

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. CAF040079

Hearing Officer – DRP

ORDER GRANTING ENFORCEMENT'S MOTION FOR WITNESS SEQUESTRATION

On January 30, 2006, the Department of Enforcement moved for entry of an order excluding, with certain exceptions, witnesses from being present at the hearing during other witnesses' testimony. Enforcement further seeks an order prohibiting witnesses subject to sequestration from discussing their testimony with any other witness until those involved have testified. On February 13, 2006, Respondent ["Respondent" or "the Firm"] opposed Enforcement's motion in part.

Enforcement proposed to except from any sequestration order: (1) corporate designees of the Firm; (2) John J. Hanlon, NASD's lead examiner on this case; (3) Catherine Bruns, NASD's paralegal on this case; and (4) expert witnesses, when evidence is presented on subjects related to the expert's proposed testimony.

Respondent opposes the exception for Hanlon and proposes an exception for the Firm's registered representatives. Though not named as individual respondents, the Firm asserts that registered representatives should be permitted to attend the hearing during the testimony of their customers.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-22 (CAF040079).

Under Rule 9235, the Hearing Officer has the authority to order sequestration of witnesses to discourage fabrication, collusion, and tailoring of testimony. Accordingly, the Hearing Officer grants Enforcement's motion as follows:

- (1) Fact witnesses, including the Firm's registered representatives, shall be excluded from the hearing room and shall be advised to refrain from discussing their testimony with any other witnesses until all have finished testifying.
- (2) Sequestration shall not apply to Bruns or Hanlon. On or before March 24, Respondent may designate a corporate representative by name and title, who, with the Hearing Officer's approval, will also be exempt from sequestration.
- (3) Sequestration shall not apply to expert witnesses, if permitted to testify.¹

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: March 9, 2006
Washington, DC

¹ The Hearing Officer has deferred ruling on the parties' request to present expert testimony until the Hearing Panel has reviewed reports prepared by the proposed experts.