

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID R. OAKES  
(CRD No. 1465154),

Respondent.

Disciplinary Proceeding  
No. 2018057755201

Hearing Officer–DDM

**ORDER GRANTING RESPONDENT'S RULE 9252 MOTION**

**I. Introduction**

Enforcement filed a Complaint alleging that Respondent David Oakes structured three cash deposits and six cash withdrawals in his personal bank account to evade federal reporting requirements. In his Answer, Oakes admits that he made the deposits and withdrawals but denies that he tried to evade federal reporting requirements.

Oakes filed a motion pursuant to FINRA Rule 9252(b) to compel the Department of Enforcement to invoke FINRA Rule 8210 to require Wells Fargo Clearing Services, LLC ("Wells Fargo") to produce two categories of documents. First, Oakes asks for "[a]ll documents relating to [his] employment file."<sup>1</sup> Second, Oakes seeks "[a]ll documents relating to the forgivable loans from [Wells Fargo] to Oakes."<sup>2</sup> He requests these documents because Wells Fargo's "purported investigation and termination of [his employment] was the genesis of this case and is directly relevant to the underlying facts."<sup>3</sup>

Enforcement opposes the Rule 9252 motion. Enforcement takes a different view of the relevance of Oakes's request. "[T]he documents and information sought by Respondent are not linked in any way to the allegations in the Complaint or sanctions," Enforcement argues, "nor are they relevant or material to the resolution of the charges against Oakes."<sup>4</sup>

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<sup>1</sup> Respondent's Motion for Issuance of 8210 Order Pursuant to Rule 9252 ("Rule 9252 Mot.") 1.

<sup>2</sup> Rule 9252 Mot. 1.

<sup>3</sup> Rule 9252 Mot. 3.

<sup>4</sup> Enforcement's Opposition to Respondent's Motion for Issuance of 8210 Order Pursuant to Rule 9252 ("Enf. Opp.") 1.

Along with written filings, the parties presented their arguments about the motion during a prehearing conference. After carefully considering the filings and arguments presented during the prehearing conference, I grant Oakes's Rule 9252 Motion.

## **II. Discussion**

Rule 9252 allows a respondent to request that FINRA compel the production of documents or testimony from persons subject to FINRA jurisdiction. According to Rule 9252(b), a Hearing Officer shall grant such a request only if the respondent fulfills three requirements. First, the respondent must show that “the information sought is relevant, material, and non-cumulative[.]” Second, the respondent must show that he has attempted in good faith to obtain the documents and information through other means. Third, the respondent must show that FINRA has jurisdiction over each of the persons who would be the subject of the Rule 8210 request. Finally, even if the respondent meets all three requirements of Rule 9252(b) “the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.”

The third requirement is not in dispute here. Both Oakes and Enforcement agree that FINRA has jurisdiction over Wells Fargo. But the parties disagree over whether Oakes has met the first two requirements.

### **A. “Relevant, Material, and Non-Cumulative”**

Oakes must show that the information he seeks is “relevant, material, and non-cumulative.” When evaluating Rule 9252 requests, Hearing Officers have looked to Rule 401 of the Federal Rules of Evidence for guidance. That Rule provides that evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence to determining the action.”<sup>5</sup> While not referenced specifically, the concept of materiality is embodied in the second part of the relevance test. Although evidence may tend to make a fact more or less probable, that evidence is not relevant unless that fact is also material.<sup>6</sup>

Many essential facts are undisputed. Oakes does not dispute that the deposits and withdrawals occurred. He does not dispute when they occurred. And he does not dispute the amounts of the transactions. The main issue to resolve at hearing, then, is *why* they occurred.<sup>7</sup>

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<sup>5</sup> OHO Order 16-30 (2014040476901) (Nov. 14, 2016), at 5, [http://www.finra.org/sites/default/files/OHO\\_Order16-30\\_2014040476901.pdf](http://www.finra.org/sites/default/files/OHO_Order16-30_2014040476901.pdf).

<sup>6</sup> See, e.g., *United States v. Shomo*, 786 F.2d 981, 985 (10th Cir. 1986); OHO Order 19-10 (2016052503101) (Mar. 13, 2019), at 4, [http://www.finra.org/sites/default/files/2019-10/OHO\\_Order\\_19-10\\_2016052503101.pdf](http://www.finra.org/sites/default/files/2019-10/OHO_Order_19-10_2016052503101.pdf).

<sup>7</sup> See Complaint (“Compl.”) ¶¶ 20-21; Answer (“Ans.”) ¶¶ 20-21

Did Oakes structure them to avoid the reporting requirements of the Bank Secrecy Act<sup>8</sup> and therefore violate FINRA Rule 2010?

To help answer that question, Enforcement intends to present the testimony of a Wells Fargo investigator.<sup>9</sup> This Wells Fargo investigator interviewed Oakes about his deposits.<sup>10</sup> The Wells Fargo investigator is expected to testify that Oakes admitted during the interview that he structured his transactions to avoid reporting requirements.<sup>11</sup> After this interview, Wells Fargo terminated Oakes's employment.<sup>12</sup>

Oakes denies that he made that admission to the Wells Fargo investigators.<sup>13</sup> He contends that the documents he seeks are relevant to the investigator's credibility and bias.<sup>14</sup> He also contends that the documents he seeks are relevant to Wells Fargo's determination to terminate his employment.<sup>15</sup>

Some background is necessary. According to Oakes, Wells Fargo induced him to join the firm with a forgivable loan in excess of \$1.8 million.<sup>16</sup> About a year later, however, Oakes suffered a stroke that forced him to work a reduced schedule.<sup>17</sup> When Wells Fargo refused to accommodate him, Oakes claims, his productivity declined, and the firm rebuffed his requests to restructure his loan.<sup>18</sup> In his motion, Oakes asserts that he "believes that his full employment file may contain additional detail regarding [Wells Fargo]'s rationale for terminating him, including but not limited to the circumstances of his stroke and/or the forgivable loan."<sup>19</sup>

Enforcement disputes the relevance of Oakes's employment file and forgivable loan documents, noting that Oakes does not dispute that the deposits and withdrawals occurred.<sup>20</sup> Enforcement characterizes Oakes's request as an apparent "fishing expedition into internal firm

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<sup>8</sup> 31 U.S.C. § 5324(a) and 31 C.F.R. § 1010.

<sup>9</sup> Transcript of Pre-Hearing Conference on August 11, 2020 ("Tr.") 16-17.

<sup>10</sup> Rule 9252 Mot. 2; Tr. at 17.

<sup>11</sup> Tr. 8.

<sup>12</sup> Rule 9252 Mot. 2; Tr. 12, 20.

<sup>13</sup> Tr. 12.

<sup>14</sup> Tr. 24.

<sup>15</sup> Rule 9252 Mot. 2-3; Tr. 12-13, 24.

<sup>16</sup> Rule 9252 Mot. 1.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Enf. Opp. 2.

records having no connection to this disciplinary proceeding.”<sup>21</sup> Instead, Enforcement argues, its investigation of whether Oakes engaged in illegal structuring “did not rely, in any form, on [Wells Fargo]’s decision to terminate Oakes or the reasons giving rise to that decision.”<sup>22</sup>

But Oakes does not seek his employment file and forgivable loan documents to prove a wrongful termination claim against Wells Fargo. Instead, he seeks those documents to rebut the testimony of a witness about a key issue in the case – his intent in making the deposits and withdrawals. According to Oakes, he expects the documents to show that Wells Fargo had an incentive to misconstrue the statements he made during the interview.<sup>23</sup> As Oakes’s counsel put it during the prehearing conference, “one possibility is that Wells Fargo intentionally did this to get rid of [Oakes] because of his declining productivity and his health issues.”<sup>24</sup> Oakes will have to prove this “possibility” at hearing, of course, but the documents he seeks are relevant to this defense.

In response, Enforcement argues that the testimony of the Wells Fargo investigator is “just a piece” of its evidence of Oakes’s intent.<sup>25</sup> Enforcement contends it will present other evidence at hearing that shows Oakes intentionally structured his transactions in an improper way.<sup>26</sup> But this argument misses the point. The documents sought by Oakes do not have to rebut every piece of evidence that Enforcement presents at trial. They simply must be relevant to a material fact. And the relevance to a material fact here – *why* Oakes engaged in the transactions – is clear.

## **B. Good-Faith Attempt to Obtain the Documents by Other Means**

Oakes argues that he can obtain his full employment file and forgivable loan documents from Wells Fargo only by a Rule 8210 request. In his motion and at the prehearing conference, he described his attempts to obtain those documents by other means. Wells Fargo provided him with a “limited file” but did not produce “documents regarding his termination or other items [he] believes exist.”<sup>27</sup> As examples of why the file produced by Wells Fargo “does not appear to be complete,” Oakes states that it included only one annual review, nothing related to his request for an accommodation after his stroke, and none of the termination documents produced by Wells Fargo to Enforcement during its investigation.<sup>28</sup> None of Oakes’s requests to Wells

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<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> Tr. 13.

<sup>24</sup> Tr. 25.

<sup>25</sup> Tr. 20.

<sup>26</sup> Tr. 20-21.

<sup>27</sup> Rule 9252 Mot. 3.

<sup>28</sup> *Id.*

Fargo's response were in writing, nor was Wells Fargo's response.<sup>29</sup> Even so, Oakes made adequate attempts to obtain the documents by other means, for purposes of Rule 9252.


In its opposition, Enforcement points to the arbitration between Oakes and Wells Fargo about his termination and forgivable loan. Enforcement contends that Oakes could have obtained the documents in discovery during that arbitration.<sup>30</sup> Relatedly, Enforcement expresses concern that Oakes may be seeking the documents here for use in his arbitration.<sup>31</sup>

At the prehearing conference, Oakes's counsel allayed those concerns. Oakes filed for bankruptcy, which stayed the arbitration.<sup>32</sup> During the bankruptcy proceeding, Oakes reached a settlement with Wells Fargo to dismiss the arbitration.<sup>33</sup> As a result, Oakes's counsel stated, it was unnecessary during the arbitration to request his employment file and documents regarding his forgivable loan.<sup>34</sup> While the dismissal was without prejudice, as Enforcement notes,<sup>35</sup> that is insufficient reason to deny Oakes's motion.

### III. Order

Oakes's Rule 9252 Motion is **GRANTED**. Enforcement is ordered to issue Rule 8210 requests for information to Wells Fargo, as described in the Rule 9252 Motion. Enforcement should issue the Rule 8210 requests no later than August 24, 2020. Enforcement should also provide to Oakes the response from Wells Fargo no later than two business days after receiving it.

**SO ORDERED.**

  
Daniel D. McClain  
Hearing Officer

Date: August 17, 2020

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<sup>29</sup> Tr. 14.

<sup>30</sup> Tr. 28-29.

<sup>31</sup> Tr. 29.

<sup>32</sup> Tr. 9, 31.

<sup>33</sup> Tr. 9, 12, 31.

<sup>34</sup> Tr. 9, 31.

<sup>35</sup> Tr. 29.

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