

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RONALD R. BLASCZYK
(CRD No. 3065429),

Respondent.

Disciplinary Proceeding
No. 2016052503101

Hearing Officer—MC

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

I. Introduction

Respondent Ronald R. Blasczyk seeks dismissal by summary disposition of the first cause of action of the Complaint in this disciplinary proceeding. The Department of Enforcement opposes the request. Assessing Respondent's motion by the standards FINRA Rule 9264 requires, the motion must be denied.

The issues presented are straightforward. The first paragraph of the first cause of action of the Complaint alleges:

On June 25, 2015, Respondent Ronald R. Blasczyk ("Blasczyk") recommended to his 75-year old customer, EF, that she liquidate a valuable variable annuity (the "Voya VA") that she had owned for ten years and use the proceeds to purchase a new variable annuity offered by a different company.

In his Answer to the Complaint, Respondent "denies the allegations in paragraph 1" of the Complaint.¹ However, later in his Answer, Respondent partially retracts, or refines, this denial, stating, "EF had accepted Blasczyk's recommendation to liquidate the Voya VA at the June 25, 2015 meeting so that her portfolio could be diversified."² Thus, Respondent admits recommending liquidation, but denies it was unsuitable and, importantly, denies recommending that EF replace her variable annuity with another one.

¹ Respondent's Answer to Complaint, Specific Responses ("Specific Responses") ¶ 1.

² Specific Responses ¶ 3.

The parties concur that there was a second meeting, in July 2015. At this meeting, EF's daughter, PF, accompanied her. The Complaint alleges that when Respondent said he wanted to discuss exchanging her variable annuity for another, EF and her daughter told him they did not want him to do so.³

Now, in his Memorandum of Law in Support of the Motion for Summary Disposition Pursuant to FINRA Rule 9264 ("Memorandum"), and Statement of Material Facts with exhibits, including the Declaration of Ronald Blasczyk, Respondent moves to dismiss the first cause of action.

The Department of Enforcement lays out its opposition to Respondent's motion in its Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Disposition ("Opposition") and Response to Respondent's Statement of Material Facts, with exhibits. Enforcement contends that there are genuine issues of material fact at the core of the first cause of action that require a hearing to resolve.

II. The Requirements For Ruling On Motions For Summary Disposition

FINRA Rule 9264(e) sets the standards for assessing whether to grant or deny motions for summary disposition in FINRA disciplinary proceedings. Applying the rule to this case, it would permit granting the motion "if there is no genuine issue with regard to any material fact" alleged in the first cause of action and if, based on undisputed material facts, Respondent is "entitled to summary disposition as a matter of law." The rule requires that the allegations in the first cause of the Complaint be "taken as true." Inferences drawn from the underlying facts must be viewed in the light most favorable to Enforcement, the party opposing summary disposition. "[I]f there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed," summary disposition should be denied.⁴

Respondent acknowledges that he has the initial burden of showing the absence of a genuine issue of material fact.⁵ Once he meets the burden, Enforcement must present facts to show the existence of a genuine dispute. Respondent notes that under Federal Rule of Civil Procedure 56, with the same standard as FINRA Rule 9264, he may object, and summary disposition may be appropriate, on the ground that there is no admissible evidence available to Enforcement to establish an alleged material fact at the hearing.⁶

³ Complaint ¶¶ 45, 46, 49.

⁴ *Ideal Dairy Farms, Inc. v. John Labatt, Ltd.*, 90 F.3d 737, 744 (3d Cir. 1996).

⁵ Memorandum at 5, citing *Dep't of Enforcement v. Walblay*, No. 2011025643201, 2012 FINRA Discip. LEXIS 68, at *3 (OHO 2012).

⁶ Memorandum at 5, citing Federal Rule of Civil Procedure 56(c)(4). FINRA's disciplinary proceedings are governed by FINRA's own procedures, as established in the FINRA Rule 9000 Series. Neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence are binding in FINRA disciplinary proceedings, although they and the relevant case law may be consulted for guidance as appropriate. OHO Order 12-02 (2011029760201) (Apr. 5, 2012), at 5, <http://www.finra.org/sites/default/files/OHODecision/p126070.pdf>.

III. Discussion

The controversy leading to this case arises from the meeting in June 2015 at which only Respondent and EF were present. The parties agree that this was when Respondent recommended that EF liquidate a variable annuity. What they dispute is whether the recommendation to liquidate was suitable and, further, whether Respondent recommended that EF use the proceeds from the liquidation to replace it with another, thereby effectively exchanging the first variable annuity for a second proposed by Respondent. Respondent argues that there is no “admissible evidence” to support what he calls the “single alleged unexecuted unsuitable recommendation” that EF replace the first annuity with the second.⁷

Respondent explains that this allegation depends entirely on statements made by PF about what her mother, now deceased, told her had happened in the June meeting. Thus, Respondent argues, PF’s potential testimony about what EF told her is “inadmissible hearsay.”⁸ For these reasons, he insists, the first cause of action must be dismissed. Enforcement counters by observing that there is not a “single” recommendation at issue: rather, the first paragraph of the first cause of action contains two disputed allegations to be resolved: whether Respondent’s recommendation to liquidate the first variable annuity was suitable, and whether Respondent recommended EF exchange her variable annuity for another.⁹

Enforcement also contests Respondent’s claim that it will be unable to present any evidence that he recommended the exchange of annuities at the June 2015 meeting. To the contrary, Enforcement points out, Respondent made notes of the June meeting that describe a discussion he had with EF about purchasing the different variable annuity he allegedly recommended, and state that EF “agreed this is a good idea.”¹⁰ Enforcement cites other evidence it proposes to offer to bolster its allegation, including: a letter that Respondent’s firm sent to EF, which Respondent expressly approved, acknowledging that Respondent recommended the exchange of variable annuities; internal firm records showing Respondent entered and then later cancelled the execution of the exchange; and a sworn statement Respondent made at an on-the-record investigative interview admitting that he entered the exchange and cancellation into his firm’s internal system.¹¹

IV. Conclusion

Based on the filings of the parties, it is clear that there is a fundamental and material factual dispute: the Complaint alleges, and Respondent denies, that he made the exchange recommendation. Furthermore, contrary to Respondent’s assertions, there is potentially

⁷ Memorandum at 1.

⁸ *Id.* at 6.

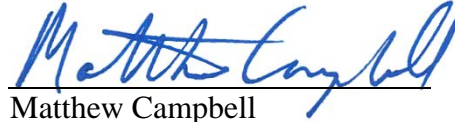
⁹ Opposition at 2.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 8–9.

admissible evidence Enforcement intends to present to prove the allegation. For these reasons, Respondent's motion for summary disposition and dismissal of the Complaint's first cause of action is DENIED.

SO ORDERED.



Matthew Campbell
Hearing Officer

Dated: March 28, 2019

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