

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH C. BARON  
(CRD No. 3231494),

Respondent.

Disciplinary Proceeding  
No. 2022073772701

Hearing Officer–MC

**ORDER DENYING RESPONDENT’S MOTION PURSUANT TO FINRA RULE 9251**

**I. Introduction**

The Complaint filed in this proceeding charges Respondent Keith C. Baron in five causes of action stemming from misrepresentations he allegedly made to two of his customers to invest in a company (“Company A”) with which he had a consulting agreement. The Complaint alleges that Baron: (1) made material misrepresentations and omissions to the customers in violation of FINRA Rule 2010; (2) failed to disclose outside business activities in violation of FINRA Rules 3270 and 2010; (3) participated in a private securities transaction without written notice to his firm, in violation of FINRA Rules 3280 and 2010; (4) made misrepresentations to his employer firm in violation of FINRA Rule 2010; and (5) provided false and misleading written statements in response to FINRA’s requests for information, in violation of FINRA Rules 8210 and 2010. Baron’s Answer denies the allegations.

On April 18, 2024, Baron filed a Motion Pursuant to FINRA Rule 9251 (“Motion”) seeking to compel the Department of Enforcement to produce exculpatory evidence. On May 7, Enforcement filed an Opposition to Respondent’s FINRA Rule 9251 Motion (“Opposition”) and attached a supporting Declaration signed under oath (“Declaration”) by Enforcement counsel Gregory R. Firehock.

**II. Discussion**

**A. Baron’s Motion**

The Motion asks for an order compelling Enforcement to produce “a single class of documents and information” that it describes as: “Relative to (a) Baron and/or (b) Company A, all communications between and among FINRA and (a) the Securities and Exchange Commission (“SEC”); (b) the Department of Justice (“DOJ”); and (c) New York State

Department of Financial Services (“DFS”).<sup>1</sup> Baron claims that the information he seeks qualifies as “material exculpatory evidence” that Enforcement must disclose under FINRA Rule 9251(b)(3).<sup>2</sup>

Justifying his request, Baron represents that in 2022 and 2023, his counsel “was in regular contact with” staff attorneys and prosecutors representing the SEC and DOJ and provided them with “extensive document production” related to a “Parallel Criminal Investigation.”<sup>3</sup> According to Baron, the Parallel Criminal Investigation “appears to have ended without regulatory or criminal charges.”<sup>4</sup> Baron represents, without explanation, that “[t]ypically” under circumstances such as these, “all parallel regulatory and self-regulatory matters are stayed” to “protect the DOJ’s criminal prosecution,” because of “the wide divide in permissible discovery under the Federal Rules of Criminal Procedure as opposed to the Federal Rules of Civil Procedure and FINRA Rules.”<sup>5</sup> Baron concludes by claiming that under these facts, “there is good cause to believe” that Enforcement possesses exculpatory evidence “relative to the DOJ’s and SEC’s apparent decision to terminate their investigations without charges.”<sup>6</sup>

In sum, Baron’s argument is that since the federal criminal investigations against him have apparently ended, “there is good cause to believe” that Enforcement possesses exculpatory evidence “relative to” the SEC and DOJ’s decision to stop their investigations.<sup>7</sup>

## **B. Enforcement’s Opposition**

Enforcement acknowledges its obligation under FINRA Rule 9251(b)(3) to disclose to Baron any withheld documents containing material exculpatory evidence.<sup>8</sup> Enforcement recognizes that FINRA precedents have applied this rule consistently with the principles regarding the prosecutorial obligation to disclose exculpatory information established by the United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963).<sup>9</sup> Enforcement also understands that material exculpatory evidence in FINRA proceedings is defined expansively to include all evidence that might be considered favorable to a respondent’s case, whether pertaining to liability or sanctions, to provide a respondent with a fair hearing.<sup>10</sup>

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<sup>1</sup> Motion ¶ 8.

<sup>2</sup> *Id.* ¶ 9.

<sup>3</sup> *Id.* ¶ 10.

<sup>4</sup> *Id.* ¶ 11.

<sup>5</sup> *Id.* ¶ 12.

<sup>6</sup> *Id.* ¶ 13.

<sup>7</sup> *Id.*

<sup>8</sup> Opposition at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

In his sworn Declaration, Firehock represents that Enforcement fulfilled its discovery obligations in its initial document production when it provided Respondent with all documents generated in the investigations leading to the Complaint.<sup>11</sup> At the same time, Enforcement also produced all documents it received from other regulators and law enforcement personnel.<sup>12</sup> Further, Firehock states under oath that he and other Enforcement personnel reviewed all documents “that could be withheld from production pursuant to FINRA Rules 9251(b)(1) or 9251(b)(2)” to determine if any withheld documents contain material exculpatory evidence.<sup>13</sup> Finally, the Declaration attests that “Enforcement did not withhold any material exculpatory evidence from the production.”<sup>14</sup>

### III. Conclusion

Baron’s assertion that there is good cause to believe Enforcement has withheld material exculpatory evidence is just that—an assertion based on a speculative assumption. He does not provide any evidence to support it. Despite his counsel’s regular contact for two years with federal law enforcement officials, he provides no description of what sort of exculpatory facts are contained in the documents he seeks. Baron does not explain how the federal authorities’ apparent decision not to proceed with their criminal investigations provided Enforcement with exculpatory evidence relating to the Complaint charging him with violations of FINRA Rules 3270, 3280, 8210, and 2010.

To obtain an order compelling Enforcement to produce documents, a respondent bears the burden of persuasion to show that a basis exists for issuing the order.<sup>15</sup> Here, to require Enforcement to produce “all communications between and among FINRA, the SEC, DOJ, and DFS” relating to him and Company A, Baron’s burden requires him to make a “plausible showing” that these communications contain material exculpatory evidence, “information that is both favorable and material to the respondent’s defense.”<sup>16</sup> Baron has not met this burden.

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<sup>11</sup> Declaration ¶¶ 5, 6, 8.

<sup>12</sup> *Id.* ¶ 7.

<sup>13</sup> *Id.* ¶ 9.


<sup>14</sup> *Id.* ¶ 10.

<sup>15</sup> OHO Order 15-05 (2012034936005) (Jan. 27, 2015), at 3, available at [http://www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005\\_0\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005_0_0_0.pdf), citing *In re Jett*, 1996 SEC LEXIS 1683 (June 17, 1996) and OHO Order 12-04 (2010023367001) (Aug. 30, 2012), at 3, available at [https://www.finra.org/sites/default/files/OHODecision/p229424\\_0\\_0\\_0.pdf](https://www.finra.org/sites/default/files/OHODecision/p229424_0_0_0.pdf) (it is respondent’s burden to make a plausible showing that Enforcement’s files contain material exculpatory information).

<sup>16</sup> *Jett*, 1996 SEC LEXIS 1683, at \*2 (citing *Pennsylvania v. Ritchie*, 480 U.S. 39, at 58 n.15 (1987)).

For these reasons, the Motion is **DENIED**.

**SO ORDERED.**



Matthew Campbell  
Hearing Officer

Dated: May 15, 2024

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