

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

DIRECTOR, DISTRICT 5	:	
	:	
Complainant,	:	Rule 9540 Eligibility and Qualification Proceeding
	:	
v.	:	No. EQS000002
	:	
A. G. HALVORSON SECURITIES INC. (BD #37250),	:	HEARING DECISION
	:	
629 Tucker Avenue	:	Hearing Officer - GAC
Jefferson, Louisiana 70121	:	
	:	March 2, 2001
Respondent.	:	

Digest

On November 1, 2000, Director, District 5, sent Respondent, A.G. Halvorson Securities, Inc. (“Respondent” or “firm”), a letter stating that the firm has failed to meet the NASD eligibility requirements set forth in Article III, Section 1(a) of the NASD By-Laws for continued membership in the NASD. Pursuant to NASD Procedural Rule 9542, on November 7, 2000, Respondent filed a written request for a hearing with the NASD Regulation, Inc. (“NASDR”) Office of Hearing Officers (“OHO”).

After a review of the record, including arguments and exhibits presented at a hearing, the Hearing Officer found that Respondent is not engaged in any branch of the investment banking or securities business as defined in Article I, Section (p) and applied by Article III, Section 1(a) of the NASD By-Laws. The Hearing Officer therefore found that Respondent does not meet the eligibility standards for NASD membership. Accordingly, the Hearing Officer ordered that the Respondent’s membership be canceled.

Appearances

Emily Gordy, Esq., and Bradford E. Ali, Esq., Washington, DC, for Director, District 5.

Albert G. Halvorson, Jr., for A.G. Halvorson Securities, Inc.

DECISION

Introduction

This matter comes before the Hearing Officer pursuant to NASD Procedural Rule 9542. In accordance with Article III, Section 1(a) of the NASD By-Laws and Procedural Rule 9541(c), Respondent was advised by a letter, dated November 1, 2000, that it had become ineligible for continued membership in the NASD because it did not meet the eligibility standards set forth in Article III, Section 1(a) of the NASD By-Laws. For continued membership, the provision requires that members be engaged in any branch of the investment banking or securities business. By letter dated November 4, 2001, Respondent requested a hearing pursuant to Rule 9514(a)(1). After a review of the record, including arguments presented at a hearing held on December 13, 2000, the Hearing Officer found that Respondent is not engaged in any branch of the investment banking or securities business as required by Article III, Section 1(a) of the NASD By-Laws.

Pre-Hearing

On or about August 15, 2000, the NASDR Director of District 5 notified Respondent in writing that a review of NASDR records disclosed that the firm did not appear to be actively engaged in the securities business.¹ (NCX 1.) The letter further notified Respondent that, “[u]nless you can demonstrate to this office within 30 calendar days of the date of this letter that

¹ Complainant filed proposed exhibits in November and December 2000. Since both sets of exhibits proffered by Complainant are numbered 1-8, the first set of exhibits, submitted in November is designated as “NCX __” while the exhibits filed in December is designated as “DCX __.”

you are actually conducting a securities business, the NASD will initiate steps to cancel your membership.” Id. By letter dated September 15, Respondent, acting through Albert G. Halvorson, Jr., (“Halvorson”), the firm’s President, responded that the firm “is currently in a recruiting phase, which involves the education and the sponsoring of individuals who have a desire to become licensed stockbrokers.” (NCX 2.)

A Pre-Hearing Conference (“Conference”) was conducted on November 20, 2000, at which time the Parties were directed to serve and file a witness list and proposed exhibits by December 5, 2000. Complainant, Director of District 5, filed a witness list and eight exhibits on December 5, 2000. Those eight exhibits supplemented an earlier filing of eight other proposed exhibits for Complainant. Respondent did not file a witness list or any proposed exhibits. On December 11, 2000, Complainant also filed a Memorandum in Support of Notice of Ineligibility.

The Hearing

The Hearing Officer conducted a hearing by telephone on December 13, 2000. The Complainant presented 16 proposed exhibits, which were admitted into evidence. (Hearing Tr., p. 30.) Complainant also called two witnesses, Reena Soni, a staff member in the NASDR’s CRD/Public Disclosure Department, and Donald DeBlanc, a supervisor of examiners in the NASDR’s New Orleans, District 5 office. Respondent presented no documentary evidence and presented Halvorson as its only witness.

Complainant’s Evidence of Lack of Eligibility

The Central Registration Depository (“CRD”) shows that Respondent was first approved for membership by the NASD and the Securities and Exchange Commission on April 25, 1995. (NCX 8, p. 2.) On its Form BD, Respondent noted that it would be engaged in “[b]roker or dealer retailing corporate equity securities over-the-counter.” (NCX 8, p. 5; Hearing Tr., p. 20.)

It is undisputed that the firm's membership was suspended for approximately six months in 1999 for failing to pay its SIPC fees. (Hearing Tr., p. 18; NCX 8, p. 14.) CRD also reveals that Respondent is not and has never been approved by the State of Louisiana (its domiciled state) to conduct a securities business. (Hearing Tr., p. 19; NCX 8, p. 2.) The firm is not registered to do business in any other state. (DCX 1, pp. 3-4.)

Although Halvorson, the firm's only associated person, is registered as a Direct Participation Program Principal, Financial and Operations Principal, and General Securities Principal and Representative, his status as to each of those registrations has been inactive since August 23, 2000, due to his failure to fulfill his continuing education requirements. (Hearing Tr., pp. 21-22; DCX 5, p. 3.) Thus, there are currently no active registered persons associated with the firm.

Complainant demonstrated, principally through the introduction of the firm's Focus IIA filings, that the firm has generated no revenue, other than "Other revenue," from the quarter ended December 1996 to the quarter ended June 30, 2000. (NCX 3-7.) Specifically, no revenue was shown during that period as having been derived from any trading of securities or commodities, underwriting or selling group activities, or fees from account supervision, investment advisory or other administrative services. Id. "Other Revenue" generated each quarter since December 1996 never exceeded \$150 in any given quarter. Id.

DeBlanc testified that the NASDR District 5 staff conducted a routine examination of Respondent in October 1996. At that time, the examiner noted that Respondent had not engaged in any type of securities business since its membership became effective. (Hearing Tr., p. 32.) Documentation for that examination, which was signed by Halvorson on November 6, 1996, noted that Halvorson would contact the NASDR District office when he began conducting a

business. (Hearing Tr., p. 33.) According to DeBlanc, there is no record that Halvorson ever contacted the NASDR District office to indicate he was conducting a business.

On January 21, 2000, the NASDR District 5 staff conducted another routine examination of Respondent. The examination was conducted at the NASDR District offices because Halvorson indicated that the firm did not have an office. (Hearing Tr., pp. 33-34.) During that examination, the NASDR examiner noted that the firm had not engaged in any type of business since its membership became effective. (Hearing Tr., p. 34.) The NASDR examiner also advised Halvorson that he was not currently registered in Louisiana. (Hearing Tr., p. 35.) Halvorson represented at that meeting that he intended to open accounts for himself and his family. (Hearing Tr., pp. 34-35.)

Respondent's Evidence of Eligibility

Halvorson explained that when he applied for membership in the NASD, he never intended the firm to be a large, multi-branch operation. Instead, he intended to operate the firm as a "small boutique type of firm." (Hearing Tr., p. 37.) He explained that he invested "a lot of money ... into this membership. The membership to me was an alternate investment." *Id.* Halvorson further testified that "[in] good faith I am trying to establish a security company at my own pace." (Hearing Tr., p. 40.) He asserted that the firm participated in an IPO, noting that it recently purchased 300 shares of Nasdaq (Hearing Tr., pp. 38, 43.), and is planning to participate in other IPOs for his own personal account. (Hearing Tr., p. 39.)

Halvorson admitted that the during the last four years the firm has not purchased securities or offered such securities for sale as a dealer. (Hearing Tr., p. 44.) He claimed however, that he was in the process of employing an individual and that he hoped to submit a

Form U-4 for the person within a few days. That individual is not licensed in the securities industry.

Discussion

The issue to be resolved is whether Respondent meets the NASD's eligibility requirements by actively engaging in any investment banking or securities business. The eligibility requirements for membership in the NASD are set forth in Article III, Section 1(a) of the NASD By-Laws. It provides that a broker or dealer is eligible for membership if it is "authorized to transact, and [its] regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States...." The term "investment banking or securities business" is defined in Article I, Section (p) of the NASD By-Laws as:

the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

In this case, Respondent failed to show that it is currently engaged in the investment banking or securities business. As noted *supra*, the firm has never been approved for registration in its domiciled state of Louisiana. The firm has not generated any revenue from engaging in the purchase or sale of securities, either for itself or on behalf of others, since at least December 1996. Respondent's inactivity since its inception has been documented in two NASDR routine examinations of the firm. Finally, the registration of the firm's President and sole registered individual, Halvorson, is inactive in all categories in which he is registered due to his failure to comply with the continuing education requirements.

Respondent relies on its purchase of 300 shares of Nasdaq as a sufficient basis to show that it is engaged in the securities business. The firm also points to efforts by Halvorson to educate potential employees or customers, and its very recent efforts to associate a second person with the firm, as further evidence that it is actively engaged in the securities business. However, such activities simply do not constitute active engagement in an investment banking or securities business as defined in the NASD's By-Laws. Consequently, the Hearing Officer finds that Respondent's regular course of business does not consist of actually transacting an investment banking or securities business in the United States. Respondent therefore fails to meet the NASD's Eligibility and Qualifications requirements under Article III, Section 1(a) of the NASD's By-Laws.

Conclusion

In light of the foregoing, it is hereby ordered, pursuant to Article III, Section 1 of the NASD By-Laws, and NASD Code of Procedure Rule 9543(b), that the NASD membership of Respondent A.G. Halvorson Securities, Inc., be canceled. Under Rule 9543(b), a member canceled under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an NASD Board call for review, in accordance with the Rule 9300 series. If not timely appealed or called for review, this decision shall constitute final disciplinary action of the Association.

Gary A. Carleton
Hearing Officer

Copies to:

A.G. Halvorson Securities, Inc. (Via Overnight and First Class Mail)

Emily Gordy, Esq., (Via First Class Mail and Electronic Mail)

Bradford E. Ali, Esq., (Via First Class Mail and Electronic Mail)