

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-06 (C3A990067).

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	
v.	:	Disciplinary Proceeding
	:	No. C3A990067
	:	
	:	Hearing Officer—AHP
	:	
	:	
	:	
Respondents.	:	
	:	
	:	

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**ORDER DENYING RESPONDENT \_\_\_\_\_  
SECOND MOTION FOR MORE DEFINITE STATEMENT**

The Department of Enforcement filed the Complaint in this proceeding on December 7, 1999. On December 29, 1999, Respondent \_\_\_\_\_ filed an Answer to the Complaint and a Motion for More Definite Statement (the “First Motion”), pursuant to Rule 9215(c). The First Motion requested the Department of Enforcement (“Enforcement”) to identify the acts or omissions underlying the allegations in Count Seven of the Complaint. Enforcement did not oppose the First Motion. Accordingly, the Hearing Officer granted the First Motion, and on February 7, 2000, Enforcement filed its response (“Bill of Particulars”).

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Count Seven of the Complaint, in paragraphs 22 and 23, alleges that Respondents \_\_\_\_\_ and \_\_\_\_\_ failed to supervise Respondent \_\_\_\_\_ in a manner “reasonably designed to achieve compliance with applicable laws, rules, and regulations, in that she was permitted to engage in the acts and practices that are described in Causes Four through Six” of the Complaint. Generally, Causes Four through Six of the Complaint charge that Respondent \_\_\_\_\_: (1) effected securities transactions without being registered; (2) misappropriated customer funds; and (3) effected private securities transactions without giving her firm proper written notice. The Complaint further alleges that Respondents \_\_\_\_\_ and \_\_\_\_\_ shared supervisory responsibility of Respondent \_\_\_\_\_.

Enforcement filed the Bill of Particulars that amplified the allegations in the Complaint. Enforcement further alleged that Respondent \_\_\_\_\_ was the manager of his firm’s Houston office where Respondent \_\_\_\_\_ was employed. Enforcement also enumerated several bases for the allegations in the Complaint. Among those are that Respondent \_\_\_\_\_ and the Chief Executive Officer of the firm both testified that Respondent \_\_\_\_\_ was the firm’s on-site principal in Houston and that he was responsible for the supervision of \_\_\_\_\_ retail activities. Enforcement also pointed to four “red flags” that should have alerted Respondent \_\_\_\_\_ to Respondent \_\_\_\_\_ alleged violations, which were primarily in the “corporate finance” area.

On February 17, 2000, Respondent \_\_\_\_\_ filed a reply to Enforcement’s Bill of Particulars, and a Second Motion for More Definite Statement (the “Second Motion”). The Second Motion seeks to have Enforcement “reveal the specific misconduct of Respondent \_\_\_\_\_ that occurred in the

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course of her retail activities.” Enforcement filed its opposition to the Second Motion on February 24, 2000.<sup>1</sup> For the reasons set forth below, the Second Motion is denied.

### **Discussion**

A motion for a more definite statement is proper when the allegations of a Complaint fail to afford the respondents adequate notice of the charges. Rule 9212(a) requires that a Complaint “specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated.” A Complaint satisfies this requirement if the allegations give “a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense.” District Bus. Conduct Comm. No. 9 v. Michael R. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (NBCC July 28, 1997) (construing former Rule 9212(a)). It is clear from the Complaint, the Bill of Particulars, and Respondent \_\_\_\_\_ responsive pleadings that the allegations, as supplemented by the Bill of Particulars, meet these standards.

Of course, the Respondent would like a more detailed account of Enforcement’s theories and evidence, but he cannot obtain that through a motion for more definite statement. A motion for more definite statement is not a discovery device. Enforcement’s discovery obligation is limited to making certain categories of documents available for inspection and copying pursuant to Rule 9251. Such a motion is also not a substitute for a motion for summary disposition.

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<sup>1</sup> Respondent \_\_\_\_\_ also filed a Reply to Response to Second Motion for More Definite Statement, and Enforcement followed with a response to this reply. Neither Party obtained leave to file these further pleadings as is required by Rule 9146(h). The Hearing Officer has therefore disregarded them.

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The Complaint and Bill of Particulars fairly disclose the charges and adequately afford the Respondent an opportunity to prepare his defense. For now, no more is required. Accordingly, Respondent \_\_\_\_\_ Second Motion for More Definite Statement is denied.

On the other hand, the Code of Procedure provides the Hearing Officer with the discretion to require the Parties to disclose their theories and evidence in detail in their pre-hearing submissions. Accordingly, pursuant to Rule 9242(a), the Parties are ordered to include with their pre-hearing submissions a detailed outline or narrative summary of their case or defense and a memorandum of points and authorities setting forth the legal theories upon which each Party shall rely at the hearing. All pre-hearing submissions shall be filed no later than June 27, 2000.

**SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer

Dated: Washington, DC  
March 10, 2000