

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADAM J. MAKKAI
(CRD No. 425159),

Respondent.

Disciplinary Proceeding
No. 2018058924502

Hearing Officer–DDM

ORDER GRANTING MOTION FOR POSTPONEMENT

I. Introduction

The hearing is currently scheduled for December 2 through December 4, 2020 by videoconference. In June 2020, the Department of Enforcement filed a one-cause Complaint alleging that Respondent Adam J. Makkai improperly shared commissions with an unregistered person in violation of FINRA Rules 2040 and 2010. The parties agreed upon dates for the hearing, and the dates were incorporated into a Case Management and Scheduling Order (“CMSO”). On September 29, 2020, Joshua P. Miller filed his notice of appearance, joining Dochter Kennedy as attorneys for Makkai.

Makkai now asks for a 40-day postponement of the hearing. In a motion seeking the postponement, Makkai asserts that the Marine Corps recently informed Miller that he must report to active duty on November 16, 2020, for about eight weeks.¹ Enforcement opposes the motion. The parties participated in a pre-hearing conference (“PHC”) to discuss the motion.

For the reasons below, Makkai's motion is granted. The hearing will occur by videoconference from January 12 to January 14, 2021.

¹ Makkai's Motion to Postpone 1. According to Makkai, Miller learned of his impending orders over the weekend of October 31 and November 1, 2020. *Id.* Miller disclosed this news during a pre-hearing conference on Monday, November 2, 2020.

II. Discussion

Under FINRA Rule 9222(b), a Hearing Officer may postpone a hearing for a “reasonable period of time” for good cause shown. While Hearing Officers have broad discretion in deciding whether to grant a postponement,² they may not postpone a hearing for more than 28 days without providing reasons why a longer period is necessary.³

The Rule directs the Hearing Officer to consider five factors when evaluating a request to postpone the start of a hearing:

(A) the length of the proceeding to date; (B) the number of postponements, adjournments, or extensions already granted; (C) the stage of the proceedings at the time of the request; (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (E) such other matters as justice may require.⁴

There is no dispute about two of the factors. There have been no prior postponements of the hearing. And Enforcement does not allege that a postponement of the proceedings against Makkai, who is no longer registered with FINRA, poses a potential harm to the investing public. These two factors support postponement.

The parties disagree about the other factors. As for the length of the proceeding, the case against Makkai has been pending for less than six months. A postponement until January 12, 2021 would lead to a hearing that begins around seven months from the filing of the Complaint. Enforcement points out that a hearing should occur in a case like this within four to six months of the filing of the Complaint. Enforcement is correct. But a 40-day delay in the proceedings is outweighed by the 22 months of investigation that led to the filing of the Complaint. This factor therefore favors postponement. As for the stage of the proceeding, Makkai made his request for postponement less than a month before the start of the hearing. This weighs against postponement, though the event precipitating Makkai’s request was unexpected, and Makkai raised it promptly at a pre-hearing conference.

That leaves the interests of justice. Miller is half of a two-person legal team for Makkai. At the PHC, his co-counsel represented that Makkai retained Miller for his litigation experience, and that Miller would have a substantial role at the hearing. In short, Makkai would be prejudiced if Miller were unable to participate in the hearing. Miller also made clear in the PHC that the Marine Corps might revoke his commission if he ignored the orders.

² *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *20 (Oct. 31, 2018) (“In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance.”) (quoting *Robert J. Prager*, 58 S.E.C. 634, 664 (2005)).

³ FINRA Rule 9222(b)(2).

⁴ FINRA Rule 9222(b)(1)(A)–(E).


On the other hand, Enforcement would experience some hardship from a postponement. Enforcement's lead counsel is booked for a two-week fraud trial starting January 11, 2021. And he joined the case because other Enforcement attorneys at first had a conflict with the hearing date. But Enforcement has five other attorneys of record in the case, including the attorney who conducted the investigation and another attorney who specializes in litigation. Enforcement is therefore better positioned to adjust to a postponement than Makkai would be if Miller were unavailable. On balance, then, the interests of justice favor Makkai's request for a postponement.

Upon careful consideration of the parties' arguments, and balancing the foregoing factors, I conclude that there is good cause to postpone the hearing.

III. Order

Makkai has established good cause for a postponement of the hearing. His motion is GRANTED. The hearing will be held from January 12 – 14, 2021 by videoconference. The Final Pre-Hearing Conference will be held on January 6, 2021 by videoconference at 2:00 p.m. (Eastern Time). All other provisions of the CMSO remain in effect.

SO ORDERED.



Daniel D. McClain
Hearing Officer

Dated: November 13, 2020

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