

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES LUKEZIC  
(CRD No. 4284800),

Respondent.

Disciplinary Proceeding  
No. 2022073425001

Hearing Officer–LOM

**ORDER DENYING RESPONDENT’S MOTION  
FOR ORDER TO COMPEL DISCOVERY**

Respondent James Lukezic filed a motion on March 31, 2025, seeking an order to compel the Department of Enforcement to produce certain documents and information that Respondent deems necessary to his defense (the “Motion”). On April 14, 2025, Enforcement timely filed an opposition (the “Opposition”). For the reasons discussed below, I **DENY** the Motion.

**I. Background**

Enforcement filed its three-count Complaint in this proceeding on December 17, 2024. The Complaint primarily revolves around allegations that Respondent placed six mutual fund exchanges with a total principal of around \$1.1 million in the accounts of five customers without the customers’ authorization. The First Cause of Action charges Respondent with unauthorized trading in violation of FINRA Rule 2010. The Second Cause charges him with providing false or misleading information in two written responses to two Rule 8210 requests in violation of Rules 8210 and 2010. The Third Cause charges him with providing false or misleading information in on-the-record testimony in violation of Rules 8210 and 2010.

Respondent filed an Answer on January 29, 2025, denying any wrongdoing. In addition, the Answer raises numerous matters characterized as affirmative defenses. Many of these matters constitute attacks on FINRA and its staff. For example, Respondent asserts that FINRA has improperly used its staff in such a way as to violate New York rules of professional ethics. The Answer also asserts that FINRA’s proceeding against Respondent constitutes a deprivation of his constitutional rights.

## **II. Discussion**

### **A. FINRA Rule 9251**

As Respondent acknowledges, discovery in a FINRA disciplinary proceeding is governed by FINRA Rule 9251.<sup>1</sup> Rule 9251(a) requires Enforcement to make available to a respondent for inspection and copying documents prepared or obtained by Interested FINRA staff in connection with the investigation that led to the filing of the complaint. Rule 9251(b) specifies, however, that Enforcement may withhold, among other things, privileged documents, internal memoranda and other writings not intended to be offered into evidence, and documents that would reveal the identity of a source or investigatory techniques and internal guidelines. With respect to both categories of documents, those that must be made available to a respondent and those that may be withheld, Rule 9251(b)(3) directly states that Enforcement is not authorized to withhold a document that contains “material exculpatory evidence.”

### **B. Motion**

With his Motion, Respondent provided a list of documents and information that he wants Enforcement to produce.<sup>2</sup> The first item is a list of withheld documents. Then Respondent seeks the identities of persons who participated in the investigation or who “communicated with any individuals or entities involving Mr. Lukezic and the allegations raised in the Complaint.” From there, Respondent seeks the titles and FINRA departments of all the individuals identified as having communicated about Respondent and the allegations, the identities of the heads of those departments, the method of communication, the nature of the communication, and the topics of discussion. The Motion seeks the production of all internal FINRA communications referencing or relating to Respondent, this proceeding, or evidence related to this case.<sup>3</sup>

Respondent seeks the documents and information to demonstrate that FINRA staff failed to investigate adequately, that the staff improperly relied on persons who allegedly had conflicts of interest, and that FINRA was biased during the investigation.<sup>4</sup>

### **C. Opposition**

Enforcement filed an Opposition, arguing that Respondent had failed to show any basis for the assertion that Enforcement did not produce or improperly withheld any documents it was required to produce. Enforcement asserted that Respondent’s Motion constitutes nothing more than a fishing expedition.<sup>5</sup>

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<sup>1</sup> Motion 2.

<sup>2</sup> Motion 4–5.

<sup>3</sup> Motion 4–5.

<sup>4</sup> Motion 1.

<sup>5</sup> Opposition 1.

Enforcement submitted with its Opposition a declaration signed by one of its attorneys under penalty of perjury.<sup>6</sup> The attorney represents in the Declaration that in February 2025 Enforcement produced more than 11,000 documents and audio files to Respondent's then-counsel, and that it later produced one audio file that it discovered had been inadvertently omitted from the February production.<sup>7</sup> The Enforcement attorney also represents that Enforcement fully complied with its discovery obligations under FINRA Rule 9251, that any documents withheld were properly withheld, and that no documents containing material exculpatory evidence have been withheld.<sup>8</sup>

#### **D. Conclusion**

Respondent's Motion must be denied for several reasons.

First, as is plain from the Motion itself, Respondent seeks documents and information to show that FINRA's investigation was mishandled and to identify and hold accountable those persons Respondent believes should be held accountable. The Motion explains that Respondent seeks "assurances" that investigative staff with an alleged conflict of interest "did not directly influence any investigative outcome."<sup>9</sup> Respondent argues that Enforcement "should not be permitted to withhold any documentation demonstrating investigative bias."<sup>10</sup> But the decision in this disciplinary proceeding will be based on record evidence in the proceeding. What happened in the investigation is irrelevant.<sup>11</sup>

Second, Respondent has presented no evidence of misconduct in the course of the investigation. Respondent has merely hypothesized that alleged interactions he had decades ago with one of the staff members involved in FINRA's investigation may have resulted in unfair treatment of him.<sup>12</sup> That is insufficient to justify the requested discovery.

Third, Enforcement has presented evidence in the form of an Enforcement attorney's declaration made under penalty of perjury to show that it complied with Rule 9251. Respondent has presented no evidence to show that Enforcement did not comply. Instead, Respondent has

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<sup>6</sup> Declaration of Ashley Morris in Support of Department of Enforcement's Opposition to Motion for Order to Compel Discovery ("Declaration").

<sup>7</sup> Declaration, at ¶¶ 3, 7.

<sup>8</sup> Declaration, at ¶¶ 7, 8, 9.

<sup>9</sup> Motion 2.

<sup>10</sup> Motion 2.

<sup>11</sup> Respondent has not alleged improper selective prosecution. To establish such a claim, he would be required demonstrate that "he was unfairly singled out for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right." *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217 at \*39 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *see also Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at \*38 (Dec. 7, 2009).

<sup>12</sup> Motion 2.

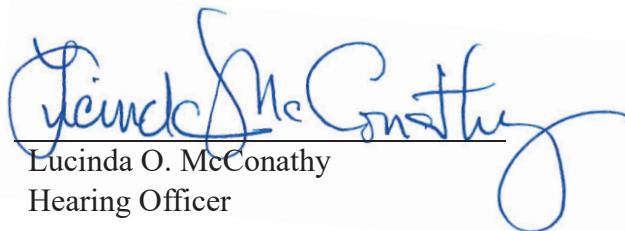
made allegations. Mere allegations do not provide any reason to believe that Enforcement is improperly withholding documents and information.<sup>13</sup>

Fourth, a withheld document list such as Respondent requests must be based on some reason to believe that a document is being withheld in violation of FINRA's rules.<sup>14</sup> Respondent has provided no such reason.

### III. Order

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

**SO ORDERED.**



Lucinda O. McConathy  
Hearing Officer

Dated: April 28, 2025

Copies to:

James Lukezic, Respondent (via email)  
John R. Baraniak, Esq., FINRA Enforcement (via email)  
Ashley Morris, Esq., FINRA Enforcement (via email)  
Justin Arnold, Esq., FINRA Enforcement (via email)  
Jennifer L. Crawford, Esq., FINRA Enforcement (via email)

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<sup>13</sup> OHO Order 13-06 (2009017529101) (May 2, 2013), at 5, [https://www.finra.org/sites/default/files/OHO Order 13-06 2009017529101](https://www.finra.org/sites/default/files/OHO%20Order%2013-06%2009017529101).

<sup>14</sup> OHO Order 16-08 (2014043020901) (Feb. 25, 2016), at 10, [https://www.finra.org/sites/default/files/OHO-Order-16-08-2014043020901\\_0\\_0\\_0.pdf](https://www.finra.org/sites/default/files/OHO-Order-16-08-2014043020901_0_0_0.pdf).