

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. E102003130804

Hearing Officer—Andrew H. Perkins

ORDER REGARDING RESPONDENT'S PRE-HEARING SUBMISSIONS

The pre-hearing schedule in this proceeding required the parties to file their pre-hearing submissions by March 17, 2006, and the Order Establishing Pre-Hearing Procedures ("Procedures Order") established standards for those submissions. Pursuant to the schedule, the Procedures Order, and NASD Procedural Rule 9242, each party's pre-hearing submission should have included a list of all witnesses who will testify for the party, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony, a list and copies of all exhibits that the party intends to offer at the hearing; a memorandum of points and authorities that contains a summary of the party's case or defense and the legal theories upon which the party relies.

The Respondent did not file his proposed exhibits with his Pre-Hearing Submission on March 17, 2006. Thereafter, on March 23, 2006, the Respondent also submitted a number of documents with a cover letter that indicates that the Respondent

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intends to use some exhibits on the Department of Enforcement's exhibit list. However, the Respondent did not submit copies of the documents on Enforcement's exhibit list because, in his words, "It should not be necessary for the Hearing Officer and counsel to have to work with such duplicates."

The Hearing Officer has reviewed the Respondent's pre-hearing submissions and found them lacking in a number of respects. Most notably, the documents the Respondent submitted on March 23, 2006, are late. In addition, they are not labeled or tabbed as required by the Procedures Order, and the Respondent failed to submit the required number of copies. Accordingly, the Respondent's proposed exhibits are rejected and returned to the Respondent. The Respondent is given until April 4, 2006, to submit the original and three copies of all documents he intends to offer into evidence at the hearing. The documents shall be labeled, tabbed, and placed in three-ring binders as required by the Procedures Order. Moreover, the Respondent shall file a proper exhibit list that includes a brief description of each proposed exhibit. If the Respondent fails to comply with the foregoing, he will be precluded from offering any exhibits at the hearing, other than exhibits included in Enforcement's pre-hearing submission.

Finally, the memorandum of points and authorities (pre-hearing brief) the Respondent filed is inadequate. Accordingly, the Respondent is ordered to file a pre-hearing brief that contains a narrative summary of the Respondent's defense. In addition, the Respondent shall include a discussion of the legal theory or theories upon which he

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relies, including cites to prior decisions and other authority. The Respondent shall file the pre-hearing brief on or before April 4, 2006.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

March 24, 2006