

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT FIRM

and

RESPONDENT 2,

Respondents.¹

Disciplinary Proceeding
No. 2005001305701

Hearing Officer – SW

**ORDER DENYING THE RESPONDENTS'
MOTION FOR A MORE DEFINITE STATEMENT**

On October 19, 2006, the Department of Enforcement ("Enforcement") filed an eight count Complaint in this proceeding.

Count one of the Complaint alleges in paragraphs 11-13 that the Respondent Firm and Respondent 2 violated NASD Membership and Registration Rules 1021 and 1031, NASD Conduct Rule 2110 and IM-8310-1 because Respondent 2 managed and controlled the Firm's securities business and otherwise engaged in activities that required registration as a general securities principal from June 2004 to October 2006.

On January 11, 2007, the Respondents filed a Motion for a More Definite Statement as to count one of the Complaint. The Respondents requested that Enforcement state with specificity in paragraphs 11, 12, and 13, the alleged activities in which Respondent 2 was engaged that

¹ A notice of acceptance of offer of settlement was issued on November 15, 2006 as to Respondent 3, who was named in the Complaint. Accordingly, this proceeding is terminated as to Respondent 3.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-02 (2005001305701).

constituted managing and controlling the Firm and being actively engaged in the Firm's securities business.

On January 22, 2007, Enforcement filed an opposition to the Respondents' Motion for a More Definite Statement, stating that paragraph 13 of the Complaint contained seventeen separate subparagraphs which set forth various impermissible acts, functions and types of conduct that Respondent 2 performed or engaged in while suspended.

Rule 9212(a) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." A complaint satisfies this requirement if the allegations provide "a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense." DBCC No. 9 v. Michael R. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (NBCC July 28, 1997) (construing former Rule 9212(a)).

The Hearing Officer agrees that the alleged impermissible activities attributed to Respondent 2 are referenced in the subparagraphs of paragraph 13 of the Complaint. For example, subparagraph b of paragraph 13 of the Complaint alleges that Respondent 2 was the only authorized signatory on the Firm's checking account and that he issued, or directed the issuance, of all checks and other disbursements from the checking account. Therefore, Enforcement is alleging that Respondent 2's control of the Firm's checking account constituted managing and controlling the Firm.

The Hearing Officer finds that even a summary review of the Complaint reveals that Enforcement is alleging that Respondent 2 engaged in each of the activities listed in subparagraphs a through q of paragraph 13 and that each of the listed activities constitutes being impermissibly engaged in the Firm's securities business.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-02 (2005001305701).

Accordingly, the allegations in the Complaint are sufficient to allow the Respondents' to understand the charges and adequately prepare their defense. For this reason, the Hearing Officer denies the Respondents' motion for a more definite statement.²

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
February 5, 2007

² Additional examples of rulings by the Office of Hearing Officers are available at "www.nasd.com," then click on "Regulatory Enforcement," then "Adjudication," then "Office of Hearing Officers Decisions and Proceedings," and then "OHO Disciplinary Orders."