement opposes the Motion. It argues that Respondents are engaged in a thinly disguised ploy to discover evidence, without identifying any ambiguity in the Complaint. It points out that Respondents “filed a detailed Answer” and counterstatement of facts and nowhere denied having sufficient knowledge or information to form a belief as to the truth of any material allegation involving any of the subject arbitrations.¹⁷ Enforcement argues that Respondents want it to amend the Complaint to set forth the evidentiary basis and explain the allegations, contrary to the requirements of FINRA Rules 9212(a) and 9215(c).

I find that Enforcement has met the pleading requirements in this case. The standard is whether the complaint provides sufficient information to enable a respondent to plan a defense. After considering all the circumstances, I find that the Complaint provides adequate detail to place Respondents on notice of the charges against them and to prepare a defense to those charges, as required by FINRA Rule 9212. The Complaint includes 23 pages and 135 paragraphs. It details how in 223 instances Spartan allegedly failed to file, or timely file, Forms U4 and Forms U5 for Spartan’s registered representatives and how Lowry and Monchik allegedly failed to amend their own Forms U4. Two exhibits attached to the Complaint identify each of the arbitrations in question, together with their case numbers and the relevant registered representatives whose Forms U4 or Forms U5 were not properly amended. Furthermore, Respondents also already have the statements of claim in those arbitrations.

Accordingly, I deny the Motion. I find that the Motion does not seek to clarify some vagueness or confusion in the Complaint that makes it difficult for Respondents to defend themselves in this proceeding. Instead, it asks for evidence supporting the underlying allegations. Specifically, Respondents want Enforcement to point to the language in the statements of claim that Enforcement believes supports the existence of a sales practice violation that gives rise to an obligation to make disclosures on Forms U4 and Forms U5. Respondents’ request is improper. They are asking in effect that Enforcement answer a set of interrogatories. FINRA Rules do not allow for the use of interrogatories.¹⁸

¹⁵ Mot. 3.

¹⁶ Mot. 3.

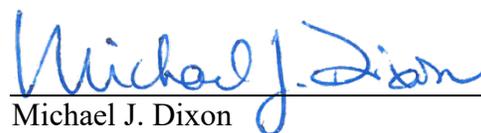
¹⁷ Department of Enforcement’s Opposition to Motion for a More Definite Statement (“Opp.”) 3.

¹⁸ OHO Order 17-10 (2014042524301) (April 11, 2017), at 4 & n.13, http://www.finra.org/sites/default/files/OHO_Order_17-10_2014042524301_0_0.pdf.

III. Order

Because the Complaint adequately apprises Respondents of the charges against them and the Motion seeks discovery that is not permitted in FINRA disciplinary proceedings, Respondents' Motion for a More Definite Statement is **DENIED**.

SO ORDERED.


Michael J. Dixon
Hearing Officer

Dated: December 14, 2021

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