

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEK SECURITIES CORP.
(CRD No. 33135)

and

SAMUEL FREDERIK LEK
(CRD No. 1642936),

Respondents.

Disciplinary Proceeding
No. 2015045312501

Hearing Officer—DRS

**SUPPLEMENTAL ORDER REGARDING DENIAL OF MOTION FOR
STAY OF PROCEEDINGS**

A. Introduction

On November 26, 2018, the Department of Enforcement filed a six cause-of-action Complaint charging Lek Securities Corporation (“LSC”) and Samuel Lek (“Lek”) with failing to establish and implement a reasonable anti-money laundering (“AML”) program and failing to supervise for compliance with Section 5 of the Securities Act of 1933. The Complaint also charged LSC with selling unregistered securities; failing to conduct searches pursuant to section 314(a) of the Patriot Act; failing to conduct reasonable AML testing; and failing to provide reasonable AML training. Respondents answered the Complaint, denied that they had committed the violations charged, and requested a hearing.

I scheduled an initial pre-hearing conference in the case for January 28, 2019.¹ A few days before the conference, on January 24, 2019, Respondents moved to stay this proceeding (“Motion”)² pending resolution of a federal civil action filed against them by the U.S. Securities

¹ Revised Order Setting Initial Pre-Hearing Conference (Jan. 10, 2019).

² Respondents’ Motion for a Stay of Proceedings (“Mot.”).

and Exchange Commission (“SEC Action”)³ and eight disciplinary actions brought against them by FINRA’s Department of Market Regulation⁴ (“SRO Actions”).⁵ The charges in the SRO Actions are similar to and overlap the allegations in the SEC Action.⁶ No trial date has been set in the SEC Action, pending the Court’s ruling on Respondents’ summary judgment motion.

The basis for the Motion is that if Respondents’ summary judgment motion is denied and the SEC Action goes forward, then it would be unduly burdensome for them to defend themselves simultaneously in that action and this disciplinary proceeding. I held the initial pre-hearing conference as scheduled, and, for the reasons stated at the conference, I granted Respondents the opportunity to supplement the Motion.⁷ On January 31, 2019, Respondents filed their supplement.⁸ Enforcement opposed the Motion on February 5, 2019.⁹ Two days later, on February 7, 2019, I denied the Motion, stating that I would provide the basis for my ruling in a supplemental order.¹⁰ I do so, below.

B. Discussion

Hearing Officers have broad discretion to grant or deny a hearing postponement.¹¹ FINRA Rules, however, do not specifically authorize a Hearing Officer to grant an indefinite

³ *SEC v. Lek Securities Corp., et al.*, No. 1:17-cv-01789-DLC (filed Mar. 10, 2017, S.D.N.Y.). The Complaint in the SEC Action also named three additional defendants. The SEC Action charges LSC and Lek with involvement in manipulative trading schemes.

⁴ After filing the SRO Actions, the Department of Market Regulation’s enforcement function became part of the Department of Enforcement.

⁵ Market Regulation brought one action on behalf of FINRA (No. 20110297130-04) and seven actions on behalf of certain other self-regulatory organizations: (1) Bats BYX Exchange, Inc. (No. 20110297130-10), Bats BZX Exchange, Inc. (No. 20110297130-11), Bats EDGA Exchange, Inc. (No. 20110297130-12), and Bats EDGX Exchange, Inc. (No. 20110297130-13); (2) International Securities Exchange, LLC (No. 20120336673-02); (3) NYSE MKT LLC (Nos. 20110297130-09 and 20120336673-01); (4) The New York Stock Exchange LLC (No. 20110297130-07); (5) NYSE Arca, Inc. (No. 20110297130-08); (6) The NASDAQ Stock Market, LLC (No. 20110297130-05); and (7) NASDAQ BX, Inc. (No. 20110297130-06). The SRO Actions were filed on March 27, 2017.

⁶ *See* Mot., Exhibit 11 (Orders Granting Respondents’ Unopposed Motion for Extension of Time to File Answers and Orders Granting Complainant’s Unopposed Motion for Stay of Proceedings) (Apr. 13, 2017). Based on Market Regulation’s unopposed motion, FINRA’s Chief Hearing Officer stayed the SRO Actions pending resolution of the SEC Action. *Id.*

⁷ Order Following Initial Pre-Hearing Conference (Jan. 28, 2019).

⁸ Respondents’ Supplement to Its [sic] Motion for a Stay of Proceedings (“Suppl. to Mot.”).

⁹ Department of Enforcement’s Opposition to Respondents’ Motion for Stay.

¹⁰ Order Denying Motion for Stay (Feb. 7, 2019).

¹¹ *Cf. Dep’t of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *18 (NAC Oct. 5, 2017) (“It is well-settled that a hearing officer has ‘broad discretion as to whether or not a continuance should be granted.’”), *aff’d*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018).

stay of a disciplinary proceeding.¹² Hearing postponements are governed by FINRA Rule 9222(b). This Rule instructs, in relevant part, that “[a] hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown ... postpones the commencement of the hearing ... for a reasonable period of time ...”¹³ Postponements cannot exceed 28 days unless the Hearing Officer finds that “a longer period is necessary.”¹⁴ FINRA Rule 9222(b)(1) requires the Hearing Officer to consider the following factors when deciding a postponement motion: “(A) the length of the proceeding to date; (B) the number of postponements, adjournments, or extensions already granted; (C) the stage of the proceedings at the time of the request; (D) potential harm to the investing public if ... [a] postponement is granted; and (E) such other matters as justice may require.”

The Rule’s primary purpose is “to ensure prompt resolution of the [FINRA] disciplinary proceedings, which is necessary to enable [FINRA] to carry out its regulatory mandate and fulfill its responsibilities in protecting the public interest.”¹⁵ Ordinarily, “[a]n indefinite stay of a proceeding ... would be inconsistent with these goals.”¹⁶

In determining whether to grant the Motion, I considered that certain factors weighed in favor of a stay: this disciplinary proceeding has been pending since November; it is in its early stages; no hearing date has been scheduled; and there have been no hearing postponements to date. That said, I gave primary consideration to the seriousness of the charges and the potential harm to the public if I granted the Motion, which weighed against granting an indefinite stay. The charges are serious and Respondents are still in the industry, thus raising a legitimate concern of potential harm to investors.¹⁷

Additional factors weighed against granting the Motion. It is not inherently unfair for Respondents to defend two proceedings at the same time. “Dual or parallel proceedings and

¹² OHO Order 98-31 (C06980015), at 1 (Oct. 23, 1998), http://www.finra.org/sites/default/files/OHODecision/p007764_0.pdf.

¹³ FINRA Rule 9222(b).

¹⁴ FINRA Rule 9222(b)(2).

¹⁵ OHO Order 06-28 (CLI050007), at 3 (Mar. 24, 2006), http://www.finra.org/sites/default/files/OHODecision/p017538_0_0.pdf; *accord* OHO Order 18-07 (2014041860801), at 12 (May 2, 2018), http://www.finra.org/sites/default/files/OHO_Order_18-07_2014041860801.pdf.

¹⁶ OHO Order 98-31, at 2 (denying motion to stay proceeding pending the conclusion of a federal criminal investigation in which the respondent was purportedly a target).

¹⁷ *See* OHO Order 05-38 (CMS040165), at 2 (Nov. 15, 2005), http://www.finra.org/sites/default/files/OHODecision/p016002_0_0_0.pdf (denying motion for reconsideration of scheduling order, noting that the respondent was still in the industry and that the charges included securities manipulation and the distribution of unregistered securities), http://www.finra.org/sites/default/files/OHODecision/p016002_0_0_0.pdf; OHO Order 06-01 (CLI050004), at 3 (Jan. 6, 2006) (denying motion for a three-month adjournment and giving primary consideration to the nature and extent of the misconduct alleged in the complaint, which raised a legitimate concern of potential harm to investors), http://www.finra.org/sites/default/files/OHODecision/p016216_0_0_0_0_0_0.pdf.

investigations are not uncommon in the securities industry.”¹⁸ “[C]ivil, regulatory, and criminal laws often overlap, creating the possibility of simultaneous or successive proceedings.... Absent substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable under concepts of American jurisprudence.”¹⁹ Specifically as to FINRA, its “disciplinary and regulatory function coexists with other forums of redress, whether they be governmental or judicial, and the [FINRA] process does not stop when another entity’s process begins.”²⁰

Moreover, Respondents failed to show that they would suffer substantial prejudice in the absence of an indefinite stay of this proceeding. No trial date has been scheduled in the SEC Action, and it is uncertain that a trial will even occur, given that Respondents have filed a potentially dispositive motion in that case. And even if the SEC Action goes forward, it is unknown whether it would result in unavoidable scheduling conflicts with this proceeding or an undue burden on Respondents.²¹

In short, the public interest in securing a prompt resolution of the charges against Respondents—whatever the outcome—outweighs any potential prejudice to Respondents in defending against an uncertain trial, on an unspecified date, in the SEC Action involving charges unrelated to this case.²²

In support of their Motion, Respondents relied primarily on two orders issued by FINRA Hearing Officers in other FINRA disciplinary proceedings. These orders did not compel a stay in this case, however, as both are inapposite. In OHO Order 06-37 (E102003025201), the Hearing Officer granted the respondents’ unopposed motion to adjourn the scheduled hearing until a specified date after respondents’ criminal trial. The Hearing Officer granted the request because, among other reasons, the respondents could not adequately defend their criminal case while participating in the disciplinary proceeding, which was scheduled for hearing before the criminal

¹⁸ *Dep’t of Enforcement v. Rader*, No. C06980015, 1998 NASD Discip. LEXIS 71, at *18 (OHO Nov. 24, 1998); OHO Order 11-08 (2009017798201), at 3 (Sept. 7, 2011), http://www.finra.org/sites/default/files/OHODecision/p124573_0_0.pdf.

¹⁹ OHO Order 97-13 (C05970037), at 6 (Dec. 15, 1997), http://www.finra.org/sites/default/files/OHODecision/p007835_0_0.pdf.

²⁰ *Dep’t of Enforcement v. Rader*, No. C06980015, 1998 NASD Discip. LEXIS 71, at *18 (OHO Nov. 24, 1998) (quoting *Mkt. Surveillance Comm. v. Wakefield Fin. Corp.*, No. MS-936, 1992 NASD Discip. LEXIS 124, at *36 (NBCC May 7, 1992)); OHO Order 11-08 (2009017798201), at 3.

²¹ Respondents attached to the Supplement to the Motion a declaration by Lek stating that he needs to be actively involved in both the SEC Action and this proceeding and it would not be “feasible” for him to “personally” do so while fulfilling his “significant responsibilities at LSC.” Suppl. to Mot., Exhibit 6, ¶ 7. He provides no support, however, for these conclusory assertions.

²² *Cf.* OHO Order 97-13 (C05970037), at 8 (denying motion to stay proceeding based, in part, on an ongoing criminal investigation, and stating that a prompt resolution of the NASD charges outweighed any potential prejudice to the respondent in defending against uncertain, future criminal charges that may or may not involve some of the same matters at issue in the NASD proceeding).

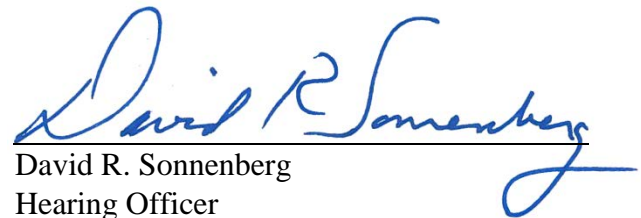
trial. Significantly, however, unlike here, the trial in the other proceeding (the criminal case) was already scheduled and thus the prejudice to respondents was not speculative. Also, the Hearing Officer did not stay the disciplinary proceeding indefinitely, as Respondents request here. Instead, she adjourned the hearing and scheduled a pre-hearing conference to discuss new hearing dates and related scheduling issues.²³

Similarly, in OHO Order (CAF030007), the Hearing Officer did not stay the disciplinary proceeding pending resolution of the respondent's criminal matter. That matter—like the SEC Action here—had not been scheduled for trial and it was unclear whether a trial would ever occur. So, the Hearing Officer ruled that the disciplinary proceeding should be scheduled for hearing if it could be held before a possible criminal trial and directed the parties to take steps to determine if that were feasible.²⁴

C. Conclusion

Based on the foregoing, to grant the requested indefinite stay under these circumstances “would set a dangerous precedent and significantly impair ... [FINRA's] ability to protect the securities industry and the investing public.”²⁵ Accordingly, I found that Respondents did not show good cause for an indefinite stay of further proceedings in this case and **DENIED** the Motion.

SO ORDERED.


David R. Sonnenberg
Hearing Officer

Dated: February 15, 2019

²³ OHO Order 06-37 (E102003025201), at 2–3 (Sept. 13, 2006), http://www.finra.org/sites/default/files/OHODecision/p018467_0_0_0.pdf.

²⁴ OHO Order (CAF030007), at 8 (May 5, 2006), http://www.finra.org/sites/default/files/OHODecision/p019204_0_0.pdf. To buttress their request for a stay, Respondents also point to the stay order issued in the SRO Actions. But as noted above, unlike here, the allegations in the SRO Actions and SEC Action overlapped. Thus, a request to stay the SRO Actions involved considerations—such as judicial economy—not present here.

²⁵ OHO Order 97-13 (C05970037), at 8.

Copies to:

Kevin J. Harnisch, Esq. (via email and first-class mail)
Ilana B. Sinkin, Esq. (via email)
Gregory R. Firehock, Esq. (via email and first-class mail)
Dale A. Glanzman, Esq. (via email)
Brody W. Weichbrodt, Esq. (via email)
Lara C. Thyagarajan, Esq. (via email)