

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MEMBER REGULATION,

Complainant,

v.

THE REID GROUP LLC
(CRD No. 130448),

Respondent.

Expedited Proceeding
No. FPI060005

Hearing Officer – DMF

HEARING PANEL DECISION

June 28, 2006

Respondent failed to timely file its annual audit report as required by Exchange Act Rule 17a-5, in violation of NASD Rule 2110. Respondent is suspended from NASD membership until the report is filed and assessed costs.

Appearances

J. Barron Knight, Esq., Washington, DC for Complainant.

Donovan L. Reid, President, New York, NY for Respondent.

DECISION

I. Procedural History

The Department of Member Regulation sent a letter to Respondent, The Reid Group LLC, on March 17, 2006, notifying Respondent that, pursuant to NASD Rule 9552, its NASD membership would be suspended for failure to timely file its annual audit report, as required by the Securities and Exchange Commission's Exchange Act Rule 17a-5. (CX-1.)¹ On March 31, 2006, Respondent filed a request for a hearing, pursuant to Rule 9552(e). (RX-1.) The hearing was held by telephone conference call on

¹ In this decision, "CX" refers to Complainant's exhibits; "RX" to Respondent's exhibits; and "Tr." refers to the transcript of the hearing.

May 24, 2006, before an NASD Hearing Panel that included an NASD Hearing Officer and two members of the District 10 Committee.

II. Facts

Respondent has been an NASD member since 2004. It is a registered broker-dealer with a \$5,000 net capital requirement. Respondent does not have any retail customers or conduct a retail business; rather, its business is limited to “investment banking advisory services.” (Tr. 8, 27-28, 31; CX-4.)

There is no dispute that Respondent was required to file an annual audit report for 2005 with NASD by March 1, 2006. Similarly, there is no dispute that Respondent has not yet filed such a report. (CX-1; Tr. 13.)

At the hearing, Donovan L. Reid, Respondent’s president, explained that Respondent has not filed its annual report “simply because we have not received pending fees. We have been calling on one particular client to provide us with those fees. It keeps getting pushed on and on each week ... The accountant has decided not to do the audit until they are paid” (Tr. 9.) He stated that the accountant’s fees would be just \$2,500 and that the client owes \$15,000. (Tr. 23, 29.) Thus, Respondent should be able to pay the accountant when the client pays, but the client’s bill has been outstanding for more than 120 days and as of the hearing Mr. Reid did not know when the client, which was “in the process of closing the final leg of their funding,” would pay. (Tr. 28-29, 32-33.)

III. Discussion

SEC Exchange Act Rule 17a-5 requires every registered broker-dealer to “file annually ... a report which shall be audited by an independent public accountant.” Respondent’s report was due on March 1, but it has not been filed. Failure to timely file

a report as required by Rule 17a-5 is a violation of NASD Rule 2110. E. Magnus Oppenheim & Co., Exch. Act Rel. No. 51,479, 2005 SEC LEXIS 764 at *7 (April 6, 2005).

Under certain circumstances, the SEC may grant a broker-dealer a waiver of the requirement that it file an annual report. In fact, Respondent received a partial waiver of its obligation to file a report covering the period ending December 31, 2004, in the form of a no-action letter from SEC staff.² (CX-4.) Respondent did not, however, seek or obtain a waiver from the SEC for its 2005 audit report.

Rule 17a-5 allows NASD to grant an NASD member firm an extension of time to file its report. In February 2006, Respondent mistakenly filed a request for an extension until the end of April with the SEC, rather than NASD, but Respondent sent a copy of its request to NASD. In March, after he inquired about the status of Respondent's request, SEC staff advised Mr. Reid that Respondent should have filed the request with NASD. (RX-1.) By that time, Respondent's audit report was overdue and NASD staff had sent Respondent the notice instituting this proceeding.

It appears that although Respondent sent NASD a copy of its February request for an extension, NASD did not direct the copy to the proper NASD staff, and it was not considered, because Respondent had addressed it to the SEC. (Tr. 16.) In any event, by the time of the hearing Respondent's extension request was moot, because even if NASD staff had considered and granted Respondent's request, that would have extended the

² SEC staff explained that it was granting the waiver because Respondent's registration with the SEC did not become effective until September 2004 and Respondent earned only \$8,965 from its business activities during the balance of that year. But SEC staff also instructed Respondent that "the annual report for the year ending December 31, 2005, must cover the entire period from September 13, 2004, the effective date of [Respondent's] registration with the Commission." (CX-4.)

deadline for Respondent to file its report only until the end of April. By May 24, the date of the hearing, Respondent had still not filed the report and Mr. Reid could not say when Respondent would be in a position to do so.³

Mr. Reid stated that Respondent was “not seeking to have an arbitrary exception to the rules,” and that “if suspension is the only path then we should be suspended.” (Tr. 9, 29-30.) But, arguing that “the effect of suspending the firm would be more harmful than the benefits” and that “because of the nature of [Respondent’s] business[,] investors are not at risk,” he asked the Panel to extend Respondent’s deadline for filing the report until such time as the client pays its outstanding bill and the accountant completes the audit. (Tr. 9, 30.) Since Mr. Reid could not predict when the client would pay, in practical effect this would be an indefinite extension of time.

The Hearing Panel lacks authority to grant Respondent an indefinite extension. It could amount to a complete waiver of Respondent’s obligation to file its report, which only the SEC has authority to grant. Moreover, even if the Panel could grant the relief Mr. Reid requests, it would not do so, because Respondent has not shown good cause for such an extension. According to Mr. Reid, Respondent’s accountant would charge only \$2,500 to complete the audit and prepare the report. Mr. Reid acknowledged that Respondent has not sought a loan or other funding to pay this modest amount. (Tr. 38.) In fact, Mr. Reid stated that Respondent has other paying clients, but has used those payments “to settle accounts payable and [for] operating expenses.” (Tr. 33-34.)

³ During a May 3, 2006, pre-hearing conference, the Department of Member Regulation confirmed that it would not pursue a suspension in this proceeding if Respondent filed its report by the date of the hearing. Thus, in effect Respondent received a longer extension of time than it requested in its February letter.

The Hearing Panel concludes, therefore, that Respondent is in violation of Rule 17a-5, and thus in violation of NASD Rule 2110.⁴

IV. Conclusion

Because it has failed to file its annual audit report in a timely manner, Respondent, The Reid Group LLC, is in violation of SEC Exchange Act Rule 17-5 and NASD Rule 2110. Respondent is suspended from NASD membership until it files the report. Upon filing the report, Respondent may make application to the Department of Member Regulation for termination of the suspension, pursuant to Rule 9252(f). In addition, pursuant to Rule 9559(n)(2), Respondent is ordered to pay costs in the amount of \$1,096, which includes a \$750 administrative fee and the cost of the hearing transcript. The suspension shall be effective as of the opening of business on June 30, 2006. The costs shall be due as of a date established by NASD.⁵

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to: The Reid Group LLC (*via facsimile and overnight and first class mail*)
J. Barron Knight, Esq. (*electronically and via first class mail*)
Grant D. Ward, Esq. (*electronically and via first class mail*)

⁴ The only sanction requested by the Department of Member Regulation was that Respondent be suspended until it files its audit report. Although the Hearing Panel has authority under Rule 9559(n)(1) to impose “any other fitting sanction,” under the particular facts of this case the Panel finds that the suspension requested by the Department is appropriate.

⁵ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.