

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-17 (C9B040033).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9B040033
	:	
v.	:	
	:	Hearing Officer - SW
	:	
	:	
	:	
Respondent.	:	

ORDER REQUIRING RESPONDENT TO SUPPLEMENT HIS RULE 9252 REQUESTS

On August 26, 2004, Respondent filed a Rule 9252 motion requesting that RQ, DW, RD and NS be compelled to provide testimony and produce unspecified documents at the Hearing scheduled for October 13 and 14, 2004. On September 8, 2004, the Department of Enforcement ("Enforcement") filed an opposition to Respondent's motion, arguing that Respondent failed to meet the requirements of Rule 9252.

Rule 9252 provides, in part, that a request to compel the production of documents or testimony at a hearing (i) describe with specificity the testimony and documents sought, (ii) state whether the testimony is material, (iii) describe the requesting party's previous efforts to obtain the testimony and documents through other means, and (iv) state whether each proposed witness is subject to NASD's jurisdiction.

Respondent's August 26, 2004 motion indicates that the witnesses are currently associated with an NASD member, and that they have not responded to Respondent's request that they appear and testify at the Hearing. The motion also indicates that the testimony will

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concern the events cited in the investigation. However, the motion does not adequately summarize the specific documents being requested. For example, the motion should state, "I requested that RD bring a copy of . . ."; and the motion should state, "This document is material because it will prove that . . ."

The motion must also specify that Respondent has made subsequent efforts to contact the witnesses. For example, the motion must state, "I attempted to contact RQ on _____, 2004, _____, 2004, and _____, 2004 and RQ has not responded"; or "I contacted DW on _____, 2004, and requested that he appear at the October 13, 2004 Hearing to testify on my behalf, and DW said . . ."

The motion must also provide an address and telephone number for each witness to enable the Office of Hearing Officers to contact them.

Respondent must supplement his motion to include the above requested information no later than September 16, 2004. The Department of Enforcement will then have until September 20, 2004 to file an objection to Respondent's Rule 9252 motion, as supplemented.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 9, 2004