

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW NEMER
(CRD No. 2813102)

Respondent.

Disciplinary Proceeding
No. 2016051925301

Hearing Officer — MAD

ORDER GRANTING MOTION REGARDING WITNESS SEQUESTRATION

On September 1, 2017, the Department of Enforcement filed a motion to sequester the witnesses during the hearing, with the exception of Respondent and FINRA's lead investigator, Michael Jaeger. Enforcement represents that Respondent does not oppose this motion.

Enforcement states that Jaeger has served as lead investigator in this matter since the beginning of the case, reviewed thousands of pages of documents, and prepared a demonstrative exhibit to be offered at the hearing. Enforcement asserts Mr. Jaeger's prospective testimony will focus primarily on: 1) the FINRA investigation that led to these proceedings; 2) authentication of documents obtained in that investigation; and 3) preparation of Enforcement's demonstrative exhibits. Enforcement argues that it is critical to its presentation that Jaeger be present in the hearing room and its case would be unduly prejudiced if Jaeger was sequestered. Enforcement asserts that Jaeger's testimony is unlikely to be compromised by his presence when others testify.

As Enforcement notes in its motion, there is precedent for excluding Enforcement staff investigators from sequestration at hearings, and that doing so is consistent with Federal Rule of Evidence 615, which, although not binding on FINRA disciplinary proceedings, provides guidance.¹ Rule 615 specifically requires sequestration when requested by a party, but excludes from mandatory sequestration a person who is "essential to presenting" a claim or defense. The Notes accompanying Rule 615 specifically state that an investigative agent may be permitted to sit at counsel table during a trial despite being a witness, particularly in a complex case.²

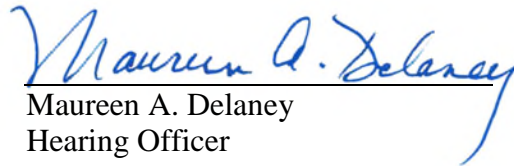
¹ See OHO Order 12-03 (2010024889501) (July 6, 2012), http://www.finra.org/sites/default/files/OHODecision/p150733_0_0.pdf.

² Fed. R. Evid. 615 Notes, Notes of Committee on the Judiciary, Senate Report No. 93-1277.

In this case, based upon Enforcement's representations, it is clear that Jaeger is the equivalent of an investigative agent whose presence at counsel table is permitted by Rule 615, and that Enforcement reasonably characterizes his presence as essential to the proper presentation of this data-intensive case. Although the goal of avoiding having witnesses shape their testimony based on what they hear from others is always a concern, according to Enforcement's representation, the risk of taint to Jaeger's testimony stemming from the testimony of other witnesses, including Respondent, appears in this case to be minimal.

Accordingly, for good cause shown, Enforcement's motion is granted. Counsel for the parties shall inform all non-party witnesses who will attend the hearing, with the exception of Jaeger, that they will not be allowed to enter the hearing room except to testify. Counsel shall also inform all non-party witnesses that they are prohibited from discussing their testimony or the testimony of other witnesses or potential witnesses until the hearing concludes.

SO ORDERED.


Maureen A. Delaney
Hearing Officer

Dated: September 5, 2017

Copies to:

Peter R. Boutin, Esq. (via email and first-class mail)
Edwin T. Aradi, Esq. (via email and first-class mail)
Jeffrey D. Pariser, Esq. (via email)