

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JORGE ANTONIO NETTO
(CRD No. 2432661),

Respondent.

Disciplinary Proceeding
No. 2018058537302

Hearing Officer—RES

ORDER DENYING RESPONDENT'S MOTION TO POSTPONE HEARING DATES

I. Complaint and Answer

FINRA's Department of Enforcement filed a Complaint on August 13, 2021 against Respondent Jorge Netto, a registered representative. The Complaint consists of two causes of action. The first cause of action alleges that Respondent engaged in outside business activities ("OBAs") without prior written notice to his then-employer firm, Mora WM Securities Inc. ("Mora WM").¹ Together with three other individuals, Respondent formed and managed a Florida limited liability company ("Florida LLC") to raise funds to purchase a warehouse in Sacramento, California in which marijuana could be grown and stored ("Sacramento Property").² Through another limited liability company he co-owned and managed ("Delaware LLC"), he became a co-manager of a California limited liability company ("California LLC 2") that managed another California limited liability company ("California LLC 1").³ California LLC 1 bought the Sacramento Property.⁴

To help fund the purchase of the Sacramento Property, Respondent allegedly recommended that a customer of Mora WM liquidate securities positions in the customer's account to loan money to California LLC 1.⁵ Respondent received \$119,000 in compensation for

¹ Complaint ("Compl.") ¶ 1.

² Compl. ¶ 2.

³ Compl. ¶ 2. Netto admits he was listed as a manager of the Delaware LLC. Answer ("Ans.") ¶ 2.

⁴ Compl. ¶ 2.

⁵ Compl. ¶ 3.

facilitating the purchase of the Sacramento Property.⁶ Respondent disclosed none of these activities to Mora WM before engaging in them.⁷

The second cause of action alleges that in January 2018, Respondent submitted an annual compliance certification to Mora WM in which he falsely certified that he had notified Mora WM's Compliance Department of all outside business activities when, in fact, he had failed to identify his ownership of and management role in two limited liability companies related to the Sacramento Property transaction—Delaware LLC and Florida LLC.⁸

According to the Complaint, Respondent's alleged failure to provide prior written notice of the OBAs violated FINRA Rules 3270 and 2010, and his allegedly false annual compliance certification violated FINRA Rule 2010.⁹

In his Answer, Respondent denies he violated FINRA Rules and states in an affirmative defense that his involvement in the Sacramento Property transaction did not require disclosure because it was a passive investment, which is exempt from the coverage of FINRA Rule 3270.

II. Respondent's Motion to Postpone

On January 11, 2022, Respondent filed a motion ("Motion") to have the hearing currently scheduled for February 14-17, 2022, adjourned for three months. Respondent requests the continuance because he is hopeful the global COVID-19 pandemic will abate sufficiently to allow for an in-person hearing in Boca Raton, Florida, and because the Department of Enforcement's production of documents under FINRA Rule 9251 was allegedly disorganized and voluminous. The next day, January 12, 2022—and before Enforcement had a chance to oppose the Motion—Respondent's counsel sent an ex parte email to the Case Administrator on this case asking when he might hear back on the Motion.¹⁰

For the reasons stated below, the Motion is **DENIED**.

III. Governing Law

A Hearing Officer has broad discretion to determine whether to grant a request for a continuance.¹¹ That discretion is bounded by FINRA Rule 9222, which provides 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 ... subject to the limitations in paragraph

⁶ Compl. ¶ 3.

⁷ Compl. ¶ 3.

⁸ Compl. ¶ 4.

⁹ Compl. ¶¶ 1, 4.

¹⁰ In all emails to the Case Administrator, a party must copy the adverse party. See FINRA Rule 9143(a).

¹¹ *Dep't of Enforcement v. Reyes*, No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at *50-51 (NAC Oct. 7, 2021); *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *20 (Oct. 31, 2018).

(b)(2).”¹² Paragraph (b)(2) of FINRA Rule 9222 provides that “[p]ostponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.”¹³

Respondent’s Motion seeks a continuance in excess of 28 days. If the Motion were granted, the hearing would be delayed 90 days.

FINRA Rule 9222 specifies five factors a Hearing Officer must consider when deciding whether to grant a continuance: (1) the length of the proceeding to date; (2) the number of postponements, adjournments, or extensions already granted; (3) the stage of the proceeding at the time of the request for a continuance; (4) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (5) such other matters as justice may require.¹⁴

Here, the length of the proceeding is five months from the August 13, 2021 date when the Complaint was filed. This is the first request for a continuance of the hearing. Respondent makes his request for a continuance at a late stage of the proceeding: the pre-hearing submissions are due today, January 13, 2022. There is potential harm to the investing public because Respondent is currently registered with a FINRA member firm.

IV. Discussion

Respondent is not entitled to a continuance to await the hope-for subsidence of the COVID-19 pandemic. Instead of halting or suspending the disciplinary hearing process, FINRA has dealt with the pandemic by amending FINRA Rule 9261 to provide for the conduct of hearings through videoconference. Conducting the hearing by videoconference, rather than in person, will not deprive Respondent of a fair hearing or prevent the Hearing Panel from adequately assessing the witnesses’ credibility. Arguments much like Respondent’s were carefully considered, and ultimately rejected, by FINRA in amending FINRA Rule 9261 to allow for videoconference hearings.

Respondent is not entitled to a continuance on the alleged ground that Enforcement’s production of documents under FINRA Rule 9251 was disorganized and voluminous. The Motion shows that Enforcement produced 99.9 percent of the documents at issue on or before the deadline of October 15, 2021, as provided for in the Case Management and Scheduling Order. Respondent’s counsel had three months to review these documents and select the ones to use in the hearing. It was not until the January 11, 2022 Motion that Respondent notified me there was any problem with Enforcement’s document production. This silence is especially telling because

¹² FINRA Rule 9222(b); *accord* OHO Order 18-07 (2014041860801) (May 2, 2018), at 12, www.finra.org/sites/default/files/OHO_Order_18-07_2014041860801.pdf.

¹³ *Accord* OHO Order 18-07, at 12.

¹⁴ FINRA Rule 9222(b)(1); *accord* OHO Order 16-25 (2013038986001) (Sept. 7, 2016), at 1, www.finra.org/sites/default/files/OHO_Order16-25_2013038986001_0_0.pdf.

I held a mid-term pre-hearing conference with the parties on December 17, 2021, in which nothing was said about Enforcement's document production. Instead, Respondent's counsel informed me he was on track to present his case at the hearing:

Hearing Officer: [I]s Respondent on track to present his case following Enforcement's case on February 14th?

Counsel: Yes, we are.

....

Hearing Officer: [D]o you have any issues or matters you would like to raise?

Counsel: No, I don't.¹⁵

Thus, Respondent fails to show good cause for a continuance.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: January 13, 2022

Copies to:

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¹⁵ Pre-Hearing Conference Transcript, at 11 (Dec. 17, 2021).