

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING

File No. 3-16155

In the Matter of

Nicholas B. Rowe,

Respondent.

RESPONDENT'S
CONSOLIDATED REPLY TO DIVISION'S CONSOLIDATED OPPOSITION TO
RESPONDENT'S MOTIONS

Nicholas Rowe ("Respondent") replies to the Division's Consolidated Opposition to Respondent's Motions.

Opposition to Respondent's Motion to Clarify Scope of Trial

The Consent order provided the basis for this proceeding. In its Order Denying Motion for Summary Affirmance and Remanding for Additional Proceedings, this Court stated "Statutory prerequisites for proceeding based on Advisers Act Section 203(f), incorporating by reference Section 203(e)(9), authorizes the Commission to impose certain sanctions on a person who "is subject to any final order of a State securities commission (or any agency . . . performing like functions)" that "bars such person from engaging in the business of securities" or that is "based on violations of any laws or regulations that prohibit fraudulent, manipulative, or

deceptive conduct," and who, at the time of the alleged misconduct, was associated with an investment adviser."

This Court further stated that "the law judge determined that a collateral bar was in the public interest based on allegations of a state securities regulator that Rowe settled by way of a consent order." However, Respondent had reserved the right to deny allegations in subsequent proceedings, as Respondent did in this proceeding. Because Respondent denied these allegations, the Court stated that it could not "take the allegations in the Consent Order as true in determining an appropriate sanction in the public interest, and the record does not contain enough additional evidence to allow us to make such a determination."

Had Respondent not denied the allegations in the Consent Order, this Court would have implemented a sanction. The Division has noted that this Court stated that it "may admit and consider additional evidence from any relevant source." However, this does not alter the issues and only allows for additional evidence. The allegations contained in the Consent Order are thus the allegations that are being contested in this proceeding.

Opposition to Respondent's Motion in Limine to Remove Witnesses or Exclude Witness's Testimony

In its opposition, the Division states that it wishes to call the named witnesses to rebut Respondent's contention that the FINRA claimants and New Hampshire regulators conspired against him. However, the Division failed to rebut the assertion that these witnesses are expected to testify about the risk involved in their accounts with Respondent. The Division merely claims that Respondent's inability to perform a risk analysis or hire an expert to produce one on the witness's accounts does not provide a basis for excluding their testimony on risk.

The Division expects testimony from the witnesses to include: “Rowe’s knowing and consistent disregard for the witness’s risk tolerance when selecting investment strategies and products.” Without a risk analysis on the witnesses’ accounts, there is no evidence that Respondent ever exceeded the risk tolerance. Thus there is no way that these witnesses can testify to the level of risk that was taken on their accounts.

Further, it is not Respondent’s burden to perform the risk analysis on these witnesses’ accounts. As previously stated, Respondent does not have the information necessary in his possession to perform a risk analysis. The Division is asserting that Respondent knowingly and consistently disregarded these witnesses’ risk tolerance without offering any proof of this. Asking Respondent to gather and analyze the data to respond to this claim is an unfair shift of burden.

Motion to Compel Parties to Produce Subpoenaed Information

The Division has stated that it takes no position on this matter at this time. The Division further requested that the Court grant until January 20, 2016 to file an opposition, if one is filed. Respondent will reply at that time.

Opposition to Respondent’s Motion for Reconsideration of Certain of Respondent’s Subpoenas

The Division stated that this Court previously stated that Respondent’s request for documents involving disputes and controversies “with any person you have had any controversy with” was unreasonable. However, the Court also stated that “Rowe is entitled to gather impeachment material on witnesses who may testify against him” and that “whether these

individuals were involved in such disputes or litigation – and the basis and result of such actions – goes to their credibility in making allegations against Rowe.” The Court further stated that “Rowe has affirmatively identified certain advisers who had claims brought against them, so his contention does not appear to be unsupported.”

The Division stated that “Respondent fails to explain how the disputes he seeks to prove bear on the issues in this hearing.” The Division takes the position that the existence of disputes does not go to the credibility of this witness ([REDACTED]). However, the Court already stated that certain disputes were relevant and went to the credibility of the witness. Respondent merely seeks to include other disputes that he has knowledge of from when the witness told him about the disputes in connection with the same allegations made in this proceeding. The witness made these prior disputes relevant by attempting to use them to get Respondent to settle with the witness. Respondent has advanced reasons as to why the scope of this subpoena should be expanded slightly for one individual and has given specific instances. (See Respondent’s Motion for Reconsideration of Certain of Respondents’ Subpoenas).

Conclusion

For the reasons set forth above, Respondent requests that the court grant Respondent’s Motions to

- a) Clarify Scope of Trial;
- b) In Limine to Remove Witnesses or Exclude Witness’s Testimony; and
- c) for Reconsideration of Certain of Respondent’s Subpoenas.

Respectfully submitted,

N Rowe
/s/ Nicholas Rowe

[REDACTED]

[REDACTED]

Date: January 19, 2016

Certificate of Service

I certify that on January 19, 2016, I caused true and correct copies of the foregoing **Respondent's Motion to Compel Certain Parties to Produce Subpoenaed Information** to be served on the following parties and other persons entitled to notice to the following addresses:

Honorable Jason S. Patil
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/s/ Nicholas Rowe
Nicholas Rowe, Respondent