This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 21-01 (2018058588501).

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CHRISTOPHER PETER TRANCHINA (CRD No. 5657849), Respondent.	Disciplinary Proceeding No. 2018058588501 Hearing Officer–DDM

ORDER DENYING RESPONDENT'S MOTION TO POSTPONE HEARING DATES

I. Introduction

In June 2020, Enforcement filed a three-cause Complaint alleging that Respondent Christopher Peter Tranchina broke into his office and stole client files after Hornor, Townsend & Kent ("HTK") fired him. The first two causes of action allege that this constituted conversion and unauthorized access to firm information, both in violation of FINRA Rule 2010. The third cause of action alleges that Tranchina willfully failed to disclose a criminal action stemming from his break-in on his Uniform Application for Securities Industry Registration or Transfer (Form U4). In his Answer, Tranchina denied that he converted client files or obtained unauthorized access to firm information. He also denied that he had an obligation to update his Form U4 to disclose the criminal action.

A hearing has been scheduled for January 26 - 29, 2021. In an Order dated December 8, 2020, Chief Hearing Officer Maureen A. Delaney converted the in-person hearing to a videoconference hearing because an in-person hearing was not safe or feasible because of the ongoing COVID-19 pandemic. Chief Hearing Officer Delaney cited the guidance of FINRA's health and safety consultant, along with COVID-19 data and guidance from public health authorities. Chief Hearing Officer Delaney issued the Order under the authority granted to her by temporary amendments to FINRA Rule 9261, as outlined in SR-FINRA-2020-027 and SR-FINRA-2020-042.

On December 15, 2020, Tranchina moved to postpone the hearing until April 27 - 30, 2021, "or until an in-person hearing can be safely conducted."[1] Enforcement opposed Tranchina's motion, and the parties participated in an oral argument on January 5, 2021. Given the relief sought by Tranchina, I also treated his motion as a request to reconsider the Chief

[1] Respondent's Motion to Postpone Hearing Dates ("Resp't Mot.") 1.

Hearing Officer's Order of December 8, 2020. As a result, the Chief Hearing Officer participated in the oral argument and will issue an Order along with this Order.

For the reasons below, Tranchina failed to demonstrate good cause to postpone the hearing. His motion is denied. The hearing will proceed as scheduled, on January 26 - 29, 2021, by videoconference.

II. Discussion

Under FINRA Rule 9222(b), a Hearing Officer may change the place of a hearing or postpone it for a "reasonable period of time" for good cause. A Hearing Officer has broad discretion to decide whether to postpone a hearing,[2] but must consider five factors:

> (A) the length of the proceeding to date; (B) the number of postponements, adjournments, or extensions already granted; (C) the stage of the proceedings at the time of the request; (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (E) such other matters as justice may require.[3]

Only one of the factors points unambiguously toward postponement: there have been no prior postponements of the hearing **(B)**. As Enforcement points out, however, that factor alone is not dispositive, or every respondent could obtain at least one postponement in every disciplinary hearing.

The other factors do not support postponing the hearing. The length and stage of this case, for example, **(A) and (C)**, militate against postponement. The Complaint was filed nearly seven months ago. The parties have filed their prehearing submissions, which include briefs, witness lists, and exhibit lists. Neither party has voiced a need or desire to identify or interview additional witnesses or collect additional documents. The hearing will be brief, with three witnesses. It will be focused on few disputed facts. In short, this case is ready to go to hearing.

And while Tranchina has proposed re-scheduling the hearing for late April 2021, there is no assurance that an in-person hearing will be safe or feasible then. During oral argument, Tranchina proposed June 2021 for back-up dates if we cannot hold an in-person hearing in April 2021. But the same caveat applies to an in-person hearing in June 2021; perhaps an in-person hearing will not be safe or feasible then, either. By insisting on an in-person hearing, Tranchina is essentially asking for an indefinite postponement of the hearing. Nobody can say now when conditions may permit an in-person hearing.

Postponing the hearing may also pose a potential risk of harm to the investing public **(D)**. Enforcement has charged Tranchina with conversion and with unauthorized access to

---

[2] *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *20 (Oct. 31, 2018) ("In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance.") (quoting *Robert J. Prager*, 58 S.E.C. 634, 664 (2005)).

[3] FINRA Rule 9222(b)(1)(A)–(E).

confidential firm information. These are serious charges, and Enforcement argues that Tranchina should be expelled from the securities industry. Enforcement also alleges that Tranchina needed to update his Form U4 to disclose criminal charges associated with his break-in at HTK's offices, and that he has still failed to do so. Tranchina points out that Enforcement's allegations are unproven and do not relate to any of his interactions with his customers. He also contends that he did not have to update his Form U4 because he was never charged in a "formal complaint," as defined by FINRA in its CRD Glossary. But Tranchina is still actively engaged in the securities industry, and the gravity of the charges against him highlights the need to adjudicate them promptly.

That leaves "such other matters as justice may require" **(E)**. Tranchina devotes most of his arguments to this factor. Tranchina argues that proceeding by videoconference, rather than in-person, deprives him of a fair hearing. Tranchina asserts that he will be unable to meaningfully address the Hearing Panel by video,[4] and that the Hearing Panel must see and hear from him in person to assess his sincerity and credibility.[5] He also argues that proceeding by videoconference will deprive him of an ability to confront his accusers and cross-examine witnesses.[6] Finally, he addresses the importance of the case to him, in that its outcome "will determine the future of [his] career in the securities industry."[7]

But these arguments could apply to almost every disciplinary proceeding. And they were carefully considered, and ultimately rejected, by FINRA in amending FINRA Rule 9261 to allow for videoconference hearings. Before amending FINRA Rule 9261, FINRA issued a Notice of Proposed Rule Change that explained how its procedures for videoconference hearings would still provide a fair process.[8] A hearing conducted by videoconference will still provide "simultaneous visual and oral communication" to the parties "but without the risks of individuals being close to one another."[9] The technology used by FINRA has "features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms."[10]

Like Tranchina, some commenters to the Proposed Rule contended that "the use of video conferencing technology may not allow for fair hearings, in part because adjudicators may not be able to assess the credibility of respondents or other witnesses."[11] But FINRA specifically

---

[4] Resp't Mot. 3.

[5] Resp't Mot. 3.

[6] Resp't Mot. 3.

[7] Resp't Mot. 2.

[8] SR-FINRA-2020-027, Proposed Rule Change to Temporarily Permit Hearings to be Conducted by Video Conference, Exchange Act Release No. 89737, 85 Fed. Reg. 55712, 55716 (Sept. 9, 2020) ("[T]he proposed rule change will continue to provide fair process in connection with OHO and NAC hearings.").

[9] *Id.*

[10] *Id.*

[11] Response to Comments, SR-FINRA-2020-027, at 5 (Oct. 9, 2020), https://www.sec.gov/comments/sr-finra-2020-027/srfinra2020027-7893032-224256.pdf.

rejected this contention as unpersuasive. As FINRA noted in response to the comments, "even telephonic testimony is consistent with fair process and can be relied upon for credibility determinations."[12] Using videoconference technology "is arguably an enhancement to telephonic testimony and hearings" and "will provide adjudicators with the opportunity to assess the credibility of the respondent and any witnesses consistent with the applicable fair process standards."[13]

As for the importance of the case to Tranchina, the stakes are indeed high. Enforcement has requested a bar from the industry as a sanction for two of its charges, and that Tranchina be subject to a statutory disqualification for the third charge. But every respondent feels that his or her disciplinary proceeding is important and career-altering. Simply because Enforcement has asked for significant sanctions here does not render a videoconference hearing unfair.

Tranchina raises an argument that FINRA did not explicitly address in amending Rule 9261 – namely, that state-mandated travel restrictions prevent him from preparing in-person with his attorney for the hearing. This argument is unconvincing. As Enforcement points out, professionals in various circumstances have adapted to business by videoconference, and Tranchina continues to engage in his securities business. Tranchina has a long-standing relationship with his attorney, who has prepared and filed pre-hearing submissions. And Tranchina has cited no legal authority that an attorney cannot engage in zealous advocacy for his client by participating in a remote hearing. By contrast, several courts have concluded that hearings and trials can be conducted fairly by videoconference over objections by a party, even in cases longer and more complex than this one.[14]

Finally, there is FINRA's interest in resolving this disciplinary proceeding promptly. FINRA amended Rule 9261 to allow videoconference hearings so that its "critical adjudicatory processes [could] continue to function in these extraordinary times – enabling FINRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets – while protecting the health and safety of hearing participants."[15] An indefinite postponement would thwart FINRA's ability to fulfill its statutory obligation here.

---

[12] *Id.* at 6 (citing *Gerald E. Donnelly*, 52 S.E.C. 600, 603 n.16 (1996); *Daniel Joseph Alderman*, 52 S.E.C. 366, 368 n.6 (1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997); *Curtis I. Wilson*, 49 S.E.C. 1020, 1024-25 (1989)).

[13] *Id.*

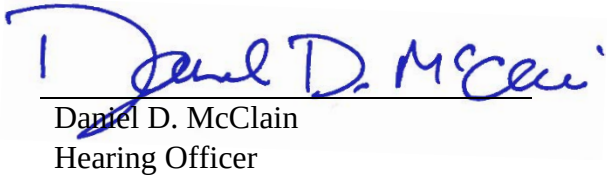
[14] *See, e.g.*, *Gould Elec. Inc. v. Livingston Cty. Rd. Comm'n*, No. 17-11130, 2020 U.S. Dist. LEXIS 118236, at *17 (E.D. Mich. June 30, 2020) (holding videoconference trial over plaintiff's objection despite "technical" and "scientific" nature of expert testimony); *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, No. 2:18CV94, 2020 U.S. Dist. LEXIS 110665 (E.D. Va. Apr. 23, 2020) (holding 23-day bench trial in complex patent infringement case by videoconference, over objection of defendant).

[15] 85 Fed. Reg. at 55713.

III. Order

This hearing should be brief, with three witnesses and few disputed facts. Tranchina has failed to establish good cause that the videoconference hearing scheduled for January 26 - 29, 2021 should be postponed. His motion for a postponement is therefore **DENIED**.

SO ORDERED.



Daniel D. McClain
Hearing Officer

Dated: January 7, 2021

Copies to:

Jon-Jorge Aras, Esq. (via email)
Matthew M. Ryan, Esq. (via email)
Amanda E. Fein, Esq. (via email)
Kevin M. Hartzell, Esq. (via email)
Lisa M. Colone, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)