

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-14 (CAF040079).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. CAF040079

Hearing Officer – DRP

ORDER GRANTING IN PART RESPONDENT'S MOTION TO EXCEED TIME LIMITS FOR SPECIFIC WITNESSES AND DENYING MOTION FOR RECONSIDERATION OF TOTAL NUMBER OF WITNESSES TO BE CALLED

On April 9, 2007, Respondent provided a list of 15 registered representatives who will testify during the May 2007 session of this continued hearing. Pursuant to the Hearing Officer's March 28, 2007 Order Regarding Witnesses (Order), a list of 15 additional witnesses is due no later than April 27.

On April 9, Respondent also filed a motion seeking to exceed the 30 minutes allotted for direct examination of each registered representative, imposed by the Order, for nine of the 15 representatives who sold _____ bonds to more than one customer. Respondent notes that two of these nine representatives each sold _____ bonds to eight customers. Enforcement, who is similarly limited to 30 minutes for cross-examination of each registered representative, filed its opposition to Respondent's motion on April 10.

Respondent also asks the Hearing Officer to reconsider her Order requiring Respondent to have available 30 witnesses during the May 2007 session. Respondent cites the financial burden involved in providing transportation and lodging for 30 witnesses, and the possible

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adverse effects on its "ability to prepare its case . . . by pushing witnesses to appear for preparation and testimony who are not then called to testify [in May], forcing [Respondent] to go back and seek their cooperation at a later date." For the reasons stated below, Respondent's motion is granted in part and denied in part.

Respondent has offered, and the Hearing Officer has admitted in evidence, detailed declarations from 35 registered representatives regarding their sale of _____ bonds to Respondent's customers in October-November 2001.¹ Each declaration sets forth the representative's background and training; how he or she became aware that _____ bonds were available for sale to retail customers; the basis of his or her recommendation of _____ bonds to customers; a response to declaration(s) submitted by his or her customer(s) regarding the representative's recommendation of _____ bonds; and the sales credit earned for each _____ bond transaction. A significant portion of the language in the declarations, particularly with respect to the basis for the representative's recommendation of _____ bonds, is identical.

Furthermore, the Extended Hearing Panel has heard testimony from nine registered representatives. For the most part, their testimony was consistent with each other, as well as with the declarations. Thus, to avoid considerable and unnecessary repetition, and to focus the parties on the most important issues, the Hearing Officer has properly imposed time limits for the direct and cross-examination of the 45 representatives yet to testify in this proceeding, most of whom are still registered with Respondent.

Accordingly, Respondent's motion is denied, and the Order stands, except that the parties may each have 60 minutes to examine each of the two representatives who sold _____ bonds to

¹ Declarations from 14 of the 15 witnesses at issue were admitted in evidence during the October 2006 hearing session. *See* Hearing Transcript (Tr.) at 4795-98; RX-151, 153, 163, 167, 168, 181, 186, 187, 190, 201, 203, 206, 211, 226.

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eight customers.² Respondent is thus required to submit a list of 15 additional witnesses on or before April 27, 2007. In addition, on or before May 9, Respondent must provide in writing the names of five witnesses who will testify on May 14, 2007.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: April 11, 2007
Washington, DC

² Though not identified by Respondent, the Hearing Officer believes the representatives at issue are _____ and _____.