

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

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|----------------------------|---|------------------------|
| DEPARTMENT OF ENFORCEMENT, | : | |
| | : | |
| Complainant, | : | Failure to Provide |
| | : | Information Proceeding |
| v. | : | |
| | : | No. FPI010002 |
| SAMUEL ENGELSBURG | : | |
| (CRD 2806792), | : | Hearing Officer - JN |
| | : | |
| Brooklyn, NY | : | HEARING PANEL |
| | : | DECISION |
| | : | |
| Respondent. | : | April 19, 2002 |

Respondent found liable for refusing to respond to staff requests for investigative testimony, issued under Rule 8210. For these violations, Respondent was barred from associating with any NASD member in any capacity.

I. Introduction

NASD members and associated persons must respond to staff requests for information made pursuant to Rule 8210. Rules 9541 through 9544 spell out the procedures arising from failures to respond to such requests. If an associated person fails to provide requested information, the staff may serve a notice on such person, specifying the violation and stating that a failure to take corrective action within 20 days will constitute a ground for suspension. If the failure persists after that 20-day period, the staff issues another notice, stating that the person has been suspended. He or she may file a motion for reinstatement within six months of the original notice. Upon such filing, the matter must be adjudicated by a three-member Hearing Panel (a Hearing Officer and two members drawn from the Association's District Committees).

Respondent Engelsberg filed a timely motion for reinstatement. Thereafter, the Deputy Chief Hearing Officer appointed a Hearing Panel, consisting of an NASD Regulation Hearing Officer and two current members of the Association's District 10 Committee. This Decision is rendered by that Panel.

On March 5, 2002, the parties filed a Joint Motion, asking that the Panel find Engelsberg liable for his failures to comply with staff requests and impose a bar as a sanction. The facts are set out in a Statement of Stipulated Facts ("Stip.") and documented by ten exhibits ("Ex.").

On February 22, 1999, Respondent, whose registration had earlier been terminated, filed a Form U-4, seeking registration as a general securities representative for a member firm and became associated with that firm (Stip., ¶¶ 2-3). Respondent Samuel Engelsberg failed to appear for on-the-record interviews as requested by the NASDR staff on February 8, 2000 and March 20, 2000, pursuant to Rule 8210 (Stip., ¶¶ 7-12). Thereafter, on January 18, 2001, the staff, acting under Rule 9541(b), served Respondent with a Notice stating that he would be suspended within 20 days for those failures, unless he took corrective action within that time (Ex. 5). On February 12, 2001, the staff sent him a Notice of Suspension from Association with any NASD Member, based on his failures to appear and to take corrective action (Ex. 6).

He thereafter agreed to appear for the requested interview, but that appearance (on December 3, 2001) culminated in his invocation of the Fifth Amendment (Stip., ¶¶ 18-21), an event which – as the parties agree – did not constitute corrective action (Stip., ¶ 27). See e.g. D. L. Cromwell Investments, Inc. v. NASD Regulation, Inc., 132 F. Supp. 2d 248, 252 (S.D.N.Y. 2001) (and cases there cited), aff'd 2002 U.S. LEXIS

1689 (2d Cir. 2002), recognizing that NASD is a private entity, and the Fifth Amendment is thus inapplicable to its proceedings.

Pursuant to Rules 9542(b) and 9543(a), the Hearing Panel approves the agreed-upon findings and imposes the agreed-upon sanction. The Panel accepts the parties' agreement that Respondent failed to comply with the staff's Rule 8210 requests for interviews and failed to take corrective action to cure those failures. Paragraph 28 of the Stipulation states that "[t]he parties agree that a bar from associating with any NASD member firm in any capacity is the appropriate sanction." The Panel ratifies that agreement and concludes that a bar, the standard sanction for failures to respond,¹ should be imposed here.

II. Conclusion

For failing to respond to requests for information in violation of Rule 8210, Respondent Samuel Engelsberg is barred from association with any NASD member firm in any capacity. The bar shall become effective on the date this Decision becomes the final disciplinary action of the Association.

HEARING PANEL

Jerome Nelson
Hearing Officer

Dated: Washington, DC
April 19, 2002

Copies to: Samuel Engelsberg (via overnight and first class mail)
Bernard C. Daley, Esq. (via overnight and first class mail)
Evan J. Gordon, Esq. (via electronic and first class mail)

¹ NASD Sanction Guidelines (2001), p. 39.