

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KIM K. KOPACKA
(CRD No. 3153396),

and

BETH A. DEBOUVRE
(CRD No. 3176483),

Respondents.

Disciplinary Proceeding
No. 2016050137503

Hearing Officer–LOM

**ORDER DENYING RESPONDENTS' MOTION
FOR MORE DEFINITE STATEMENT**

A. Background

FINRA's Department of Enforcement filed a Complaint on March 25, 2019, alleging that Respondents Kim K. Kopacka and Beth A. DeBouvre violated FINRA and NASD Rules and By-Laws in connection with the activities of a barred and statutorily disqualified person. In the First Cause of Action, the Complaint alleges that the Respondents violated FINRA Rule 2010 and NASD Rule 2110 by permitting and enabling a statutorily disqualified person to conduct a securities business. The Second Cause of Action alleges that Respondents violated Article III, Section 3(b) of the NASD and FINRA By-laws, FINRA Rules 8311 and 2010, and NASD Rule 2110 and NASD-IM-8310-1, by permitting a statutorily disqualified person to associate with two member firms. The Third Cause of Action alleges that Respondents violated NASD Rules 1031 and 2110, and FINRA Rule 2010, by permitting an unregistered person to act in a registered capacity.

The allegations involve Ms. Kopacka's husband, who previously settled a FINRA disciplinary proceeding against him by agreeing to be barred from association with any NASD (now FINRA) member firm in any capacity. The Complaint alleges that Ms. Kopacka entered the securities business at roughly the same time that Mr. Kopacka settled the claims against him, and that she and he then worked in the same office space under similar business names, which made it appear to customers that nothing had changed with her husband's securities business.

According to the Complaint, Ms Kopacka hired DeBouvre to act as Ms. Kopacka's supervisor and manager at the office where Ms. Kopacka and her husband worked. The Complaint charges that both Ms. Kopacka and DeBouvre engaged in actions that enabled Ms. Kopacka's husband to meet with customers, make recommendations, provide investment advice, and, in effect, act as an associated person in a registered capacity, even though he was not.

Respondents, who are not represented by counsel, each filed a motion for a 90-day extension of the deadline to file an Answer. The parties reached agreement on, and requested, a 30-day extension, which I granted on April 15, 2019.

On May 22, 2019, Respondents jointly filed their Answer. The same day they also filed Respondents' Motion for More Definite Statement (the "Motion"). Enforcement filed the Department of Enforcement's Opposition to Respondents' Motion for More Definite Statement (the "Opposition") on May 30, 2019.

After reviewing the Complaint, the Answer, and the parties' submissions, for the reasons explained below, the Motion is DENIED.

B. Discussion

FINRA Rule 9212(a) requires a complaint to "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." The allegations of the complaint should provide "a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense."¹ A complaint that provides such notice need not include evidentiary details.²

FINRA Rule 9215(c) permits a respondent, after reviewing a complaint, to move for a "more definite statement of specified matters of fact or law to be considered or determined" in the matter. Such a motion affords clarification where a complaint is ambiguous, confusing, or lacks sufficient specificity and detail to permit the respondent to defend himself.³ But a motion

¹ OHO Order 16-28 (2014042524301) (Oct. 31, 2016), at 3-4, http://www.finra.org/sites/default/files/OHO_Order16-28_2014042524301_0.pdf (citing *Dist. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NBCC July 28, 1997)).

² OHO Order 09-05 (2008012955301) (Dec. 16, 2009), at 3, <http://www.finra.org/sites/default/files/OHODecisions/p121082.pdf>; OHO Order 05-23 (C050015) (June 7, 2005), at 2, http://www.finra.org/sites/default/files/OHODecision/p014437_0_0.pdf (If a complaint, "taken as a whole, fairly apprises the respondent of the charges and affords the respondent an adequate opportunity to plan a defense, a motion for more definite statement will not lie.").

³ OHO Order 07-28 (2005000323905) (July 2, 2007), at 2, http://www.finra.org/sites/default/files/OHODecision/p037092_0.pdf.

for a more definite statement may not be used as a discovery device.⁴ Nor can it “be used as a discovery tool to force [a Complainant] to reveal its legal theories, trial strategy, or the facts it intends to introduce at the hearing.”⁵

Enforcement argues that the Complaint adequately apprises Respondents of the nature of the charges against them. It asserts that the Complaint describes how Respondents permitted an unregistered person to solicit investments from firm customers and prepared documents that concealed that he was unregistered and barred from the industry.

As Enforcement argues, Respondents’ Motion does not seek to clarify some ambiguity or vagueness in the Complaint that would make it difficult for Respondents to know how to defend themselves. Rather, Respondents seek specific evidence supporting the allegations. For example, they seek “documentation of all meetings where Mr. Kopacka was present and where he supposedly recommended or sold a security.”⁶ Similarly, they seek the “date, time[,] location, who was present, and what was recommended for every transaction where Enforcement claims falsifying documents occurred.”⁷ They seek the same type of details for “every transaction” involved in the claim of “\$40 million in transactions and \$6 million in commissions.”⁸ Finally, they broadly request the “dates, times, location, who was present and purpose of all meetings that were attended by Mr. Kopacka and Respondents.”⁹

Respondents’ Motion is more like a set of interrogatories and document production requests made in civil litigation than a request for clarity in the Complaint. Discovery in a FINRA disciplinary proceeding, however, is governed by FINRA Rules, and those rules do not allow for the use of interrogatories, requests for admissions, document production requests and the like.¹⁰

⁴ OHO Order 18-05 (2014041860801) (Jan. 10, 2018), at 2, http://www.finra.org/sites/default/files/OHO_Order_18-05_2014041860801.pdf; OHO Order 00-06 (C3A990067) (Mar. 10, 2000), at 3, <http://www.finra.org/sites/default/files/OHODecision/p007878.pdf>.

⁵ OHO Order 09-05 (2008012955301), at 2.

⁶ Motion, at 2.

⁷ Motion, at 3.

⁸ Motion, at 3.

⁹ Motion, at 3.

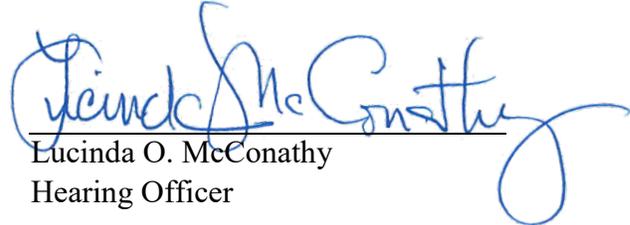
¹⁰ OHO Order 17-10 (2014042524301) (April 11, 2017), at 4 and n.13, http://www.finra.org/sites/default/files/OHO_Order_17-10_2014042524301_0_0.pdf.

Respondents also assert in their Motion that “Enforcement[’]s entire complaint is without merit and should be thrown out.” Motion, at 2. They acknowledge, however, that whether the Complaint has merit or not depends on the “truth and accuracy” of the allegations and “proof of fact and accuracy.” Motion, at 2. The purpose of a hearing is to determine the facts and apply the law to those facts in order to reach a reasoned conclusion regarding the allegations. It is premature at this time to make any assessment regarding the validity of the allegations.

C. Order

Because the Complaint here adequately appraises Respondents of the charges and permits them an opportunity to plan their defense, and the Motion seeks discovery that is not allowed in a FINRA disciplinary proceeding, the Motion is **DENIED**.

SO ORDERED.


Lucinda O. McConathy
Hearing Officer

Dated: June 4, 2019

Copies to:

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