

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. Respondent 1 and Respondent 2 Respondents.	Disciplinary Proceeding No. E1020040926-01 Hearing Officer – SW
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**ORDER DIRECTING THE RESPONDENTS TO FILE
A PROPER ANSWER TO THE COMPLAINT**

On February 17, 2006, Respondents 1 and 2 (collectively, the “Respondents”) were served with the Complaint in this proceeding. Count one of the Complaint alleges that Respondent 2 failed to amend his Form U-4 to disclose an initial and amended civil action alleging sales practice violations and a settlement agreement regarding the sales practice allegations, and counts two and three of the Complaint allege that in connection with two settlement agreements with customers, the Respondents drafted confidentiality provisions which failed to authorize their customers to respond to any inquiry about the settlement from NASD, in violation of Conduct Rule 2110. On March 21, 2006, a Second Notice of Complaint and Complaint were served on the Respondents, which directed the Respondents to file an answer to the Complaint no later than April 7, 2006.

On April 10, 2006, the Respondents submitted an unsigned letter in which both Respondents stated “not guilty” and referred to a letter dated October 19, 2004, which was not

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-29 (E1020040926-01).

attached. The letter as submitted does not meet the NASD requirements for an answer to a complaint.

NASD Procedural Rule 9137 provides that if a filing is not signed, the filing may be stricken, unless it is signed promptly after the omission is called to the attention of the person making the filing.¹

In addition, NASD Procedural Rule 9215(b) requires that an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the Complaint. If the Respondents believe that the October 19, 2004 letter, referenced in the Respondent's April 10, 2006 submission, specifically addresses each of the allegations of the Complaint, and it wants the October 9, 2004 letter to be deemed part of their answer, the Respondents must submit the letter directly to the Office of Hearing Officers to become part of the record of this disciplinary proceeding.

Accordingly, the Respondents are directed to submit a signed answer no later than April 24, 2006, to the Officer of Hearing Officers and to the Department of Enforcement. In addition to specifically addressing each of the allegations of the Complaint, the answer must also indicate whether the Respondents are requesting a hearing. If an answer in the proper form is not filed on or before the above deadline, the Hearing Officer will consider holding the Respondents in default.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
April 17, 2006

¹ On April 10, 2006, the Hearing Officer's legal assistant, Nick Laliberté contacted Respondent 2 and indicated that the answer needed to be signed.