

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL VENTURINO
(CRD No. 5872439),

Respondent.

Disciplinary Proceeding
No. 2021070337501

Hearing Officer–MC

ORDER DENYING RESPONDENT’S MOTION PURSUANT TO FINRA RULE 9253

I. INTRODUCTION

The Complaint in this disciplinary proceeding charges Respondent Michael Venturino with churning and excessively trading 12 customer accounts while associated with member firm Aegis Capital Corp. (“Aegis”). The Department of Enforcement has provided Respondent with voluminous discovery, comprising more than 150,000 documents with a total of more than one million pages.

Respondent seeks an order compelling the Department of Enforcement to provide more discovery. He wants Enforcement to provide him with: (1) all undisclosed interview notes and statements of customers identified in the Complaint; and (2) notes of interviews and statements of any other of Respondent’s customers obtained by Enforcement during the investigation leading to the Complaint. In the alternative, Respondent seeks an order for Enforcement to provide a “withheld documents list” identifying all such documents, and copies of those documents, for me to review *in camera*.

Finally, Respondent asks that Enforcement produce a third category of documents. In 2021, Aegis resolved allegations that it violated various FINRA rules in a Letter of Acceptance, Waiver, and Consent (“AWC”) in which the firm accepted an obligation to pay restitution to certain customers, including two customers holding accounts identified in the Complaint.¹

¹ Aegis Capital Corp., AWC No. 2016051704305 (Oct. 29, 2021), at <https://www.finra.org/sites/default/files/2021-11/Aegis-Capital-AWC-110921.pdf>; Declaration of Payne L. Templeton in Support of Enforcement’s Opposition to Respondent’s Motion Pursuant to Rule 9253 (“Templeton Decl.”) ¶ 12.

Respondent's motion seeks an order compelling Enforcement to provide evidence of the payments.

Enforcement opposes Respondent's motion.

II. RELEVANT RULES

In relevant part, FINRA Rule 9251(a) requires Enforcement to provide respondents in discovery with documents "prepared or obtained by Interested FINRA Staff² in connection with the investigation that led to the institution of proceedings." Rule 9251(b) permits Enforcement to withhold certain categories of documents from discovery, so long as they do not contain material exculpatory evidence.

Rule 9253(a)(1) permits a respondent to file a motion to obtain transcripts or "substantially verbatim" records of statements relating to the direct testimony of a person to be called as an Enforcement witness. Rule 9253(a)(2) also allows a respondent to seek Interested FINRA Staff members' contemporaneous written records, made "during a routine examination," of oral statements of a non-FINRA person relevant to the testimony of either the non-FINRA person or the staff member.

Rule 9251(c) allows a respondent, "based upon some reason to believe" that Enforcement has withheld documents in violation of the Code of Procedure, to move to require Enforcement to produce a list of those documents. The rule authorizes a hearing officer to require Enforcement to submit a list of the withheld documents, or the documents themselves, for the hearing officer to review. Then the hearing officer may require Enforcement to disclose the list or documents to a respondent.

III. ARGUMENTS

Noting that even though Enforcement has informed him it possesses no records discoverable under Rule 9253(a)(2), Respondent asserts that "it is clear that FINRA conducted several [c]ustomer interviews" and that he is entitled to records of the interviews, even if they contain only partial quotes or substantially verbatim fragments, because they relate to or may be relied upon by witnesses at the hearing. Respondent asserts that "a withheld documents list and *in camera* review is the most effective way to comply with the requirements of Rule 9253" and ensure a fair hearing.³

Enforcement represents that transcripts of Respondent's on-the-record interviews are the only contemporaneous verbatim records it possesses, and it has provided them to Respondent. Enforcement maintains that it possesses no other contemporaneously recorded verbatim or

² The term "Interested FINRA Staff" is defined in FINRA Rule 9120(t)(1) as including, in relevant part, FINRA employees who "directly participated in an examination, investigation . . . or litigation related to a specific disciplinary proceeding."

³ Respondent Michael Venturino's Motion Pursuant to Rule 9253 6-7.

“substantially verbatim” records of any oral statements by Respondent or any of his customers, whether named in the Complaint or not.⁴

Enforcement acknowledges that it has not disclosed some contemporaneous interview notes made by FINRA staff of Venturino’s customers’ oral statements. But Enforcement argues it need not disclose them, because: (1) they are not verbatim or substantially verbatim; (2) they do not contain material exculpatory evidence; and (3) they were made in cause examinations—not routine examinations—of Aegis and Respondent and thus they are outside the scope of discoverable notes described in Rule 9253(a)(1).⁵

Finally, Enforcement represents that it has provided Respondent with all the documentary evidence it possesses relating to Aegis’s efforts to make the restitution payments at issue.⁶

IV. DISCUSSION

Based upon Enforcement’s representations in both its Opposition and in its sworn Declaration, it has no undisclosed discoverable interview notes and statements from customers identified in the Complaint or other customers taken by FINRA staff during its investigation. Enforcement represents that whatever interview notes it has not provided in discovery are not substantially verbatim and therefore are not discoverable under Rule 9253(a)(1).

Enforcement further represents that the interview notes it possesses of oral customer statements made during the cause examinations of Aegis and Respondent are also not discoverable under Rule 9253(a)(2), because they were not made during routine examinations and contain no exculpatory information. Thus, absent any challenge to Enforcement’s representations in its Opposition and sworn Declaration, Respondent’s claim of entitlement to an order compelling Enforcement to produce the first two categories of notes of customer interviews and statements is unavailing.

Also unavailing is Respondent’s argument to compel Enforcement to produce a withheld documents list and the documents for an *in camera* review. It is well-established that “to justify such a review, a respondent must first establish a basis for claiming that the documents contain material exculpatory evidence” and that they “contain information that is both favorable and material to the respondent’s defense.”⁷ Respondent established no basis for such a claim. Further, as Enforcement points out, Respondent has made no showing there is “some reason to

⁴ Enforcement’s Opp. 3; Templeton Decl. ¶ 8.

⁵ Templeton Decl. ¶¶ 9–10.

⁶ Enforcement’s Opp. 5–6; Templeton Decl. ¶¶ 12–13.

⁷ *Orlando Joseph Jett*, Exchange Act Release No. 514, 1996 SEC LEXIS 1683, at *2 (June 17, 1996).

believe,” as Rule 9251(c) requires, that Enforcement is withholding a document in contravention of FINRA’s Code of Procedure.⁸

Finally, Respondent’s request for an order requiring Enforcement to provide evidence of payments Aegis made to Respondent’s two customers pursuant to the 2021 AWC appears to be moot. Based on Enforcement’s representations in its Opposition, supported by the Templeton Declaration, Enforcement has provided all the evidence in its possession documenting Aegis’s efforts to pay restitution to the customers.

For these reasons, Respondent’s motion is **DENIED**.

SO ORDERED.



Matthew Campbell
Hearing Officer

Dated: February 8, 2023

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⁸ Enforcement’s Opp. 5; Templeton Decl. ¶ 6.