

**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 REGARDING ENFORCEMENT’S MOTION IN LIMINE
AND PRE-HEARING OBJECTIONS**

I. Introduction

Enforcement alleges that Respondent Christopher Peter Tranchina broke into his office and stole client files after Hornor, Townsend & Kent (“HTK”) fired him. According to Enforcement, his actions constituted conversion and unauthorized access to firm information, both in violation of FINRA Rule 2010. Enforcement also alleges that Tranchina willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) a Complaint-Summons and related proceedings in a New Jersey court.

Tranchina denies that he engaged in conversion or unauthorized access of firm information. He also denies that the Complaint-Summons triggered a disclosure obligation on his Form U4. In his Answer, Tranchina claimed that he acted in good faith and “relied on counsel throughout the time period relevant to the Complaint.”¹ A hearing is scheduled for January 26 – 29, 2021.

Enforcement filed a motion in limine seeking to preclude Tranchina from introducing an advice-of-counsel defense at the hearing. Enforcement also filed pre-hearing objections to four of Tranchina’s proposed exhibits. The motion in limine is denied as moot, as Tranchina has represented in his opposition papers and at the Final Pre-Hearing Conference (“FPHC”) that he does not intend to assert an advice-of-counsel defense at the hearing. Enforcement’s objections are overruled for now, though Enforcement may renew its objections at the hearing.

¹ Answer ¶¶ 6-7.

II. Discussion

FINRA Rule 9263 provides that “[t]he Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.”² A Hearing Officer maintains broad discretion to decide whether proffered documents or testimony are relevant and should be admitted into evidence.³ Because the relevance of challenged evidence can be difficult to discern without the context of other evidence presented at the hearing, pre-hearing motions to exclude evidence are generally disfavored and should be granted “only if the evidence at issue ‘is clearly inadmissible for any purpose.’”⁴

A. Enforcement’s Motion in Limine

Enforcement filed a motion in limine to exclude Tranchina from introducing an advice of counsel defense at the hearing. According to Enforcement, Tranchina abandoned his advice of counsel defense and, in response to a pre-hearing request from Enforcement, did not produce documents or information relevant to that defense. In his opposition to Enforcement’s motion in limine, Tranchina concedes that he does not intend to assert advice of counsel as an affirmative defense at the hearing. Instead, Tranchina asserts, he will refer to a response made by his counsel in response to a FINRA Rule 8210 request by FINRA during its investigation. This response is included on Enforcement’s Exhibit List. Tranchina may also testify that he was represented by counsel during the investigation and during the court proceedings in New Jersey.

Because Tranchina has represented that he will not assert an advice-of-counsel defense at the hearing, Enforcement’s motion is denied as moot. If Tranchina attempts to introduce testimony or evidence at the hearing that his actions should be excused or mitigated because he relied upon the advice of counsel, Enforcement may renew its motion.

B. Objections to Respondent’s Exhibits

Enforcement objects to four of Respondent’s proposed exhibits – RX-3, RX-4, RX-5, and RX-16.

RX-3, 4, and 5 relate to a civil lawsuit pending in federal court involving Tranchina, as defendant, and Penn Mutual Life Insurance Company, its affiliate, and a former coworker of Tranchina, as plaintiffs. RX-3 is a brief filed by Tranchina in opposition to plaintiffs’ motion for a temporary restraining order (“TRO”). RX-4 is an order by the judge in that case denying the plaintiffs’ motion for a TRO. RX-5 is a certification made by Tranchina in that case that he returned all policyholder data and other records to counsel for the plaintiffs. Enforcement argues that these documents have no relevance to any of the disputed facts here, or whether Tranchina violated FINRA Rules. Tranchina asserts that the documents are relevant to any contention that

² FINRA Rule 9263(a); *accord* OHO Order 16-04 (2012033393401) (Feb. 3, 2016), at 2, http://www.finra.org/sites/default/files/OHO_Order16-04_2012033393401_0.pdf.

³ *Dep’t of Enforcement v. Brookstone Sec., Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *110 (NAC Apr. 16, 2015) (“The Hearing Officer is granted broad discretion to accept or reject evidence under this rule.”).

⁴ OHO Order 16-18 (2014043020901) (May 24, 2016), at 2, <http://www.finra.org/sites/default/files/OHO-Order-16-18-2014043020901.pdf> (quotation omitted).


he used HTK's files to solicit customers after he was fired. At the FPHC, he also asserted that he wanted to reserve these documents for possible impeachment purposes. It is premature to decide the possible relevance of these proposed exhibits; instead, it is better to make such a determination with a more complete context during the hearing. Enforcement may renew its objection to these documents if and when they are offered during the hearing.

RX-16 is a monthly attestation signed by Tranchina and dated April 6, 2019. Tranchina describes it as "an example of a monthly attestation [he] is required to make at his current firm." Again, Enforcement disputes its relevance to any disputed facts or issues here. Tranchina asserts that the document is relevant to his current firm's knowledge of the circumstances of his departure from HTK. Tranchina also argues that RX-16 is relevant to sanctions. As with RX-3, 4, and 5, the possible relevance of RX-16 is better decided during the hearing. Enforcement may renew its objection to RX-16 if Tranchina attempts to use it during the hearing.

III. Order

Enforcement's motion in limine to exclude an advice-of-counsel affirmative defense by Tranchina is denied as moot. Its objections to RX-3, RX-4, RX-5, and RX-16 are overruled, for now. Enforcement may renew its motion or objections during the hearing, if necessary.

SO ORDERED.


Daniel D. McClain
Hearing Officer

Dated: January 19, 2021

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