

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SEBASTIAN G. BONGIOVANNI
(CRD No. 4398600),

Respondent.

Disciplinary Proceeding
No. 2022077443302

Hearing Officer–MJD

**ORDER DENYING RESPONDENT'S OMNIBUS
MOTION TO DISMISS AND FOR OTHER RELIEF**

I. Background

The Complaint in this disciplinary proceeding was filed on June 5, 2025. It alleges in a single cause of action that Respondent Sebastian G. Bongiovanni failed to produce documents and information in violation of FINRA Rules 8210 and 2010. At the time, FINRA was investigating whether Bongiovanni had made misrepresentations on a mortgage application and engaged in the unlawful structuring of withdrawals from his personal bank accounts.¹ Bongiovanni timely filed an Answer denying the allegations and requesting a hearing.

On July 28, 2025, I held the initial pre-hearing conference during which I informed the parties that the hearing would take place December 8 and 9, 2025. On July 30, 2025, I issued a Case Management and Scheduling Order (“CMSO”) formally confirming the hearing dates and setting various pre-hearing deadlines.

Three months later, and less than six weeks before the scheduled hearing, on October 30, 2025, Bongiovanni filed an omnibus Notice of Motion (“Motion”)² seeking to (1) dismiss this disciplinary proceeding based on the Securities and Exchange Commission’s (“SEC”) dismissal of his appeal of a Notice of Suspension, (2) compel FINRA’s Department of Enforcement to turn over certain discovery information in connection with the mortgage application referenced in the Complaint, and (3) continue the hearing dates. In his Motion, Bongiovanni also states that he is giving notice that he intends to call an unidentified family psychiatrist as an expert witness, which I treat as a motion for leave to present expert testimony.

¹ Complaint (“Compl.”) ¶¶ 5-7, 26-28.

² Respondent’s Notice of Motion (“Mot.”), Bongiovanni filed substantially the same Motion the day before, on October 29, 2025. He refiled it on October 30, asking that the prior one be disregarded because it contained a “date entry error.” Accordingly, I rely on the version of the Motion that Bongiovanni filed on October 30, 2025.

On November 5, 2025, Enforcement filed an opposition to the Motion, supported by the Declaration of Enforcement counsel, Christen Sproule (“Sproule Decl.”), opposing Bongiovanni’s requests for relief.³

As a preliminary matter, Bongiovanni’s Motion is untimely. The CMSO established deadlines for the filing various substantive motions in this case, including motions for summary disposition, to compel discovery under FINRA Rule 9251, and for leave to present expert testimony. On that basis alone, I could deny the various forms of relief Bongiovanni seeks.⁴ Nonetheless, I address below the merits of the individual items of relief Bongiovanni seeks and deny the Motion on that basis.

II. Discussion

A. The Motion to Dismiss

Citing statements he made in his Answer, including specifically that this disciplinary proceeding is barred under the principles of *res judicata* and collateral estoppel, Bongiovanni moves to dismiss on the grounds that the “SEC has already [d]ismissed these proceedings.”⁵ FINRA’s Code of Procedure does not provide for motions to dismiss but does allow for motions for summary disposition under FINRA Rule 9264.⁶ Under the CMSO, the deadline to file a motion for summary disposition was September 17, 2025. I nonetheless analyze the Motion as a motion for summary disposition.

In September 2024, Bongiovanni appealed a FINRA bar to the SEC. FINRA had imposed the bar pursuant to FINRA Rule 9552 for his failure to provide information and documents pursuant to FINRA Rule 8210. Rule 9552 provides an expedited process, in addition to a standard disciplinary proceeding, for FINRA to enforce Rule 8210. On December 10, 2024, the SEC granted FINRA’s motion to dismiss Bongiovanni’s appeal of the Rule 9552 proceeding as moot because it had vacated the bar that Bongiovanni challenged.⁷

Enforcement opposes the Motion on the grounds that neither *res judicata* nor the collateral estoppel doctrine applies in this case, and it is therefore free to bring this action.⁸

³ Department of Enforcement’s Opposition to Respondent’s Omnibus Filing (“Opp.”) (Nov. 5, 2025).

⁴ Bongiovanni also failed to submit a certification with the Motion that he had complied with the obligation in the CMSO that a party make a reasonable, good faith effort to meet and confer with the opposing party to resolve an issue before filing any motion. *See* CMSO, at 9 § V.E. This, too, is a basis to deny the Motion.

⁵ Mot. 2; Answer ¶ 10.

⁶ OHO Order 22-05 (2019060648701) (Mar. 2, 2022), at 4, <https://www.finra.org/sites/default/files/2022-05/22-05-StockKings-Order-Denying-Respondents-Motion-to-Dismiss-Complaint.pdf>.

⁷ Answer, Ex. 1 (SEC Order Dismissing Proceedings).

⁸ Opp. 2-4.

For the reasons discussed below, I deny Bongiovanni's motion to dismiss.

Res judicata generally applies when there is (1) a final judgment on the merits in a prior proceeding, (2) identity of the litigating parties, and (3) identity of the cause of action in both the earlier and later proceeding.⁹ The concept of *res judicata* “forecloses parties from re-litigating the same dispute if they have already had a full and fair opportunity to litigate it and an adjudicator . . . has resolved it.”¹⁰ The SEC has explained that *res judicata* “relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication.”¹¹ Here, there was no prior judgment on the merits, so the first required element for *res judicata* to apply is missing. Enforcement voluntarily dismissed the Rule 9552 proceeding after vacating the bar imposed pursuant to Rule 9552. The SEC did not adjudicate Bongiovanni's appeal. Accordingly, I reject Bongiovanni's *res judicata* argument.

I turn next to Bongiovanni's collateral estoppel argument. Collateral estoppel is intended to protect a litigant from the burden of re-litigating an issue with the same party where the issue has already been decided against that party. Certain circumstances are generally required for collateral estoppel to apply: (1) the same party or someone in privity must have been involved in the earlier litigation; (2) the identical issue must be at stake in both proceedings; (3) that issue must have been actually litigated and necessary to the outcome in the earlier litigation; and (4) the party that lost on the issue must have had a full and fair opportunity in the earlier litigation to litigate it.¹² Because no issue was litigated in the Rule 9552 proceeding before the SEC, the doctrine of collateral estoppel does not apply here. I therefore reject Bongiovanni's collateral estoppel argument as well.

B. The Motion to Compel Discovery

Bongiovanni also moves to compel the production of additional discovery in connection with the mortgage application referenced in the Complaint. According to the Complaint, FINRA's investigation originated in part from Bongiovanni's alleged misrepresentations on the mortgage application.¹³ He now seeks materials relating to the “allegations [that he] gave mis-information [sic] in a loan application and/or Misreported Debt [sic] in a loan application.”¹⁴ He also asks that Enforcement be compelled to identify the person behind the allegation so that he

⁹ *Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 SEC LEXIS 839, at *22 (Mar. 7, 2014).

¹⁰ OHO Order 17-02 (2014042291901) (Feb. 7, 2017), at 7, https://www.finra.org/sites/default/files/OHO_Order_17-02_2014042291901.pdf.

¹¹ *Pierce*, 2014 SEC LEXIS 839, at *30 (quoting *Allen v. McCurry*, 449 U.S. 90, 94 (1980)) (citation omitted).

¹² *Wolfe v. Perry*, 412 F.3d 707, 716 (6th Cir. 2005) (quoting *Santana-Albarran v. Ashcroft*, 393 F.3d 699, 704 (6th Cir. 2005)).

¹³ Compl. ¶ 5.

¹⁴ Mot. 2.

can confront the accuser at the hearing.¹⁵ Although he does not cite a specific FINRA Rule, I treat Bongiovanni’s request as a motion to compel discovery under FINRA Rule 9251. The CMSO set a deadline of August 18, 2025, for Bongiovanni to file a motion under Rule 9251.¹⁶ I deny the motion because it was filed more than two months late and also for the reasons set forth below.

FINRA Rule 9251 establishes “the outside limit of discovery in FINRA disciplinary proceedings, which is substantially less than the scope of discovery permitted in federal court under the Federal Rules of Civil Procedure.”¹⁷ FINRA Rule 9251(a) requires that Enforcement make available to a respondent any documents that were “prepared or obtained by Interested FINRA Staff in connection with the investigation that led to the [filing of the complaint].”¹⁸ Despite this obligation, however, under Rule 9251(b) Enforcement may withhold 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 or guidelines. Enforcement’s ability to withhold otherwise discoverable documents is limited by FINRA Rule 9251(b)(3), which requires that Enforcement produce any document that contains “material exculpatory evidence.” In a FINRA disciplinary proceeding, “material evidence” is evidence relating to liability or sanctions that might be considered favorable to the respondent’s case, which, if suppressed, would deprive the respondent of a fair hearing.¹⁹

Enforcement opposes the motion to compel, primarily on the grounds that it has produced all the documents it is required to produce under FINRA’s Rules and Bongiovanni has failed to demonstrate that any documents have been improperly withheld.²⁰ Enforcement’s counsel represents, under the penalties of perjury, that Enforcement has produced 980 pages of discoverable documents contained in its investigative file pursuant to Rule 9251 and complied with its discovery obligations.²¹ According to counsel, any documents that Enforcement withheld included non-discoverable privileged documents, attorney work product, internal memoranda, notes, and documents that are prohibited from disclosure by federal law.²² Counsel also states

¹⁵ Mot. 3.

¹⁶ See CMSO, at 2 and § IV.

¹⁷ OHO Order 17-10 (2014042524301) (Apr. 11, 2017), at 2, https://www.finra.org/sites/default/files/OHO_Order_17-10_2014042524301_0_0.pdf (citation omitted).

¹⁸ FINRA Rule 9120(t) defines the term “Interested FINRA Staff.”

¹⁹ OHO Order 17-04 (2015044921601) (Mar. 6, 2017), at 4, http://www.finra.org/sites/default/files/OHO_Order-17-04_2015044921601.pdf; OHO Order 16-07 (2014043020901) (Feb. 29, 2016), at 3, http://www.finra.org/sites/default/files/OHO-Order-16-07-2014043020901_0_0_0.pdf.

²⁰ Opp. 5-6.

²¹ Sproule Decl. ¶¶ 3, 7.

²² Sproule Decl. ¶ 8.

under the penalties of perjury that Enforcement complied with its responsibility to produce material exculpatory evidence.²³

A respondent “bears the burden of establishing the basis for claiming that Enforcement’s withheld documents must be produced.”²⁴ Bongiovanni’s speculation that Enforcement has improperly withheld existing discoverable material provides no basis for me to disbelieve Enforcement’s sworn statements.

Bongiovanni also requests that I compel Enforcement to identify the person, assuming such a person exists, who complained to FINRA about the alleged mortgage application misrepresentations. Bongiovanni’s request is effectively an interrogatory, which is not permitted under FINRA’s Rules.²⁵

Accordingly, based on Enforcement’s representations, made under oath, I deny Bongiovanni’s motion to compel production of documents relating to alleged misrepresentations on a mortgage application and his request that I order Enforcement to disclose the identity of the person who may have made those allegations to FINRA.

C. The Motion for Leave to Present Expert Testimony

Bongiovanni gives “notice” that he intends to call an unidentified “family psychologist” to testify about his mental state and the condition of his family surrounding the death of his son, which, according to his Answer, occurred sometime in January 2024.²⁶ I will treat his “notice” as a motion for leave to offer expert testimony. Enforcement opposes it on the grounds that it is untimely and fails to comply with the requirements of the CMSO for motions to permit expert testimony.²⁷ I deny the motion as untimely and for the additional reasons stated below.

A Hearing Officer has broad discretion to accept or reject expert testimony.²⁸ Under FINRA Rule 9263, a Hearing Officer shall receive relevant evidence but may exclude evidence that is “irrelevant, immaterial, unduly repetitious, or unduly prejudicial.” While the Federal Rules of Evidence do not apply to FINRA proceedings, the rules and the case law applying them

²³ Sproule Decl. ¶ 9.

²⁴ OHO Order 19-20 (2016048393501) (June 14, 2019), at 4, https://www.finra.org/sites/default/files/2019-10/OHO_Order_19-20_2016048393501.pdf (citing OHO Order 17-10, at 3).

²⁵ OHO Order 17-10, at 4 (citing OHO Order 12-02 (2011029760201) (Apr. 5, 2012), at 5, http://www.finra.org/sites/default/files/OHODecision/p126070_0_0_0_0.pdf) (“FINRA disciplinary proceedings have ‘unique characteristics’ and are governed by FINRA’s own procedural rules, the Rule 9000 Series, not the Federal Rules of Civil Procedure.”).

²⁶ Mot. 2; Answer ¶ 4.

²⁷ Opp. 4-5.

²⁸ OHO Order 24-06 (2019064508802) (Feb. 7, 2024), at 2, https://www.finra.org/sites/default/files/2024-05/OHO_Order_24-06_Kim_2019064508802.pdf; OHO Order 22-09 (2019061528001) (May 26, 2022), at 3, <https://www.finra.org/sites/default/files/2022-08/22-09-Order-Denying-Respondents-Motion-for-Leave-to-Offer-Expert-Testimony.pdf>.

provide guidance on the issue of expert testimony.²⁹ Rule 702 of the Federal Rules of Evidence specifies that a witness who is “qualified as an expert by knowledge, skill, experience, training, or education” may give opinion testimony if his or her “specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue” and the testimony meets certain measures of reliability. “In short, expert testimony is admissible only if it is both relevant and reliable.”³⁰

As the proponent of expert testimony, Bongiovanni has the burden of establishing that an expert’s proposed testimony satisfies the conditions for admission.³¹ Bongiovanni must also comply with the relevant provisions of the CMSO.³² He has failed both to satisfy his burden and to comply with the CMSO’s requirements.

First, the deadline to file a motion for leave to present expert testimony, was September 17, 2025, a month and a half before Bongiovanni filed his Motion.³³ Additionally, the CMSO requires that a motion seeking leave to offer expert testimony include certain items, including the name of the proposed expert, a statement of the witness’s qualifications, a list of other proceedings in which the witness has given expert testimony in the last four years, and a list of publications the witness has authored or co-authored in the last ten years.³⁴ Bongiovanni provided none of this information. He has completely failed to provide even a minimal amount of information about the proposed witness sufficient to determine whether he or she is qualified to provide an expert opinion and how the testimony could assist the Hearing Panel.³⁵

More fundamentally however, this case is not one that requires expert testimony. The principal issue is whether Bongiovanni failed to respond to two requests made under Rule 8210—dated December 12, 2023, and January 2, 2024.³⁶ According to Bongiovanni’s Answer,

²⁹ OHO Order 24-06, at 2; OHO Order 22-09, at 3.

³⁰ OHO Order 17-03 (2014042059701) (Feb. 24, 2017), at 2, https://www.finra.org/sites/default/files/OHO_Order_17-03_2014042059701.pdf (quoting *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002)).

³¹ OHO Order 17-07 (2013035817701) (Mar. 21, 2017), at 2, https://www.finra.org/sites/default/files/OHO_Order_17-07_2013035817701.pdf.

³² OHO Order 24-06, at 2; OHO Order 17-19 (2015047154001) (Nov. 13, 2017), at 3, https://www.finra.org/sites/default/files/OHO_Order_17-19_2015047154001_0.pdf.

³³ CMSO, at 2.

³⁴ CMSO, at 10 § VI.B.

³⁵ *See, e.g.*, OHO Order 06-20 (E9B2003033501) (March 3, 2006), at 1, https://www.finra.org/sites/default/files/OHODecision/p017563_0.pdf, (denying a respondent’s motion for expert testimony, in part, because the proposed expert’s overview of his opinion was “so lacking that it is difficult to determine if any of his intended testimony would be helpful in resolving the issues before the Hearing Panel”); OHO Order 17-19, at 4 (denying respondent’s motion for expert testimony, in part, on the grounds that he failed to comply with the CMSO and the summary of the opinions was “short, vague, and inadequate, making it difficult to discern the substance of his expected testimony”).

³⁶ Compl. ¶¶ 6-11.

his son died in January 2024, which is around the time responses to the requests were due.³⁷ Bongiovanni says he was in a state of mourning the loss of his son, which he asserts should have led Enforcement to place its investigation on hold.³⁸ From Bongiovanni's perspective, his proposed expert will testify about his state of mind during the period FINRA sent him the requests for information that form the basis for the Complaint.

A key factor in determining whether to admit proposed expert testimony is whether it would be helpful to the Hearing Panel.³⁹ A family's suffering in the wake of the tragic death of a close family member such as a son is a sad and unfortunate occurrence that the typical FINRA hearing panel is able to evaluate without the need for expert testimony.

Although I deny Bongiovanni's motion for leave to offer expert testimony from the unidentified family psychologist, he may list the person who is the subject of the Motion as a proposed fact witness concerning Bongiovanni's condition as a result of his son's death. If allowed to testify, the person's testimony will not be treated as expert testimony. Additionally, Bongiovanni can testify about his state of mind at the time.

D. The Motion for a Continuance of the Hearing Dates

Lastly, Bongiovanni asks for a continuance of 90 days, or at least until "[l]ate January 2026," to give him time to hire an attorney. He states that his life has been in "tremendous turmoil," and he has asked family and friends for financial help to retain an attorney.⁴⁰ Enforcement opposes a continuance.⁴¹

A Hearing Officer has broad discretion to determine whether to grant a request for a continuance.⁴² That discretion is limited by FINRA Rule 9222, which permits a hearing officer to postpone a hearing for "good cause shown." The factors to be considered in determining whether to postpone a hearing include the length of the proceeding to date, the number of postponements already granted, the stage of the proceedings at the time of the request, the potential harm to the investing public if a postponement is granted, and "such other matters as justice may require."⁴³ A postponement may not exceed 28 days unless the hearing officer states on the record or provides by written order the reasons a longer period is needed.⁴⁴ The Rule is primarily

³⁷ Compl. ¶ 11; Answer ¶ 4.

³⁸ Answer ¶ 14.

³⁹ OHO Order 17-19, at 3.

⁴⁰ Mot. 3.

⁴¹ Opp. 6-8.

⁴² *Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *19-22 (Oct. 31, 2018) (sustaining hearing officer's denial of a motion for a two-month continuance to allow respondent sufficient time to acquire the funds to retain an attorney).

⁴³ FINRA Rule 9222(b)(1).

⁴⁴ FINRA Rule 9222(b)(2).

“intended to ensure prompt resolution of [FINRA’s] disciplinary proceedings, which is necessary to enable [FINRA] to carry out its regulatory mandate and fulfill its responsibilities in protecting the public interest.”⁴⁵

I find that a balancing of the factors set forth in Rule 9222 weighs heavily against a continuance. Bongiovanni has been aware of the hearing dates for three months. On July 28, 2025, this matter was scheduled for a hearing on December 8-9, 2025. Although this is the first request for a postponement and there is no immediate threat to the investing public because Bongiovanni is not currently associated with a member firm, the proceedings are at an advanced stage. At the time of the filing of the Motion, the hearing was less than six weeks away. On October 16, 2025, the date set in the CMSO for the parties to exchange their witness and exhibit lists, Enforcement timely provided these documents to Bongiovanni. On November 6, Enforcement filed its pre-hearing submissions, including a pre-hearing brief and its lists of proposed witnesses and exhibits. Bongiovanni filed no pre-hearing submissions. Aside from his Answer, the Motion is the only filing Bongiovanni has made in this proceeding.

I have also considered that Bongiovanni does not describe any efforts he has made since the initiation of this proceeding to retain an attorney who is available on the scheduled hearing dates. Furthermore, the allegations in the Complaint are not so complicated that a newly retained attorney could not adequately prepare in the time remaining before the hearing.⁴⁶ Also, attorney, witness, and panelist schedules and travel arrangements have been set with the expectation that the hearing will begin on December 8, 2025.

I find that Bongiovanni has failed to show good cause for a continuance of the hearing dates and therefore deny his Motion.

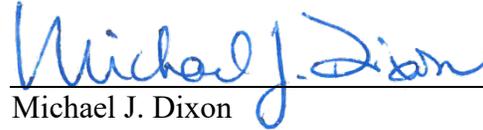
⁴⁵ OHO Order 13-01 (2009019108901) (Jan. 2, 2013), at 8, https://www.finra.org/sites/default/files/OHODDecision/p229434_0_0.pdf (citing OHO Order 06-28 (CLI050007) (Mar. 23, 2006), https://www.finra.org/sites/default/files/OHODDecision/p017538_0_0.pdf)).

⁴⁶ During a pre-hearing conference with the parties on November 3, 2025, Bongiovanni stated for the first time that he is no longer available to attend the hearing on December 8 and 9, 2025. He said that he had accepted a temporary part-time job and his employer would not allow him time off. I find that Bongiovanni failed to establish good cause to justify re-scheduling the hearing for this additional purported reason.

III. Conclusion

For the reasons discussed above, Bongiovanni's Motion to dismiss this disciplinary proceeding, to compel production of documents, for leave to present expert testimony, and to continue the hearing is **DENIED**.

SO ORDERED.



Michael J. Dixon
Hearing Officer

Date: November 11, 2025

Copies to:

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