

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LANDON L. WILLIAMS
(CRD No. 1751467),

Respondent.

Disciplinary Proceeding
No. 2014042524301

Hearing Officer - CC

**ORDER REGARDING RESPONDENT'S MOTIONS TO STAY CASE MANAGEMENT
AND SCHEDULING ORDER AND
TO STRIKE AND/OR FOR A MORE DEFINITE STATEMENT**

In this order, I rule on Respondent's Motion to Stay Case Management and Scheduling Order and Motion to Strike and/or Motion for a More Definite Statement. I also direct the parties to file supplemental information for my consideration in connection with scheduling the hearing in this matter.

I. Background

The Department of Enforcement ("Enforcement") filed the Complaint on August 4, 2016. Cause one of the Complaint alleges that Landon L. Williams ("Williams") fraudulently made materially false and misleading statements and omitted material information in securities-related communications with one customer. Cause two alleges that Williams unethically made materially false and misleading statements and omitted material information in securities-related communications with five customers. Cause three alleges that Williams caused his member firm's books and records to be inaccurate. Cause four alleges that Williams made misrepresentations to his employer. The Complaint contains 66 numbered paragraphs, each of which includes detailed factual or legal allegations.

On September 1, 2016, Williams filed an Answer that included 21 paragraphs identified as "Affirmative Defenses" and five paragraphs identified to correspond with five causes of action. Each paragraph that corresponds with a cause of action states, "Mr. Williams does not have, has not been furnished with, or has been unable to obtain sufficient information from FINRA to admit or deny the allegation or allegations premised by the Office of Enforcement in its [first, second, etc.] cause of action. Therefore, Mr. Williams denies . . ."

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 16-28 (2014042524301).

On September 9, 2016, Enforcement filed a Motion for Order Directing Respondent to File a Proper Answer.¹

On September 26, 2016, I issued an order directing Respondent to file a supplement to the Answer in which he responds directly to each individual allegation contained in every paragraph of the Complaint. I ordered that each such response be numbered to correspond to the paragraph in which the allegation is included, and required that Respondent admit, deny or state that he does not have and is unable to obtain sufficient information to admit or deny each allegation. I ordered Respondent to supplement his Answer on or before October 12, 2016. I later granted Respondent's request to extend the due date to October 19, 2016.

In my September 26, 2016 Order, I also addressed Respondent's statement in his Answer to the Complaint that counsel for Enforcement, Mark J. Fernandez ("Fernandez"), "is not qualified to engage in the practice of law in the State of Florida" and that Williams "will not, under any circumstances nor will he in any manner, communicate with [Fernandez]" in this matter. I noted that FINRA is not a Florida state tribunal. FINRA is a private regulatory organization, and FINRA proceedings are governed by FINRA's own Code of Procedure, which allows for a party—Enforcement or the Respondent—to be represented in a FINRA proceeding by an attorney admitted to practice before the highest court of any state or commonwealth. Because Fernandez is admitted to practice law before the highest court of the State of Louisiana, I directed Respondent to communicate with Fernandez and any other attorney who appears on behalf of Enforcement in this litigation.

On October 11, 2016, I conducted the initial pre-hearing conference in this matter. During the conference, I reiterated the requirement in FINRA Rule 9215 that Respondent admit, deny or state that he does not have and is unable to obtain sufficient information to admit or deny each allegation of the Complaint. I also again directed Respondent to communicate in this litigation with Fernandez. The parties were unable to agree to a hearing date. As such, I ordered them to submit proposed hearing dates and pre-hearing schedules on or before October 25, 2016. The parties complied.

On October 17, 2016, Williams filed a pleading he titled "Supplemental Response in the Form of a Motion to Strike and/or Motion for a More Definite Statement." He did not otherwise supplement his Answer as required by my earlier order. On October 25, 2016, Williams filed a pleading he titled "Motion to Stay Case Management and Scheduling Order." On October 27, 2016, Enforcement filed one responsive pleading. I address these outstanding matters below.

¹ Williams' Answer and Enforcement's Motion refer to five causes of action. The Complaint, however, contains only four causes of action.

II. Discussion

A. Motion to Strike/For More Definite Statement and Respondent's Deficient Answer

Williams contends that Enforcement's Complaint "is a perfect example of a shotgun pleading." He states that it is impossible for him to discern which allegation of fact is intended to support which cause of action because of the layout of the Complaint. He notes that the first 35 paragraphs of the Complaint contain factual allegations, and each cause of action re-alleges and incorporates all 35 paragraphs, alleges additional facts, and re-alleges and incorporates the allegations contained in all prior causes of action. Williams contends that, as a result of Enforcement's re-alleging all prior factual allegations and causes of action in each subsequent cause of action, he is unable to properly respond.

Enforcement notes that Williams' motions do not contend that the allegations of misconduct lack detail, the causes of action fail to specify the rule or regulation allegedly violated, or the Complaint fails to satisfy the pleading requirements of FINRA Rule 9212. Enforcement argues that Williams' motions are premised entirely on an objection to the manner in which the causes of action are pled. Enforcement contends that Williams' pleadings to date demonstrate a sufficient level of understanding of the allegations against him to enable him to answer the Complaint and prepare a defense. Enforcement argues that Williams' motions are a frivolous attempt to avoid or delay complying with my September 26, 2016 Order. Enforcement requests that I deny Williams' motions.

As detailed below, I grant in part and deny in part Respondent's motion for a more definite statement, deny his motion to strike the Complaint, require Enforcement to file an Amended Complaint as detailed below, and order Respondent thereafter to file an Amended Answer in accordance with this Order.²

FINRA Rule 9212(a) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." This pleading requirement is satisfied if the allegations of the complaint provide "a respondent sufficient notice to understand the

² In this Order, I proceed with the understanding that the numbered paragraphs of the Amended Complaint will correspond to the numbered paragraphs in the Complaint.

charges and adequate opportunity to plan a defense.”³ Enforcement need not include evidentiary details in the complaint to meet this standard.⁴

FINRA Rule 9215(c) permits a respondent to move for a “more definite statement of specified matters of fact or law to be considered or determined.” This provision allows a respondent to seek clarification where a complaint is ambiguous, confusing, or lacks sufficient specificity and detail to permit the respondent to defend himself.⁵ A motion for a more definite statement may not be used as a discovery device.⁶

FINRA Rule 9215 provides that “an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint...Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.”

Paragraphs one and two of the Complaint contain summaries of the allegations of the Complaint. Paragraphs one and two are not ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs one and two of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered one and two, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs one and two of the Amended Complaint.

Paragraphs three through six of the Complaint contain allegations related to Williams' registrations and associations in the securities industry and FINRA's jurisdiction to pursue this disciplinary action. The allegations in paragraphs three through six do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs three through six of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered three through six, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs three through six of the Amended Complaint.

³ *Dist. Bus. Conduct Comm. v. Euripides*, Complaint No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NBCC July 28, 1997); *see also Dist. Bus. Conduct Comm. v. Hamilton Inv., Inc.*, Complaint No. C8A940023, 1997 NASD Discip. LEXIS 19, at *12 (NBCC Feb. 26, 1997) (“A complaint is alleged in reasonable detail when it provides a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense.”).

⁴ OHO Order 09-05 (2008012955301) (Dec. 16, 2009), at 3, http://www.finra.org/sites/default/files/OHODDecision/p121082_0_0_0.pdf. Furthermore, FINRA's Code of Procedure does not contain a heightened pleading requirement for fraud cases. *Id.*

⁵ *See* OHO Order 07-28 (2005000323905) (July 2, 2007), at 2-3, http://www.finra.org/sites/default/files/OHODDecision/p037092_0_0_0.pdf; OHO Order 05-23 (C05050015) (June 7, 2005), at 2, http://www.finra.org/sites/default/files/OHODDecision/p015987_0_0_0.pdf.

⁶ *See* OHO Order 09-05, at 2; OHO Order 00-06 (C3A990067) (Mar. 10, 2000), at 3, http://www.finra.org/sites/default/files/OHODDecision/p007878_0_0_0.pdf.

Paragraphs seven and eight of the Complaint contain allegations related to Williams' employment with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Merrill Lynch's procedures during the period when Williams was associated with the firm. The allegations in paragraphs seven and eight do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs seven and eight of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered seven and eight, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs seven and eight of the Amended Complaint.

Paragraphs nine, 10, and 11 contain allegations related to Williams' conversations with five Merrill Lynch customers, notes that he allegedly took during those conversations, and notes that Williams allegedly entered into Merrill Lynch's on-line system. Although paragraphs 12 through 35 of the Complaint and the Amended Addendum to the Complaint identify five Merrill Lynch customers with whom Williams allegedly spoke, paragraphs nine, 10 and 11 do not specifically identify those customers. In order to clearly indicate for Respondent the identity of the customers referenced in paragraphs nine, 10, and 11, Enforcement is ordered to file an Amended Complaint that identifies by initials (which should correspond with the individuals identified in the Amended Addendum to the Complaint) the customers to whom Williams is alleged to have talked and about whom he is alleged to have made note entries in Merrill Lynch's on-line system. After Enforcement files the Amended Complaint, Williams is ordered to file an Amended Answer that contains paragraphs numbered nine, 10, and 11, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs nine, 10, and 11 of the Amended Complaint.

Paragraphs 12 through 15 contain detailed allegations regarding customer ASA (identified in the Amended Addendum to the Complaint), Williams' alleged conversations with ASA, and notes regarding ASA that Williams allegedly entered into Merrill Lynch's on-line system. The allegations contained in paragraphs 12 through 15 do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs 12 through 15 of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered 12 through 15, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 12 through 15 of the Amended Complaint.

Paragraphs 16 through 19 contain detailed allegations regarding customer RLC (identified in the Amended Addendum to the Complaint), Williams' alleged conversations with RLC, and notes regarding RLC that Williams allegedly entered into Merrill Lynch's on-line system. The allegations contained in paragraphs 16 through 19 do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs 16 through 19 of the Complaint. Williams is ordered to file an Amended Answer that contains

paragraphs numbered 16 through 19, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 16 through 19 of the Amended Complaint.

Paragraphs 20 through 22 contain detailed allegations regarding customer GDC (identified in the Amended Addendum to the Complaint), Williams' alleged conversations with GDC, and notes regarding GDC that Williams allegedly entered into Merrill Lynch's on-line system. The allegations contained in paragraphs 20 through 22 do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs 20 through 22 of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered 20 through 22, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 20 through 22 of the Amended Complaint.

Paragraphs 23 through 26 contain detailed allegations regarding customer JLM (identified in the Amended Addendum to the Complaint), Williams' alleged conversations with JLM, and notes regarding JLM that Williams allegedly entered into Merrill Lynch's on-line system. The allegations contained in paragraphs 23 through 26 do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs 23 through 26 of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered 23 through 26, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 23 through 26 of the Amended Complaint.

Paragraphs 27 through 35 contain detailed allegations regarding customer RBS (identified in the Amended Addendum to the Complaint), Williams' alleged conversations with RBS, and notes regarding RBS that Williams allegedly entered into Merrill Lynch's on-line system. The allegations contained in paragraphs 27 through 35 do not appear ambiguous, confusing, or lacking in detail. Williams' Answer does not specifically address paragraphs 27 through 35 of the Complaint. Williams is ordered to file an Amended Answer that contains paragraphs numbered 27 through 35, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 27 through 35 of the Amended Complaint.

Cause one of the Complaint contains paragraphs 36 through 50 and alleges fraud. Paragraphs 37 through 39 state the rules and laws that Williams is alleged in cause one to have violated. Paragraphs 40 through 50 relate to Williams' interactions with customer RLC and include straight-forward, unambiguous allegations of violations related to RLC. Williams is ordered to include in an Amended Answer paragraphs numbered 37 through 50, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state

that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 37 through 50 of the Amended Complaint. Paragraph 36 re-alleges and incorporates by reference paragraphs one through 35 of the Complaint. Paragraphs 12 through 15 and 20 through 35 of the Complaint contain allegations related to Williams' interactions with customers other than RLC. If cause one of the Complaint relates only to customer RLC, it is unclear why Enforcement incorporates paragraphs 12 through 15 and 20 through 35 into cause one. I order Enforcement to amend the Complaint to explain in paragraph 36 of the Amended Complaint which allegations in cause one relate to the customers identified in paragraphs 12 through 15 and 20 through 35 or delete references in paragraph 36 to those paragraphs. In the Amended Answer, Williams must respond to paragraph 36 of the Amended Complaint, and may do so by incorporating by reference his answers to previous paragraphs.

Cause two of the Complaint contains paragraphs 51 through 53. Paragraphs 52 and 53 contain straight-forward, unambiguous allegations of violations related to customers ASA, RLC, GDC, RLM, and RBS. Williams is ordered to include in an Amended Answer paragraphs numbered 52 and 53, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 52 and 53 of the Amended Complaint. Paragraph 51 re-alleges and incorporates by reference paragraphs one through 50 of the Complaint. Cause one of the Complaint alleges fraud and cause two alleges unethical conduct and does not allege fraud. Paragraphs 37, 38, 42, 45, 48, and 50, however, which have been incorporated by reference into cause two, relate to allegations of fraudulent misconduct and include allegations of scienter.

Additionally, in that causes one and two both allege misconduct related to interactions between Williams and customer RLC, it is unclear whether Enforcement has pled cause two as an alternative to cause one with respect to customer RLC. I order Enforcement to amend the Complaint to explain in paragraph 51 how the allegations contained in paragraphs 37, 38, 42, 45, 48, and 50 relate to the non-fraudulent misconduct alleged in cause two or delete references in cause two to those paragraphs. I also order Enforcement to clarify if cause two is pled as an alternative to cause one with respect to misconduct alleged as to customer RLC. In the Amended Answer, Williams must respond to paragraph 51 of the Amended Complaint, and may do so by incorporating by reference his answers to previous paragraphs.

Cause three of the Complaint (paragraphs 54 through 60) alleges that Williams caused Merrill Lynch's books and records to be inaccurate. Paragraphs 55 through 60 contain straight-forward, unambiguous allegations of books and records violations. Williams is ordered to include in an Amended Answer paragraphs numbered 55 through 60, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 55 through 60 of the Amended Complaint. Paragraph 54 re-alleges and incorporates by reference paragraphs one through 53 of the Complaint, which include allegations of fraud that do not clearly relate to the books and records violations alleged in cause three. I order Enforcement to amend the Complaint to explain in paragraph 54 how allegations of

fraudulent misconduct in previous paragraphs relate to the non-fraudulent misconduct alleged in cause three or delete references in cause three to those allegations. In the Amended Answer, Williams must respond to paragraph 54 of the Amended Complaint, and may do so by incorporating by reference his answers to previous paragraphs.

Cause four contains paragraphs 61 through 66 and alleges that Williams misrepresented facts to his employer. Paragraphs 62 through 66 contain straight-forward, unambiguous allegations. Williams is ordered to include in an Amended Answer paragraphs numbered 62 through 66, corresponding to the same numbered paragraphs in the Amended Complaint, that specifically admit, deny, or state that Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation contained in paragraphs 62 through 66 of the Amended Complaint. Paragraph 61 re-alleges and incorporates by reference paragraphs one through 60 of the Complaint. Paragraphs one through 60 of the Complaint include allegations of fraud and books and records violations that do not clearly relate to the violations alleged in cause four. I order Enforcement to amend the Complaint to explain in paragraph 61 how allegations of fraud and books and records violations relate to the misconduct alleged in cause four or delete references in cause four to those allegations. In the Amended Answer, Williams must respond to paragraph 61 of the Amended Complaint, and may do so by incorporating by reference his answers to previous paragraphs.

Throughout causes one through four, Enforcement states "As alleged above ..." Given my direction that Enforcement provide additional information regarding its incorporation by reference of previous paragraphs in various causes of the Complaint, I order Enforcement to identify by number the particular paragraphs to which it refers when it indicates "As alleged above ..." In an Amended Answer, Williams may respond to Enforcement's incorporation by reference of previous paragraphs by incorporating by reference his answers to previous paragraphs.

As detailed above, I order Enforcement to file an Amended Complaint on or before **November 16, 2016**. I order Respondent to file an Amended Answer as detailed above by **December 12, 2016**.

B. Motion to Stay Case Management and Scheduling Order

In October 2016, the parties filed proposed case management and scheduling orders that include proposed hearing dates. Enforcement proposes May 2017 hearing dates and suggests alternative dates in July and August 2017. Williams proposes February 2018 hearing dates and suggests alternative dates in March, April or May 2018. To date, I have not issued a case management and scheduling order, nor have I scheduled the hearing in this matter. I therefore deny as moot, Respondent's request to stay the Case Management and Scheduling Order.

With respect to scheduling the hearing, Williams contends that he is no longer registered, no longer associated with a FINRA member firm, and permanently disabled, and that these factors preclude his ability to proceed to hearing before February 2018.

This Order has been published by FINRA’s Office of Hearing Officers and should be cited as OHO Order 16-28 (2014042524301).

I order both parties to file a supplement to their proposed case management and scheduling orders. I order Williams to provide additional information about his disability, including medical documentation, and to explain why his disability and other circumstances preclude him from participating in a hearing before February 2018. I order Enforcement to explain why it seeks to proceed to hearing on the dates that it has proposed rather than in February 2018. The parties must file their submissions on or before **December 1, 2016**.

C. Communications with Counsel for Enforcement

I reiterate the directive in my September 26, 2016 Order that Respondent must communicate with Fernandez and any other attorney who appears on behalf of Enforcement in this litigation.

FINRA is not a Florida state tribunal. FINRA is a private corporation and self-regulatory organization (“SRO”) registered with the Securities and Exchange Commission (“SEC”) as a national securities association pursuant to the Maloney Act of 1938, 15 U.S.C. §78o-3, *et. seq.*, amending the Securities Exchange Act of 1934 (“Exchange Act”). As an SRO, FINRA is part of the Exchange Act’s comprehensive plan for regulating the securities markets. *See* 15 U.S.C. §§78q, 78s. Under the Exchange Act, the SEC must approve all FINRA rules, policies, practices, and interpretations before they are implemented, including the FINRA Code of Procedure.

The FINRA Code of Procedure, approved by the SEC, governs FINRA disciplinary proceedings against securities firms and registered representatives. FINRA’s rules “are part of the apparatus of federal securities regulation.”⁷ Rule 9141(b) of FINRA’s Code of Procedure allows for a party—Enforcement or the Respondent—to be represented in a FINRA proceeding by an attorney admitted to practice before the highest court of any state or commonwealth. Fernandez is admitted to practice law before the highest court of the State of Louisiana. Therefore, he is qualified to represent Enforcement in this disciplinary proceeding. Respondent must communicate with Fernandez and any other attorney who appears on behalf of Enforcement in this litigation.

SO ORDERED.

Carla Carloni
Hearing Officer

Dated: October 31, 2016

⁷ *Kurz v. Fidelity Management & research Co.*, 556 F.3d 639, 641 (7th Cir. 2009).