

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JORGE ANTONIO NETTO
(CRD No. 2432661),

Respondent.

Disciplinary Proceeding
No. 2018058537302

Hearing Officer—RES

ORDER GRANTING DEPARTMENT OF ENFORCEMENT'S MOTION
FOR LEAVE TO USE DEMONSTRATIVE

I. Enforcement's Complaint and Respondent's Answer

FINRA's Department of Enforcement filed a Complaint against Respondent Jorge Netto, a registered representative. The Complaint consists of two causes of action. The first cause of action alleges that Respondent engaged in outside business activities ("OBAs") without prior written notice to his employer firm, Mora WM Securities Inc. ("Mora WM").¹ Together with three individuals, Respondent formed and managed a Florida limited liability company ("Florida LLC") to raise funds to purchase a warehouse in Sacramento, California in which marijuana could be grown and stored ("Sacramento Property").² Through a Delaware limited liability company he co-owned and managed ("Delaware LLC"), he allegedly became a co-manager of a California limited liability company that managed another California limited liability company that bought the Sacramento Property.³

The second cause of action alleges that in January 2018, Respondent submitted an annual compliance certification to Mora WM in which he falsely certified he had notified Mora WM's Compliance Department of all OBAs when, in fact, he had failed to identify his ownership and management role in the Delaware and Florida limited liability companies.⁴

¹ Complaint ("Compl.") ¶ 1.

² Compl. ¶ 2.

³ Compl. ¶ 2. Respondent admits he was listed as a manager of the Delaware LLC. Answer ("Ans.") ¶ 2.

⁴ Compl. ¶ 4.

According to the Complaint, Respondent's alleged failure to provide prior written notice of the putative OBAs violated FINRA Rules 3270 and 2010, and his allegedly false annual compliance certification violated FINRA Rule 2010.⁵

In his Answer, Respondent denies he violated FINRA Rules and states in an affirmative defense that his involvement in the Sacramento Property transaction did not require disclosure because it was a passive investment and thus exempt from FINRA Rule 3270.⁶

II. Enforcement's Motion and Respondent's Opposition

The hearing is scheduled for February 14-17, 2022. Enforcement moves for leave to use a demonstrative in its opening statement ("Motion"). The demonstrative lists: (1) four entities involved in this proceeding (*see* the first paragraph of this Order); (2) the shortened names by which Enforcement has referred to the entities in its Complaint and Pre-Hearing Brief and which Enforcement intends to use in the hearing; (3) the date each entity was formed; and (4) the owners and managers of each entity.⁷ Nothing in the demonstrative suggests either way whether Respondent's interest in the entities was an active or passive investment.

Respondent has filed an Opposition to Enforcement's Motion ("Opposition"). In his Opposition, Respondent's main objection is that the demonstrative is unduly prejudicial:

[I]t . . . serves to multiply [the limited liability companies] in the eyes of the Panel and create what Enforcement appears to hope is a web of corporate entities that is neither representative of what actually occurred nor is something that they have shown (or can show) was known to [Respondent] during the time period at issue.⁸

III. Discussion

FINRA Rule 9235 provides that "[t]he Hearing Officer shall . . . have authority to do all things necessary and appropriate to discharge his or her duties," including "regulating the course of the hearing."⁹ While Enforcement states it will not offer the demonstrative into evidence, the Hearing Officer has broad discretion to admit or reject evidence (or demonstratives) on grounds of relevance or any of the other grounds in FINRA Rule 9263.¹⁰ Rule 403 of the Federal Rules of

⁵ Compl. ¶¶ 1, 4.

⁶ Ans., First Affirmative Defense.

⁷ Mot. 1.

⁸ Opp. 2.

⁹ FINRA Rule 9235(a).

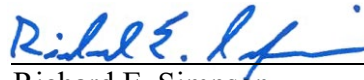
¹⁰ OHO Order 21-08 (2019064313901) (May 19, 2021), at 2, <https://www.finra.org/sites/default/files/2021-07/oho-order-21-08-2019064313901.pdf>; *Dep't of Enforcement v. Braeger*, No. 2015045456401, 2019 FINRA Discip. LEXIS 55, at *37 (NAC Dec. 16, 2019).

Evidence provides for the exclusion of even relevant evidence if its probative value is substantially outweighed by one or more specified factors:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.¹¹

I find that Enforcement's use of the demonstrative in its opening statement will be helpful to the Hearing Panel in understanding the many limited liability companies involved in this proceeding and that the demonstrative will not unduly prejudice Respondent. Thus, the Motion is **GRANTED**.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: February 10, 2022

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¹¹ Fed. R. Evid. 403. The Federal Rules do not govern FINRA proceedings but may be instructive. OHO Order 20-09 (2016048837401) (July 2, 2020), at 2, https://www.finra.org/sites/default/files/2020-10/OHO_Order_20-09_2016048837401.pdf.