

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

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DEPARTMENT OF ENFORCEMENT,	:	
	:	Non-Summary Suspension
Complainant,	:	Proceeding
	:	
v.	:	No. ARB980006
	:	
	:	DECISION
	:	
	:	Hearing Officer - DMF
	:	
	:	
Respondent.	:	December 15, 1998
	:	

Digest

The NASD notified the respondent, _____, pursuant to Rule 9513(a), that his registration would be suspended, pursuant to Article VI, Section 3 of the NASD's By-Laws and Rule 9510, et seq., for failing to pay an arbitration award. _____ requested a hearing, pursuant to Rule 9514(a), but he did not contest the NASD's jurisdiction to bring the proceeding. The NASD Board of Governors, however, determined, sua sponte, that the NASD lacks jurisdiction to bring this proceeding under Article V, Section 4 of the NASD's By-Laws, because the charge against _____ (who is not currently registered) concerns conduct – failure to pay an arbitration award – that commenced after the termination of his last association with a member firm. Therefore, in accordance with the directions of the Board of Governors, the Hearing Officer, sitting as the Hearing Panel pursuant to Rule 9514(b), dismissed the proceeding.

Appearances

Nina Schloesser McKenna, Chief Counsel, and Lisa J. Henoch, Senior Regional Attorney, Kansas City, MO, (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, of counsel), for the Department of Enforcement.

_____ and _____, _____, _____, _____ & _____, L.L.P., New York, NY, for respondent.

DECISION

Respondent _____ became registered with the NASD as a general securities representative and a general securities principal in November 1994. He was associated with First United Equities Corporation until December 1997, when First United went out of business. He has not been registered since December 1997.¹ On April 15, 1998, several months after _____'s association with First United ceased, an NASD arbitration panel issued an award against First United, _____, and others in the amount of \$228,627.74, together with forum fees. The award remains unsatisfied.²

The NASD notified _____, by letter dated July 17, 1998, that he was subject to suspension or cancellation of his registration, in accordance with Article VI, Section 3 of the NASD By-Laws and Rule 9510, et seq., for failing to pay the arbitration award. _____ requested a hearing pursuant to Rule 9514(a), and the undersigned Hearing Officer was appointed as the Hearing Panel pursuant to Rule 9514(b)(1).

A hearing was held on August 28, 1998 and reconvened on October 2, 1998. No party raised any question about the NASD's authority to bring this proceeding, either before or during the

¹ CX 1; Stip. ¶ 1; Tr. 21-22, 31, 92-93.

hearing. After the hearing, however, the NASD Board of Governors considered the jurisdictional issue sua sponte, determined that the NASD lacks jurisdiction, and directed the Hearing Officer to dismiss this proceeding.

_____ was no longer associated with any member firm when the arbitration award was issued. Article V, Section 4 of the NASD's By-Laws, captioned "Retention of Jurisdiction," provides, in part, that a person who is no longer associated with any member "shall be subject to the filing of a complaint under the Rules of the Association based upon conduct which commenced prior to the termination [of such person's association with a member firm.]" The Board of Governors determined that _____'s conduct – failure to pay the arbitration award – did not commence until after the termination of his association with First United, and, therefore, that the NASD lacks jurisdiction to bring this proceeding. Therefore, in accordance with the directions of the Board of Governors, this proceeding is dismissed.

SO ORDERED

David M. FitzGerald
Hearing Officer

Dated: Washington, DC
December 15, 1998

² CX 2, 4-7; Stip. ¶¶ 2-3, 5-8.