

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-02 (ARB040045).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Expedited Proceeding
No. ARB040045

Hearing Officer – DRP

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

On or about August 6, 2004, an NASD arbitration panel rendered an award of \$584,511.42 plus interest, costs and fees against Respondent. He was duly notified of the award. By letter dated November 10, 2004, NASD's Office of Dispute Resolution notified Respondent that it intended to suspend his registration for failing to comply with that award. On November 30, 2004, Respondent requested a hearing, asserting an inability to pay the arbitration award.

In an order issued on December 6, 2004, the Hearing Officer set the hearing in this matter for January 31, 2005 and established a pre-hearing schedule, which, among other things, directed Respondent to complete, file, and serve a financial statement, together with all required supporting materials, by January 3, 2005.

Respondent failed to provide the financial statement or supporting materials to the Office of Hearing Officers or to Enforcement by January 3. On January 4, Enforcement filed a motion for an order deeming Respondent's request for a hearing abandoned for this failure. On that same day, however, Respondent telephoned the Office of Hearing Officers to request an

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-02 (ARB040045).

extension of time, and on January 5 also provided in writing his request for an extension until January 11, 2005.

Noting Enforcement's objection to an extension of time and its motion for an order deeming Respondent's request for a hearing abandoned, on January 7, 2005, the Hearing Officer granted Respondent an extension of time to file his financial statement until January 11, 2005. Respondent again failed to provide the financial disclosure and supporting documentation to the Office of Hearing Officers or to Enforcement by the required deadline.

Respondent had ample time and opportunity to provide the documentation supporting his asserted defense of an inability to pay at the hearing he requested. Moreover, Respondent was on notice that his failure to meet the deadlines set out by the Hearing Officer would result in immediate suspension. The Hearing Officer's December 6, 2004 Order states:

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.

Further, the Hearing Officer's January 7, 2005 Order, which granted Respondent an extension to file his financial disclosure despite his failure to meet the initial deadline, further cautions that:

[A]ny future failure to comply with the schedule or any of the Hearing Officer's orders in this case will be deemed an abandonment of Respondent's defense and a waiver of the hearing, resulting in immediate suspension.

Finally, 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.

Mr. C has so failed, and the Hearing Officer deems Respondent's asserted defense to be abandoned and his hearing request to be waived. The November 10, 2004 Notice from NASD

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-02 (ARB040045).

Dispute Resolution to Respondent is, therefore, deemed to be the final NASD action, and the instant proceeding is hereby terminated.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer

Dated: January 14, 2005
Washington, DC