

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent 1,

Respondent 2,

and

Respondent 3,

Respondents.

Disciplinary Proceeding
No. C9B040013

Hearing Officer – DRP

**ORDER GRANTING RESPONDENTS' MOTION
TO INTRODUCE EXPERT TESTIMONY**

Respondent 2 is charged with violating NASD Conduct Rules 2110, 2310, 2510(a) and IM-2310-2 for excessive and unsuitable trading in the account of customer ME. Respondent 2 seeks leave to present expert testimony at the hearing in order to challenge Enforcement's evidence and conclusions regarding the turnover, cost-equity, and commission-equity ratios in ME's account, which are used to support a finding of excessive and quantitatively unsuitable trading. The proposed expert would also testify about his analysis of ME's account, including "securities transaction detail, profit and loss detail, withdrawal detail, dividend and interest detail, and commissions detail ... and will draw conclusions as to actual harm to the customer based on this information."

Enforcement opposes the request, asserting that a hearing panel can easily comprehend and decide these issues without expert testimony, simply by reviewing relevant documentation, as evidenced by a recent decision involving similar charges.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-12 (C9B040013).

While Enforcement is correct that a particular hearing panel may be able to determine the turnover, cost-equity and commission-equity ratios by reviewing documentary evidence, not every hearing panel may have the same ability or expertise. Nor should a hearing panel be required to perform such calculations when testimony could assist the panel in making those determinations.

The Hearing Officer believes that the testimony of Respondents' proposed witness, _____, may be helpful to the Panel in its resolution of the issues in this case. Accordingly, _____ will be permitted to testify in this proceeding regarding his qualifications as an expert, and if so established, may render an opinion regarding his analysis of ME's account.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: July 30, 2004
Washington, DC