

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. C9B030076

Hearing Officer—Andrew H. Perkins

**ORDER DENYING RESPONDENT'S AMENDED MOTION
TO RECONSIDER ORDER DENYING MOTION TO DISMISS**

On November 24, 2004, the Respondent filed an "Amended Motion to Reconsider Order Denying Motion to Dismiss" (the "Motion"). The Motion renews the Respondent's request that the Hearing Officer dismiss this proceeding because the Office of Hearing Officers has not served the Decision promptly. The Respondent bases his motion on Procedural Rule 9268(a), which provides in relevant part that the Hearing Officer shall prepare a written decision within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs. The Respondent speculates that either the Hearing Officer failed to prepare the draft decision within the 60 day timeframe, or the Office of Hearing Officers failed to serve the decision timely. In either event, the Respondent argues that this proceeding must be dismissed.

Procedural Rule 9268 does not provide that the Hearing Panel must issue its decision within 60 days after the hearing, or that if the Hearing Panel does not issue its decision within

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-09 (C9B030076).

that time, the proceeding must be dismissed.¹ Instead, the Rule establishes a target date for the preparation of the decision. The Hearing Officer drafted the decision in due course and circulated it for review and final approval. Once the Hearing Panel completes its review of the draft decision, the Office of Hearing Officers will issue the decision promptly in accordance with the NASD Code of Procedure.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

November 26, 2004

¹ See *Daniel Richard Howard*, Exchange Act Release No. 46,269, 2002 SEC LEXIS 1909 (July 26, 2002).