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**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MARKET REGULATION

Complainant,

v.

Respondent 1, et al.

Respondents.

Disciplinary Proceeding  
No. CMS040165

Hearing Officer – SNB

**ORDER DENYING RESPONDENT'S MOTION FOR  
RECONSIDERATION OF SCHEDULING ORDER**

On October 31, 2005, Respondent 1 ("Respondent"), sent a letter to the Case Administrator in this matter, which Respondent characterized as a "formal objection to the scheduling that has been set in this case." The Hearing Officer will treat this as a Motion for Reconsideration of the Scheduling Order that she issued on October 31, 2005.

Respondent argues that he has not had enough time to retain a new attorney, following the disqualification of his attorney. Respondent also argues that there are "about 100,000 pages of documents and over 20 deposition transcripts" and a prospective attorney claimed he would have insufficient time to prepare for a January 2006 hearing in this matter.

The Hearing Officer finds Respondent's arguments unpersuasive, and denies Respondent's Motion for Reconsideration. In that regard, with respect to Respondent's argument that he has not had a fair amount of time to obtain new counsel, it is instructive to note that on August 22, the Hearing Officer issued her order disqualifying Respondent's counsel, pursuant to the National Adjudicatory Council's instruction to disqualify counsel if certain conditions were met. On September 30, 2005, the NAC

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affirmed the Hearing Officer's order. Accordingly, being generous, Respondent has already had many weeks to retain counsel. Moreover, the hearing is not scheduled to begin until January 9, 2006, and there is ample time to prepare for hearing, even assuming that Respondent's estimates as to documents and depositions is accurate, and they all relate to claims against Respondent. Respondent is also fortunate that he is seeking to retain counsel in the New York area, where there are numerous lawyers with the appropriate expertise to assist him.

The Hearing Officer is also not persuaded that Respondent has made a good faith effort to retain counsel, nor has he exhibited good faith in agreeing on a hearing date. Indeed, during the October 28, 2005 conference set for the purpose of confirming a hearing date, Respondent did not bring his calendar, and initially indicated that he believed he was unavailable on any of the ten proposed dates that worked for all other parties participating. Only when the Hearing Officer directed Respondent to get his calendar to review his conflicts date by date did Respondent acknowledge that he was available on the proposed hearing dates. (Transcript of October 28, 2005, Pre-Hearing Conference. Consistent with this, Respondent failed to mention the tentative dates of the hearing to his prospective counsel, despite the fact that the Hearing Officer's prior order directed him to do so. (Transcript of October 28, 2005, Pre-Hearing Transcript at p. 21)

The Hearing Officer also notes that the charges against Respondent (including manipulation of securities and unregistered distribution of securities), and the fact that Respondent is still in the industry. Given this, the ample time for counsel to prepare for hearing, and the lack of good faith demonstrated by the Respondent in scheduling the hearing date thus far, the Hearing Officer is not persuaded that delaying the hearing

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further is justified, reasonable, or in the public interest.

For these reasons, Respondent's Motion for Reconsideration of the Scheduling Order is hereby denied.

**SO ORDERED.**

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Sara Nelson Bloom  
Hearing Officer

Dated: November 15, 2005