

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-09 (C05000006).

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	
v.	:	Disciplinary Proceeding
Respondents.	:	No. C05000006
	:	Hearing Officer—AHP
	:	

**ORDER GRANTING IN PART RESPONDENT _____
MOTION FOR MORE DEFINITE STATEMENT**

On March 21, 2000, Respondent _____ filed a motion for a more definite statement, specifically requesting that the Department of Enforcement (“Enforcement”) identify the acts or omissions underlying the allegations in the Fourth Cause of the Complaint that he violated Conduct Rules 2110 and 3010. Specifically, _____ seeks greater specificity regarding: (1) the acts or omissions constituting the failure to supervise; (2) the dates on which the failure to supervise is alleged to have occurred; and (3) whether the charge is premised upon a failure to follow the firm’s written supervisory procedures. Enforcement opposes the motion.

Discussion

A motion for a more definite statement is proper when the allegations of a Complaint fail to afford the respondents adequate notice of the charges. Rule 9212(a) requires that a Complaint “specify

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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 give “a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense.” District Bus. Conduct Comm. No. 9 v. Michael R. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (NBCC July 28, 1997) (construing former Rule 9212(a)). The pleadings in this case do not meet these standards.

The Fourth Cause of the Complaint alleges that Respondent _____ “failed and neglected to exercise reasonable and proper supervision of . . . _____ and . . . _____” with respect to the activities described in paragraphs 4-7 of the Complaint. Generally, paragraphs 4-7 of the Complaint allege that Respondents _____ and _____ made misrepresentations in connection with their participation in the sale of investment contracts to four individuals. Other than alleging that _____ was the branch manager at their firm during the period at issue, _____ is not mentioned in paragraphs 4-7 of the Complaint. No mention is made in those paragraphs of _____ duty of supervision with respect to _____.

More detail is needed to give _____ sufficient notice of the charge against him so that he has an adequate opportunity to plan a defense. On the other hand, a motion for more definite statement is not a discovery device. Enforcement’s discovery obligation is limited to making certain categories of documents available for inspection and copying pursuant to Rule 9251. Respondents are not entitled to a complete statement of all the evidence Enforcement intends to rely upon at the hearing. Accordingly, Enforcement is ordered to file a Bill of Particulars no later than April 20, 2000, providing reasonable detail of _____ alleged violation of NASD Conduct Rule 3040, including whether the alleged violation is based, in whole or part, on his failure to follow the firm’s written supervisory procedures.

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Enforcement is not required to provide the specific dates on which the failure to supervise is alleged to have occurred. If Enforcement claims that the firm's written supervisory procedures were inadequate, the Bill of Particulars also shall state whether Enforcement claims that _____ was responsible for establishing and maintaining those procedures.

_____ is ordered to file his reply to the Bill of Particulars within 14 days after it is filed with the Office of Hearing Officers.

SO ORDERED.

Andrew H. Perkins
Hearing Officer

Dated: Washington, DC
April 4, 2000