

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C10000010
v.	:	
	:	
	:	Hearing Officer - EBC
	:	
Respondent.	:	

**ORDER GRANTING ENFORCEMENT’S MOTION FOR LEAVE
TO WITHHOLD FROM PRODUCTION CERTAIN DOCUMENTS**

The Department of Enforcement (Enforcement) has moved, pursuant to Code of Procedure Rule 9251(b)(1)(D), for leave to withhold from production certain documents prepared or obtained in connection with the investigation that led to the institution of this proceeding. Respondent has not opposed the motion, and the Hearing Officer concludes that Enforcement has demonstrated good cause for the relief requested.

Discussion

The Department of Enforcement’s Complaint alleges that the Respondent, _____ (“_____” or the “Respondent”), violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to three requests to appear for an on-the-record interview. According to the Complaint and as set forth in Enforcement’s moving papers, NASD Regulation, Inc. (NASDR) issued these requests in connection with its investigation of possible unauthorized trading activities by _____. Enforcement seeks to withhold from production all documents in the investigative file with the exception

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of: (1) the initial customer complaint letters that led to the institution of the investigation; and (2) all documents relating to the scheduling of _____ testimony and his alleged failure to appear. In support of the motion, Enforcement argued that the other documents in NASDR's investigative file, including documents pertaining to possible unauthorized trading by _____, have no bearing on the matters at issue in this proceeding and that the disclosure of these documents would jeopardize the integrity of an on-going investigation.

Code of Procedure Rule 9251(a)(1) requires Enforcement to "make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of proceedings" (emphasis added). However, Enforcement's disclosure obligations are not unqualified. Pursuant to Code of Procedure Rule 9251(b)(1)(A)-(C), it may withhold from disclosure documents that are privileged, constitute attorney work product, or otherwise fall within a protected category. In addition, pursuant to Code of Procedure Rule 9251(b)(1)(D), the Hearing Officer may grant Enforcement leave to withhold a document or category of documents from disclosure "as not relevant to the subject matter of the proceeding, or for other good cause shown."

The Hearing Officer agrees that there is no reason to compromise the integrity of an on-going investigation in favor of the disclosure of documents that appear to be plainly irrelevant to the subject matter of this proceeding. In connection with the latter, the Hearing Officer notes that Respondent has not opposed the motion much less suggested that the documents Enforcement seeks to withhold are somehow relevant to his defense.

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Ruling

According, for good cause shown and there being no opposition, Enforcement's motion is GRANTED. Enforcement may withhold from production documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of this proceeding with the exception of:

- (1) the initial customer complaint letters that led to the institution of the investigation; and
- (2) all documents relating to the scheduling of _____ testimony and his alleged failure to appear.

Enforcement's obligation to produce these documents is, of course, subject to the provisions of Code of Procedure Rules 9251(b)(1)(A)-(C).

SO ORDERED.

Ellen B. Cohn
Hearing Officer

Dated: New York, New York
March 29, 2000