

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NAS ADEL ALLAN
(CRD No. 4562149),

GREGORY J. ANASTOS
(CRD No. 5800831),

and

WINDSOR STREET CAPITAL, f/k/a
MEYERS ASSOCIATES, L.P.
(BD No. 34171)

Respondent.

Disciplinary Proceeding
No. 2015046971701

Hearing Officer–LOM

**ORDER GRANTING MOTION
TO ALLOW *DE BENE ESSE* DEPOSITION**

On March 12, 2018, the Office of Hearing Officers received from the Department of Enforcement a motion to allow it to take a *de bene esse* deposition of the sole living customer whose account is the subject of the allegations of the Complaint. Enforcement also moved for expedited consideration of that motion, representing that counsel for Respondents Windsor Street Capital, LP (the “Firm”) and Gregory J. Anastos did not oppose the motion to take the *de bene esse* deposition and did not object to it. Enforcement further represented that Respondent Nas Adel Allan did not state whether he intended to oppose the motion to take the deposition.

On March 13, 2018, I granted the motion for expedited consideration and Ordered Respondents to file and serve any responses no later than March 19, 2018. I instructed Respondents to act more quickly if possible, particularly if they had no more to say than that Enforcement had accurately reported their position.

On March 14, 2018, the Firm filed a response saying that it agreed with Enforcement’s statements in its submission. On March 15, 2018, Respondent Allan filed a response confirming

that Enforcement accurately reported his position.¹ The Office of Hearing Officers has received nothing from Respondent Anastos regarding the motion to take the deposition. The March 19, 2018 deadline for any objection or opposition has passed.

Thus, no Respondent has timely filed an objection or opposition to the motion to take the *de bene esse* deposition of customer IR. Furthermore, as briefly summarized in the Order granting expedited consideration, and as set forth in more detail in Enforcement's motion, Enforcement has shown good cause for taking the deposition. Accordingly, I **GRANT** the motion to take the *de bene esse* deposition of customer IR, subject to the guidance set forth below.

Enforcement proposes to record on video the deposition in Morgantown, West Virginia, either at the nursing facility where IR currently resides or, if he has been discharged, wherever he then resides. Counsel for the Firm and Anastos have said that they intend to participate by video conference. The parties should work together to facilitate the taking of the deposition in this manner.

Enforcement will conduct direct examination; Respondents will cross-examine; and the parties may engage in re-direct and re-cross to the extent appropriate. If there is an objection to a question or a line of inquiry, the objecting party shall briefly state the basis for the record but the deposition shall continue. The objections will be considered and ruled upon if the recorded testimony is offered at the hearing. The parties should keep objections to a minimum, keeping in mind the importance to the Hearing Panel of a sensible flow of testimony and the need to respect the fragile health condition of the witness.

Enforcement has sought to be allowed to use either a video of the deposition or a transcript if IR is unavailable to testify at the hearing. From the perspective of the Hearing Panel, a video recording of the deposition is more desirable than an audio recording or a transcript. I will defer determination of whether a transcript may be used until the circumstances of the deposition and IR's availability to testify at the hearing are better known.

In its motion, Enforcement proposes two periods during which it hopes the deposition can be arranged, March 26-30, 2018, and April 9-13, 2018. It requests that Respondents be ordered to inform Enforcement within two (2) days of this Order when they are or are not available during those periods. According to Enforcement's motion, the Firm and Anastos have already said they believe the deposition should be scheduled during the April 9-13, 2018 period. At least as their position is described in the motion, they did not indicate when they are or are not available on the earlier dates. Rather, they selected the later dates. Allan has thus far said nothing regarding availability during the specified periods.

¹ Allan emailed his response to the Case Administrator and to the other parties. In the future, Respondent Allan should send filings to OHOCASEFILINGS@FINRA.ORG, a monitored mailbox.

I believe that the deposition will not take a whole day. It is critical that a date be chosen that is convenient for the witness and that provides him a fair opportunity to testify fully, minimizing the stress. If some other date not within the two periods proposed by Enforcement is better for the witness, I expect the parties to make every effort to accommodate him.

With respect to the dates suggested by Enforcement, I note the following from the parties' filings during the struggle to set hearing dates in this matter and instruct the parties to take certain steps to expedite the taking of the deposition. Time is growing short.

- The Firm's counsel was scheduled to participate as a panel member in a FINRA Dispute Resolution arbitration hearing set for March 27-30, 2018. Counsel stated that the matter had been rescheduled twice, implying that he did not want to be the cause of another change in the schedule. Counsel for the Firm should inform Enforcement **within one (1) day of this Order** whether the arbitration matter is still scheduled for March 27-30, 2018. If it is not, then counsel for the Firm will be presumed to be available for at least one day during the March 26-30, 2018 period for the deposition of IR.
- March 30, 2018, is Good Friday and also the beginning of the Jewish holiday of Passover. The Firm and Anastos had objected to holding the hearing on that day. If religious observances would make that day difficult for some to be involved in the deposition, they should inform Enforcement **within one (1) day of this Order** and Enforcement should make an effort to schedule the deposition another day.
- Allan's former counsel had a scheduling conflict for March 28-30, 2018, but Counsel no longer represents Allan. When Counsel for Allan raised his objections to holding the hearing that week, he asserted no conflict for Allan himself for those dates. Accordingly, Allan will be presumed to be available for at least one day during the March 26-30, 2018 period for the deposition of IR.
- Counsel for Anastos provided a detailed schedule of arbitration hearings in which he is participating. Although the schedule shows two early March arbitration hearings, it shows no conflict with the March 26-30, 2018 period. Accordingly, Anastos will be presumed to be available for at least one day during the March 26-30, 2018 period for the deposition of IR.
- If a Respondent or Respondent's counsel is **actually not available** on a day during the March 26-30, 2018 period, then **within one (1) day of this Order** that Respondent shall inform Enforcement which particular day he is not available and explain in detail why.
- The Firm had originally suggested that the hearing in this matter take place after the final hearing in a FINRA arbitration commenced by the trustees for the customer account at issue in this matter, the account originally held by IR and his

now-deceased wife. The final arbitration hearing was scheduled for April 9-13, 2018. That is the same period that Enforcement now offers as an alternative for IR's deposition. No one has indicated whether IR is expected to give testimony during the arbitration proceeding. Nor do I know if counsel or Respondents are participating in that proceeding. However, the Firm and Anastos have indicated to Enforcement that they could participate in the deposition during that period. If there is **any actual impediment** to the scheduling of the deposition in that period known to Respondents, they should inform Enforcement **within one (1) day of this Order**.

SO ORDERED.

Lucinda O. McConathy
Hearing Officer

Dated: March 20, 2018

Copies to:

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