

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN D. SULLIVAN
(CRD No. 2926996),

Respondent.

Disciplinary Proceeding
No. 2020066257302

Hearing Officer– DRS

**ORDER GRANTING ENFORCEMENT’S OBJECTION TO
RESPONDENT’S PROPOSED WITNESSES**

I. Introduction

The hearing in this disciplinary proceeding is scheduled for June 20–21, 2024. On February 16, 2024, Respondent Sullivan filed a witness list containing the names of 20 persons.¹ On March 22, 2024, Enforcement filed objections to all of Sullivan’s proposed witnesses except Grace McAllister, whom Enforcement intends to call as a witness. Enforcement objected to the 19 witnesses because Sullivan failed to include their occupations, addresses, and a brief summary of their expected testimony as required by the Case Management and Scheduling Order (“CMSO”). Enforcement also objected on additional grounds specific to each particular witness. Depending on the witness, those other grounds included, among others, (1) relevance; (2) materiality; (3) repetitiousness; (4) lack of jurisdiction to compel the witness’s testimony; and (5) undue burdensomeness, given where the witness resides.

As explained below, I grant Enforcement’s objection to the 19 witnesses based on Sullivan’s non-compliance with the CMSO.

¹ Sullivan listed the following proposed witnesses: Christopher Colletti; Amy Moshö; Robert Goerke; Matthew Minerva; Grace McAllister; Meghan Ferguson; Victor Sosa; Gina Petrocelli; Robert Lawner; Riaz Jivraj; Greg Lawrence; David Gehn; Jon Stansfield; Peter Hughes; Theodore Houdek; Brian Aukes; Belma Mujdzic; Justin Chretien; Danielle Derrick; and David Henry.

II. Discussion

Consistent with the authority granted to Hearing Officers under FINRA Rule 9242(a)(4),² the CMSO ordered each party to submit a “list of witnesses who will testify on its behalf” that includes their “full name, home city and state, occupation, and a summary of the substance and scope of the witness’s anticipated testimony.”³ The filing deadline for the list was March 11, 2024.⁴ As noted above, Sullivan filed his list on February 16, 2024, well before the deadline.

Sullivan listed the names of the witnesses but included none of the other required information. I brought Sullivan’s non-compliance to his attention at a pre-hearing conference on March 7, 2024:

The witness list does not comply with the requirements of a witness list as set forth in the case management and scheduling order. There needs to be information, for example, what the subject matter of the witness’ testimony is going to be and other requirements set forth in the case management and scheduling order. . . . I reference the case management and scheduling order containing language about the requirements of the witness list that is on page 12 of the case management and scheduling order. Among other things, there has to be an explanation of the summary of the substance and scope of the witness’ anticipated testimony. That has not been provided with a list but, again, it’s not due until March 11th, so I wanted to say something ahead of time.⁵

Nevertheless, Sullivan has not cured or attempted to cure the omissions. This is especially troubling because after he filed the witness list—and even after the pre-hearing conference—I reminded him several times that he must adhere to the filing requirements.⁶ I also rejected two of his filings for non-compliance.⁷

Finally, the list’s length and omissions are problematic. The CMSO required the parties to identify the witnesses “who will testify.” The list, however, did not comply with this

² This provision authorizes the Hearing Officer to require the parties to furnish “a list of witnesses who shall testify on a Party’s behalf, including the witnesses’ names, occupations, addresses, and a brief summary of their expected testimony.”

³ CMSO 11–12, §VII.

⁴ CMSO 4, §II.

⁵ Transcript of March 7, 2024 Pre-Hearing Conference 27–28.

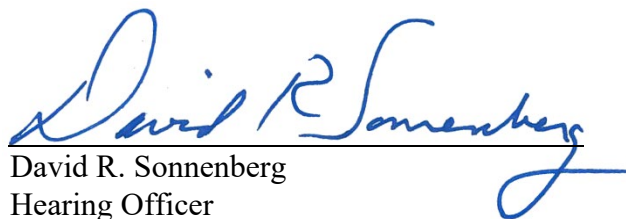
⁶ See Supplemental Order Regarding Denial of Respondent’s Motion for Continuance 1 n.3 (Apr. 5, 2024) (“I again remind Sullivan that if he fails to comply with . . . the filing requirements in the CMSO, I may reject any such non-compliant filing); Order Denying, Without Prejudice, Respondent’s Motion Requesting and Reviewing Order Denying Continuance Based on Extraordinary Medical Conditions 2 n.1 (Mar. 29, 2024); Order Rejecting Two Filings by Respondent (Mar. 8, 2024); Order Overruling Objection 1 n.1 (Feb. 16, 2024);

⁷ See Order Rejecting Two Filings by Respondent (Mar. 8, 2024).

requirement; given that the hearing is scheduled for only two days, Sullivan cannot reasonably intend to call more than a few of the 20 persons listed. Moreover, the length and omissions, combined, place Enforcement in the unfair position of potentially trying to contact, interview, and prepare to cross examine 20 witnesses without Sullivan having provided their contact information; without Enforcement knowing what Sullivan expects them to testify about; and without Enforcement knowing which witnesses, if any, he is likely to call to testify.

Accordingly, for these reasons, I **GRANT** the objection based on noncompliance with the CMSO and **PRECLUDE** the 19 witnesses from testifying. In light of this ruling, it is not necessary for me to address Enforcement's witness-specific additional objections.

SO ORDERED.


David R. Sonnenberg
Hearing Officer

Dated: April 30, 2024

Copies to:

John D. Sullivan (via email)
Mark Fernandez, Esq. (via email)
Meghan Ferguson, Esq. (via email)
Matthew Minerva, Esq. (via email)
Cristina Laramée Souto, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)