

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-08 (2005001305701).

In a January 31, 2007 Pre-Hearing Order, the Hearing Officer set a deadline of February 26, 2007, for the Parties to file suggestions for the location of the Hearing and reasons supporting their suggestions.

The Respondents filed their motion on February 5, 2007 requesting that the Hearing be held in Washington, DC, and Enforcement filed its motion on February 14, 2007 requesting that the Hearing be held in New York, NY. At the request of the Hearing Officer, the Parties filed supplements to their motions to address the possibility of holding the Hearing in Philadelphia, PA. The Respondents filed their supplement on February 20, 2007, and Enforcement filed its supplement on February 23, 2007.

There is no dispute that the appropriate primary district committee for this proceeding, pursuant to the criteria set forth in NASD Procedural Rule 9232(c), is the District 9 Committee, which is based in Philadelphia, PA. To support their choice of location of the Hearing, both Parties also focused on the criteria set forth in NASD Procedural Rule 9232(c). Although the criteria do not directly apply to a determination of what is the most convenient location for a hearing, the criteria are useful in formulating the determination of overall convenience.

The Respondents argued that five of the six criteria favor the Washington, DC metropolitan area because this: (i) is the location of the Firm's principal office; (ii) was the location of Respondent 2's principal office at the time of the alleged misconduct; (iii) was the location of the office of the member and the associated person where the alleged misconduct occurred; (iv) was the location, at the time of the alleged misconduct, of the office in which supervisory personnel, who were responsible for the supervision of a respondent, were employed; and (v) was the location, at the time of the alleged misconduct, of the office in which

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supervisory personnel, who were responsible for the supervision of the segment of the member, where the alleged misconduct occurred, were employed.

The Respondents further argued that the Firm is a very small minority owned broker/dealer and has very limited income or revenue to prepare and attend a hearing outside of its principal location.

Enforcement argued that the Hearing should be held in New York, NY because six of the witnesses in this proceeding, who will address the issue of whether Respondent 2 functioned in a principal capacity, are located in the New York metropolitan area. Rule 9232(c)(4) lists as a relevant factor the location of witnesses at the time of the filing of the complaint, especially the location of witnesses who are or were customers of a respondent. Enforcement's motion acknowledges that the witnesses are not customers but rather are registered individuals, subject to Rule 8210.

Enforcement, however, strongly argues that the witnesses should not be inconvenienced and that as between Respondent 2 and the witnesses, it is fairer that Respondent 2 bear any inconvenience. Enforcement also disputed the Respondents' argument that the supervisors referenced in Rule 9232(c)(5) and (c)(6) were located in Washington, DC; rather, Enforcement argued that the individuals, who the Respondents' alleged were supervising the Firm, were actually located in New York.

Enforcement also disputed the Respondents' claim that Respondent 2 does not have the financial resources to travel. Enforcement argued that in the Firm's last Income Statement for calendar year 2005, the Firm reflected almost \$200,000 of income. Nevertheless, Enforcement has no objection to holding the Hearing in Philadelphia, PA, believing that Philadelphia imposes less of a financial burden on the witnesses than does Washington, DC.

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The Hearing Officer notes that (i) the investigation leading to this proceeding was initiated in the Philadelphia office, (ii) the investigative file for this proceeding is located in Philadelphia, (iii) it is less expensive and less time consuming for Respondent 2 to travel to Philadelphia from Washington, DC than it is to travel to New York, and (iv) it is less expensive and less time consuming for six witnesses to travel to Philadelphia from New York than it is to travel to Washington, DC.

Accordingly, in the interest of fairness not only to the Respondents but also to the witnesses, and based on a review of the motions as supplemented, the Hearing Officer has determined that the Hearing scheduled for May 8, 9, 10, 2007 shall be held in Philadelphia, PA. A notice setting forth the exact location and time of the Hearing will be issued by April, 2007.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
February 28, 2007