

**NASD OFFICE OF HEARING OFFICERS**

<p>DEPARTMENT OF ENFORCEMENT</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>Respondent 1</p> <p>and</p> <p>Respondent 2,</p> <p style="text-align: center;">Respondents.</p>	<p>Disciplinary Proceeding No. C3A030049</p> <p>Hearing Officer – AWH</p>
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**ORDER PRECLUDING EVIDENCE**

On September 9, 2004, the Department of Enforcement filed a motion, under Procedural Rule 9280, to preclude Respondents from offering any testimony or documents into evidence at the hearing because of their failure to serve or file any pre-hearing submissions. Rule 9280(b)(2) provides that:

A Party that without substantial justification fails to disclose information . . . required by order of the Hearing Officer . . . shall not, unless such failure is harmless, be permitted to use as evidence at a hearing . . . any witness or information not so disclosed.

By Order dated March 31, 2004, the parties were to file proposed documents to be offered into evidence, and a list of witnesses proposed to be called to testify at the hearing. Respondents have not filed any such documents or a list of witnesses proposed to be called.

On September 13, 2004, Respondents filed a Statement in Opposition to Enforcement's motion, objecting to divulging their witnesses, what those witnesses might

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-18 (C3A030049).**

say, or the evidence they may rely upon. Respondents assert that to do so would "assist the prosecutor in developing his case," and, as to Respondent 2, all witnesses named by Enforcement, and all documents produced by Enforcement, those witnesses and documents should not be subject to an order of preclusion.

To the extent that Enforcement calls witnesses at the hearing, Respondents will certainly be afforded the opportunity to cross-examine those witnesses. To the extent that Enforcement introduces exhibits that are admitted into evidence at the hearing, Respondents will be allowed to rely upon such documents as evidence for their defense. Finally, because Enforcement is obviously familiar with all documents that it filed in its pre-hearing submission, Respondents may seek to introduce into evidence any of those documents not offered by Enforcement. However, Respondents will not be allowed to call any other witnesses or introduce into evidence any other documents.

Both parties need time to prepare for effective cross-examination of documents and witnesses. The orderly conduct of the hearing under NASD Rules of Procedure does not allow parties to "hide the ball" and then produce surprise evidence at the hearing. Accordingly, Enforcement's motion to preclude Respondents from offering evidence at the hearing is *granted*, to the extent consistent with this Order.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer

Dated: September 13, 2004