

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SUZANNE MARIE CAPELLINI
(CRD No. 1357703),

Respondent.

Disciplinary Proceeding
No. 2020066627202

Hearing Officer–DDM

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS WITH LEAVE
TO RE-FILE AS A MOTION FOR SUMMARY DISPOSITION**

In its Complaint, the Department of Enforcement alleges that Respondent Suzanne Marie Capellini violated FINRA's anti-money laundering rules and provided false or misleading information in response to FINRA's requests for documents and information. In response, Capellini filed a "Motion to Dismiss and Answer." Capellini moved to dismiss the Complaint for lack of jurisdiction, arguing that Enforcement filed the Complaint more than two years after her FINRA registration was terminated. While not conceding that the Complaint was timely, Capellini also answered the Complaint's allegations, asserted three affirmative defenses, and requested a hearing. Enforcement opposed Capellini's motion to dismiss the Complaint.

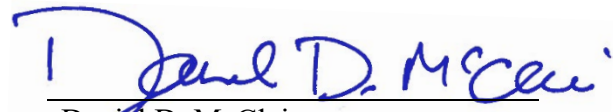
FINRA's Code of Procedure does not provide for a motion to dismiss. Instead, the Office of Hearing Officers has treated motions to dismiss as motions for summary disposition under FINRA Rule 9264.¹ Under Rule 9264(d), a party moving for summary disposition must support the motion with a statement of undisputed facts and "affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein." Capellini's motion relies upon several factual allegations, including allegations about communications between Enforcement and Capellini and her lawyer, that are not contained in the Complaint. But Capellini did not include with her motion a

¹ See *Dep't of Enforcement v. Perles*, No. CAF980005, 2000 NASD Discip. LEXIS 9, at *19 (NAC Aug. 16, 2000) (finding it appropriate to treat a motion to dismiss as a motion for summary disposition), *aff'd*, Exchange Act Release No. 45691, 2002 SEC LEXIS 3395 (Apr. 4, 2002); OHO Order 22-05 (2019060648701), at 4 (Mar. 2, 2022).

statement of undisputed facts. Nor did she include any affidavits, declarations, or other supporting materials.

Capellini's motion to dismiss is therefore **DENIED**. I grant leave for her to contest jurisdiction by filing a motion for summary disposition pursuant to Rule 9264 no later than October 19, 2022, the deadline set for motions for summary disposition in the Case Management Scheduling Order ("CMSO").² Any motion must include a statement of undisputed facts and other supporting materials, such as affidavits or declarations, and must comply with the provisions of the CMSO.

SO ORDERED.



Daniel D. McClain
Hearing Officer

Dated: July 22, 2022

Copies to:

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² If Capellini files her motion for summary disposition contesting jurisdiction before October 19, 2022, Enforcement's response will be due no later than 14 days after the filing date of Capellini's motion. Otherwise, Enforcement's response will be due on November 2, 2022, the deadline for oppositions to motions for summary disposition in the CMSO.