

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID WILLIAM HUFF
(CRD No. 4423458),

Respondent.

Disciplinary Proceeding
No. 2014042059701

Hearing Officer — MAD

**ORDER DENYING RESPONDENT’S MOTION FOR PERMISSION
TO OFFER EXPERT TESTIMONY**

I. Introduction

The Complaint charges Respondent David William Huff (“Respondent”) with two causes of action. The first cause of action alleges that Respondent willfully failed to timely amend his Form U4 to disclose a bankruptcy in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. The second cause of action alleges that Respondent made false statements to his employer when completing his annual compliance attestation in violation of FINRA Rule 2010.

On February 3, 2017, Respondent moved for leave to offer the expert testimony of John Maine and Charles Stanley. The Department of Enforcement (“Enforcement”) opposed the motion on February 22, 2017. For the reasons below, the motion is denied.

II. Respondent’s Motion and Enforcement’s Opposition

Respondent requests leave to allow Maine and Stanley to testify concerning the potential effects of a finding of willfulness in connection with the first cause of action. Regarding Maine, Respondent seeks:

[T]o introduce expert testimony from John Maine on the effect of a “willful” violation (i.e., statutory disqualification) and the requirement of a prospective new employer to file a Form MC-400 application on employability in the current market. Mr. Maine will testify that, in the current market, an associated person who is statutorily disqualified and

thus requiring the filing of a Form MC-400 will not be able to obtain employment with a reputable FINRA member.¹

Regarding Stanley, Respondent seeks:

[T]o introduce expert testimony from Dr. Charles Stanley on the potential adverse effect of a willful violation and statutory disqualification on his AICPA [American Institute of Certified Public Accountants] membership. [Stanley] will testify about the AICPA's response to a statutory disqualification finding in this proceeding, and the likelihood that such a finding would also cause Mr. Huff to be dismissed from the AICPA under AICPA Rule 501.²

Enforcement objects to the proposed expert testimony on the ground that it is neither relevant nor material to whether Respondent committed the acts alleged in the Complaint.³

III. Discussion

Hearing Officers have broad discretion to accept or reject expert testimony if the expert is qualified to address the proposed topics and the evidence meets the general standard for admissibility set forth in FINRA Rule 9263.⁴ While the Federal Rules of Evidence are not applicable to FINRA proceedings, those rules and the case law applying them can provide guidance on the issue of expert testimony.⁵ Rule 702 of the Federal Rules of Evidence specifies that a witness who is "qualified as an expert by knowledge, skill, experience, training, or education" may give opinion testimony if his or her "specialized knowledge will help the trier of fact" and the testimony meets certain measures of reliability. "In short, expert testimony is admissible only if it is both relevant and reliable."⁶ The overarching and critical factor is whether

¹ Resp't's Mot. at 4.

² *Id.* at 5.

³ Dep't of Enforcement's Opp'n at 3. Enforcement also argued that Respondent failed to comply with the requirements in the Case Management and Scheduling Order ("Scheduling Order") and that his motion was procedurally defective. *Id.* at 1-2, 5-7. Although Respondent may not have fully complied with the Scheduling Order, the Hearing Officer addresses the merits of his motion.

⁴ See OHO Order 12-01 (2009018771602) (Mar. 14, 2012), <http://www.finra.org/sites/default/files/OHODDecision/p126068.pdf>; *Dep't of Enforcement v. Fiero*, No. CAF980002, 2002 NASD Discip. LEXIS 16, at *89-90 (NAC Oct. 28, 2002).

⁵ See OHO Order 11-04 (2009017798201) (Mar. 24, 2011), <http://www.finra.org/sites/default/files/OHODDecision/p123470.pdf>; FINRA Rule 9145(a) (specifying that the Federal Rules of Evidence do not apply in FINRA disciplinary proceedings).

⁶ *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002).

the proposed testimony would be helpful to the Hearing Panel.⁷ It is the proponent's burden to show that the expert's testimony satisfies the conditions for admission.⁸

In this case, Respondent has failed to satisfy that burden. The issues in this case do not require a detailed examination of unusual rules or statutes, but rather an assessment of Respondent's compliance with FINRA by-laws and rules governing required disclosures. If the Hearing Panel determines that Respondent did not make the required disclosures, it must also determine if Respondent's actions were willful. The possible future effect of any willfulness finding is not relevant to this proceeding.⁹ In addition, because Respondent's proposed expert testimony involves the possible future effect of a willfulness finding, it amounts to speculation, which is not relevant.

IV. Order

Respondent's motion for permission to offer expert testimony of Maine and Stanley is DENIED.

SO ORDERED.

Maureen A. Delaney
Hearing Officer

Dated: February 24, 2017

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⁷ See OHO Order 12-01.

⁸ See OHO Order 12-01.

⁹ See *Dep 't of Enforcement v. Michael Earl McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at *24 (NAC July 27, 2015) (stating any policy arguments related to the fairness of statutory disqualification and any subsequent FINRA proceeding related to that disqualification are not relevant).