

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-24 (20050000720-02).

## NASD OFFICE OF HEARING OFFICERS

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT 1<sup>1</sup>,

and

RESPONDENT 2,

Respondents.

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Disciplinary Proceeding  
No. 20050000720-02

Hearing Officer – SW

### ORDER PROHIBITING USE OF SUBPOENAS

On June 1, 2007, as part of an omnibus motion, Respondent 2 sought permission from the Hearing Officer to issue a subpoena under New York State Court Rules to the attorney of the customers, Mr. S and Ms. G, referenced in the Complaint.

Consistent with the reasoning set forth in OHO Order No. 05-39 (CAF040058),<sup>2</sup> the Hearing Officer issues this Order prohibiting the use of such subpoenas. The Hearing Officer specifically adopts the finding of OHO Order No. 05-39 (CAF040058) that New York Civil Practice Law and Rules (CPLR) do not apply to NASD Disciplinary Hearings, and that permitting the use of such subpoenas would result in uneven treatment of respondents located outside the State of New York.

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<sup>1</sup> On April 25, 2007, the Hearing Officer deemed Respondent 1 in default pursuant to Rule 9241(f).

<sup>2</sup> OHO Order No. 05-39 (CAF040058) may be found at [www.nasd.com](http://www.nasd.com) at the link "OHO Orders" at [http://www.nasd.com/web/groups/enforcement/documents/oho\\_disciplinary\\_orders/nasdw\\_015862.pdf](http://www.nasd.com/web/groups/enforcement/documents/oho_disciplinary_orders/nasdw_015862.pdf). On November 20, 2006, the order was appealed as part of the appeal of the underlying decision and is pending before the National Adjudicatory Council.

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In NASD disciplinary proceedings, respondents may avail themselves of Rule 9252, to request that NASD invoke Rule 8210 to “compel the production of documents or testimony at the hearing” under circumstances set forth in that rule. The Hearing Officer is unwilling to allow Respondent 2 to circumvent NASD’s procedures through the use of subpoenas. Rule 9235 authorizes the Hearing Officer to regulate the course of this proceeding and resolve procedural, evidentiary, and discovery issues. Pursuant to the Hearing Officer’s authority under Rule 9235, the Parties are prohibited from issuing subpoenas.

The Hearing Officer will rule on the remainder of Respondent 2’s omnibus motion in a subsequent order.

**SO ORDERED.**

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Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
June 13, 2007