

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Expedited Proceeding
No. ARB050010

Hearing Officer – DRP

**ORDER DEEMING DEFENSE AS ABANDONED, HEARING AS WAIVED,
AND NASD SUSPENSION NOTICE AS FINAL**

On or about April 19, 2004, an NASD arbitration panel rendered an award of \$66,685.00 plus interest, costs and fees, against Respondent jointly and severally with other parties.

Respondent was duly notified of the award and his obligation to pay the award within 30 days.

By letter dated January 31, 2005, NASD's Office of Dispute Resolution notified Respondent that it intended to suspend his registration for failing to comply with that award. On February 24, 2005, the Office of Hearing Officers received Respondent's request for a hearing pursuant to Procedural Rule 9554, asserting his inability to pay the arbitration award.

In an order issued on March 4, 2005, the Hearing Officer set the hearing in this matter for April 20, 2005 and established a pre-hearing schedule.¹ In light of Respondent's defense of inability to pay, the March 4 Order directed Respondent to file with the Office of Hearing Officers and serve on Enforcement a completed financial disclosure statement, together with all required supporting materials, by April 4, 2005. The March 4 Order also required the parties to

¹ On March 10, 2005, the parties filed a stipulation waiving any objection to the hearing being conducted beyond the 60-day period mandated by Rule 9559(f)(2) and requested that the hearing be held on May 2, 2005. By Order dated March 11, the Hearing Officer granted the request and rescheduled the hearing for May 2, 2005. That Order specifically stated that "[t]he pre-hearing schedule set out in the March 4 Order remains in effect."

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-16 (ARB050010).

file and exchange their pre-hearing submissions, to include a list of proposed witnesses and exhibits, as well as copies of all proposed exhibits, no later than April 11, 2005. In addition, the Hearing Officer's March 4 Order states that:

Any failure by Respondent to appear at the hearing or to comply with the pre-hearing schedule may be deemed an abandonment of Respondent's defenses to the notice and a waiver of any opportunity for a hearing, in which case the notice will be deemed to be final NASD action.

Respondent failed to abide by the pre-hearing schedule set forth in the March 4 Order. First, he failed to file the financial statement or supporting materials with the Office of Hearing Officers and failed to serve the documents on Enforcement by April 4, as required. Consequently, on April 5, Enforcement filed a motion for an order deeming Respondent's request for a hearing abandoned. Respondent did not file a response to the motion.² In addition, Respondent failed to file pre-hearing submissions by April 11, as required.

Respondent had ample time and opportunity to provide the documentation supporting his asserted defense of an inability to pay at the hearing he requested and to file pre-hearing submissions, and he was on notice that his failure to meet the deadlines set out by the Hearing Officer would result in immediate suspension. Furthermore, Procedural Rule 9559(m) provides that:

Failure of any respondent . . . to comply with any order of the Hearing Officer . . . requiring production of information to support any defense to the notice that the respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series.

² The Office of Hearing Officers phoned Respondent's counsel in order to clarify the status of the case, and on April 7, 2005, counsel orally requested until April 8 to confer with his client and respond to Enforcement's motion. On April 8, the Office of Hearing Officers again phoned Respondent's counsel, who said he would speak with his client "immediately," then call back with more information. Counsel has not contacted the Office of Hearing Officers.

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Respondent has so failed, and the Hearing Officer deems Respondent's asserted defense to be abandoned and his hearing request to be waived. The January 31, 2005 Notice from NASD Dispute Resolution to Respondent is hereby deemed to be the final NASD action, and the instant proceeding is hereby dismissed.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: April 12, 2005
Washington, DC