BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

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| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>Southeast Investments, N.C., Inc.<br>Charlotte, North Carolina,<br><br>and<br><br>Frank Harmon Black<br>Rock Hill, South Carolina,<br><br>Respondents. | DECISION DISMISSING<br>REMANDED CAUSES OF ACTION<br><br>Complaint No. 2014039285401r<br><br>Dated: June 6, 2025 |

**On remand from the Securities and Exchange Commission. Held, remanded causes of action dismissed.**

**Appearances**

For the Complainant: Jennifer Crawford, Esq., Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondents: Alan M. Wolper, Esq.

## I. Introduction

This matter is before the National Adjudicatory Council ("NAC") on remand from the Securities and Exchange Commission. In a decision dated May 23, 2019, the NAC found that Southeast Investments, N.C., Inc. ("SEI") and Frank Harmon Black ("Black"): (1) provided to FINRA fabricated documents and testified falsely that Black inspected the offices of four former SEI registered representatives (the "Four Representatives"); (2) failed to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures ("WSPs") to ensure the adequate retention and review of business-related emails; and (3) failed to retain certain

business-related emails.[1] The NAC's findings that respondents testified falsely and fabricated documents relied heavily on the Hearing Panel's determination that the Four Representatives testified credibly, at a 2016 hearing, that Black did not inspect their offices. For respondents' false testimony and fabrication of documents, the NAC barred Black and fined SEI $73,000. For respondents' supervisory and email retention failures, the NAC fined respondents a total of $73,500 (payable jointly and severally).

Respondents timely appealed the NAC's decision to the SEC and sought to stay the NAC's bar of Black pending their appeal. The SEC denied respondents' stay request in June 2019, and Black terminated his registrations with SEI shortly thereafter.[2]

On December 7, 2023, the SEC issued a decision (the "SEC Decision") in which it sustained the NAC's findings and sanctions concerning respondents' supervisory and email retention failures.[3] The SEC Decision, however, set aside the NAC's findings and sanctions related to respondents' alleged false testimony and fabrication of documents. The SEC set aside these findings and sanctions because it could not conclude that the Department of Enforcement's untimely production to respondents of certain documents was harmless error. The SEC explained that respondents may have used such documents at the hearing to cross examine the Four Representatives and potentially impeach their testimony. The SEC remanded the matter to FINRA for further proceedings consistent with the SEC Decision.

After considering the facts and circumstances currently before us in light of the SEC Decision, we dismiss the remanded causes of action.[4] As described below, we find that at this juncture respondents cannot be afforded a fair opportunity to defend themselves in any additional evidentiary proceeding because of the unavailability of witnesses and the extraordinary length of time that has passed since the pertinent events at issue in this case.

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1 *See Dep't of Enf't v. Southeast Inv., N.C., Inc.*, Complaint No. 2014039285401, 2019 FINRA Discip. LEXIS 23 (FINRA NAC May 23, 2019).

2 *See Southeast Inv., N.C., Inc.*, Exchange Act Release No. 86097, 2019 SEC LEXIS 1370 (June 12, 2019) (denying stay).

3 *Southeast Inv., N.C., Inc.*, Exchange Act Release No. 99118, 2023 SEC LEXIS 3460 (Dec. 7, 2023).

4 We do not address or revisit the findings or sanctions related to respondents' supervisory and email retention failures that the SEC affirmed in the SEC Decision because those findings and sanctions are not before us on remand.

## II. Relevant Factual Background

The facts underlying the remanded causes of action concern purported inspections of SEI registered representatives' offices that respondents assert occurred between October 2010 and July 2012. During this time, Black owned between 95% and 100% of the firm and served as, among other things, SEI's President, Chief Executive Officer, and Chief Compliance Officer. Black was responsible for ensuring SEI fulfilled its obligations to conduct office inspections, which were set forth in the firm's WSPs.

In 2011, SEC staff identified numerous deficiencies in SEI's office inspections. FINRA subsequently examined SEI in 2012 and sought information from the firm to determine if it had addressed these deficiencies. In March 2013, in connection with that examination, FINRA staff conducted an on-the-record interview of Black. In response to a subsequent FINRA Rule 8210 request, respondents produced documents purporting to show that Black inspected the offices of the Four Representatives during the period October 2010 through July 2012. In August 2013, two FINRA examiners (Pamela Arnold and Ray Palacios) conducted telephone interviews of the Four Representatives, all of whom were no longer associated with the firm. Arnold took notes of these interviews. Shortly after the interviews, she also sent emails to Palacios summarizing the interviews and Palacios drafted a memo that summarized the salient points of Arnold's interview notes.[5] Arnold's emails and Palacios's memo reflected that each of the Four Representatives informed Arnold and Palacios that Black did not inspect their offices as he claimed.[6] In October 2013, the Four Representatives responded to FINRA Rule 8210 requests and stated in writing that Black did not inspect their offices as he claimed.

Contrary to the verbal and written statements of the Four Representatives and consistent with the documents respondents had previously provided to FINRA, in April 2014 Black testified at an on-the-record interview that he inspected the offices of the Four Representatives beginning in or around October 2010 through July 2012.

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[5] As described below, the existence of the notes was not revealed to respondents until the hearing in this matter. Further, Enforcement could not locate a copy of Arnold's interview notes, and the emails and memo summarizing the notes were not produced to respondents until after the hearing.

[6] The emails and memo, however, also contained statements by the Four Representatives that respondents would later assert contradicted other parts of the Four Representatives' testimony.

## III. Procedural Background

### A. Complaint

In September 2015, Enforcement filed a five-cause complaint against Black and SEI. The complaint alleged that: (1) SEI, acting through Black, provided to FINRA fabricated documents, which falsely showed that Black inspected the offices of the Four Representatives and one other representative, when Black did not do so, in violation of FINRA Rules 8210, 4511, and 2010; (2) Black and SEI, through Black, provided false investigative testimony concerning these alleged office inspections during an on-the-record interview, in violation of FINRA Rules 8210 and 2010; (3) Black and SEI established a deficient supervisory system regarding office inspections, in violation of NASD Rule 3010; (4) Black and SEI failed to preserve and maintain all of the firm's business-related emails, and in so doing, the firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17a-4, and Black and SEI violated NASD Rule 3110 and FINRA Rules 4511 and 2010; and (5) Black and SEI failed to establish, maintain, and enforce a supervisory system and WSPs designed to supervise the firm's review and preservation of emails, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.

### B. FINRA Conducts a Hearing During Which Arnold Reveals She Took Interview Notes in 2013

In September 2016, a Hearing Panel conducted a four-day hearing. Ten witnesses testified, including the Four Representatives, Black, and FINRA examiner Arnold. The Four Representatives each testified that Black did not inspect their offices, whereas Black testified that he did. During Arnold's testimony, she revealed that she took notes during the August 2013 interviews with the Four Representatives.

In response to Arnold's testimony, respondents' counsel made an oral motion to obtain Arnold's newly identified notes, which had not been produced to respondents during discovery. Counsel argued that the notes would be helpful to see if the Four Representatives' testimony was consistent with what they told Arnold and Palacios during the interviews. The Hearing Officer denied respondents' motion and found that counsel's request had already been denied earlier in the proceedings as part of a ruling on a discovery motion filed by respondents.

### C. The Hearing Panel Finds Respondents Liable for the Misconduct Alleged in the Complaint

In March 2017, the Hearing Panel issued a decision finding that Black and SEI engaged in the misconduct alleged in the complaint, including that they testified falsely concerning office

inspections and fabricated documents in connection with their false testimony. The Hearing Panel barred Black and fined SEI $73,000 for this misconduct.[7]

In holding that Black (and through Black, SEI) testified falsely and fabricated documents, the Hearing Panel found that the Four Representatives credibly testified that Black did not inspect their respective offices as he had claimed, and that their testimony tracked their responses to previous FINRA Rule 8210 requests concerning the matter. In contrast, the Hearing Panel found that Black's testimony that he inspected the offices of the Four Representatives was false, not credible, and unsupported by any reliable evidence.

D. Respondents Appeal to the NAC and the NAC Issues an Interim Discovery Order

Respondents appealed the Hearing Panel decision to the NAC. During the appeal, in June 2018 the NAC issued an interim discovery order remanding the matter to the Hearing Panel and requiring that the Hearing Panel direct Enforcement to produce to respondents a copy of Arnold's 2013 notes. The NAC also directed that the Hearing Panel determine whether the notes constituted "written statements" within the meaning of FINRA Rule 9253(a)(2) and, if so, whether respondents had established, pursuant to FINRA Rule 9253(b), that the failure to provide Arnold's notes was not harmless error.[8]

E. The Hearing Panel's Proceeding Related to the Interim Discovery Order

Pursuant to the NAC's interim discovery order, the Hearing Panel directed Enforcement to produce a copy of Arnold's 2013 notes. Enforcement, however, informed the Hearing Panel that despite its best efforts it could not locate Arnold's notes. Instead, Enforcement produced

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[7] The Hearing Panel also fined Black and SEI $50,000 (payable jointly and severally) for failing to retain business-related emails and assessed but did not impose on Black in light of the bar a one-year suspension in all principal capacities. For respondents' supervisory failures, the Hearing Panel fined them $120,000 (payable jointly and severally) and assessed but did not impose on Black in light of the bar a one-year suspension in all principal capacities. Finally, the Hearing Panel assessed $8,335.29 in costs.

[8] FINRA Rule 9253 (Production of Witness Statements) provides that a respondent may request that Enforcement produce any contemporaneously written statement made by staff during a routine examination or inspection about the substance of oral statements made by a non-FINRA person when: (1) either the staff member or non-FINRA person is called as a witness by Enforcement; and (2) that portion of the statement for which production is sought directly relates to the staff member's testimony or the testimony of the non-FINRA witness. *See* FINRA Rule 9253(a). If Enforcement fails to produce to a respondent a document required to be made available pursuant to this rule, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to make the document available was not harmless error. *See* FINRA Rule 9253(b).

Arnold's emails and Palacios's memo, which contemporaneously summarized the contents of the notes.

After considering the parties' briefs on the issues identified by the NAC, in August 2018 the Hearing Panel issued an order finding that Arnold's notes (as evidenced by Arnold's emails and Palacios's memo) were not made during a routine examination or inspection and that, therefore, the notes were not "written statements" under FINRA Rule 9253(a)(2). Consequently, the Hearing Panel concluded that Enforcement was not required to produce Arnold's notes. The Hearing Panel also found that, even if Arnold's notes qualified as "written statements" under FINRA Rule 9253(a)(2), respondents did not demonstrate that the failure to produce those notes was not harmless error pursuant to Rule 9253(b). The Hearing Panel rejected respondents' arguments that certain descriptions of the Four Representatives' conversations with Arnold and Palacios in 2013 were inconsistent with their hearing testimony and therefore undermined their credibility, and it reaffirmed its credibility findings with respect to the Four Representatives. The Hearing Panel also found that Arnold's summaries of her notes contained nothing that would have altered the Hearing Panel's findings of liability and that "[t]here is no hint that the notes contained any exculpatory *Brady* material."[9]

F. The NAC Finds that Respondents Testified Falsely and Fabricated Documents

After the Hearing Panel's order responding to the NAC's interim discovery order, jurisdiction reverted to the NAC to consider respondents' appeal. In May 2019, the NAC issued a decision finding that Black and SEI: (1) provided to FINRA fabricated documents and testified falsely that Black inspected the Four Representatives' offices, in violation of FINRA Rules 8210, 4511, and 2010; (2) failed to establish, maintain, and enforce a reasonable supervisory system and WSPs to ensure the adequate retention and review of business-related emails, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010; and (3) failed to retain certain emails, in violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-4, NASD Rule 3110, and FINRA Rules 4511 and 2010.[10] For respondents' false testimony and fabrication of documents,

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[9] "*Brady* material" refers generally to evidence in a criminal case possessed by the government that is favorable to the accused and material either to guilt or punishment, which must be disclosed to the defendant. *See Maryland v. Brady*, 373 U.S. 83 (1963).

[10] The NAC affirmed respondents' supervisory and email retention violations on narrower grounds than the Hearing Panel. The NAC found that respondents failed to establish a reasonable supervisory system for retaining and reviewing SEI's emails but reversed the Hearing Panel's findings that such misconduct was willful. The NAC also reversed the Hearing Panel's findings that respondents maintained a deficient supervisory system regarding office inspections. Finally, although the NAC affirmed the Hearing Panel's findings that respondents failed to preserve and maintain business-related emails it found that such misconduct was not willful and narrowed respondents' misconduct to failing to preserve 16 emails from a single registered representative.

the NAC barred Black and fined the firm $73,000. For respondents' supervisory and email retention failures, the NAC fined them a total of $73,500 (payable jointly and severally, although not imposed upon Black in light of the bar). Finally, the NAC affirmed the Hearing Panel's imposition of hearing costs and imposed $1,991.17 in appeal costs.

In finding that respondents testified falsely and fabricated documents, the NAC found that respondents failed to show that Enforcement acted with a culpable state of mind when it lost Arnold's notes and the NAC rejected respondents' argument that the case should be dismissed based upon the spoliation of evidence doctrine. The NAC also rejected respondents' arguments concerning Enforcement's failure to produce Arnold's notes, the emails, and memo until after the hearing. The NAC held that, even assuming that the notes, emails, and memo were "written statements" under Rule 9253(a)(2), respondents failed to show that Enforcement's failure to produce them was not harmless error. The NAC found that the emails and memo were consistent with, and corroborated, the credible testimony of the Four Representatives and their 2013 written responses to FINRA Rule 8210 requests that Black did not inspect their offices. Further, the NAC found that the inconsistencies identified by respondents in the emails and memo versus the Four Representatives' testimony were not material to the key issue—that Black never inspected their offices as he had claimed. Finally, the NAC summarily affirmed the Hearing Panel's determination that the emails and memo did not contain exculpatory material that Enforcement should have produced earlier in the proceeding pursuant to FINRA Rule 9251.[11]

G. The SEC Remand

In May 2019, respondents appealed the NAC decision to the SEC and sought a stay of Black's bar. The SEC denied respondents' stay request in June 2019, and Black terminated his registrations with the firm shortly thereafter.

In December 2023, the SEC issued the SEC Decision. The SEC Decision affirmed the NAC's findings that respondents failed to maintain an adequate supervisory system concerning

[11] FINRA Rule 9251 (Inspection and Copying of Documents in Possession of Staff) requires Enforcement to make available for inspection and copying by any respondent documents prepared or obtained by staff in connection with the investigation that led to the institution of proceedings. *See* Rule 9251(a). Rule 9251 permits Enforcement to withhold certain documents (e.g., privileged documents or attorney work product), but Enforcement may not withhold a document that contains exculpatory evidence. *See* Rule 9251(b). If Enforcement fails to produce to a respondent a document required to be made available pursuant to this rule, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to make the document available was not harmless error. *See* Rule 9251(g).

the retention of emails and failed to preserve certain emails, and affirmed the $73,500 in fines imposed for this misconduct.[12]

The SEC Decision, however, set aside the NAC's findings that respondents testified falsely and fabricated documents and the sanctions imposed for this misconduct (including Black's bar), and remanded the matter to FINRA. The SEC Decision held that respondents were unfairly denied an opportunity to undermine the Four Representatives' testimony because they received Arnold's emails and Palacios's memo after the hearing. The SEC could not conclude that Enforcement's failure to produce the emails and memo to respondents before the hearing was harmless error. In so ruling, the SEC noted that FINRA did not argue that the emails and memo were not subject to FINRA Rule 9253 as "written statements."[13] It held that the NAC's findings that respondents testified falsely and fabricated documents were based primarily upon the Hearing Panel's determinations that the Four Representatives testified credibly. Respondents, however, were not afforded the opportunity during the hearing to use the inconsistencies they identified in the emails and memo to impeach the Four Representatives' credibility. The SEC also indicated that the notes and memo could potentially be considered exculpatory evidence (such that the materials should have been produced under FINRA Rule 9251). It cited to *United States v. Bagley*, 473 U.S. 667 (1985), for the proposition that exculpatory evidence includes evidence that may be used to impeach a witness' credibility. Based upon the foregoing, the SEC remanded the matter to FINRA for further proceedings consistent with its opinion, which might include if respondents request it "further record development through cross-examination of the Four Representatives with the benefit of Arnold's emails and Palacios's memorandum."[14]

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[12] Respondents subsequently appealed the SEC Decision to the United States Court of Appeals for the Fourth Circuit. In January 2025, the Fourth Circuit dismissed respondents' appeal for lack of jurisdiction. *See Black v. SEC*, 125 F.4th 541 (Jan. 14, 2025).

[13] FINRA did not make such an argument because, as described above, the NAC did not decide the issue. Rather, the NAC concluded that, even assuming the emails and memo were written statements under Rule 9253(a) and thus should have been produced, the failure to do so was harmless error under Rule 9253(b).

[14] The SEC agreed with the NAC that the case should not be dismissed based upon the spoliation doctrine, finding that Enforcement's failure to preserve Arnold's notes was not so egregious to justify dismissal because it did not deny respondents the ability to defend the case and the substance of Arnold's notes was preserved in Arnold's emails and Palacios's memo. However, it held that Enforcement's inadvertent failure to preserve Arnold's notes "suggests that it engaged in conduct that could be considered negligent," which may justify an adverse inference against Enforcement. The SEC Decision stated that "[s]hould applicants pursue such a remedy upon the remand to FINRA as discussed below, the Hearing Panel or the NAC may consider the propriety of this sanction."

H. The Parties' Filings with the NAC on Remand

In mid-December 2023, Enforcement requested that the NAC direct briefing on, among other things, whether the emails and memo are "written statements" required to be produced under FINRA Rule 9253(a)(2). Enforcement argued that although the Hearing Panel determined that Arnold's emails and Palacios's memo were not written statements required to be produced under FINRA Rule 9253(a)(2), neither the NAC nor the SEC decided the issue. Enforcement further asserted that if the emails and memo were not written statements required to be produced under FINRA Rule 9253(a)(2), then it is unnecessary to determine whether a failure to produce them constituted harmless error under FINRA Rule 9253(b). Enforcement argued that addressing this threshold issue is important because FINRA no longer has jurisdiction over three of the Four Representatives and the fourth individual is no longer associated with a firm. Enforcement also asserted that the NAC found that the emails and memo did not contain exculpatory evidence (and thus were not required to be produced pursuant to Rule 9251) and the SEC did not rule on this issue. Notwithstanding this argument, Enforcement requested that if the NAC determines that this issue has not been resolved in Enforcement's favor, that Enforcement be permitted to brief the issue.

Respondents opposed Enforcement's request and argued that the SEC Decision resolved the issue of whether the emails and memo are covered by FINRA Rule 9253. They argued that Enforcement's arguments reflect the unlikely participation of key witnesses in another hearing. In support thereof, they stated that they believed two of the Four Representatives are deceased, that Black is now in his eighties, and that this case had been pending for more than nine years.

While Enforcement's request was pending, the parties filed the first of two joint requests for a stay of these proceedings pending resolution of respondents' appeal of the SEC Decision pending before the Fourth Circuit. Both requests to stay these proceedings were granted. In February 2025, after the Fourth Circuit dismissed respondents' appeal of the SEC Decision, Enforcement and respondents informed the NAC that they could not agree on whether the stay of these proceedings should remain in place pending resolution of federal district court litigation involving the respondents, FINRA, and the SEC, and they requested permission to submit briefs addressing the issue.[15] The parties' request for further briefing was granted. Enforcement argues that the NAC should lift the stay because the pending federal court litigation does not serve as good cause to further delay these proceedings, while respondents assert that the stay should remain in place while the federal court litigation is pending.

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[15] In October 2023, respondents filed a request for preliminary injunction and complaint against the SEC and FINRA in federal district court seeking, among other things, to enjoin any SEC or FINRA proceedings against respondents and arguing that FINRA's proceeding and structure are unconstitutional. The parties agreed to stay that litigation while respondents' appeal of the SEC Decision to the Fourth Circuit was pending. That litigation has resumed.

IV. Analysis

The Exchange Act requires that FINRA provide a fair disciplinary procedure for its members and associated persons. *See* 15 U.S.C. § 78 o-3(b)(8) ("An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that . . . . [t]he rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members."), (h) (requiring registered securities associations in disciplinary proceedings to "bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record"). FINRA's proceedings cannot improperly prejudice a respondent and cannot be inherently unfair. *See, e.g.*, *Jeffrey Ainley Hayden*, Exchange Act Release No. 42772, 54 S.E.C. 651 (2000) (setting aside self-regulatory organization's disciplinary action after finding the proceeding to be "inherently unfair"). When assessing the overall fairness of a FINRA disciplinary action in connection with a claim of unfair delay in bringing an action against a respondent, the SEC and the NAC look to "the entirety of the record" and to whether the respondent has shown that his "ability to mount an adequate defense was harmed by any delay in the filing of a complaint against him." *Mark H. Love*, 57 S.E.C. 315, 324-25 (2004); *Dep't of Enf't v. Patatian*, Complaint No. 2018057235801, 2023 FINRA Discip. LEXIS 13, at *59 (FINRA NAC Sept. 27, 2023). We apply the principles articulated in these cases to assess the matter currently before us.

The SEC Decision acknowledges that liability in connection with the remanded causes of action hinges largely on the witnesses' credibility. The SEC Decision indicates that before FINRA can find respondents liable for testifying falsely and fabricating documents, respondents should have the opportunity to cross examine the Four Representatives—with the benefit of Arnold's emails and Palacios's memo summarizing the interviews of the Four Representatives conducted in 2013 that contained potentially inconsistent statements with the representatives' 2016 hearing testimony—to attempt to undermine their credibility. Any such hearing would need to be conducted fairly such that Black and the firm are able to adequately defend themselves. *See* 15 U.S.C. § 78 o-3(b)(8), (h); *Love*, 57 S.E.C. at 324-25; *Patatian*, 2023 FINRA Discip. LEXIS 13, at *59.

At this stage, however, we cannot conclude that respondents will be able to mount an adequate defense through further evidentiary proceedings. As an initial matter, two of the Four Representatives are deceased and only one of the remaining two witnesses remains subject to FINRA's jurisdiction. Yet, it is the testimony of the Four Representatives that would be crucial to any remand proceeding. *Cf. Love*, 57 S.E.C. at 325 (rejecting applicant's claim that he was prejudiced by the death of one of his customers on the ground that the Hearing Panel's findings were based on undisputed facts and the customer's testimony, therefore, was not material); *Dep't of Enf't v. The Dratel Group*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *104 (FINRA NAC May 2, 2014) (rejecting claim of unfair delay and holding applicants had not established any prejudice from delay stating that "[t]here is no indication in the record that witnesses or documents became unavailable or that the witnesses who testified were unable to recall the specifics of DGI's operations and procedures"), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016); *Dep't of Enf't v. Tweed*, Complaint No. 2015046631101, 2019 FINRA Discip. LEXIS 53, at *24 (FINRA NAC Dec. 11, 2019) (rejecting

respondent's claim that he was unable to mount an adequate defense because the violations were established largely on undisputed facts), *aff'd in rel. part*, Exchange Act Release No. 99201, 2023 SEC LEXIS 3579 (Dec. 18, 2023).

Moreover, as to any witnesses that could potentially testify on remand, significant time has passed since the events at issue. Arnold and Palacios interviewed the Four Representatives almost 12 years ago and it is these interviews that would be the focus of any further evidentiary proceedings. This significant passage of time supports our finding that any additional proceeding would severely prejudice respondents' ability to adequately defend themselves based upon lapsed memories of any testifying witness. *See Dep't of Enf't v. Morgan Stanley DW, Inc.*, Complaint No. CAF000045, 2002 NASD Discip. LEXIS 11, at *37 (NASD NAC July 29, 2002) (finding delays were unfair and stating that after 10 years "[t]he elapsed time has severely limited the respondents' ability to defend themselves against this action because of faded memories . . . . We find it hard to imagine that these witnesses' memories have not faded after ten years"). Further, the purpose of any hearing on remand—to ask the remaining Four Representatives questions about conversations they had with FINRA staff almost 12 years ago concerning matters that were not related to the alleged misconduct at issue—supports our determination that a fair hearing on remand is not possible. The remaining witnesses are unlikely to recall short conversations they had almost 12 years ago on points that were not salient to the underlying allegation that Black did not inspect their offices.

For these reasons, we grant Enforcement's request to terminate the stay of these proceedings, and we dismiss the remanded causes of action.

V. Conclusion

Under the unusual facts and circumstances of this case, we dismiss the causes of action remanded to us by the SEC and dismiss these proceedings.[16]

On behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[16] In light of the SEC Decision, we deny Enforcement's post-remand request to brief whether the emails and memo needed to be produced pursuant to FINRA Rule 9253(a). At a minimum, the SEC Decision implicitly found that the documents fall under FINRA Rule 9253(a). On remand, we are bound by the SEC's determination. *See Bradley v. Vill. of Univ. Park*, 59 F.4th 887, 896 (7th Cir. 2023) (stating that "once an appellate court either expressly or by necessary implication decides an issue, the decision will be binding upon all subsequent proceedings in the same case").