

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 02-10 (CAF010021).

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CAF010021
v.	:	
	:	Hearing Officer - AWH
	:	
	:	
	:	
	:	
	:	
	:	
Respondents.	:	

ORDER DENYING MOTION TO SEVER

On April 15, 2002, Respondent _____ filed a motion to sever the allegations against him and have them heard in a separate proceeding in Los Angeles, California. He argues that (1) "including him in the hearing against the other Respondents against whom there is much greater evidence could prejudice his chances of a fair hearing," and (2) his resources would be conserved if he and his counsel were not required to travel to Boca Raton, Florida, and sit through the portions of the hearing that were not germane to the allegations against him. On May 8, 2002, the Department of Enforcement filed its opposition to the motion.

Rule 9214(e) authorizes the Chief Hearing Officer to sever a disciplinary proceeding into two or more proceedings after considering whether (1) the same or similar evidence reasonably would be expected to be offered at each of the possible hearings; (2) severance would conserve the time and resources of the parties; and (3) any party would suffer unfair prejudice if severance is or is not ordered. Here, there are

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significant common questions of law and fact that pertain to all five Respondents. Those common issues would have to be litigated twice if severance were to be granted.

Moreover, where there are common questions of law and fact, severance risks inconsistent decisions if different Hearing Panels are required for the separate proceedings. While severance might conserve Respondent's own resources, it would necessitate additional inconvenience and costs for other parties, the Hearing Panel, and witnesses, if the same evidence were required to be considered at separate hearings on opposite coasts. Finally, the relative quantum of evidence against one Respondent does not provide a basis upon which one could find prejudice against another Respondent; the charges against each Respondent stand on their own. Accordingly, good cause has not been shown for granting the motion to sever, and it is hereby *denied*.

SO ORDERED.

Linda D. Fienberg
Chief Hearing Officer

Dated: Washington, DC
May 15, 2002