

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 07-31 (20050000720-02).

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT 1,²

and

RESPONDENT 2,

Respondents.

Disciplinary Proceeding
No. 20050000720-02

Hearing Officer – SW

**ORDER OVERRULING THE PARTIES' OBJECTIONS TO
EXHIBITS AND WITNESSES**

In accordance with the Scheduling Order issued on April 3, 2007, the Department of Enforcement ("Enforcement") and Respondent 2 filed witness lists and exhibit lists for this disciplinary proceeding on June 22, 2007. Enforcement filed an exhibit list and 86 exhibits, and a witness list with seven witnesses. Respondent 2 filed an exhibit list and 45 exhibits, and a witness list with ten witnesses.

A. Respondent 2's Objections

On July 6, 2007, Respondent 2 filed objections to all or part of 53 of Enforcement's 86 proposed exhibits. Respondent 2's objections included an objection to

¹ NASD is now the Financial Industry Regulatory Authority (FINRA).

² On April 25, 2007, the Hearing Officer deemed Respondent 1 in default pursuant to Rule 9241(f).

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Enforcement's Exhibit CX-77.³ Respondent 2 listed the objections to the exhibits as primarily relevance, hearsay, or prejudice. With respect to several of the summary exhibits, i.e., exhibits CX-48, CX-60, CX-62, CX-64, CX-66, CX-68, and CX-69, Respondent 2 listed "argument" as a basis for the objection.

On July 16, 2007, Enforcement filed a motion for leave to respond to Respondent 2's objections and attached a copy of its response.

The Hearing Officer hereby grants Enforcement's request to file a response to Respondent 2's objections to Enforcement's exhibits.

In its response, Enforcement argued among other things that the one-word objections do not sufficiently state a basis for an objection. In addition, Enforcement argued that the exhibits were relevant because they included inquiries from the underlying investigation, and trade blotters and commissions summaries. Enforcement argued that hearsay is permitted in NASD proceedings if there are indicia of probative value, reliability, and fairness of use. Enforcement also argued that "prejudice" alone is not a valid objection.

B. Enforcement's Objections

On July 9, 2007, Enforcement filed objections to the proposed testimony of PB, DC, and DS on the grounds that the description of their testimony is "so vague as to be meaningless," and an objection to Respondent 2's proposed exhibit RX-45 as hearsay.

On July 20, 2007, Respondent 2 filed a response to Enforcement's objections to the proposed testimony of PB, DC, and DS. Respondent 2 argued that according to

³ On July 6, 2007, Respondent 2 also filed a motion in limine to preclude Enforcement's use of Exhibit CX-77--the affidavit of CS and SG--on the grounds that (i) the affidavit is superfluous if CS testifies in person, or (ii) if CS does not testify in person, the affidavit does not provide Respondent 2 the opportunity to cross examine a material witness.

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Enforcement's Exhibit CX-78, PB and DC supervised the account of SG and CS when the account was a joint account of Respondent 1 and Respondent 2. DS worked with Respondent 1 regarding option transactions in CS's account. With respect to Exhibit 45—the affidavit of Mr. C, Respondent 2 argued that the statements are admissions by Respondent 1 against his interest.

C. All Objections Overruled

Upon review of the Parties' objections and their opposition thereto, the Hearing Officer was not persuaded by the objections and hereby overrules all the objections of both Parties.

With respect to the exhibits, the Hearing Officer retains the authority to reject proposed exhibits of any of the Parties at the Hearing pursuant to Rule 9263. With respect to the testimony of PB, DC, and DS, Enforcement may raise appropriate objections to specific questions at the Hearing.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
July 30, 2007