

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent 1

and

Respondent 2,

Respondents.

Disciplinary Proceeding
No. CAF030067

Hearing Officer—Andrew H. Perkins

ORDER DENYING MOTION TO STRIKE WITNESSES

By letter filed September 14, 2004, Respondent 2 requested the Hearing Officer to order the Department of Enforcement to remove CM and RF from its witness list because the Department failed to propose stipulations regarding their testimony. Respondent 2 bases his request on the Hearing Officer's rulings made at the Final Pre-Hearing Conference on September 10, 2004.

At the Final Pre-Hearing Conference, Respondent 2 argued that the hearing could be shortened if the Parties could agree on stipulations regarding the proposed testimony of certain of the Department's proposed witnesses. Accordingly, the Hearing Officer directed the Department to submit proposed stipulations to the Respondents for their consideration. The Department did propose stipulations regarding the testimony of a third witness, CS. However, the Department elected not to propose stipulations regarding the expected testimony of the other witnesses because Department counsel did not consider it

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-19 (CAF030067).

a worthwhile exercise based on the conversations he had with Respondent 2 after the Final Pre-Hearing Conference.¹

The Hearing Officer denies Respondent 2's motion. The Parties are not required to stipulate to the witnesses' testimony, although stipulations are encouraged to avoid unnecessary proof at the hearing. In addition, the Department is not obligated to withdraw any witness if it cannot establish the "basis for [his] testimony," as Respondent 2 argues in his memorandum to Jeffrey Bloom, counsel for the Department, dated September 13, 2004.² The Hearing Officer will determine the relevance of the proposed witnesses' testimony at the hearing in the context of the evidence admitted at the hearing.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

September 15, 2004

¹ See Mem. from Bloom to Respondent 2 dated September 13, 2004, attached to Respondent 2's Mot.

² See exhibit attached to Respondent 2's Mot.