DEPARTMENT (OF ENFORCEMENT,	
v.	Complainant,	Disciplinary Proceeding No. C3A990067
	Respondents.	Hearing Panel Order

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

ORDER DENYING MOTION FOR SUMMARY DISPOSITION

Respondent _____' Motion for Summary Disposition seeks dismissal of Cause Seven of the Complaint on factual and legal grounds. After considering the Motion and its supporting materials, the Department of Enforcement's Opposition, and the Respondent's Reply to the Department of Enforcement's Opposition,¹ the Hearing Panel concludes that the Motion should be denied. In the Panel's view, the factual contentions, set out in _____' Memorandum supporting the motion, are inappropriate for resolution by summary disposition. is charged with failing to supervise Respondent ______, in violation of NASD Conduct Rules 2110 and 3010. In essence,

¹ The Hearing Officer granted the Respondent and the Department of Enforcement leave to file the Reply and the Opposition thereto. On June 27, 2000, the Respondent, without leave, also filed a Surreply. Because the Respondent did not have leave to file the Surreply, it was not considered by the Hearing Panel.

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-16 (C3A990067). argues that the charge should be dismissed because as the branch manager of _____ Houston office he was not _____''s direct supervisor. _____ argues that although ______ joined ______ as a registered representative, she shortly moved over to the corporate finance department, over which _____ had no authority. But, as both Parties correctly note, the determination of whether a person is a supervisor is dependent upon the specific facts and circumstances of the relationship. See In re John H. Gutfreund, Exchange Act Release No. 31544, 1992 SEC LEXIS 2939 (Dec. 3, 1992). These aspects of Respondent's Motion argue for rulings in his favor on such issues as his authority, responsibility, ability to affect _____'s conduct, _____'s supervisory structure, and management's expectations regarding ______'s supervision. As to these and other factual questions concerning _____'s activities, the record is not so clear as to enable the Hearing Panel to find that there is no genuine issue with regard to any material fact. To resolve these matters, the Panel needs to assess documentary evidence in light of the questioning of witnesses and to see and hear the witnesses, including _____ himself. Accordingly, Respondent ' Motion for Summary Disposition is denied.

HEARING PANEL.

By Andrew H. Perkins Hearing Officer

Dated: Washington, DC July 6, 2000