

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-15 (C3A030008).

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C3A030008
v.	:	
	:	Hearing Officer – DMF
	:	
Respondent.	:	

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**ORDER HOLDING RESPONDENT IN DEFAULT AND IN CONTEMPT, AND DIRECTING COMPLAINANT TO FILE A MOTION FOR ENTRY OF DEFAULT DECISION**

On January 31, 2006, Respondent failed to appear for a pre-hearing conference of which he had been given notice. Therefore, Respondent is held in default, pursuant to Rule 9241(f), and, pursuant to Rule 9269, the allegations of the Complaint will be deemed admitted. The Department of Enforcement is directed to file a motion for entry of a default decision, with appropriate support, by February 28, 2006.

As explained in the Order Dissolving Stay and Setting Pre-Hearing Conference issued January 20, 2006, one purpose of the conference was to allow Respondent to show cause, if any, why he should not be held in contempt for failing to comply with the January 7, 2004, order staying this proceeding. That order was based upon Respondent's submission of orders establishing that he was being called to active duty in the United States Army for deployment to Iraq as of January 25, 2004, for a period of 179 days, and Respondent's representation that he anticipated that his deployment would be extended for an additional 179 days. In granting the stay, the Hearing Officer ordered Respondent to provide a copy of any orders extending his deployment, and to notify the Office of Hearing Officers in writing within 30 days following the

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later of (1) his discharge from active duty or (b) his return to the United States.

As explained in the January 20, 2006 order, Respondent never submitted any orders extending his deployment to the Office of Hearing Officers, and never notified the Office upon his discharge from active duty or his return to the United States. In December 2005, however, the Office of Hearing Officers received a copy of certain correspondence that revealed Respondent had returned to the United States at some earlier date. During the January 31, 2006, conference, Enforcement stated that, in another matter, Respondent has provided sworn testimony that he was discharged from active duty and returned to the United States in November 2004. In failing to appear for the conference, Respondent elected not to offer any explanation for his failure to comply with the January 7, 2004 order.

By failing to comply with the order, Respondent delayed the resolution of this proceeding, which involves allegations of serious misconduct by Respondent. If he had provided orders extending his deployment, as ordered, the Office of Hearing Officers and Enforcement would have been able to anticipate the likely date when his active duty would end and he would return to the United States; if he had notified the Office of Hearing Officers of his release from active duty and return to this country, the Hearing Officer would promptly have scheduled a hearing to resolve the charges. Instead, without good cause this matter lingered unresolved.

Accordingly, the Hearing Officer finds Respondent in contempt for his failure to comply with the January 7, 2004 order. As sanctions, in accordance with Rule 9280(b), the Hearing

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Officer will deem the allegations of the Complaint established for purposes of this proceeding, and will preclude Respondent from offering any evidence in opposition to those allegations.

**SO ORDERED.**

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David M. FitzGerald  
Hearing Officer

Dated: January 31, 2006