

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-40 (CAF040058).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondents.

Disciplinary Proceeding
No. CAF040058

Hearing Officer – DRP

ORDER REGARDING ADMISSIBILITY OF TAPE RECORDINGS AND TRANSCRIPTS

At a pre-hearing conference held on August 15, 2005, and in an Order dated August 29, 2005, the parties were ordered to exchange transcripts of tape-recorded conversations they intend to introduce at the hearing by October 14, 2005, and to file any objections to the introduction of tape recordings or transcripts by October 28, 2005.

On October 28, Respondents filed an objection to the introduction of Enforcement's transcripts due to their "poor quality" and "gaps" in selected conversations. They also objected to the introduction of transcripts of any tape-recorded conversations other than those provided by Enforcement on October 14, 2005.

On October 28, Enforcement filed an objection to Respondents' "dumping" of thousands of pages of transcripts of "irrelevant" tape-recorded conversations, in violation of the Hearing Officer's order that the parties were to exchange transcripts of tape recordings they intend to

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offer at the hearing.¹ Enforcement also objected to the introduction of Respondents' "inaccurate" and "worthless" transcripts.²

The Hearing Officer notes that Respondents filed no objection to the admissibility of the tape-recorded conversations, as required by the August 29 Order, but merely objected to Enforcement's transcripts. Respondents have thus waived pre-hearing objections to the admissibility of the tape recordings, including the audibility and/or authenticity of the tape recordings. The parties are not precluded, however, from introducing evidence at the hearing to support or controvert the authenticity of the tape recordings, as it relates to the weight of the evidence.

Second, the parties were ordered to exchange transcripts of tape-recorded conversations to be offered during their case-in-chief. While it appears that Enforcement has complied with the Order, it seems that Respondents have not. Accordingly, Respondents have until November 28, 2005 to designate which tape-recorded conversations, if any, they intend to introduce during their case-in-chief. Failure to comply with this Order will result in preclusion.

Finally, if the parties are unable to stipulate to the accuracy of transcripts of tape recordings that will be offered at the hearing, as identified by Enforcement on October 14 and by Respondents on November 28, each party may present its transcript at the hearing. The Panel

¹ Enforcement cites to several transcribed conversations about purely personal topics.

² On November 2, Enforcement filed a Response to Respondents' objections without leave of the Hearing Officer.

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will determine which transcript, if either, is accurate, provided the transcript is accompanied by an affidavit from the individual who prepared the transcript, swearing to its accuracy.³

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: November 18, 2005
Washington, DC

³ Transcripts and accompanying affidavits must be included in the parties' pre-hearing submissions.