

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2009017798201

Hearing Officer—RSH

ORDER DENYING RESPONDENT'S MOTION FOR STAY OF HEARING

On August 25, 2011, Respondent filed a motion requesting that the hearing, currently scheduled to take place November 14-18, 2011, be postponed. Respondent states that, in connection with its investigation of Respondent, the Suffolk County District Attorney's Office ("DA") seized Respondent's computer, which contained "all of his files." In July 2011, the DA filed a criminal complaint against Respondent based upon the same transactions that are at issue in FINRA's enforcement action. Respondent requests that the hearing be stayed "until his criminal complaint is adjudicated," or "for six months from the current hearing dates during which time he is hopeful of getting his material back from the DA." Respondent argues that unless the hearing is stayed, he faces the "draconian choice of testifying in this action and exposing himself to criminal liability, or asserting his Fifth Amendment privilege against self-incrimination and risking certain guilt in [the FINRA] action."

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-08 (2009017798201).

Enforcement, arguing that Respondent has failed to provide good cause to stay the hearing, opposes Respondent's motion. Enforcement's Complaint, which was filed on September 14, 2010, alleges that Respondent made unsuitable sales of unregistered securities to a non-profit animal shelter, refused to process the shelter's sell orders, and sold securities away from his firm to the shelter and nine other investors. Enforcement argues that the allegations against Respondent are serious, the case will have been pending for over one year by the time of the hearing, and the investing public is at risk from Respondent's activities.

FINRA Rule 9222(b) permits the postponement of a hearing, upon "good cause shown...for a reasonable period of time." Further, pursuant to Rule 9222(b)(2), a Hearing Officer may not postpone a hearing or grant extensions of time in excess of 28 days, without providing reasons why a longer period is necessary. The Rule "primarily is intended to ensure prompt resolution of [FINRA]'s disciplinary proceedings, which is necessary to enable [FINRA] to carry out its regulatory mandate and fulfill its responsibilities in protecting the public interest."¹

Rule 9222(b)(1) sets forth five factors for the Hearing Officer to consider in determining whether or not to grant a requested continuance: (a) the length of the proceeding to date; (b) the number of postponements, adjournments or extensions already granted; (c) the state 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.

After considering the five relevant factors, I conclude that Respondent has failed to provide good cause for postponing the hearing. The proceeding has now been pending almost one year, and the hearing, which has already been postponed once, is now 14 months

¹ See OHO Order 06-28 (CLI050007) (Mar. 24, 2006).

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after the date the Complaint was filed. The hearing is approximately two months away, and the parties’ pre-hearing submissions are due in the next week. Respondent’s alleged violations involve customer harm, and if proven, would indicate that he is a threat to the investing public. There is no assurance that Respondent’s criminal case will be concluded within the next eight months. Respondent’s claim that the DA’s seizure of his computer prevents him from defending himself is vague and unsubstantiated—he does not state what documents needed for his defense were taken, nor does he state whether he has asked the criminal authorities for any of the documents. Further, as Enforcement notes, the criminal action was filed against Respondent well after discovery ended in this proceeding, and Respondent has all of the documents Enforcement intends to use at the hearing.

Finally, it is well established that different regulatory agencies may simultaneously pursue parallel civil and criminal proceedings, even if they arise from the same facts.² In the securities industry, dual or parallel proceedings are not uncommon. FINRA’s “disciplinary and regulatory function coexists with other forums of redress, whether they be governmental or judicial, and [FINRA]’s process does not stop when another entity’s process begins.”³ Indeed, protection of the securities industry and members of the investing public often requires prompt action that cannot await the outcome of grand jury investigations and criminal prosecutions.⁴

² *United States v. Kordel*, 397 U.S. 1, 11 (1970); OHO Order 98-31 (C06980015) (Oct. 23, 1998); OHO Order 97-13 (C05970037) (Dec. 15, 1997).

³ *Market Surveillance Committee v. Wakefield Financial Corp.*, 1992 NASD Discip. LEXIS 124, at *36 (NBBC May 7, 1992) (finding no unfair prejudice to the respondents as a result of the hearing panel’s refusal to stay the disciplinary proceeding pending the outcome of criminal proceedings).

⁴ *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1377 (D.C. Cir. 1980).

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Because Respondent has failed to show good cause to postpone the hearing, his motion is denied.

SO ORDERED.

Rochelle S. Hall
Hearing Officer

Dated: September 7, 2011