

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. Respondent.	Disciplinary Proceeding No. CAF030058 Hearing Officer—Andrew H. Perkins
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**ORDER GRANTING RESPONDENT'S MOTION FOR
IN CAMERA INSPECTION OF DOCUMENTS**

On May 28, 2004, the Respondent moved for entry of an order compelling the Complainant to produce all notes and memoranda that contain substantially verbatim statements of _____ personnel; or, in the alternative, for entry of an order requiring the Complainant to submit the notes and memoranda to the Hearing Officer for a determination of whether they must be produced pursuant to Procedural Rule 9253(a).

On June 14, 2004, the Complainant filed its opposition to the motion. The Complainant admits that it withheld notes and memoranda of witness interviews because it considers them privileged under Procedural Rule 9251(b). The Complainant asserts that the subject documents are attorney work product and that they do not contain substantially verbatim witness statements. As such, the Complainant argues that the Respondent cannot compel their production under Procedural Rule 9253(a).

Under the facts and circumstances of this proceeding, the Hearing Officer concludes that the Respondent has made a sufficient showing to justify an *in camera*

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-05 (CAF030058).

inspection of the notes and memoranda. The statements of the _____ representatives constitute the central (and possibly the only) evidence against the Respondent. Thus, the importance of full disclosure of any witness statements to the Respondent's defense cannot be questioned. Accordingly, the Hearing Officer ORDERS the Complainant to produce the notes and memoranda of the interviews of the _____ officials it intends to call to testify at the hearing for an *in camera* inspection. The Complainant shall produce the documents to the Office of Hearing Officers on or before June 25, 2004.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

June 15, 2004