

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

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondents.

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Disciplinary Proceeding  
No. C05990006

Hearing Officer - AHP

**Hearing Panel Order**

**ORDER DISMISSING RESPONDENT \_\_\_\_\_ FOR LACK OF JURISDICTION**

On April 13, 1999, a Pre-Hearing Conference was held in this proceeding. At the Conference the Parties represented that Respondent \_\_\_\_\_ registration terminated on January 23, 1997. The record reflects that the Complaint in this proceeding was filed on January 25, 1999, which is more than two years after \_\_\_\_\_ termination date. Accordingly, the Hearing Officer ordered the Department of Enforcement (Enforcement) to show cause why the Complaint against \_\_\_\_\_ should not be dismissed for lack of jurisdiction. Enforcement filed its papers in response to this order on April 27, 1999.

**This Decision has been published by the NASDR Office of Hearing Officers and should be cited as OHO Redacted Decision C05990006.**

For the reasons set forth below, the Hearing Panel dismisses the Complaint against \_\_\_\_\_ for lack of jurisdiction.

### **Discussion**

Pursuant to Article V, Section 4 of the NASD's By-Laws, a person whose association with a member is terminated remains subject to the Association's jurisdiction for two years after the effective date of termination of registration. During this two-year period of retained jurisdiction, the Association may file a complaint against a formerly associated person based on conduct commencing prior to termination.

Here, Enforcement concedes that the effective date of termination of \_\_\_\_\_ registration was—at the latest—January 23, 1997,<sup>1</sup> more than two years before the Complaint was filed with the Office of Hearing Officers. To avoid dismissal, however, Enforcement argues that NASD Procedural Rule 9138 extends the filing date to January 25, 1999, because January 23 fell on a Saturday. This argument is without merit.

Rule 9138 provides as follows:

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. (Emphasis added.)

Enforcement argues that since the deadline for filing the Complaint fell on a Saturday, the Rule extended the deadline to the following Monday when the Office of Hearing Officers

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<sup>1</sup> Enforcement also concedes that the \_\_\_\_\_ Form U-5 was received by the NASD on January 20, 1997, which is referred to as the "Julian Date." In the past, the NASD has treated the Julian Date as the effective date of termination for the purposes of jurisdiction under Article V, Section of the NASD By-Laws. See District Staff Memorandum (DSM 92-4). However, the Hearing Panel need not address this issue because it finds that Enforcement filed the Complaint more than two years after the date \_\_\_\_\_ termination was posted to CRD.

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received the Complaint. Enforcement's argument, however, overlooks the plain wording of the Rule. It applies only to time periods designated in the NASD Code of Procedure, and it has no application to the jurisdictional limitation in Article V, Section 4 of the NASD By-Laws. In other words, Rule 9138 only applies to pleading and practice deadlines. Accordingly, the Complaint against Augustine is dismissed.

**SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Dated: Washington, DC  
May 19, 1999