

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 04-25 (ARB040029).

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,  Complainant,  v.  Respondent.	Disciplinary Proceeding No. ARB040029  Hearing Officer – JN
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**ORDER DEEMING DEFENSE AS ABANDONED, HEARING AS WAIVED, AND NASD  
SUSPENSION NOTICE AS FINAL**

Respondent requested a hearing concerning NASD's July 14, 2004 Notice of intent to suspend his registration for noncompliance with a settlement agreement involving an unpaid arbitration award. After Respondent asserted an inability to pay, the Hearing Officer, on August 19, 2004, issued an Order which scheduled a telephonic hearing for 2 p.m. Eastern Daylight Time on October 5, 2004 and, for that purpose, instructed the parties to telephone an MCI operator at a designated number. This Order also directed that Enforcement immediately send to Respondent the standard NASD financial disclosure statement and stated that by September 13, 2004, Respondent must "complete the statement, together with all required supporting materials" and send copies of such documents to Enforcement's counsel and to the Office of Hearing Officers. The Office of Hearing Officers did not receive any such documents on that date or at any time thereafter.

On September 17, 2004, Enforcement filed a Motion representing that Respondent had submitted nothing in support of his claim and requesting suspension of his registration for failure to comply with the Hearing Officer's August 19, 2004 Order. On September 28, 2004, the

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Hearing Officer issued an order notifying the parties that Enforcement's Motion would be addressed at the outset of the October 5, 2004 hearing. Respondent did not respond to the Motion.

On October 5, 2004, the Hearing Officer convened the scheduled hearing at 2 p.m. Enforcement counsel was present, but Respondent was not. The Hearing Officer then recessed the hearing until 2:30 p.m. to give Respondent further opportunity to make the call. The hearing resumed at 2:30 p.m. and Respondent was not on the line.<sup>1</sup>

Under Rule 9559(m), a respondent's failure to appear at the hearing or to comply with any order requiring production of information to support a defense to the notice "shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing..." Respondent has so failed. The Hearing Officer hereby considers his asserted defense to be abandoned and his hearing request to be waived

The Rule further provides "in such cases [abandonment of defenses and waiver of hearing], the notice issued under the Rule 9550 Series shall be deemed to be the final NASD action." The July 14, 2004 Notice from NASD Dispute Resolution to Respondent is, therefore, hereby deemed to be the final NASD action, and the instant proceeding is hereby terminated.

**IT IS SO ORDERED.**

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Jerome Nelson  
Hearing Officer

Dated: October 6, 2004

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<sup>1</sup> All Orders issued by the Hearing Officer were served on Respondent at the address which he furnished when he requested the hearing and which is also the most recent address listed for him in the Central Registration Depository.