

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

DEPARTMENT OF MEMBER REGULATION,

Complainant,

v.

WESTOR CAPITAL GROUP, INC.
(CRD No. 103823),

Respondent.

Proceeding No. FR120002
STAR No. 20120353473

Hearing Officer – LBB

ORDER PRECLUDING USE OF DOCUMENTS

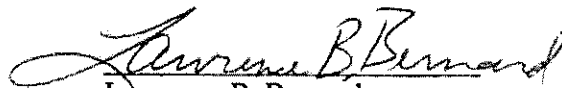
By Order of December 24, 2012, the Department of Member Regulation was required to provide to Respondent copies of all documents that were considered in issuing the Rule 9557 notice by 5 p.m. on December 27, 2012. Instead of providing the documents to Respondent at that time, Member Regulation provided the documents to an overnight courier, which delivered the documents to the office of Respondent's counsel on the morning of December 28.

Upon not receiving the documents by 5 p.m. on December 27, Respondent filed a Motion to Preclude and Vacate Notice, arguing that the failure to provide documents by 5 p.m. on December 27 prejudiced Respondent, and requesting that the Hearing Officer preclude Member Regulation from offering evidence and vacate the notice of suspension issued on December 19, 2012. At a pre-hearing conference held on December 28, Respondent's counsel explained that he had planned to review the documents in his office on the evening of December 27, and to continue his review at home on the morning of December 28. He said he was more than an hour from his office, and had personal obligations later in the day. Thus, he represented that he was prejudiced by not receiving the documents the previous day.

The order of December 24 was clear, and the time for delivery of the documents was chosen to provide Respondent, and the Hearing Panel, with at least two business days to review the documents, especially in light of the holiday period during which this proceeding is occurring. Member Regulation represents that it believed it had complied with the order, and the Hearing Officer does not find that Member Regulation acted in bad faith. However, the effect of not providing the documents until the morning of December 28 was to deprive Respondent of a portion of the time afforded to Respondent by the order of December 24 to prepare for the hearing. Accordingly, the Hearing Officer ruled at the pre-hearing conference that Member Regulation is precluded from using the documents at the hearing of January 2, 2013, and affirms that ruling by this order.

The Hearing Officer also ruled that Member Regulation may withdraw and re-issue the Rule 9557 notice, and affirms that ruling as well. Finally, the Hearing Officer ordered that Member Regulation shall file a notice by 1 p.m. on December 31, informing the Office of Hearing Officers and Respondent of whether it intends to proceed with the hearing on January 2, or to withdraw the Rule 9557 notice.

IT IS SO ORDERED.



Lawrence B. Bernard
Hearing Officer

Dated: December 28, 2012

Copies to: Martin H. Kaplan, Esq. (*via electronic and first-class mail*)
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