

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CAF970002
v.	:	
	:	
	:	Hearing Officer - EBC
	:	
Respondents.	:	

**ORDER REGARDING RESPONDENTS' MOTION
FOR AN EXTENSION OF TIME TO ANSWER**

On December 26, 1997, Respondent _____, through his counsel, filed with the Office of Hearing Officers a notice withdrawing his motion for a stay of this disciplinary proceeding combined with a motion requesting a 30-day extension of time to answer the Complaint. (A copy of “_____’ Motion to Request Extension of Time to Answer the Complaint & Withdrawal of Motion to Stay Proceedings, which was not accompanied by a certificate of service, is attached.)¹ Respondent _____ asserts that he requires an additional 30 days in which to answer the Complaint because, as a result of his previously pending bankruptcy filing, this proceeding had been “automatically stayed against him during the period of time in which his answer was due.” This is the sole basis for _____ requested extension. According to his motion, the Department of Enforcement does not oppose the requested extension of time.

¹ The Parties are reminded that all papers filed with the Office of Hearing Officers must be accompanied by a certificate of service, as required by Code of Procedure Rule 9135(c).

This order has been published by the NASDR Office of the Hearing Officers and should be cited as OHO Order 97-19 (CAF970002).

Rule 9222(a) authorizes the Hearing Officer to grant extensions of the time limits imposed by the Code of Procedure “for good cause shown.” Similarly, Rule 9215(a) authorizes the Hearing Officer to extend the time for filing an Answer “for good cause.” Pursuant to Code of Procedure Rule 9222(b)(2) extensions of time may not exceed 28 days, unless the Hearing Officer provides reasons why a longer period is necessary. Expeditious resolution of disciplinary proceedings serves the interests of the industry and the investing public, and ordinarily, the time limits in the Code of Procedure will afford the Parties adequate time to complete the action required.

Although the Hearing Officer agrees that Respondent _____ is entitled to additional time in which to answer the Complaint, he has failed to establish sufficient good cause to warrant a 30-day extension. By way of background, on December 8, 1997, Respondent _____, through his counsel, filed a motion seeking a permanent stay of this disciplinary proceeding as to him, based on his then-pending bankruptcy filing under Chapter 7 of the Bankruptcy Code. On December 19, 1997, the Department of Enforcement served and filed papers opposing the motion, on the grounds that _____ debts had been discharged on December 17, 1997 and that, by operation of law, the automatic stay terminated at the time of discharge. Prior to filing its opposition papers, on December 18, 1997, counsel for the Department of Enforcement discussed the discharge order with _____ counsel and suggested that the motion be withdrawn, but _____ counsel declined to do so.

In his papers in support of the present motion for an extension of time, _____ counsel concedes that _____ debts were discharged, the bankruptcy was proceeding dismissed, and the automatic stay was revoked on December 17, 1997. However, he declined to withdraw the motion for a stay until nine days thereafter, and did so only after the Hearing

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Officer ordered him to submit additional papers in support of his continued request for a stay of this proceeding. No reason was proffered for counsel's prior refusal to withdraw the stay motion.

While Respondent _____ may not have been obligated to answer the Complaint during the pendency of his bankruptcy filing, as of December 17 – when his debts were discharged – he no longer enjoyed the protection of the automatic stay (see 11 U.S.C. § 362(c)(2)). Code of Procedure Rule 9215(a) requires an Answer to be served and filed within 25 days after service of the Complaint. Respondent _____ has cited no reasons why the 25-day time limit is insufficient to allow him to prepare and file his Answer. Further, no benefit should inure to Respondent _____ as a result of his counsel's unexplained delay in withdrawing the motion for a stay. Accordingly, the Hearing Officer concludes that Respondent _____ is entitled to a 25- day extension of time – from the date his debts were discharged – in which to file an Answer to the Complaint.

Based on the foregoing,

IT IS HEREBY ORDERED that Respondent _____ shall serve and file an Answer to the Complaint by January 12, 1998.

Ellen B. Cohn
Hearing Officer

Dated: Washington, DC
December 29, 1997