

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AMI KATHRYN FORTE
(CRD No. 2457536),

and

CHARLES JOSEPH LAWRENCE
(CRD No. 3131566),

Respondents.

Disciplinary Proceeding
No. 2016049321302

Hearing Officer–MC

**ORDER GRANTING RESPONDENT FORTE'S SUPPLEMENTAL
MOTION FOR LEAVE TO OFFER EXPERT TESTIMONY**

I. Background

The Complaint in this case alleges that Respondents Ami Kathryn Forte and Charles Joseph Lawrence engaged in improper trading in the accounts of an elderly and cognitively impaired customer by making unsuitable recommendations and churning or excessively trading in six of the customer's accounts. Forte filed a motion seeking leave to allow Dr. Hugh Cohen to testify as a "Quantitative Expert" on trading issues relating to the allegations in the Complaint. I deferred ruling on the motion to allow her to resubmit it to comply with the requirements of the Case Management and Scheduling Order and FINRA Rule 9242(a)(5) for motions seeking leave to present expert testimony.

Forte has now resubmitted her motion and has included several of the previously omitted required elements, including a description of Dr. Cohen's particular qualifications and a summary of his anticipated expert opinions. Enforcement does not oppose the motion. For these reasons, I grant Forte's motion.

II. Motion

Forte represents that Dr. Cohen is an expert on trading related matters and expects him to testify regarding, among other things:

- whether the purchases and sales of the securities in the customer’s accounts were excessive or beneficial to the account and the customer;
- whether the trades could be part of a viable trading strategy;
- whether the trading performance of the customer’s accounts was quantitatively and qualitatively similar before and during the relevant period.

With its motion, Forte submitted Dr. Cohen’s *curriculum vitae* including a list of his publications and experience.

III. Discussion

Hearing Officers have broad discretion to accept expert testimony if the expert is qualified to render opinions on the specified topics and the testimony meets the general standard for admissibility set forth in FINRA Rule 9263.¹ The party offering the testimony bears the burden to show that it satisfies the conditions for admission.²

Although the Federal Rules of Evidence do not govern FINRA proceedings, those rules and the case law applying them can provide guidance on the issue of expert testimony.³ 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” and the testimony meets certain measures of reliability. An overarching and critical factor is whether the proposed testimony would be helpful to the Hearing Panel.⁴

Based on Forte’s representations and submissions, I find that Dr. Cohen is qualified to testify as an expert witness in this case. He is an adjunct professor at the Goizueta Business School at Emory University where for 25 years he has taught MBA and undergraduate classes in, among other topics, fixed income and investments, issues related to this matter. His doctoral dissertation was about fixed income derivative pricing models and he has conducted research

¹ See *Dep’t of Enforcement v. Brookstone Securities, Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *113 (NAC Apr. 16, 2015) (“the Hearing Officer’s discretion to accept or reject expert testimony is particularly broad”) (quoting *Dep’t of Enforcement v. Fiero*, No. CAF980002, 2002 NASD Discip. LEXIS 16, at *89 (NAC Oct. 28, 2002)); see OHO Order 17-07 (2013035817701) (Mar. 21, 2017), at 1 (“Hearing Officers have broad discretion to accept or reject expert testimony if the expert is qualified to address the proposed topics and the evidence meets the general standard for admissibility set forth in FINRA Rule 9263.”), finra.org/sites/default/files/OHO_Order_17-07_2013035817701.pdf; OHO Order 16-20 (20120342425-01) (July 28, 2016), at 4 (“The Hearing Officer has broad discretion to determine whether to permit expert testimony.”), finra.org/sites/default/files/OHO_Order16-20_20120342425-01_0.pdf.

² OHO Order 17-05 (201504421601) (Mar. 16, 2017), at 2, finra.org/sites/default/files/OHO_Order_17-05_201504421601.pdf.

³ See OHO Order 17-03 (2013035817701) (Mar. 21, 2017), at 2, http://www.finra.org/sites/default/files/OHO_Order_17-03_2014042059701.pdf.

⁴ See OHO Order 17-07 (2013035817701), at 2; OHO Order 17-03 (2013035817701), at 2-3.

into fixed income financial markets. He has testified as an expert witness about related issues and has been a consultant to the Securities and Exchange Commission, United States Attorney's Office, United States Internal Revenue Service, and the Federal Bureau of Investigation. Since 2016 Dr. Cohen has been President of Portfolio Monitoring LLC, which analyzes investments including fixed income portfolios.

III. Conclusion

Forte's motion for leave to introduce the expert testimony of Dr. Hugh Cohen is granted. On or before August 30, 2019, Forte shall file and serve a written report prepared and signed by Dr. Cohen. The report must include the information described in FINRA Rule 9242(a)(5), and a statement setting forth Dr. Cohen's proposed testimony in sufficient detail so that, at the discretion of the Hearing Officer or Extended Hearing Panel, it may serve as his direct testimony.

SO ORDERED.



Matthew Campbell
Hearing Officer

Dated: August 6, 2019

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