

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. CAF040079

Hearing Officer – DRP

**ORDER DENYING MOTION TO RECONSIDER APPOINTMENT
OF EXTENDED HEARING PANELISTS**

Respondent has filed a motion seeking reconsideration of the appointment of the Extended Hearing Panelists in this proceeding.¹ Both Panelists are from the New York, NY, area; both are retired from NASD member firms and are former members of the District 10 Committee; and one is a former member of NASD's Board of Governors. Respondent does not suggest that either of the Panelists is subject to any disqualification under Rule 9234, but argues that the Panelists should come from District 8, the Primary District Committee, and reside in the Chicago area, where the hearing will be held. Respondent suggests that Panelists who reside in the Chicago area "would be free from the time constraints and pressures inherent in what could be a lengthy relocation."

Pursuant to Rule 9232, in appointing a Hearing Panel or Extended Hearing Panel, the Office of Hearing Officers looks first to the Primary District Committee for Panelists who satisfy the criteria set forth in Rule 9232(d), but it is not precluded from going outside the Primary

¹ Because the authority to appoint Extended Hearing Panelists rest with the Chief Hearing Officer, pursuant to Rule 9232, the motion has been referred to her.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-36 (CAF040079).

District Committee to obtain Panelists who “more clearly meet the criteria of paragraph (d)(1) through (4) and the public interest or the administration of NASD Regulation’s regulatory and enforcement program would be enhanced by the selection of the Panelists.” Where, as here, the parties have indicated that the hearing will be lengthy, the Office of Hearing Officers often must look beyond the Primary District to obtain Panelists who have the required industry expertise and are available for the expected period of the hearing.

In this case, the Panelists have extensive relevant industry expertise and, being advised of the predicted length of the hearing, have advised that they are available. Both are retired from their member firms; both have experience serving on Extended Hearing Panels; and neither has expressed any reservations about having to be away from home for an extended period for the hearing. There is thus no reason to expect that they will feel any “time constraints and pressures” in serving on the Extended Hearing Panel that a Panelist who resides within District 8 would not experience.

The motion for reconsideration is denied.

SO ORDERED

Linda D. Fienberg
Chief Hearing Officer

Dated: October 31, 2005