

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent 1

and

Respondent 2

Respondents.

Disciplinary Proceeding
No. C05050015

Hearing Officer—Andrew H. Perkins

**ORDER GRANTING RESPONDENT 2'S MOTION
FOR PRODUCTION OF DOCUMENTS PURSUANT TO RULE 9253**

On January 3, 2006, Respondent 2 filed a motion for entry of an order compelling the Department of Enforcement ("Enforcement") to produce all witness statements in accordance with NASD Procedural Rule 9253.

Enforcement responded that, in compliance with Procedural Rule 9253(a)(1), it had produced all transcripts and recordings of oral statements given by the witnesses in this proceeding. These documents were transcripts of interviews taken in this proceeding and transcripts from related civil litigation. In addition, Enforcement represented that it did not possess any written statements or notes covered by Procedural Rule 9253(a)(2). As to certain staff interview notes that were not produced to the Respondents, Enforcement contended that

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-02 (C05050015).

they did not constitute "substantially verbatim" records, and they therefore were not covered by the Rule

Rule 9253(a)(1) is the NASD analogue to the Jencks Act, 18 U.S.C. 3500(e)(2), and requires production of a "substantially verbatim recital of an oral statement made by" the witness. Conversely, notes that are not substantially verbatim accounts of what the witness stated need not be produced.¹

Here Respondent 2 has moved for production of all documents that meet the requirements of Rule 9253, but he has not specified any particular documents he claims were improperly withheld. Accordingly, the Hearing Officer cannot assess whether there were any documents withheld that should have been produced. Nevertheless, the Respondents are entitled to all materials that fall within the scope of Rule 9253. Thus, to the extent that Enforcement has not already done so, it is ordered to produce such documents to the Respondents no later than January 12, 2006.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

January 6, 2006

¹ See, *Palermo v. United States*, 360 U.S. 343, 350 (1959).