

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondents.

Disciplinary Proceeding
No. 2005000316701

Hearing Officer – DRP

**ORDER DENYING RESPONDENTS' REQUEST THAT
THE DEPUTY CHIEF HEARING OFFICER NOT EXERCISE AUTHORITY
PURSUANT TO RULE 9235(b)**

Respondents have filed a joint request that the Deputy Chief Hearing Officer not exercise his authority under Rule 9235(b) to resolve pending motions. As the parties were notified on November 7, 2006, the Hearing Officer assigned to this matter is temporarily unavailable to discharge her duties for an indeterminate period. Rule 9235(b) provides that in such circumstances, the Deputy Chief Hearing Officer "may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding."

In their motion, Respondents assert that there are currently eight pending motions. These include potentially dispositive motions, as well as motions that have significant implications for the parties' preparations for the hearing. It is therefore important that the

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-54 (2005000316701).

motions be resolved promptly. Yet, as indicated in the November 7 notice, it is uncertain when the Hearing Officer assigned to this matter will be available to address them.

Respondents suggest that they will be prejudiced if the assigned Hearing Officer, who has presided over the case since the outset, does not rule on the motions, but the parties have no vested right to have a particular Hearing Officer rule on motions. In fact, cases are routinely reassigned within the Office of Hearing Officers during the pre-hearing process for administrative reasons, and such reassignment was, and remains, an option in this case. But Rule 9235(b) was adopted specifically to ensure that when a Hearing Officer becomes temporarily unavailable for any reason, as in this case, there is a mechanism available to resolve pending matters and move the case forward without having to reassign it.

Accordingly the parties may expect prompt rulings on all pending motions, as well as any motions filed hereafter.

SO ORDERED.

David M. FitzGerald
Deputy Chief Hearing Officer

Dated: November 9, 2006