

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-19 (C02040032).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C02040032
v.	:	
	:	Hearing Officer - SW
	:	
	:	
Respondent.	:	

**ORDER DENYING RESPONDENT'S
REQUEST FOR LEAVE TO OFFER EXPERT TESTIMONY**

On April 5, 2005, Respondent filed a motion for leave to offer the expert testimony of IE, Esq. and/or SM. According to Respondent's motion, these two witnesses would provide expert testimony regarding: (i) "market anomalies during 2000"; (ii) "disclosure duties" of registered representatives; (iii) the "sufficiency and materiality of disclosures" in the relevant private placement memoranda; (iv) the "materiality" of the alleged omissions; (v) "suitability" factors; (vi) "due diligence" obligations of a registered representative; (vii) "accounting reporting requirements"; and (viii) "rights and duties of a general partner of a limited partnership."

On April 15, 2005, the Department of Enforcement ("Enforcement") submitted its opposition to Respondent's motion for leave to offer expert testimony. Enforcement sought to preclude the testimony of IE, Esq. or SM as experts on the grounds that (i) the Hearing Panel had its own relevant expertise, and (ii) it was improper to tender expert testimony on ultimate issues of law.

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Enforcement correctly cited that, although the formal rules of evidence do not apply in a proceeding brought under the Rule 9000 Series, Hearing Officers look to the Federal Rules of Evidence and relevant case law for guidance in determining whether to grant a request for expert testimony. The Federal Rules of Evidence and relevant case law provide that the party seeking to admit expert testimony bears the burden of demonstrating that such testimony will assist the finder of fact in technical areas outside the fact finder's area of expertise. *See In re Diet Drugs Products Liability Litigation*, 2000 U.S. Dist. LEXIS 9037 (E.D. Pa. 2000) at *17, citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 n.10. Moreover, expert testimony is usually only received when the witness has some scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the facts in issue. *See, e.g.*, F.R.E. 702.

Here, the allegations against Respondent, i.e., that he (1) misrepresented material facts to his customers, in violation of NASD Conduct Rules 2110 and 2120, (2) made unsuitable recommendations, in violation of NASD Conduct Rules 2110 and 2310, and (3) engaged in private securities transactions, in violation of NASD Conduct Rules 2110 and 3040, do not involve unique or complex issues that would necessitate the use of an expert. Respondent's motion failed to persuade the Hearing Panel that the anticipated testimony would be helpful to the Hearing Panel, and should be given any weight as expert testimony.

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Accordingly, the Hearing Officer denies Respondent's motion for leave to offer the expert testimony of either IE, Esq. or SM.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
May 5, 2005