

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-20 (C9B040098).

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. C9B040098

Hearing Officer – AWH

**ORDER DENYING RELIEF SOUGHT IN NOTICE TO PRODUCE AND APPLICATION FOR PROTECTIVE ORDER**

On April 28, 2005, Respondent filed a Notice to Produce and Application for a Protective Order. On May 11, 2005, the Department of Enforcement filed its Opposition to Respondent's request.

The first part of Respondent's pleading requests an order directing the Department of Enforcement to take three actions: (1) produce documents previously produced, but with the addition of "Bate stamp numbers or other customary identifying numbers; (2) comply with Rules 9251 (b)(2) and 9251 (a)(1),(2) and (3) of the NASD Code of Procedure; and (3) produce eight specified categories of documents. Enforcement asserts that it has fully complied with its obligations under Rule 9251 of the NASD Code of Procedure, and that it has not withheld any material exculpatory evidence that would be required to be produced under Rule 9251 (b)(2). Enforcement also objects to the request for documents that relate to another NASD investigation that does not involve Respondent. Finally, Enforcement objects to the relief sought on grounds that there is no legal authority for Respondent's "extraordinary demands."

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Respondent's first demand for identifying numbers on documents required to be produced pursuant to Rule 9251 goes beyond the requirements of the Code of Procedure and would require the Complainant to number documents that it might not elect to propose as exhibits to be introduced at the hearing.

Respondent's second demand is for Enforcement's compliance with its obligation to produce documents pursuant to Rule 9251. However, as noted above, Enforcement asserts that it has already complied with Rule 9251. Moreover, Respondent provides no factual predicate that would give the Hearing Officer reason to believe that Enforcement has not complied with its obligations under the Code of Procedure.

Respondent's third demand is for production of documents that "would implicate SN, JG, DK, RA, AS and JG with regard to their individual participation in the scheme and artifice relating to the creation of ML's FAC offices in New Jersey and Florida, and the operation of those offices, including, but not limited to, the intense competitions and contests held in connection with the sale of MLIM mutual funds." Respondent also seeks copies of all documents, interview notes, settlement agreements, and Wells Letters and/or Disciplinary Complaints filed by Enforcement against "senior executives, executive officers of ML that have been issued in connection with the NASD's investigation of the FAC offices," and those against "any employee or former employee of ML either at the branch office level or at the FAC offices." Lastly, Respondent seeks documents relating to transactions in *all* of Respondent's customer accounts and *all* recordings of Respondent's telephone conversations with ML customers.

Respondent's requests for documents and information go far beyond the issues in this case. They do not seek information relevant to the Complaint, nor do they show that

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any named individuals have personal knowledge of any facts relevant to the issues in this proceeding. The request to produce documents a second time, but with the addition of page numbers, is unwarranted and duplicative. Accordingly, the requests for documents and information are *denied*.

Respondent provides a "notice" that he "shall" (the time is unspecified) make application for a "Protective Order" seeking certain relief. In its Opposition, Enforcement states that if such application is made, it reserves the right to file an opposition to such request.

The Procedural Rules do not provide for, or require, the filing of notices of motions. Moreover, Rule 9146 (k) provides for the issuance of a protective order only to prevent or limit the disclosure of testimony or documentary evidence. It does not authorize the issuance of a protective order to (1) postpone the hearing date, (2) extend the length of the hearing, (3) serve subpoenas and take depositions, (4) stay the proceedings until the conclusion of an arbitration, (5) take judicial notice of certain facts, or (6) direct NASD to comply with the Rules of Procedure – all of which Respondent states he "shall" seek in a protective order. Respondent provides no authority for granting the relief he will seek, nor does he provide any good cause for granting such relief. Finally, the Hearing Officer notes that, pursuant to the Pre-Hearing Order dated March 11, 2005, all motions relating to the conduct of the hearing were due to be filed on or before April 27, 2005. Even if the Hearing Officer were to construe Respondent's "notice" that he would apply for a protective order as a timely filed motion for the relief to be sought, he finds that good cause has not been shown for granting any of the relief

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sought. Accordingly, to the extent that Respondent's notice is considered to be construed as a motion for relief, it is *denied*.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer

Dated: May 17, 2005