

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CANTONE RESEARCH INC.
(CRD No. 26314),

ANTHONY J. CANTONE
(CRD No. 1066139),

and

RAYMOND J. DEROBIO
(CRD No. 1092310),

Respondents.

Disciplinary Proceeding
No. 2017055886402

Hearing Officer–LOM

**ORDER GRANTING THE DEPARTMENT OF ENFORCEMENT'S MOTION TO
PRESENT TESTIMONY BY VIDEOCONFERENCE OR TELEPHONE**

The Department of Enforcement filed an unopposed motion to permit ten customer witnesses to testify at the hearing by videoconference or telephone. None of these witnesses are subject FINRA's jurisdiction. Accordingly, they cannot be compelled to appear in person. They are seniors ranging in age from 66 to 92 and many of them live hundreds of miles away from the location of the hearing. Some of them in any case have medical concerns about appearing in person to testify. Although Enforcement does not say it, it appears unlikely that any of these customers would testify at all if they cannot do so by videoconference or telephone.

As Enforcement asserts, telephone testimony is regularly used in FINRA proceedings, and the SEC has repeatedly upheld FINRA's reliance on telephone testimony in reaching its decisions.¹ Videoconference testimony is generally permitted in FINRA proceedings and has

¹See, e.g., *Dep't of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 45, at *18 (NAC Dec. 31, 2013) ("[T]elephone testimony is not uncommon in FINRA proceedings, and the Commission has repeatedly upheld FINRA's reliance on telephone testimony in reaching its decisions."), *appeal dismissed*, 2014 SEC LEXIS 1370 (Apr. 18, 2014). See also *Gerald E. Donnelly*, Exchange Act Release No. 36690, 1996 SEC LEXIS 89 (Jan. 5, 1996) (upholding Hearing Panel determination to hear and credit telephone testimony in FINRA disciplinary

become increasingly common in courts following the COVID-19 pandemic as technology and familiarity with the technology have improved.²

Enforcement represents that it will provide signed declarations from the witnesses who testify by videoconference or telephone stating that their testimony will be truthful. Enforcement also represents it will ensure that the witnesses testifying by videoconference or telephone will have copies of exhibits to be referenced during their testimony.

The Hearing Panel would prefer that the customers testify by videoconference, as would Respondents. Enforcement states, however, that several of the customers have no ability to testify by videoconference. They could only testify by telephone. Enforcement also warns that even those customers who have indicated they could testify by videoconference might encounter technical difficulties or other impediments at the time of their testimony, necessitating that we accept telephone testimony instead.

Accordingly, I **GRANT** Enforcement's unopposed motion. The customers may testify by videoconference or telephone. But to the extent possible, each customer who can testify by videoconference should do so.³ Enforcement should ensure that the necessary technology is in place in the hearing room to enable customers to testify remotely. Enforcement must provide to OHO declarations signed by the witnesses stating that their testimony will be truthful, ensure that

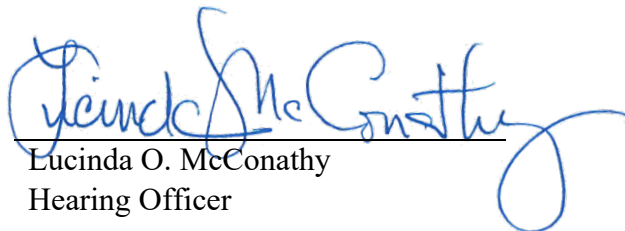
proceeding); *Ronald W. Gibbs*, Exchange Act Release No. 35998, 1995 SEC LEXIS 1824, at *16 (July 20, 1995) (“[T]elephonic testimony frequently is used in NASD disciplinary proceedings, and neither the Commission nor the courts have found the use of such testimony to be unfair.”); OHO Order 18-07 (2014041860801) (May 2, 2018), available at https://www.finra.org/sites/default/files/OHO_Order_18-07_2014041860801.pdf (granting Enforcement's motion to offer customer testimony by telephone). See also FINRA's Response to Comments to SEC regarding Proposed Rule Change to Temporarily Permit Hearings to Be Conducted by Video Conference SR-FINRA-2020-027 (Operative October 1, 2020), available at <https://www.sec.gov/comments/srfinra-2020-027/srfinra2020027-7893032-224256.pdf> (“[T]elephonic testimony and hearings are already explicitly permitted and regularly used in contested FINRA proceedings . . . where credibility determinations are made.”).

² FINRA also stated that remote testimony is “regularly used” and allowing for testimony via video conferencing “is arguably an enhancement to telephonic testimony and hearings, as it provides the parties and adjudicators with simultaneous visual and oral communication . . . provid[ing] adjudicators with the opportunity to assess the credibility of the . . . witnesses consistent with the applicable fair process standards.” FINRA's Response to Comments, SR-FINRA-2020-027, at 6.

³ “[V]ideo conferencing technology is arguably an enhancement to telephone testimony and hearings as it provides the parties and adjudicators with simultaneous visual and oral communication” *Id.*

the witnesses have copies of exhibits to be referenced during their testimony, and arrange for the witnesses to be available during the time when their testimony is anticipated.

SO ORDERED.


Lucinda O. McConathy
Hearing Officer

Dated: February 21, 2023

Copies to:

Heidi E. VonderHeide, Esq. (via email)
Alan Wolper, Esq. (via email)
Robert I. Rabinowitz, Esq. (via email)
Samantha Lesser, Esq. (via email)
Brody Weichbrodt, Esq. (via email)
Noel C. Downey, Esq. (via email)
Kevin Hartzell, Esq. (via email)
Mark Fernandez, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)