

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER CACACE
(CRD No. 4308782),

Respondent.

Disciplinary Proceeding
No. 2020065599103

Hearing Officer—MC

**ORDER DENYING RESPONDENT'S MOTION TO COMPEL THE
DEPARTMENT OF ENFORCEMENT TO PRODUCE DOCUMENTS
PURSUANT TO FINRA RULE 9251 OR, IN THE ALTERNATIVE, ISSUE
REQUESTS FOR DOCUMENTS PURSUANT TO FINRA RULE 9252**

I. Introduction

The Department of Enforcement filed its Complaint against Respondent Christopher Cacace on August 15, 2024. Its single cause of action alleges that from May 2017 through November 2019, when he was the Chief Compliance Officer at former member firm SW Financial (“SWF”), Cacace failed to reasonably supervise four registered representatives—referred to in the Complaint as RR 1, RR 2, RR 3, and RR 4—who allegedly engaged in excessive trading and, in one instance, churning, in several customer accounts. For this alleged misconduct, the Complaint charges Cacace with violating FINRA Rules 3110 and 2010. In his Answer, Cacace denies having any responsibility to supervise these or any other registered representatives at SWF.

On December 16, 2024, pursuant to Rule 9251, Cacace filed a motion to compel (“Motion”) Enforcement to produce documents or, if it does not possess the documents, to issue requests pursuant to Rules 9251 and 8210 to member firm Axos Clearing LLC (“Axos”), the custodian of SWF’s records, to produce the documents.

Rule 9251 requires Enforcement to provide Cacace with documents it prepared or obtained during the investigation that led to filing the Complaint. Rule 9252 permits Cacace to request a hearing officer to order Enforcement to invoke Rule 8210 to require a third-party entity under FINRA’s jurisdiction—in this case Axos—to produce documents.¹ The rule requires

¹ OHO Order 19-25 (2017054405401) (July 8, 2019), at 3, http://www.finra.org/sites/default/files/2019-10/OHO_Order_19-25_2017054405401.pdf; OHO Order 17-11 (2014044985401) (Apr. 11, 2017), at 2, http://www.finra.org/sites/default/files/OHO_Order_17-11_2014044985401.pdf.

Cacace to identify the requested documents, explain why they are material, and detail his unsuccessful attempts to obtain them through other means.²

If a respondent's Rule 9252 request meets the requirements of Rule 9252, a hearing officer must then weigh "whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome." The hearing officer may on those bases deny, limit, or modify the request.³

II. Discussion

The Motion seeks the production of five categories of documents.⁴ Enforcement satisfied Cacace's request for one category of documents, but, on December 30, 2024, filed its opposition ("Opposition") to providing the other four categories, accompanied by a supporting declaration from its counsel ("Decl.").⁵

The remaining four categories of documents sought by Cacace at issue here are:

- Personnel files of all SWF registered representatives employed by the firm during the 30-month relevant period;
- Documents Cacace signed as SWF's CCO, including daily trade blotters, memoranda, pre-hire forms, and account reviews;
- Documents signed by two other SWF principals, [redacted] and [redacted], that reflect their supervisory authority over SWF registered representatives; and
- The transcript of an on-the-record interview ("OTR") of former SWF registered representative [redacted] and OTR exhibits.

A. Personnel Files

1. Arguments of the Parties

Cacace argues that the personnel files of each registered representative, including the file folders and the forms and memoranda they contain, are exculpatory, because they were signed by the representative's supervisor—not Cacace—when the broker became registered with SWF.⁶

² FINRA Rule 9252(a); OHO Order 19-25, at 3.

³ FINRA Rule 9252(b); see OHO Order 19-22 (2016050957901) (June 19, 2019), at 2–3, http://www.finra.org/sites/default/files/2019-10/OHO_Order_19-22_2016050957901.pdf.

⁴ Mot. at 2.

⁵ Opp'n at 3.

⁶ *Id.*

Because Enforcement does not possess the personnel files, Cacace seeks an order compelling Enforcement to issue a request to Axos under Rule 8210 to provide them.⁷

Enforcement counters, first, that requesting the personnel files of all SWF employees over a two-and-a-half year period is unreasonably excessive and overbroad.⁸ Second, Enforcement notes that personnel files by their nature contain confidential information about employees. Granting Cacace's request could therefore violate the privacy rights of former registered representatives who have no nexus to this proceeding, according to Enforcement.⁹ Third, Enforcement contends that the personnel files are irrelevant. More specifically, Enforcement argues that even if there are documents identifying someone else as a supervisor of an SWF broker, that has no bearing on whether Cacace was responsible for supervising the allegedly excessive trading of the four registered representatives, as described in the Complaint.¹⁰

2. Ruling

Although on its face Cacace's request for the personnel files of all registered representatives employed at SWF over two and a half years appears excessive and overbroad, as Enforcement contends, the record does not indicate the number of individuals this involves. However, Cacace has not demonstrated why the files are exculpatory, other than merely asserting that they are.

Nor has Cacace shown that the personnel records of an unknown number of unidentified registered representatives signed by other persons as supervisors could aid his defense against the allegation that Cacace supervised the trading of the four registered representatives. He has provided nothing to support the claim that these records would make a fact in issue more or less probable,¹¹ or relate to a material fact in this proceeding.¹² I therefore find that Enforcement's relevance objection has merit.

For these reasons, Cacace's request that I order Enforcement to issue a request to Axos pursuant to Rule 8210 to produce all personnel files of registered representatives employed by SWF in the relevant period is denied.

⁷ Mot. 3.

⁸ Opp'n 4-5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5-6.

¹¹ See Fed. R. Evid. 401; See OHO Order 22-13 (2019061528001) (July 14, 2022), at 3, <http://www.finra.org/sites/default/files/2022-08/22-13-Order-Denying-the-Parties-Motions-in-Limine.pdf>.

¹² See, e.g., *United States v. Shomo*, 786 F.2d 981, 985 (10th Cir. 1986); OHO Order 19-10 (2016052503101) (Mar. 13, 2019), at 4, http://www.finra.org/sites/default/files/2019-10/OHO_Order_19-10_2016052503101.pdf.

B. Documents Signed by Cacace as CCO

1. Arguments of the Parties

Cacace argues that he needs another category of documents—including “daily trade blotters, memos, pre-hiring forms and account reviews”—that Cacace signed as SWF’s CCO. Cacace contends they would provide “exculpatory evidence” to support his defense that he acted “exclusively” as CCO at SWF and he did not supervise SWF brokers.¹³

Enforcement informed Cacace that “to the extent such documents were in its investigative files . . . relating to the investigation that led to the filing of the Complaint,” it fulfilled its discovery obligations under Rule 9251.¹⁴ Consequently, Cacace seeks an order compelling Enforcement to issue a request to Axos pursuant to Rule 8210 to produce any of these documents that were not in Enforcement’s investigative files or, alternatively, an order requiring Axos to allow Cacace and his representatives to review and copy the documents in Axos’s control.¹⁵

Enforcement objects that the request is overbroad and burdensome, and argues it would require Axos to review “almost every document” it holds as custodian of SWF’s files.¹⁶ Furthermore, Enforcement contends it is undisputed that Cacace was SWF’s CCO; further evidence of that fact is irrelevant because it is not probative of the central issue in this case, which is whether he supervised the allegedly excessive trading of the four brokers.¹⁷ Additionally, Enforcement objects that Rule 9252 has no provision for the alternative procedure Cacace proposes, and insists that Cacace, a “former employee of a shuttered firm,” should not be permitted “unfettered access” to all of SWF’s documents in Axos’s custody.¹⁸

2. Ruling

Enforcement has provided Cacace all documents in this category that it held in its investigative files related to the Complaint. Thus, Cacace has the documents to which he is entitled. Beyond merely asserting that there are additional exculpatory documents of this nature held by Axos, Cacace has not established their relevance by showing how they would aid in his defense. As Enforcement persuasively argues, it is not apparent how additional documents signed by Cacace in his capacity as SWF’s CCO would bear on the central issue of whether he supervised the allegedly excessive trading of the four registered representatives identified in the Complaint.

¹³ Mot. 5–6.

¹⁴ Mot. 5, Opp’n 7.

¹⁵ Mot. 5–6.

¹⁶ *Id.* at 8.

¹⁷ Opp’n 7.

¹⁸ *Id.* at 9.

For these reasons, Cacace's request for an order compelling Enforcement to require Axos to produce these documents by issuing a Rule 8210 request is denied. On the same basis, and because Rule 9252 includes no provision allowing it, I also deny his alternative request for an order requiring Axos to permit Cacace and his representatives to review and copy the documents in its custody.

C. Documents Signed by Two SWF Principals, [REDACTED] and [REDACTED], Indicating Supervisory Authority Over SWF Brokers

1. Arguments of the Parties

Cacace explains that this category of documents includes "State Request Forms[,] trade blotters and records relating to the hiring of new brokers" signed by [REDACTED] and [REDACTED]. He argues that they support his defense that these two SWF principals, not Cacace, "exercised supervisory authority" over SWF's registered representatives when he served as the firm's CCO.¹⁹

Enforcement informed Cacace that it provided him with all of the documents from this category that were contained in its investigative files that led to the filing of the Complaint.²⁰ Cacace responds that Axos has other documents signed by these principals "which apparently were not in Enforcement's investigative file" and were not provided. Arguing that such documents "are extremely relevant and exculpatory," Cacace insists that Enforcement should be required to issue a Rule 8210 request to Axos to obtain them.²¹

Enforcement objects on grounds of relevance, arguing that merely because documents show these two principals possessed supervisory authority over SWF's registered representatives does not "bear on or negate" the Complaint's allegation that it was Cacace who supervised the trading activity of the four registered representatives at issue here.²²

2. Ruling

Enforcement has provided Cacace in discovery with all documents in this category from its investigative files leading to the Complaint. Cacace asserts, without support, that there are additional documents in this category that have not been produced. Furthermore, Cacace has not established grounds for concluding the documents sought are relevant. If there are documents signed by [REDACTED] or [REDACTED] showing they supervised the alleged excessive trading of the four identified registered representatives during the relevant period, they would be among this category of documents that Enforcement provided in discovery. But documents these two principals signed evidencing their supervision of other registered representatives do not relate to the central issue in this case.

¹⁹ Mot. 6.

²⁰ Mot., Ex. C (Dec. 10, 2024, letter) at 4.

²¹ Mot. 6-7.

²² Opp'n 9.

For these reasons, Cacace's request for an order compelling Enforcement to issue a Rule 8210 request to Axos requiring it to provide additional documents signed by [redacted] and [redacted] indicating their supervision of other SWF registered representatives is denied.

D. Transcript of [redacted] OTR and Exhibits

1. Arguments of the Parties

Finally, Cacace seeks to require Enforcement to provide the transcript of and related exhibits from an OTR of [redacted], a former SWF registered representative during Cacace's tenure as CCO. Cacace contends "[o]n information and belief" that [redacted] testified about "his conduct at SWF" and that he needs the transcript because he believes [redacted]'s testimony contains "statements regarding management and supervision at SWF" and that any statements "regarding supervision of brokers at SWF . . . are relevant."²³

According to Enforcement, [redacted]'s OTR took place in August 2017 and was not part of the investigation leading to this proceeding, contains nothing materially exculpatory, makes no reference to Cacace, and was not part of Enforcement's investigative files related to the Complaint.²⁴

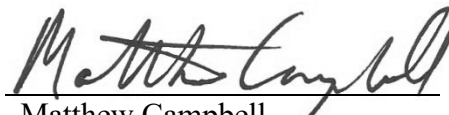
2. Ruling

Cacace does not explain the relevance of the transcript and exhibits of an OTR of a registered representative with no apparent connection to this case. His mere assertion of "information and belief" that "any statement . . . regarding supervision of brokers at SWF"²⁵ is relevant is unpersuasive. Given that the OTR was not part of the investigation related to this disciplinary proceeding, makes no reference to Cacace, and contains no exculpatory information, there is no basis for concluding it is relevant or material to the allegations in the Complaint. For these reasons, Cacace's request that I order Enforcement to produce the [redacted] transcript and exhibits is denied.

III. Conclusion

For the reasons given above, Respondent's Motion is **DENIED**.

SO ORDERED.


Matthew Campbell
Hearing Officer

Dated: January 17, 2025

²³ Mot. 7.

²⁴ Opp'n 9-10; Decl. ¶ 11.

²⁵ Mot. 7.

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