

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. Respondent.	Disciplinary Proceeding No. CAF030008 Hearing Officer—Andrew H. Perkins
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**ORDER GRANTING RESPONDENT'S
MOTION TO QUASH RULE 8210 REQUEST**

On November 3, 2003, the Respondent moved for an order quashing the request for information issued by the Department of Enforcement on October 29 and modified on October 30 (the "Request"). The Respondent objects to the Request on two grounds: first, he contends that the Request contravenes the Scheduling Order in this case; and second he contends that the Request is unduly prejudicial.¹ For the reasons discussed below, the Respondent's motion to quash is granted.

Discussion

This proceeding is riddled with contentious arguments over the defenses available to the Respondent and the evidence he may present at the hearing. Now, twelve days before the hearing, the Department for the first time focuses on the Respondent's long-standing claim that he relied on his counsel's advice when he refused to respond to the February 3, 2003, Rule 8210 request for information. The Department demands that the

¹ Mot. 1.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 03-23 (CAF030008).

Respondent supply "*all* facts, witnesses, and documents in connection with"

Respondent's claim of reliance on advice of counsel. The Department demands that the Respondent supply the information no later than November 3, just four days after the date of the amended request.

First, the Hearing Officer notes that the Department has the right to employ Rule 8210 to request the categories of information requested here. However, the Department's request in this case is both untimely and unduly prejudicial. The Scheduling Order required that all motions under Rule 8210 and 9252 for the production of evidence at the hearing be made no later than October 10. Moreover, the scope of the Request is unreasonable and unduly prejudicial at this late stage of the proceeding. The Request is so broad it encompasses attorney-client privileged matter unrelated to the specific advice surrounding the Respondent's decision not to respond to the February 3 request for information. The Request seeks all documents *connected to* the original advice, which would include the defense team's internal memoranda and communications with the Respondent. As such, the Request imposes an unfair burden on the defense to locate the documents and then raise any appropriate objections to the scope of the Request. Accordingly, the Hearing Officer quashes the Request.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

November 4, 2003