

This Order has been published by FINRA’s Office of Hearing Officers and should be cited as OHO Order 16-12 (2013038418201).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT

Respondent.

Disciplinary Proceeding  
No. 2013038418201

Hearing Officer–MJD

**ORDER DENYING RESPONDENT’S MOTION TO COMPEL MEMBER FIRM TO  
PRODUCE ADDITIONAL DOCUMENTS**

On March 2, 2016, Respondent filed a motion, pursuant to Rule 9252, seeking an order to compel the Department of Enforcement to issue a Rule 8210 request to Respondent’s former employer, BBV, for copies of emails and documents. Enforcement opposes the motion.

The one-cause Complaint alleges that on two occasions Respondent willfully failed to timely amend his Form U4 (“Uniform Application for Securities Industry Registration or Transfer Form”) to disclose that he had filed a bankruptcy petition. According to the Complaint, Respondent filed a bankruptcy petition in May 2012, in Florida, that was subsequently dismissed, and a second bankruptcy petition, in March 2013, in New York. Enforcement alleges that Respondent’s conduct constitutes a willful violation of Article V, Section 2, of FINRA’s By-Laws and violations of FINRA Rules 1122 and 2010.

The Hearing Officer denies the motion on two grounds. First, Respondent’s motion is untimely. Second, it does not meet the requirements of Rule 9252.

**I. Applicable Standards**

Procedural Rule 9252 permits a respondent to request that FINRA invoke Rule 8210 to compel the production of documents or testimony at a hearing. For such a request to be granted, the respondent must establish that the information sought is relevant, material, and non-cumulative; that the respondent has attempted in good faith but unsuccessfully to obtain the information through other means; and that each source of the information is subject to FINRA’s jurisdiction. Furthermore, when weighing a request to invoke Rule 9252, a hearing officer is

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required to consider whether compelling production of the information would be unreasonable, oppressive, excessive in scope, or unduly burdensome.

Respondent seeks the issuance of an Order instructing Enforcement to send BBV a request that it produce the following three categories of documents:

1. A BBV email discussing Respondent’s wife’s bankruptcy filing.
2. All emails Respondent sent or received from the period beginning 60 days before he filed his first bankruptcy petition to the date BBV terminated him.
3. All emails and other documents in which the firm’s President ES, Chief Compliance Officer RH, and a municipal securities principal, AL, discuss Respondent’s financial difficulties and his requests for “additional payments” from BBV from the period beginning 60 days before he filed his first bankruptcy petition to the date of his termination. This request also asks for copies of any written instructions ES gave RH and AL before and after Respondent’s termination.

## **II. Discussion**

After considering the documents requested and Enforcement’s objections, the Hearing Officer denies the motion.

### **A. The Request is Untimely**

The Case Management and Scheduling Order in this matter was issued December 3, 2015. It set January 19, 2016, as the deadline for Respondent to file a motion for the issuance of requests for the production of documents under Rule 8210. Respondent’s motion was filed six weeks after the deadline. He did not seek an extension of time to file the motion nor has he demonstrated good cause for filing the motion late.

In addition to filing the requests after the deadline, Respondent filed it at a late stage in the proceedings, just four weeks before the hearing is scheduled to commence, on March 29, 2016. The parties have already filed their pre-hearing submissions, including exhibits and witness lists, as well as objections to the proposed exhibits and witnesses.

### **B. The Requests Fail to Comply with the Requirements of Rule 9252**

Respondent failed to meet the requirements of Rule 9252. Respondent has not shown that the documents he seeks are relevant and material, as required by the Rule. The requests are also unduly burdensome.

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The first request seeks the production of a BBV email discussing Respondent’s wife’s bankruptcy filing that Respondent believes exists. The allegations of the Complaint concern only Respondent’s failure to disclose his own bankruptcy petition. He fails to explain why a purported email discussing his wife’s bankruptcy is relevant. Enforcement says it has not seen the email, which it claims “at best was the catalyst for BBV’s investigation that led to Respondent’s termination” by the firm.<sup>1</sup>

Respondent’s second request asks for “any and all” emails he sent and received while at BBV beginning 60 days before his first bankruptcy petition until his termination. According to the Complaint, Respondent filed his first bankruptcy petition on May 25, 2012, and he was terminated September 26, 2013. The request therefore seeks emails from March 26, 2012, to September 26, 2013. In its opposition, Enforcement states that during the investigation of this matter it asked for and received from BBV Respondent’s emails covering the period June 1, 2012, to April 30, 2013, a period of 11 months. Enforcement produced the emails to Respondent during discovery.<sup>2</sup> Respondent therefore asks that BBV now produce emails covering an additional six months – *i.e.*, March 26 to May 31, 2012, and June 2 to September 26, 2013. Respondent does not explain why the emails are material. The request is also unreasonable and unduly burdensome.

The third request asks Enforcement to instruct BBV to produce “any email or other written discussions” between ES, RH, and AL concerning Respondent’s “financial stress” and payments he apparently sought from the firm for the same 18-month period sought in the second request – March 26, 2012, to September 26, 2013. He also asks that BBV produce copies of all written instructions that ES sent RH and AL at any time before and after he was terminated. Enforcement argues that this request is a fishing expedition as Respondent fails to indicate that any responsive documents exist.<sup>3</sup> Respondent’s request would require BBV to devote a considerable amount of time reviewing its emails and other communications to dig up those that concern Respondent’s financial situation. In addition to being untimely, this request is unduly burdensome.

Respondent has made no showing that the documents he seeks are relevant and material. Nor has he met his burden under Rule 9252 of showing that compelling BBV to produce the emails and other documents would be reasonable, not oppressive, not excessive in scope, and not unduly burdensome.

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<sup>1</sup> Enforcement’s Opposition to Motion to Compel BBV to Provide Additional Documents, at 2.

<sup>2</sup> *Id.*, at 3.

<sup>3</sup> *Id.*

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**III. ORDER**

For the foregoing reasons, Respondent's motion fails to satisfy the requirements of Rule 9252 and it is therefore **DENIED**.

**SO ORDERED.**

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Michael J. Dixon  
Hearing Officer

Dated: March 11, 2016