

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT FIRM

and

RESPONDENT 2,

Respondents.<sup>1</sup>

Disciplinary Proceeding  
No. 2005001305701

Hearing Officer – SW

**ORDER DENYING RESPONDENTS' THREE DISCOVERY MOTIONS**

**I. Motion for Witness Statements Denied as Moot**

On February 5, 2007, the Respondents filed a motion for production of witness statements. The Department of Enforcement ("Enforcement") represented that it has provided Respondent 2 with copies of five investigative testimony transcripts (including the transcript of Respondent 2's investigative testimony) and sworn declarations of five persons. Accordingly, the Respondents' February 5, 2007 motion for witness statements is denied as moot.

**II. Motions for Interrogatories and Production of Documents Denied**

**A. Respondents' Two Additional Discovery Motions**

On February 8, 2007, the Respondents filed two motions pursuant to NASD Procedural Rule 9251, one entitled "Request for Production of Documents" and the second entitled "First Set of Interrogatories."

In the "Request for Production of Documents," the Respondents requested that NASD produce requested documents within 30 days of the service of the motion. Among other things,

---

<sup>1</sup> 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 07-06 (2005001305701).**

the motion requested copies of (i) all communications with all persons associated with Respondent, (ii) all communications between NASD pertaining to Respondent, (iii) all documentations pertaining to the opening of the investigation leading up to the this disciplinary matter, and (iv) all documentation that will be offered into evidence at the hearing in this matter.

In the "First Set of Interrogatories," the Respondents listed 31 multi-part questions for NASD to answer ranging from (i) please state the ethical oath NASD officials take in their role as examiners and enforcement personnel, to (ii) is Respondent 2 an employee of the Respondent Firm and identify the rules and/or regulations supporting the position.

On February 14, 2007, Enforcement filed an opposition and motion to quash to both the Request for Production of Documents and the First Set of Interrogatories, arguing that both motions were inconsistent with NASD Procedural Rule 9251.

**B. Procedural Rule 9251**

As acknowledged by the Respondents, Enforcement's discovery obligations are defined and circumscribed by NASD Procedural Rule 9251.

Rule 9251(a)(1) provides that Enforcement must make available to respondents for inspection and copying documents prepared or obtained by NASD staff in connection with the investigation that led to the institution of the proceeding, including, but not limited to: (i) requests for information issued pursuant to Rule 8210; (ii) every other written request directed to persons not employed by NASD to provide documents or to be interviewed; (iii) the documents provided in response to either type of request described in (i) and (ii) above; (iv) all transcripts and transcript exhibits; and (v) all other documents obtained from persons not employed by NASD.

Rule 9251(b)(1) authorizes Enforcement to withhold various categories of documents that it would otherwise be required to produce under Rule 9251(a)(1), including: (i) documents that

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-06 (2005001305701).**

are privileged or that constitute attorney work product; (ii) examination or inspection reports; (iii) internal memoranda, or other notes or writings prepared by the NASD staff that will not be offered in evidence; and (iv) documents reflecting various types of regulatory information and communications.

On January 18, 2007, consistent with the requirements of NASD Procedural Rule 9251(e), Enforcement advised the Respondents in writing that the investigative file was available for inspection and copying in the NASD Philadelphia office. At the pre-hearing conference on January 30, 2007, Enforcement reiterated the availability for review of the investigative file.

Therefore, the Respondents must first review the investigative file consistent with the Procedural Rules before they can effectively file a request for any information that they believe is being withheld in violation of the Procedural Rules. Accordingly, the Respondents' motion for "Production of Documents" is denied without prejudice, and Enforcement's motion to quash the motion is granted.<sup>2</sup>

With respect to the Respondents "First Set of Interrogatories," the Hearing Officer finds that Rule 9251 does not explicitly authorize interrogatories. Accordingly, the Respondents' motion for "First Set of Interrogatories" is denied and Enforcement's motion to quash the motion is granted.

**SO ORDERED.**

---

Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
February 20, 2007

---

<sup>2</sup> Respondent 2 should promptly make arrangements to review the investigative file in Philadelphia, PA.