FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. PETER ORLANDO (CRD No. 1142715), Respondent.	Disciplinary Proceeding No. 2014043863001 Hearing Officer–LOM

ORDER
REQUIRING THE DEPARTMENT OF ENFORCEMENT
TO FILE A SWORN DECLARATION

On May 25, 2018, Respondent Peter Orlando filed and served a motion seeking to compel the Department of Enforcement to produce certain documents. On June 6, 2018, Enforcement filed and served its opposition to that motion.

The motion describes the documents sought as "[a]ll notes and conversations" obtained by FINRA staff from WW, the adult son of Respondent's customer, DW, "concerning how [WW] obtained knowledge that Peter Orlando had a beneficial interest to Mrs. [DW's] property." According to the motion, the complaint against Respondent indicates that DW's family members learned in September 2014 that Respondent had become the beneficiary of DW's bank account, held both a durable Power of Attorney ("POA") and health POA for her, and had otherwise inserted himself into DW's financial affairs.

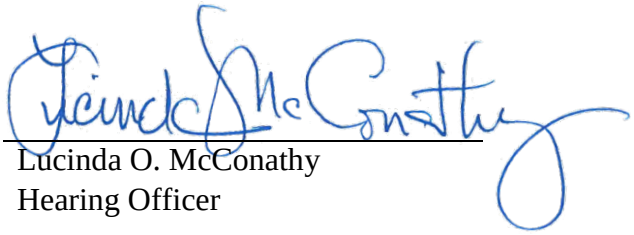
The motion asserts that the son, WW, could only have learned of Respondent's involvement in his mother's financial affairs in one of two ways. If his mother told WW or other family members, then, the motion asserts, that would show that DW had "awareness and agency." If WW learned in some other way about Respondent's involvement in his mother's financial affairs, the motion asserts it would have to be through fraud or a violation of DW's privacy. Respondent claims that this would "call into question" the son's credibility. In seeking to know how DW's son learned of Respondent's involvement, Respondent characterizes the documents sought as "exculpable information necessary" to his defense.

In its opposition to the motion, Enforcement makes several points. First, it asserts that it has no tape recordings or verbatim recitations of any interview with WW. Consequently, FINRA Rule 9253(a)(1) does not apply. Second, it asserts that the interviews of WW by FINRA staff did

not occur in a routine examination or inspection. Rather, Enforcement staff took notes during an investigation in anticipation of litigation. Therefore, FINRA Rule 9253(a)(2) does not apply. Third, Enforcement asserts that the notes of interviews of WW were taken by attorneys or at the direction of attorneys in anticipation of litigation. Enforcement argues that such interview notes constitute attorney work product that Enforcement is permitted to withhold from discovery under FINRA Rule 9251(b)(1)(A).

Enforcement failed, however, to file and serve a sworn declaration to establish the facts asserted in its opposition.[1] I ORDER Enforcement to supplement its opposition by providing a declaration sworn under penalty of perjury to establish the facts relevant to its opposition.

SO ORDERED.



Lucinda O. McConathy
Hearing Officer

Dated: June 12, 2018

Copies to:

Peter Orlando (via email and first-class mail)
Jessica Zetwick-Skryzhynskyy, Esq. (via email and first-class mail)
Carolyn Craig, Esq. (via email)
Jeffrey Pariser, Esq. (via email)

[1] *See*, *e.g.*, OHO Order 16-08 (2014043020901) (Feb. 25, 2106), at 5-23, http://www.finra.org/sites/default/files/OHO-Order-16-08-2014043020901_0_0_0.pdf (sworn declaration under penalty of perjury by Enforcement attorney established facts to show that withheld documents need not be produced); OHO Order 15-05 (2012034936005) (Jan. 27, 2015), at 7-15, http://www.finra.org/sites/default/files/OHO-Order-15-05-ProceedingNo.2012034936005 _0_ 0_ 0_0.pdf (same).

Similarly, *see SEC v. Goldstone*, 301 F.R.D. 593, at *210-14 (D.N.M. 2014) (declarations provided by SEC staff members who took notes at witness interviews established that notes were not a transcript of everything said and that notes reflected SEC staff's opinions as to relevance and significance of responses to staff's questions).