

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT 1

and

RESPONDENT 2

Respondents.

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Disciplinary Proceeding  
Nos. 20070094345  
20070111775

Hearing Officer—Andrew H. Perkins

**ORDER DENYING RESPONDENT 2's MOTION TO DISMISS**

On May 28, 2008, Respondent 2 filed a motion seeking an order dismissing the charges against her because FINRA's Chief of Enforcement issued a prejudicial pre-hearing statement in violation of the New York Lawyer's Code of Professional Responsibility. According to Respondent 2, DR 7-107 prohibits a lawyer associated with a law firm or government agency with a lawyer participating in or associated with a civil matter from making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer making the statement knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicated proceeding in such civil matter.<sup>1</sup> Respondent 2 asserts that FINRA's press release announcing the institution of this proceeding dated February 14, 2008, violated the foregoing ethical guideline.

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<sup>1</sup> DR 7-107 (Trial Publicity) is codified at NY COMP. CODES R. & REGS., Title 22, §1200.38.

**This Order has been published by FINRA’s Office of Hearing Officers and should be cited as OHO Order 08-09 (20070094345 and 20070111775).**

On June 10, 2008, the Department of Enforcement (“Enforcement”) filed a Brief in Opposition to the motion.<sup>2</sup>

Assuming that DR 7-107 applies to this proceeding (a point Respondent 2 did not address), the Hearing Officer nonetheless concludes that Respondent 2 failed to show that the Chief of Enforcement knew or reasonably should have known that her statement and the press release would “have a substantial likelihood of materially prejudicing” the hearing in this proceeding. Respondent 2 alleges that the “inflammatory comments” made by the Chief of Enforcement caused damage to her business. Specifically, Respondent 2 alleges that all of the insurance companies with which she dealt as a licensed insurance broker have terminated their contracts with her. However, even if true,<sup>3</sup> such harm does not constitute the type of prejudice referenced in DR 7-107, the purpose of which “appears to be to insulate the trial process, and especially jurors, from efforts by attorneys to influence the outcome of the proceeding through extrajudicial means.”<sup>4</sup> Respondent 2’s loss of business, if any, does not constitute prejudice to the hearing, and she has not shown any evidence that the statements attributed to the Chief of Enforcement will have a substantial likelihood of materially prejudicing the hearing. In addition, the press release contained the disclaimer required by IM-8310-3 (*Release of Disciplinary Complaints, Decisions and Other Information*) that the issuance of the Complaint in this proceeding is only the initiation of the case against the respondents and no findings as to the allegations in the Complaint have been made.

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<sup>2</sup> Enforcement filed the brief late. Under Procedural Rules 9146(d) and 9138(c), Enforcement’s response was due no later than June 9, 2008, 17 days after service of the motion.

<sup>3</sup> Respondent 2 did not submit any evidence of prejudice.

<sup>4</sup> *William P. Sullivan*, 586 N.Y.S.2d 322, 325, 1992 N.Y. App. Div. LEXIS 9073, \*11 (N.Y. App. Div. 1992).

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Accordingly, the Hearing Officer denies Respondent 2's motion to dismiss the charges against her.

**IT IS SO ORDERED**

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Andrew H. Perkins  
Hearing Officer

Dated: June 11, 2008