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–MPD

ORDER GRANTING ENFORCEMENT'S (1) MOTION FOR RELIEF UNDER FINRA RULE 9280 AND (2) SECOND MOTION FOR LEAVE TO AMEND ITS EXHIBIT LIST

I. Introduction

On October 9, 2025, during an adjournment of the hearing in this disciplinary proceeding, an attorney for Respondent James Lukezic who is not representing him in this matter sent an email to a customer witness ("Customer Witness") who the Department of Enforcement had intended to call in its case-in-chief. The Customer Witness is one of five customers in whose accounts Respondent is alleged, in Cause One of the Complaint, to have effected unauthorized mutual fund transactions. In the email, the attorney informed the Customer Witness that Respondent plans to commence a defamation action against him.

Enforcement brought the email to my attention the following day during a status conference and expressed its concern that Respondent was attempting to intimidate the Customer Witness into not testifying. Enforcement stated its intention to move for sanctions, pursuant to FINRA Rule 9280, and for leave to amend its exhibit list to include the email as an additional hearing exhibit. Enforcement filed those motions on October 15, 2025,[1] and on October 16, 2025,[2] respectively. Respondent responded to both motions on October 20, 2025.[3]

[1] Enforcement's Motion for Relief Under Rule 9280 for Respondent's Contemptuous Conduct ("Motion for Sanctions"). The Motion for Sanctions was accompanied by a declaration, signed under penalty of perjury, from Enforcement's principal investigator in this matter. Declaration of Edward Quinn in Support of Department of Enforcement's Motion for Relief Under Rule 9280 ("Quinn Decl.").

[2] Enforcement's Second Motion for Leave to File Amended Exhibit List and to Submit an Additional Exhibit ("Motion for Leave to Amend Exhibit List").

[3] Respondent's Response to Enforcement's Motion for Relief Under Rule 9280 for Respondent's Contemptuous Conduct ("Response to Motion for Sanctions"); Respondent's Response to Enforcement's Second Motion for Leave

For the reasons set forth below, both of Enforcement's motions are **GRANTED**.

II. Factual Background

The hearing in this disciplinary proceeding began on October 6, 2025. Before adjourning for the evening, Enforcement represented it planned to have the Customer Witness testify by videoconference on the next scheduled hearing date, October 8, 2025.[4] Out of the five customers who the Complaint alleges were affected by the allegedly unauthorized trading at issue in this proceeding, the Customer Witness is the only customer who was scheduled to testify at the hearing.[5]

On October 7, 2025, the remaining hearing dates were unexpectedly adjourned at the request of Respondent's counsel because of a medical issue. As a result, the Customer Witness did not testify as originally planned on October 8, 2025.

Just two days after adjourning the remaining hearing dates, on the morning of October 9, 2025, the Customer Witness received an email from an individual who identified himself as an "attorney for James Lukezic."[6] The attorney's email to the Customer Witness bore the subject line, "[customer name], re: FINRA."[7] In the body of the email, the attorney wrote:

> Good morning . . . I am attorney for James Lukezic; if you are represented by an attorney please send me their contact information. I am writing to inform of a state action vs. you that will commence, re: defamation. You will need to be served papers in order to respond. Please confirm the best address to deliver, thank you.[8]

The Customer Witness forwarded the email to Enforcement the same day.[9] Enforcement, in turn, immediately contacted Respondent's current counsel in this proceeding, Gary Carleton, Esq, and requested that he have his client retract the email.[10] Carleton agreed to approach his

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to File Amended Exhibit List and to Submit an Additional Exhibit ("Response to Motion for Leave to Amend Exhibit List").

[4] Hearing Transcript ("Hearing Tr.") at 218–19.

[5] *See* Enforcement's Witness List.

[6] Quinn Decl., Exh. B. The attorney never filed a Notice of Appearance in this disciplinary proceeding. However, on April 24, 2025, shortly after Respondent's original attorneys in this matter withdrew and before his current counsel appeared, Respondent sent an email, addressed to Enforcement and copied to the Office of Hearing Officers, in which he identified the attorney as his "new counsel on this enforcement." Respondent subsequently informed Enforcement that he was no longer represented by that attorney in this proceeding. Transcript of Oct. 10, 2025, Status Conference ("Status Conf. Tr.") at 5.

[7] Quinn Decl., Exh. B.

[8] *Id*.

[9] Quinn Decl. ¶ 7.

[10] Motion for Sanctions, at 3; Status Conf. Tr. at 6.

client, but Respondent refused to retract the email.[11] During a status conference I held on October 10, 2025, Carleton stated that Respondent's "view is that he has a right to bring state actions that are not part of the FINRA disciplinary process."[12]

III. Discussion

A. Enforcement's Motion for Sanctions

1. The Parties' Arguments

In its Motion for Sanctions, Enforcement contends that, by having his attorney send the Customer Witness the October 9, 2025, email, Respondent tampered with a witness and thereby engaged in contemptuous conduct.[13] Even if the Customer Witness is still willing to testify at the hearing, Enforcement argues he should not be put in the position of potentially having to defend against a defamation suit for having testified before the Hearing Panel.[14] As a result, to remedy Respondent's conduct, Enforcement seeks an order providing that, in lieu of it offering the Customer Witness's testimony, certain facts it anticipated the witness would testify to at the hearing should be deemed established for the purposes of this proceeding.[15] Specifically, Enforcement requests an order designating the following facts as established:

(1) The Customer Witness's grandfather gifted him the mutual fund shares that are at issue in this proceeding in Fundamental Investors in the 1990s;

(2) The Customer Witness never made any exchanges or transactions in the account in which the Fundamental Investor shares were held in the past;

(3) The Customer Witness did not conduct or authorize the mutual fund exchange in his account on February 7, 2022, because the shares in Fundamental Investors held sentimental value for him; and

(4) The Customer Witness did not know and had never spoken to Respondent.[16]

In his response to Enforcement's Motion for Sanctions, Respondent states that, "for the purposes of resolving this matter," he "would be willing to agree to these four findings" as long as the Customer Witness does not testify at the hearing.[17] However, Respondent denies he

[11] Motion for Sanctions, at 3; Status Conf. Tr. at 6.

[12] Status Conf. Tr. at 7.

[13] Motion for Sanctions, at 3–5.

[14] *Id.* at 7–8.

[15] *Id.* at 6–7.

[16] *Id*.

[17] Response to Motion for Sanctions, at 3. In his Response to Motion for Sanctions, Respondent further states that he only agrees to these factual findings if the Customer Witness does not testify at the hearing because "it would be fundamentally unfair to deny Respondent the opportunity to cross-examine [the Customer Witness] on his direct

attempted to tamper with the Customer Witness's anticipated testimony and, thus, argues there is no basis for the imposition of sanctions.[18]

2. Respondent Engaged in Contemptuous Conduct

FINRA Rule 9280(a) authorizes the imposition of sanctions if a party engages in "contemptuous conduct during a proceeding."[19] The phrase "contemptuous conduct" is not defined in the rule. However, using even the most general definition of contempt,[20] there can be no serious question that tampering with a witness—an act that undermines the integrity of the hearing process[21]—qualifies as contemptuous conduct under FINRA Rule 9280.

As a result, the principal issue for me to resolve on this motion is whether Respondent, acting through an attorney, attempted to tamper with the testimony of a witness by sending the October 9, 2025, email to the Customer Witness. I find that he did.

Respondent does not dispute he authorized his attorney to send the October 9, 2025, email to the Customer Witness. But he nonetheless denies his intent was to influence the Customer Witness's testimony or to dissuade the Customer Witness from testifying. In particular, Respondent argues I cannot infer he intended to tamper with the Customer Witness's testimony because the email "makes no request or demand that [the Customer Witness] either not appear at the hearing or change his anticipated testimony in any way."[22] Respondent also argues he had no motive to tamper with the Customer Witness's testimony because he allegedly "already

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testimony." *Id.* However, I read the relief requested by Enforcement as being intended to obviate the need to call the Customer Witness as a witness at the hearing.

[18] *Id.* at 2–3.

[19] Although FINRA Rule 9280(a) also authorizes the imposition of sanctions against an attorney for a party who engages in contemptuous conduct, Enforcement has not sought sanctions against Carleton, and there is no evidence that Carleton was involved in sending the October 9, 2025, email to the Customer Witness. *See* Status Conf. Tr. at 7 (Carleton representing he did not communicate with Respondent regarding the October 9, 2025, email before learning of it from Enforcement, and stating he does not represent Respondent in any matters other than the instant disciplinary proceeding).

[20] *See* Black's Law Dictionary 385 (10th ed. 2014) (defining "contempt of court" as "conduct that defies the authority or dignity of a court or legislature" and "interferes with the administration of justice"); 17 Am. Jur. 2d Contempt § 2 (defining "contempt of court" as including "disobedience to, disregard of, interference with, or disrespect of the court, by acts in opposition to its authority and the administration of justice, hindering, impeding, embarrassing, or obstructing the court in the discharge of its duties") (internal footnotes and citations omitted).

[21] *See Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 782 (7th Cir. 2016) (describing witness tampering as "among the most grave abuses of the judicial process"); *Ty Inc. v. Softbelly's, Inc.*, 517 F.3d 494, 498 (7th Cir. 2008) ("[t]rying improperly to influence a witness is fraud on the court and on the opposing party"); *Torres v. Wells Fargo Bank*, CV 17-9305, 2019 U.S. Dist. LEXIS 227713, at *10 (C.D. Cal. Dec. 17, 2019) (witness tampering "perverts the judicial process on a fundamental level"); *see also* 18 U.S.C. § 1512(b) (making it a federal crime when a person "knowingly uses intimidation, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with the intent to (1) influence, delay or prevent the testimony of any person in an official proceeding" or "(2) cause or induce any person to (A) withhold testimony . . . from an official proceeding").

[22] Response to Motion for Sanctions, at 2.

stipulated to most of the relevant facts" to which the Customer Witness was expected to testify.[23] I reject both arguments.

Even if the October 9, 2025, email does not explicitly refer to the Customer Witness's anticipated hearing testimony, the import of the message is obvious. The subject line of the email—which refers to FINRA—ties the email directly to this disciplinary proceeding. And although the email does not specify on what basis Respondent may be contemplating bringing a defamation suit, there is no evidence of any statement the Customer Witness has made or plans to make about Respondent aside from the Customer Witness's anticipated testimony in this matter. Thus, based on a plain reading of the email itself, I find it reasonable to infer the email was a threat to sue the Customer Witness based on his anticipated testimony before the Hearing Panel.

I also find it reasonable to infer the intent of that threat was to dissuade the Customer Witness from testifying. It is well-established that intent may be inferred from circumstantial evidence, including proof of motive.[24] And, here, Respondent had ample motive to tamper with the anticipated testimony of the Customer Witness. As part of his defense in this proceeding, Respondent has criticized Enforcement for failing to call all of the affected customers as witnesses, he has objected to the admissibility of their out-of-court statements, and he has claimed Enforcement will be unable to prove the relevant mutual fund transactions were unauthorized without the customers' sworn testimony.[25] Whether or not the Hearing Panel ultimately is persuaded by these arguments, they gave Respondent the motive to tamper with the testimony of the only customer who was scheduled to testify at the hearing.

Finally, I find it significant that Respondent has offered no alternative, innocent explanation for the email to the Customer Witness. He fails to identify any aspect of the Customer Witness's anticipated testimony that could even conceivably support a non-frivolous defamation suit. In the absence of such evidence, the most logical inference is that the intent of the October 9, 2025, email was to dissuade the Customer Witness from testifying.

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[23] *Id*.

[24] *Dep't of Enforcement v. White*, No. 2015045254501, 2018 FINRA Discip. LEXIS 6, at *77 (OHO Feb. 27, 2018) ("motive may provide evidence from which intent may be inferred"), *aff'd in part and sanctions modified*, 2019 FINRA Discip. LEXIS 30 (NAC July 26, 2019).

[25] *See*, *e.g.*, Respondent's Objections to Complainant's Exhibits, at 6 (Enforcement "has chosen to list only one of the five alleged customers as witnesses for this hearing. This raises further suspicions as to the merits of [Enforcement's] allegations . . . ."); *id.* at 5 (arguing that customer testimony was necessary to authenticate recordings of their telephone calls); Prehearing Brief of Respondent James Lukezic, at 16 ("[U]nless Enforcement establishes through sworn testimony of each person who is authorized to effect transactions in each account that the trades were not authorized, Enforcement will not have met its burden of proof and the allegations regarding those transactions must be dismissed."); Hearing Tr. at 141–42, 144–45, 163–64, 189 (objecting to admissibility of tape recorded telephone calls as "fundamentally unfair" because they amount to "unsworn testimony of someone who you have no opportunity to cross-examine").

3. The Imposition of the Sanctions is Warranted

Having found that Respondent engaged in contemptuous conduct by tampering with the testimony of a witness, the next question for me to address is whether to impose sanctions. I find the imposition of sanctions is warranted given the gravity of Respondent's conduct and the risk of recurrence.

Respondent's actions effectively deprived Enforcement (and the Hearing Panel) of the testimony of the only customer witness who was planning to testify at the hearing. Even if the Customer Witness is still willing to testify, he would do so under the specter of a threatened defamation suit. It is possible that that threatened lawsuit could influence the Customer Witness's testimony. And even if the Customer Witness's anticipated testimony remains unaffected, Enforcement reasonably has taken the position that it should not have to expose the Customer Witness to the risk of being sued by Respondent.

Respondent's offer, in response to Enforcement's Motion for Sanctions, to stipulate to certain facts that the Customer Witness was expected to testify to at the hearing may go part of the way towards addressing the damage caused by Respondent's threat to the Customer Witness. However, the purpose of sanctions under FINRA Rule 9280(b) is not only to cure any harm caused by a party's contemptuous conduct. Sanctions also are designed to deter future misconduct.[26] This rationale supports the imposition of sanctions here. Respondent's refusal to retract the October 9, 2025, email suggests he does not understand the seriousness of his actions or that they were wrong. As a result, his belated willingness to stipulate to certain facts relating to the Customer Witness's anticipated testimony provides me with little reassurance he will not again try to tamper with a witness. To minimize that risk, I find the imposition of sanctions is warranted.

4. The Sanctions Requested by Enforcement are Appropriate

Finally, I address the specific sanctions to be imposed. Under FINRA Rule 9280(b), the Hearing Officer may "make such orders as are just" to address a party's contemptuous conduct, including:

> (A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order; and

[26] *Cf. Adolph Coors Co. v. Movement Against Racism & The Klan*, 777 F.2d 1538, 1542 (11th Cir. 1985) (a "primary purpose" of sanctions under Rule 37 of the Federal Rules of Civil Procedure—which served as a model for FINRA Rule 9280—is to deter future misconduct).

(B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence.[27]

As sanctions for Respondent's contemptuous conduct, Enforcement requests that I enter an order providing that certain facts the Customer Witness was expected to testify to at the hearing will be deemed established for the purposes of this proceeding. These sanctions will allow the Hearing Panel to consider the facts that Enforcement planned to introduce through the Customer Witness's testimony without Enforcement having to expose the Customer Witness to the threat of litigation. As a result, I find the sanctions requested by Enforcement are just and appropriate under FINRA Rule 9280(b).

B. Enforcement's Motion for Leave to Amend its Exhibit List

In addition to moving for sanctions, Enforcement also seeks leave to amend its exhibit list to include as an additional exhibit the October 9, 2025, email to the Customer Witness. Respondent opposes the motion on the ground that the email is allegedly irrelevant.

Under FINRA Rule 9261(c), a party, "for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record." Given that the October 9, 2025, email did not exist until after the hearing began, I find there is good cause for Enforcement's failure to include the email on its exhibit list earlier. I also find the email is relevant to the potential issue of sanctions in the event the Hearing Panel finds misconduct occurred.[28]

Accordingly, Enforcement's motion for leave to amend its exhibit list to include the October 9, 2025, email as an additional exhibit is **GRANTED**.

IV. Order

For the foregoing reasons, Enforcement's Motion for Sanctions is **GRANTED**.

Accordingly, in lieu of having the Customer Witness testify at the hearing, the following facts will be deemed established for the purposes of this proceeding, and Respondent will be precluded from presenting evidence contravening the following facts:

(1) The Customer Witness's grandfather gifted him the mutual fund shares that are at issue in this proceeding in Fundamental Investors in the 1990s;

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[27] FINRA Rule 9280(b)(1)(A) & (B).

[28] FINRA Sanction Guidelines at 7 (2024) (Principal Consideration No. 10) ("whether the individual respondent attempted to conceal his or her misconduct or lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or the member firm with which he or she is or was associated"), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf; *Joseph J. Barbato*, Exchange Act Release No. 41034, 1999 SEC LEXIS 276, at *38–39 (Feb. 10, 1999) (considering evidence that former broker attempted to interfere with the testimony of customer witnesses as relevant to sanctions analysis).

(2) The Customer Witness never made any exchanges or transactions in the account in which the Fundamental Investor shares were held in the past;

(3) The Customer Witness did not conduct or authorize the mutual fund exchange in his account on February 7, 2022, because the shares in Fundamental Investors held sentimental value for him; and

(4) The Customer Witness did not know and had never spoken to Respondent.

Enforcement's Motion for Leave to Amend Exhibit List to include the October 9, 2025, email as an additional exhibit, CX-30, is also **GRANTED**. Enforcement shall file a Second Amended Exhibit List including CX-30 no later than **November 10, 2025.**

SO ORDERED.

Megan P. Davis
Hearing Officer

Dated: November 4, 2025

Copies to:

Gary A. Carleton, Esq., Carleton Law PLLC for Respondent (via email)
Justin Arnold, Esq., FINRA Enforcement (via email)
John R. Baraniak, Esq., FINRA Enforcement (via email)
Ashley Morris, Esq., FINRA Enforcement (via email)