

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEK SECURITIES CORP.
(CRD No. 33135),

and

CHARLES FREDERIK LEK
(CRD No. 4672129),

Respondents.

Disciplinary Proceeding
No. 2021071137001

Hearing Officer—RES

**ORDER DEFERRING RULING ON
LEK SECURITIES CORP. AND CHARLES FREDERIK LEK'S
MOTION *IN LIMINE* TO EXCLUDE CERTAIN EVIDENCE**

I. Introduction

FINRA's Department of Enforcement filed a six-count Complaint against Respondents Lek Securities Corporation ("Lek Securities") and Charles Frederik Lek ("Lek"). The Complaint alleges three general categories of conduct in violation of FINRA Rules and federal securities laws and regulations. First, Respondents allegedly violated the terms of an Order Accepting Offer of Settlement with FINRA ("Order Accepting Settlement") by failing to immediately implement a business line suspension, failing to implement the recommendations of an Independent Consultant, and making false certifications and representations to FINRA to the effect that they had complied with the Independent Consultant's recommendations.¹ Second, Respondents failed to establish, implement, and maintain a reasonable anti-money laundering ("AML") program, and failed to supervise Lek Securities' microcap securities business.² Third, Respondents willfully failed to retain books and records of the business when they allowed registered representatives at Lek Securities to use unauthorized electronic means of

¹ Complaint ("Compl.") ¶¶ 1-2.

² Compl. ¶¶ 4-7.

communication with each other and firm customers that the firm did not save in its electronic storage systems.³

In their Answer, Respondents deny Enforcement's factual allegations and deny violating FINRA Rules and federal securities laws and regulations. In an affirmative defense, Respondents contend they conducted themselves in a commercially reasonable manner consistent with all applicable laws, rules, and regulations.⁴ Respondents dispute that the conduct alleged in the Complaint violated such laws, rules, or regulations.⁵ Respondents had supervisory procedures in place and used these procedures to prevent unauthorized communications.⁶

II. Respondents' Motion *In Limine* and Enforcement's Opposition

The three-week hearing in this disciplinary proceeding is scheduled to begin July 24 and end August 10, 2023. The parties filed and served their pre-hearing submissions, including pre-hearing briefs, exhibit lists, and witness lists. Following the exchange of pre-hearing submissions, Respondents filed a motion *in limine* ("Motion") seeking to exclude the introduction of certain evidence from the hearing.⁷ Respondents request that the Hearing Panel⁸ issue an order precluding:

- Evidence of the underlying facts of an earlier disciplinary proceeding against Lek Securities and its-then Chief Executive Officer, Samuel Lek, under Rules 403 and 404(b) of the Federal Rules of Evidence.
- Evidence relating to the Final Report of Bradley L. Mirkin, the Independent Consultant.
- Evidence relating to securities or customers not specified in the Complaint.
- Use of transcripts from investigations in other matters taken after the deadline for Enforcement to issue post-Complaint FINRA Rule 8210 requests.⁹

In their Motion, Respondents contend that allegations in the earlier proceeding are not relevant to this pending proceeding because of a change in Lek Securities' management, and

³ Compl. ¶ 8.

⁴ Answer ("Ans.") 29 (Fifth Affirmative Defense).

⁵ Ans. 29 (Fourth Affirmative Defense).

⁶ Ans. 28 (Second Affirmative Defense).

⁷ Motion ("Mot.") 1.

⁸ Respondents address their Motion to "the Hearing Panel." Yet, as the Hearing Officer, I have the power to resolve all procedural and evidentiary matters and other non-dispositive motions, without involving the other members of the Hearing Panel. FINRA Rule 9235(a)(4).

⁹ Mot. 1.

object that such allegations are more prejudicial than probative because the firm settled Enforcement's charges without an admission of a violation.¹⁰ The allegations have no probative value because they were not proved before a fact-finding body.¹¹ Respondents object to the Final Report of the Independent Consultant because it is hearsay that Enforcement seeks to admit to prove the truth of the matters asserted: that Lek Securities fell short in implementing the recommendations of the Independent Consultant.¹² Further, Respondents complain that evidence relating to securities or customers not specified in the Complaint is prejudicial because it amounts to litigation by surprise.¹³

Enforcement filed an Opposition ("Opposition") to Respondents' Motion. In its Opposition, Enforcement contends that the facts about Lek Securities' earlier settlement for AML violations relating to microcap securities is relevant in this pending proceeding, which concerns the firm's compliance with the terms of that settlement, including the requirement for improvements to its AML and supervisory systems.¹⁴ The earlier proceeding, the Order Accepting Settlement, and this pending proceeding are intertwined, and the details of the earlier proceeding are probative for the Hearing Panel to understand and rule in the pending proceeding.¹⁵ The FINRA Sanction Guidelines recommend that the adjudicators consider a member firm's disciplinary history (such as the Order Accepting Settlement) in deciding sanctions.¹⁶ Further, Enforcement argues I should overrule Respondent's objections to the Final Report of the Independent Consultant because hearsay is routinely admitted in FINRA disciplinary hearings, and the Final Report is probative and reliable.¹⁷ As for evidence of securities or customers not specified in the Complaint, Respondents have been given adequate notice of the allegedly violative conduct in their AML and supervisory systems relating to microcap securities, and the proffered evidence gives further detail of such conduct.¹⁸

III. 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."¹⁹ The Hearing Officer has broad discretion to admit or reject evidence on grounds

¹⁰ Mot. 2.

¹¹ Mot. 4.

¹² Mot. 5.

¹³ Mot. 3.

¹⁴ Opposition ("Opp.") 1.

¹⁵ Opp. 4.

¹⁶ Opp. 5.

¹⁷ Opp. 6.

¹⁸ Opp. 2.

¹⁹ FINRA Rule 9263(a).

of relevance or any of the other grounds in FINRA Rule 9263.²⁰ Rule 401 of the Federal Rules of Evidence—which does not govern FINRA proceedings but may be instructive—defines evidence as relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”²¹ The standard of relevance in the Federal Rules of Evidence is not high.²² Rule 403 provides for the exclusion of even relevant evidence if its probative value is substantially outweighed by one or more of the following specified factors:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.²³

FINRA Hearing Officers generally disfavor motions *in limine* seeking to exclude evidence and will grant such motions only if the challenged evidence is inadmissible for any purpose.²⁴ The Hearing Officer is almost always better situated in the actual hearing to assess the value and utility of evidence.²⁵ Thus, I will defer ruling on Respondents’ Motion until the hearing. I do not know what the testimony of Enforcement’s witnesses will be, and the challenged evidence may be needed by both sides in the context of such testimony.

²⁰ OHO Order 22-13 (2019061528001) (July 14, 2022), at 2, <https://www.finra.org/sites/default/files/2022-08/22-13-Order-Denying-the-Parties-Motions-in-Limine.pdf>.

²¹ Fed. R. Evid. 401; *accord*, OHO Order 20-10 (2017055164001) (Aug. 5, 2020), at 2, https://www.finra.org/sites/default/files/2020-10/OHO_Order_20-10_2017055164001.pdf.

²² OHO Order 16-04 (2012033393401) (Feb. 3, 2016), at 2, https://www.finra.org/sites/default/files/OHO_Order16-04_2012033393401_0.pdf.

²³ Fed. R. Evid. 403.

²⁴ OHO Order 22-13, at 3.

²⁵ OHO Order 16-04, at 2.

For these reasons, I **DEFER RULING** on Respondents' Motion *in limine* to exclude certain evidence.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Richard E. Simpson", is written over a horizontal line.

Richard E. Simpson
Hearing Officer

Dated: July 17, 2023

Copies to:

Ralph A. Siciliano, Esq. (via email)
Adam F. Felsenstein, Esq. (via email)
Andrew L. Dubin, Esq. (via email)
Lillianna R. Iorfino, Esq. (via email)
Gregory R. Firehock, Esq. (via email)
David Monachino, Esq. (via email)
Mark S. Geiger, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)