

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADAM J. MAKKAI  
(CRD No. 425159),

Respondent.

Disciplinary Proceeding  
No. 2018058924502

Hearing Officer–DDM

**ORDER DENYING RESPONDENT’S CROSS-MOTION TO STRIKE**

**I. Introduction**

The Department of Enforcement filed a one-cause Complaint alleging that Respondent Adam J. Makkai shared commissions with an unregistered person in violation of FINRA Rules 2040 and 2010. Along with an Answer, Makkai filed a motion for summary disposition and for sanctions. Makkai argued that the Complaint was untimely, and that Enforcement had filed a false Certificate of Service with the Complaint. Enforcement opposed the motion and moved to strike Makkai’s affirmative defenses and “Prayer for Relief,” which largely depended on the same arguments in Makkai’s motion for summary disposition and sanctions. Makkai’s motion for summary disposition and sanctions was denied, while Enforcement’s motion to strike was granted in part and denied in part.

In opposing Enforcement’s motion to strike, Makkai also filed a cross-motion to strike portions of the Complaint and Enforcement’s opposition to his motion for summary disposition and sanctions. Makkai describes these portions as “[i]mmaterial, [i]mpertinent, [s]candalous, and [f]alse.”<sup>1</sup> Enforcement opposed this cross-motion. For the reasons below, Makkai’s cross-motion is denied.

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<sup>1</sup> Respondent’s Cross-Motion to Strike (“Cross-Mot.”) 2.

## II. Discussion

FINRA Rule 9136(e) allows a Hearing Officer to strike “[a]ny scandalous or impertinent matter” from a filing. A scandalous matter “casts a derogatory light on someone, usually a party to the action.”<sup>2</sup> An impertinent matter is “not responsive or relevant to the issues involved.”<sup>3</sup>

### A. Allegations about Representative A

In the Summary section of the Complaint, Enforcement alleges that Makkai improperly “shared commissions with an unregistered former colleague (‘Representative A’) who had been terminated . . . for borrowing over \$100,000 from an elderly Firm customer.”<sup>4</sup> Other portions of the Complaint contain similar allegations about Representative A’s termination for borrowing from an elderly customer.<sup>5</sup> Makkai describes these allegations as “immaterial to proving or defending against any claims or defenses in this immediate action.”<sup>6</sup> He also blames Enforcement for knowing but disregarding that “industry publications would regurgitate [its] immaterial and misstated assertion that the non-party, Representative A, had been terminated for “borrowing over \$100,000 from an elderly Firm customer.”<sup>7</sup>

As Enforcement points out, however, these allegations are directly relevant to the case against Makkai. Enforcement accuses Makkai of sharing commissions with Representative A. And Enforcement alleges that Makkai was instructed by his firm, LPL Financial LLC (“LPL”), that Representative A was prohibited from affiliating with LPL in any capacity.<sup>8</sup>

Nor do the allegations cast Representative A in a derogatory light. Enforcement never identified Representative A by name in the Complaint. Further, LPL already disclosed why it terminated Representative A when it filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”). In the Form U5, LPL stated that it terminated Representative A for “[b]orrowing money from a client . . . .” The allegations about Representative A in the Complaint are neither scandalous nor impertinent.

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<sup>2</sup> *Egan-Jones Rating Co.*, 2012 SEC LEXIS 2204, at \*4 (July 13, 2012) (quoting *Donald T. Sheldon*, Admin. Proc. Release No. 304, 1988 SEC LEXIS 5258, at \*2 (July 22, 1988)).

<sup>3</sup> *Id.*

<sup>4</sup> Complaint (“Compl.”) ¶ 1.

<sup>5</sup> *Id.* ¶¶ 9-12.

<sup>6</sup> Cross-Mot. 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> Compl. ¶ 11.

**B. Statements about the Filing and Serving of the Complaint**

Makkai also wants to strike statements by Enforcement about when it filed and served the Complaint. Enforcement made these statements in its opposition to Makkai’s motion for summary disposition and sanctions. Makkai wants to strike:


- What he calls a mischaracterization by Enforcement of his argument about when the Complaint had to be filed, to be timely;<sup>9</sup>
- Enforcement’s description of when and how it served the Complaint;<sup>10</sup> and
- Enforcement’s assertion that it filed the Complaint on June 12, 2020.<sup>11</sup>

But Makkai offers no reason to strike these statements, aside from his disagreement with them. The statements are not scandalous or impertinent. And the arguments Makkai makes now are just a re-hash of the arguments he made in his motion for summary disposition and sanctions. There is no need to discuss them at length again here. The arguments were unpersuasive then, and they are unpersuasive now. Makkai has failed to show that I should strike these statements from Enforcement’s opposition brief.

**C. Order**

For the reasons set forth above, Makkai’s cross-motion to strike is **DENIED**.

**SO ORDERED.**



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Daniel D. McClain  
Hearing Officer

Dated: August 19, 2020

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<sup>9</sup> Cross-Mot. 4.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 5-6.

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