

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 03-04 (C3A020039).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C3A020039
v.	:	
	:	Hearing Officer - SW
	:	
	:	
Respondent.	:	

**ORDER REGARDING COMPLAINANT'S MOTION FOR
A PRECLUSION ORDER**

On February 10, 2003, the Department of Enforcement filed a Motion for a Preclusion Order ("Preclusion Motion"), requesting that Respondent be precluded from offering any evidence at the Hearing or otherwise relying on or using any information that he has failed to disclose. Respondent failed to file an objection to the Preclusion Motion. For the reasons set forth below, the Hearing Officer grants the Preclusion Motion, with the exception that Respondent will be permitted to testify on his own behalf at the April 3, 2003 Hearing.

A. Background

On August 12, 2002, Enforcement filed a Complaint against Respondent. On September 4, 2002, Enforcement served a Second Notice of Complaint on Respondent, requiring Respondent to answer the Complaint no later than September 23, 2002. On September 20, 2002, Respondent filed a request for an extension until September 27, 2002 to answer the Complaint, which the Hearing Officer granted.

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Upon receipt of Respondent's Answer on September 30, 2002, the Hearing Officer issued an order setting a pre-hearing conference for October 23, 2002. On October 2, 2002, the Hearing Officer rescheduled the pre-hearing conference to October 31, 2002.

B. Timeline of Events

After the October 31, 2002 pre-hearing conference, the Hearing Officer issued a scheduling order setting (i) March 3, 2003 as the date of the Hearing, (ii) February 24, 2003 as the date of the Final Pre-Hearing Conference, and (iii) February 3, 2003 as the deadline for the Parties to file pre-hearing submissions, i.e., witness lists, exhibit lists, and proposed exhibits.

On February 3, 2003, Enforcement filed its pre-hearing submissions, consistent with the Hearing Officer's scheduling order. Respondent failed to file any pre-hearing submissions, or any request that the filing deadline be extended. On February 10, 2003, Enforcement filed its Preclusion Motion, which it supplemented on February 14, 2003. Although Respondent advised Enforcement that there was one witness and one document that he intended to present, Respondent did not file an objection to the Preclusion Motion with the Office of Hearing Officers.

At the February 24, 2003 Final Pre-Hearing Conference, Respondent made an oral request to reschedule the Hearing because Respondent's counsel was involved in a family emergency. The Hearing Officer granted Respondent's motion to reschedule the Hearing. In a revised scheduling order dated February 25, 2003, the Hearing Officer set March 14, 2003 as the new deadline for the Parties to file pre-hearing submissions.¹

¹ At the February 24, 2003 Final Pre-Hearing Conference, the Hearing Officer cautioned Respondent's counsel that she would be inclined to grant Enforcement's Preclusion Motion if Respondent did not

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On March 11, 2003, Enforcement supplemented its pre-hearing submissions, consistent with its filing obligation under the revised scheduling order. Respondent failed to file any pre-hearing submissions by the March 14, 2003 deadline, and failed to provide a date by which such pre-hearing submissions would be provided.

At the March 20, 2003 pre-hearing conference, Respondent did not object to Enforcement's Preclusion Motion.

C. Preclusion Motion Granted

The Hearing Officer finds that Enforcement would be unduly prejudiced if Respondent were permitted to submit evidence at the Hearing, which he has not previously provided. Enforcement has a right, similar to Respondent's right, to receive evidence on a timely basis, so that it can adequately prepare for the Hearing. By reason of the foregoing, Enforcement's Preclusion Motion, with the exception that Respondent may testify on his own behalf, is granted.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
March 20, 2003

submit any pre-hearing submissions by the new filing deadline. (February 24, 2003 Pre-Hearing Transcript, p. 13)