

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. C06040023

Hearing Officer – AWH

ORDER DENYING REQUEST FOR SUBPOENA

By letter dated May 10, 2005, Respondent requested a subpoena compelling the testimony of NASD Vice Chairman Mary L. Shapiro at the hearing in this matter. Respondent enclosed a written version of an address given by Ms. Shapiro on November 13, 2001, at the Fordham University School of Law. Respondent asserts that the article makes Ms. Shapiro a pertinent fact witness in this matter. On May 24, 2005, the Department of Enforcement filed its opposition to the request. On May 25, 2005, Respondent requested an oral hearing on the request. Because Respondent asserts no basis for the request for oral argument, and the request for a subpoena clearly must be denied, the request for oral argument is *denied*.

There are three reasons for denying the request for a subpoena. In the first place, the NASD Code of Procedure does not authorize the issuance of a subpoena, nor does NASD have any subpoena power. *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003). Second, even if the request for a subpoena were to be considered a request to invoke Rule 8210 to compel testimony pursuant to Rule 9252, the request would have to be denied because, as an employee of

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-22 (C06040023).

NASD who is neither associated with a member firm nor remains subject to NASD's retained jurisdiction under NASD By-Laws, Ms. Shapiro is not subject to NASD jurisdiction for purposes of Rule 9252. Finally, there is no demonstration that Ms. Shapiro has personal knowledge of any fact at issue in this case, nor does the address given at Fordham suggest, as Respondent asserts as a basis for seeking Ms. Shapiro's testimony, that there were "chaotic trade days immediately following 9/11." In fact, the address contains the following statement: "Indeed – given the orderly trading even in the very first days after the markets reopened – it has been nothing short of a systematic triumph."

Accordingly, the Hearing Officer finds that no jurisdiction or good cause has been shown for granting the request for a subpoena, and it is, therefore, *denied*.

SO ORDERED.

Alan W. Heifetz
Hearing Officer

Dated: May 27, 2005