

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK SAM KOLTA  
(CRD No. 5324620),

Respondent.

Disciplinary Proceeding  
No. 2018057297102

Hearing Officer–MJD

**ORDER REGARDING HEARING VENUE**

On December 29, 2022, the Department of Enforcement filed a four-cause Complaint against Mark Sam Kolta. Cause one of the Complaint alleges that Kolta made unsuitable recommendations to 16 customers to purchase \$4.8 million in a non-traded real estate investment trust (“REIT”), in violation of FINRA Rules 2111 and 2010, resulting in losses exceeding \$4.1 million. Causes two and three allege that Kolta violated FINRA Rules 4511 and 2010 by causing his customers’ account records, updates to their records, and their subscription documents to contain false and inaccurate information so they could qualify to buy the REIT. Cause four alleges that Kolta sent customers communications about the REIT that were not fair and balanced and contained misleading, unwarranted, and promissory statements and claims that violated FINRA Rules 2210 and 2010.

The hearing in this disciplinary proceeding is scheduled for February 5 through 9 and 12 through 16, 2024. Enforcement argues that the proper venue for the hearing is New York City because that is where Kolta engaged in the alleged misconduct and where most of the 16 affected customers reside. Kolta argues that Enforcement’s District Office in Boca Raton, Florida, is the more appropriate venue because he has resided in southern Florida since the alleged wrongdoing.

At a recent status conference, I told the parties I would consider a bifurcated hearing to maximize the likelihood of in-person testimony from customers and other witnesses. I suggested that part of the hearing could be held in New York City to accommodate in-person testimony from customer witnesses located in the area and another part of the hearing could be held in Florida where Kolta would testify. I left it to the parties to come up with a reasonable proposal to accomplish this objective.

The parties were unable to agree on a bifurcated hearing schedule. This led Kolta to file a Motion for Bifurcated Hearing Location (“Motion”), which I treat in the alternative as a motion to have the entire hearing in Florida.<sup>1</sup> Enforcement filed an Opposition to the Motion, reiterating its view that the entire hearing should be held in New York City, but if not there then held entirely in Florida rather than bifurcate the hearing.<sup>2</sup> For the reasons set forth below, I **GRANT** the Motion, and order that the entire hearing be held at FINRA’s District Office in Boca Raton, Florida, or another location near FINRA’s Florida offices.<sup>3</sup>

## I. Background

On March 2, 2023, I held the initial prehearing conference with the parties (“IPHC”). During the conference, Enforcement argued that New York is the appropriate hearing location based on the factors set forth in FINRA Rule 9232(c) for the designation of the Primary Regional Committee for the proceeding.<sup>4</sup> The most relevant factors in this case are the location of a respondent’s office at the time of the alleged misconduct and the location of witnesses, especially witnesses who were customers of a respondent.<sup>5</sup> Kolta argued that Florida was the more appropriate location because he no longer lives in New York and at the time of the alleged misconduct he was reporting to a Florida office of his broker-dealer employer.<sup>6</sup>

During the IPHC, based on the parties’ summary arguments, I preliminarily determined that New York City was the appropriate location for the hearing (which I ordered would begin on October 2, 2023).<sup>7</sup> In setting the hearing in New York, I considered that a meaningful number of the 16 affected customers identified in the Complaint could testify at the hearing in person. At the time, Enforcement did not state how many customers it thought would testify and how many of them would do so in person. Immediately after the IPHC, Kolta filed a motion to continue the October 2023 hearing dates.<sup>8</sup>

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<sup>1</sup> Respondent’s Motion for Bifurcated Hearing Location (Oct. 6, 2023) (“Mot.”).

<sup>2</sup> Enforcement’s Opposition to Respondent’s Motion for Bifurcated Hearing Location (Oct. 12, 2023) (“Opp.”).

<sup>3</sup> In ordering that the hearing take place in Florida I do so irrespective of Kolta’s purported financial or medical issues, neither of which he has substantiated. *See* Mot. 2.

<sup>4</sup> As requested by Enforcement in its Notice of Complaint, and pursuant to Rule 9232(c), the Chief Hearing Officer determined that the New York City Regional Committee would serve as the Primary Regional Committee for this case.

<sup>5</sup> Transcript of Initial Pre-Hearing Conference (Mar. 2, 2023) (“IPHC Tr.”) 58-61. Enforcement stated that all but one of the 16 customers live in the greater New York City area. IPHC Tr. 59-60.

<sup>6</sup> IPHC Tr. 63-64.

<sup>7</sup> IPHC Tr. 69.

<sup>8</sup> Kolta’s motion to continue asked that I reconsider the October 2023 hearing dates. In his proposed pre-hearing schedule, filed on March 8, 2023, Kolta offered hearing dates two years later—in October and November 2025. Enforcement opposed Kolta’s motion to continue the October 2023 hearing dates.

At the end of the conference, I instructed the parties to meet and confer in an effort to reach agreement on a pre-hearing schedule, assuming a hearing in October 2023.<sup>9</sup> Because they could not agree, the parties submitted separate proposed pre-hearing schedules and Kolta requested Boca Raton as the hearing location.

I held a pre-hearing conference on March 14, 2023, primarily to hear argument on Kolta's motion to continue the hearing dates. After hearing the parties' arguments, I ordered that the hearing would begin February 5, 2024, instead of in October 2023.<sup>10</sup> On March 23, 2023, I issued a Case Management and Scheduling Order ("CMSO") establishing New York City as the hearing venue, as I had determined at the IPHC.

On May 25, 2023, I held a status conference during which I again heard arguments from the parties about the hearing location, among other issues. At the time, Enforcement was not able to report how many customers it believed would testify, including how many would do so in person at a hearing in New York. I therefore instructed Enforcement to contact customers before the next scheduled status conference, in September 2023, to determine how many customers it believed would testify in person.

On September 19, 2023, I held another status conference. Enforcement represented that of the 16 customers identified in the Complaint only five had said they would testify at the hearing. According to Enforcement, three customers would be able testify in person and another two stated they would testify via telephone or videoconference.<sup>11</sup>

On September 26, 2023, I held another status conference during which I told the parties that I would consider a bifurcated hearing in New York City and Boca Raton. This would allow those customers who said they would testify in person to do so in New York City. It would also allow Kolta to testify in person in Boca Raton.<sup>12</sup> During the status conference, I instructed the parties to confer to attempt to agree on a plan for a bifurcated hearing for my review.

## **II. Discussion**

In his Motion, Kolta's counsel represents that he conferred with Enforcement about the possibility of a bifurcated hearing. According to Kolta, Enforcement "made it clear" that it was not willing to accommodate a bifurcated hearing. He offered to begin the hearing either in New York City or Boca Raton, depending on Enforcement's preferences. He says that Enforcement

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<sup>9</sup> IPHC Tr. 69-70.

<sup>10</sup> See Order Granting in Part Respondent's Motion to Continue Hearing Dates (Mar. 23, 2023).

<sup>11</sup> The two customers who told Enforcement they would testify via telephone or videoconference are in California and New Haven, CT. Transcript of September 26, 2023 Status Conference 5-7.

<sup>12</sup> Another potential Enforcement witness is in the greater New York City area, according to Enforcement. She is Kolta's former office assistant. She is no longer associated with a member firm.

refused to consider it.<sup>13</sup> Kolta tried to discuss the order of witnesses, according to the Motion, but Enforcement refused. Kolta's counsel then asked Enforcement if there was any scenario under which it would consider a bifurcated hearing. According to Kolta, Enforcement responded that hearings usually take place at one location, and it would like to keep it that way.<sup>14</sup>

Given the inability to reach agreement with Enforcement, Kolta proposes in the Motion that the hearing commence in New York to accommodate witnesses located there and then reconvene and conclude in Boca Raton for his own testimony.<sup>15</sup>

In its Opposition, Enforcement states that Kolta wants a bifurcated hearing solely to accommodate his "unspecified and unsupported interest not to travel to New York."<sup>16</sup> Enforcement notes that disciplinary hearings are typically held in one location. In this case, it argues that bifurcation would affect how Enforcement presents its case, including in particular the order it presents witness testimony, and burden hearing participants. It also argues it would involve additional travel expenses and other costs associated with presenting its case in two locations.<sup>17</sup> Finally, Enforcement argues that FINRA Rule 9232(c), listing factors for the designation of a Primary Regional Committee for a disciplinary proceeding, militates in favor of a hearing in New York because most customers are located nearby, and Kolta's alleged misconduct occurred while he worked there.<sup>18</sup> Enforcement requests that, should I find that New York is not the proper hearing venue, the entire hearing be held in Boca Raton, rather than have a bifurcated hearing.<sup>19</sup>

### **III. The Hearing Will Take Place in Boca Raton, Florida**

I find that Boca Raton, where FINRA's District Office is located, is the appropriate hearing venue. I based the initial decision to designate New York City as the hearing venue on the probability that a significant proportion of the 16 customers would testify in person. That turns out not to be the case. Only three customers have indicated to Enforcement that they will appear in person to give testimony. And there is no certainty that all three will testify in person.

Although in-person testimony is favored in FINRA's disciplinary proceedings, I find that holding the hearing in New York City to accommodate three customers (and perhaps Kolta's former assistant) is by itself an insufficient basis to have the hearing there. Hearing panels have

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<sup>13</sup> Mot. 1.

<sup>14</sup> Mot. 2.

<sup>15</sup> One other Enforcement witness is in Florida besides Kolta. Enforcement's investigator is based at FINRA's District Office in Boca Raton. Opp. 5.

<sup>16</sup> Opp. 5.

<sup>17</sup> Opp. 3.

<sup>18</sup> Opp. 4-5.

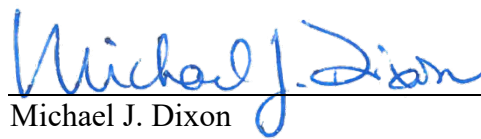
<sup>19</sup> Opp. 5 n.7.

frequently received witness testimony via telephone and more recently via videoconference. I also find that even though Kolta's alleged misconduct occurred while he worked in New York City, that, too, is not a sufficient consideration in this case to justify holding the hearing there.<sup>20</sup>

#### IV. Conclusion

For the foregoing reasons, I **GRANT** the Motion. The hearing in this disciplinary proceeding will be held February 5 through 9 and 12 through 16, 2024 at FINRA's District Office in Boca Raton, Florida, or at a nearby location.

**SO ORDERED.**



Michael J. Dixon  
Hearing Officer

Dated: October 31, 2023

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<sup>20</sup> As Enforcement notes, Rule 9232(c) is applicable to the designation of the Primary Regional Committee for the disciplinary proceeding and not to the selection of the hearing location.

This Order does not foreclose Enforcement from proposing, and the parties from agreeing to, a reasonable schedule to conduct some portion of the hearing in New York City.