

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-05 (ARB050002).

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	
Complainant,	Expedited Proceeding
v.	No. ARB050002
Respondent.	Hearing Officer – SNB

**ORDER GRANTING ENFORCEMENT'S RULE 9559(m) MOTION AND DISMISSING PROCEEDING**

On January 12, 2005, in response to a notice sent by NASD staff pursuant to Rule 9554, the Respondent filed a timely request for a hearing. In his request, Respondent asserted his inability to pay the underlying arbitration award as the basis for his request. Accordingly, a pre-hearing schedule was established, which afforded the Respondent an opportunity to gather his financial information and submit it by February 18, 2005. On February 18, 2005, Respondent failed to submit his financial information and instead filed a letter stating that while he had gathered his financial information, he "concluded that this is not the approach that truly presents the facts in a meaningful way." Respondent's submission then detailed events surrounding the underlying arbitration award and why that award should not be valid.

On February 22, 2005, Enforcement filed a "Motion for Order Under Rule 9559(m) To Deem NASD's Notice To Suspend Respondent The Final NASD Action" for Respondent's failing to abide by the pre-hearing schedule by failing to file his financial information on February 18, 2005. The Hearing Officer, by order dated February 23, 2005, "in an abundance of caution and in recognition of the fact that Respondent is not represented by counsel" modified

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the scheduling order to permit Respondent to file his financial information by February 28, 2005.

NASD Rule 9559(m) states that “[f]ailure to . . . Comply with a Hearing Officer Order Requiring the Production of Information . . . to support any defense to the notice that 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.” In the initial order setting the schedule, Respondent was informed that a failure 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’s February 18, 2005 submission did not comply with the scheduling order. Notwithstanding this, the Hearing Officer amended the scheduling order to afford the Respondent a further opportunity to comply. That order provided that if Respondent failed to submit his financial information by February 28, 2005, the Hearing Officer would grant Enforcement’s “Motion for Order Under Rule 9559(m) To Deem NASD’s Notice To Suspend Respondent The Final NASD Action.” To date, Respondent has failed to file his financial information.

Accordingly, this proceeding is dismissed as abandoned, and Enforcement’s “Motion for Order Under Rule 9559(m) To Deem NASD’s Notice To Suspend Respondent The Final NASD Action” is GRANTED.

**SO ORDERED.**

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Sara Nelson Bloom  
Hearing Officer

Dated: March 1, 2005