

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 07-35 (2005000323905).

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

RESPONDENT 1,

RESPONDENT 2,

Respondents.

Disciplinary Proceeding
No. 2005000323905

Hearing Officer – SW

**ORDER REGARDING RESPONDENT 2'S
MOTIONS FOR OFFICIAL NOTICE**

A. Official Notice of SEC Order Denied

On July 9, 2007, Respondent 2 filed a request that the Hearing Officer take official notice of an "Order Remanding Disciplinary Proceeding," issued by the Securities and Exchange Commission on June 29, 2007 (the "SEC Order").

On July 31, 2007, the Department of Market Regulation ("Market Regulation") filed a response to Respondent 2's motion, in which it indicated that it had no objection to Respondent 2's request.

Pursuant to Procedural Rule 9145(b), an adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of FINRA as an expert body.

The usual method of establishing adjudicative facts is through the introduction of evidence, ordinarily consisting of the testimony of witnesses or documents. If particular

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA).

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facts are outside of the area of reasonable controversy, this process is dispensed with as unnecessary. A high degree of indisputability is the essential prerequisite. "Judicial notice applies to self evident truths that no reasonable person could question, truisms that approach platitudes or banalities."²

To the extent that Respondent 2 is requesting that the SEC Order be considered as precedent in this proceeding, official notice is not required to make that argument.

To the extent that Respondent 2 is arguing that certain facts have been adjudicated in the SEC proceeding and that Market Regulation is barred from relitigating those facts, Respondent 2 must file a request for collateral estoppel citing the specific adjudicated facts.

By reason of the foregoing, Respondent 2's motion requesting that the Hearing Officer take official notice of the SEC Order is denied.

Nothing in this Order would prevent Respondent 2 from filing the SEC Order as an exhibit in this proceeding subject to the Hearing Officer's authority pursuant to Rule 9263 to exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

B. Official Notice of Connector Bond Award Denied

On July 20, 2007, Respondent 2 filed a request that the Hearing Officer take official notice of an arbitration award issued on July 13, 2007 in the matter of [_____ v. _____] ("Connector Bond Award").

On July 31, 2007, Market Regulation filed an opposition to the request for official notice. Market Regulation argued that no fact capable of ready determination is

² Wooden v. Missouri Pacific R. Co., 862 F.2d 560, 563 (5th Cir. 1989).

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contained in the Connector Bond Award because other than to announce the conclusion of the arbitration proceeding, the Connector Bond Award contains no findings of fact.

On August 1, 2007, Respondent 2 filed a reply to Market Regulation's opposition.

Arbitration awards do not establish precedent for disciplinary proceedings.³ Even if the Connector Bond Award included findings of fact, Respondent 2 does not have the option of arguing that Market Regulation is estopped from relitigating the adjudicated facts because Market Regulation was not a party in the arbitration proceeding.

Accordingly, Respondent 2's motion requesting that the Hearing Officer take official notice of the Connector Bond Award is denied.

Nothing in this Order would prevent Respondent 2 from filing the Connector Bond Award as an exhibit in this proceeding subject to the Hearing Officer's authority pursuant to Rule 9263 to exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
August 9, 2007

³ The Hearing Officer notes that the FINRA Sanction Guidelines states that "[c]ertain regulatory incidents are not relevant to the determination of sanctions. Arbitration proceedings, whether pending, settled or litigated to conclusion, are not 'disciplinary' actions." FINRA Sanction Guidelines, p. 2 (2007).