

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent 1

and

Respondent 2,

Respondents.

Disciplinary Proceeding
No. C05050015

Hearing Officer—Andrew H. Perkins

**ORDER DENYING RESPONDENT 1'S
MOTION FOR MORE DEFINITE STATEMENT**

On May 26, 2005, Respondent 1 moved for a more definite statement of the charges against him. The Department of Enforcement filed an opposition on June 6, 2005, asserting that the Complaint meets the pleading requirements of Procedural Rule 9212(a).

After careful consideration of the Parties' arguments, the Hearing Officer denies Respondent 1's motion. A motion for a more definite statement is not a discovery device. It allows a respondent to obtain clarification of allegations that fail to provide adequate notice of the charges. NASD Rule 9212(a) requires that the Complaint "specify 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

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violated.” This requirement is satisfied if the allegations provide “a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense.”¹

If a Complaint is so vague, ambiguous, incomplete, or confusing that it fails to satisfy this standard, a respondent may be entitled to a more definite statement of the charges. On the other hand, if the Complaint, taken as a whole, fairly apprises the respondent of the charges and affords the respondent an adequate opportunity to plan a defense, a motion for more definite statement will not lie.

Respondent 1's motion does not request a more definite statement of the charges. Rather, Respondent 1 seeks disclosure of the Department's evidence. For example, Respondent 1 requests that the Department be ordered to identify its proposed witnesses and provide a summary of their expected testimony. Respondent 1 also seeks a description of each document the Department intends to offer into evidence at the hearing. Such evidentiary details exceed the scope of a motion for a more definite statement.

Finally, Respondent 1 requests a statement of the legal theory under which the Department alleges that he violated NASD Conduct Rules 2110 and 3040. The Hearing Officer finds, however, that the Complaint adequately states the theory underlying the Department's case.² Accordingly, a more definite statement is not warranted.

¹ *District Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45 (N.B.C.C. July 28, 1997) (construing former Rule 9212(a)).

² On the other hand, Respondent 2 filed a Motion for More Definite Statement that properly challenges the sufficiency of the charges. To the extent that Respondent 1 meant to address those same deficiencies in requesting a more definite statement of the Department's “theory,” those deficiencies are discussed in the Order Granting Respondent 2's Motion for More Definite Statement dated June 7, 2005.

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For the foregoing reasons, the Hearing Officer denies Respondent 1's Motion for a More Definite Statement.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

June 7, 2005