

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-07 (E8A2002109804).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. E8A2002109804

Hearing Officer – SNB

**ORDER GRANTING THE PARTIES' MOTIONS FOR TELEPHONE TESTIMONY
AND DEFERRING RULING ON RESPONDENT'S OBJECTION TO
ENFORCEMENT'S PROPOSED EXHIBIT CX-7**

During the February 15, 2007, final Pre-Hearing Conference ("Conference") in this matter, the Department of Enforcement ("Enforcement") made an oral motion to permit telephone testimony. The Hearing Officer directed Enforcement to file a motion on the issue, and ordered Respondent to file any objection no later than February 21, 2007. Following this, both parties filed motions for telephone testimony. Respondent also filed an objection to Enforcement's proposed Exhibit CX-7, to which Enforcement filed a reply. The Hearing Officer defers ruling on Respondent's objection to Exhibit CX-7 until the hearing in this matter.

Enforcement is seeking leave to offer the testimony of MO by telephone. Enforcement represents that his testimony will be limited to rebuttal testimony narrowly focused on the issue of whether Respondent orally informed MO of the sales of Jackson National Life Insurance products. He is also expected to testify consistent with his earlier written responses to NASD, which are reflected in proposed exhibit CX-6. Enforcement represents that MO has a scheduling conflict that would make his travel to Chicago a hardship.

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Respondent is seeking leave to offer the testimony of his father by telephone.

Respondent represents that his father's testimony is limited to his involvement in the initial meeting between Respondent and DV. Respondent further represents that his father recently had knee surgery, and travel from Indiana to Chicago would be a hardship.

Both requests are beyond the deadline in the scheduling order governing this matter. Enforcement's counsel orally represented to the Case Administrator that Enforcement does not object to Respondent's request. However, Respondent objects to Enforcement's request because it is untimely. Respondent also claims that he would be prejudiced, although the nature of the prejudice is unclear.

The Hearing Officer observes that both parties have requested relief beyond the scheduling order's deadline, the proposed testimony is anticipated to be fairly brief and concerns narrow issues, and the testimony may be helpful to the Panel in reaching a decision. Accordingly, for good cause shown, the parties' motions are granted, subject to the following conditions:

1. The parties shall provide for the record, in advance of the hearing, sworn statements obtained from the witnesses attesting that the testimony they will give at the hearing will be truthful. Enforcement shall promptly share with Respondent a form that he may use in preparing the sworn statement for Respondent's father to sign.
2. The parties shall ensure that the witnesses have, at the time of their testimony, copies of all exhibits that relate to the witnesses' direct testimony.
3. The parties shall ensure that the witnesses will be available by telephone during a block of time when it is reasonable to expect that the witnesses will be called to

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testify at the hearing, so that the hearing is not unduly disrupted if the testimony of prior witnesses is longer or shorter than expected.

4. The parties are responsible for ensuring that an operable speakerphone is available for use at the hearing.

SO ORDERED.

Sara Nelson Bloom
Hearing Officer

Dated: February 22, 2007