

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

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C8A000022
v.	:	
	:	Hearing Officer - DMF
	:	
	:	
Respondent.	:	

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**ORDER DENYING RESPONDENT’S MOTION  
FOR WITHHELD DOCUMENT LIST**

On June 5, 2000, respondent filed a motion for an order requiring the Department of Enforcement to produce a list of documents that Enforcement has withheld from production pursuant to Rule 9251(b). Enforcement filed its opposition to the motion on June 8.

Rule 9251(c) requires that in order to compel a withheld document list a respondent must show “some reason to believe that a Document is being withheld in violation of the Code.” Respondent sought to satisfy this requirement by stating: “At the Pre-Hearing Conference, counsel for Complainant represented that it has conducted witness interviews regarding the subject matter of this action. Mr. \_\_\_\_\_ has no way to determine if Complainant withheld documents pertaining to these interviews, and if such documents contain evidence demonstrating that further proceedings against him are unwarranted. If Complainant withheld documents and information containing exculpatory evidence, it is required to produce these documents to Mr. \_\_\_\_\_.”

**This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-14 (C8A000022).**

In its response, Enforcement states: “Any documents not produced were withheld by the Complainant strictly in accordance with NASD Rule 9251(b).” In addition, Enforcement represents: “[T]he documents produced included staff memoranda of telephone conversations. These memoranda include the staff’s internal memoranda and ‘telephone notes’ concerning numerous telephone conversations .... The Complainant provided [respondent] with all documents created or obtained by the staff during the investigation that relate to contacts between the staff and potential witnesses” (emphasis in original).

In light of Enforcement’s representations and respondent’s failure to cite any evidence that would contradict those representations or call them into question, the Hearing Officer finds that respondent has failed to demonstrate reason to believe that Enforcement is withholding any documents in violation of the Code. Therefore, the motion is denied.

**SO ORDERED**

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David M. FitzGerald  
Hearing Officer

Dated: Washington, DC  
June 14, 2000