

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN JAY DRESCHER
(CRD No. 2619465),
Remsenburg, NY

Respondent.

Disciplinary Proceeding
No. CAF000016
(Consolidating CAF000016 and
CAF020029)

**HEARING PANEL ORDER
AND DECISION**

Hearing Officer – JN

September 22, 2003

**ORDER AND DECISION GRANTING SUMMARY DISPOSITION
AS TO SANCTIONS AND IMPOSING A BAR**

A. Background

On May 2, 2003, Enforcement filed a Motion for Summary Disposition as to liability and sanctions in No. CAF020029, a disciplinary proceeding based on allegations in a federal indictment under which Respondent has been convicted. The Department sought rulings by summary disposition that Respondent (1) is liable as charged in the Complaint and (2) should be barred for such misconduct.

On May 6, 2003, the Hearing Officer conducted a pre-hearing conference with Enforcement counsel and with Mr. Steven Altman, the attorney then representing Mr. Drescher. Noting his client's criminal conviction for the same misconduct charged in the instant Complaint, Mr. Altman had no objection to summary disposition on liability. He argued, however, that there

should be a hearing on the question of sanctions, where Mr. Drescher could urge the Panel to impose something less than a bar. Counsel asked for two months to file a Response to the Department's Motion, citing a busy intervening litigation schedule and the need to spell out many details of his case as to sanctions. The Hearing Officer established July 2, 2003, as the deadline for the Response, noting that Mr. Drescher is incarcerated and poses no threat to the securities industry and emphasizing the Panel's need for a particularized Response.

No response was filed on July 2, 2003, or at any date thereafter. On July 7, 2003, Mr. Altman informed Mr. Manly Ray, Legal Assistant in the Office of Hearing Officers, that he would not be filing a response to the Department's Motion and would be filing a notice of withdrawal as Mr. Drescher's counsel. On July 11, 2003, the Office of Hearing Officers received a notice announcing Mr. Altman's withdrawal as counsel.

By order dated July 18, 2003 (and amended on July 23, 2003), the Panel granted Enforcement's motion as to liability, "[b]ased upon the conviction in United States v. Stephen J. Drescher, No. 00 CR 662-001 (S.D.N.Y.)." The Panel noted that Drescher's counsel (when still representing him) had agreed to a finding of liability; that that a jury had found beyond a reasonable doubt that Respondent engaged in a conspiracy to commit securities fraud and in securities fraud; and that the indictment for these crimes alleged "the same misconduct charged in the instant Complaint."

As to sanctions, the Panel deferred ruling until Respondent had another opportunity to respond, noting that his counsel had withdrawn in the meantime. On July 23, 2003, the Hearing Officer issued an "Order Affording Respondent an Opportunity to Respond to Enforcement's Motion for Summary Disposition," which reviewed the background of the case and gave Mr. Drescher a final opportunity to respond to the request for a bar. That Order stated inter alia that

“[o]n or before August 25, 2003, Respondent may mail his response to Enforcement’s Motion to the NASD Office of Hearing Officers, 1801 K Street, Suite M101L, Washington, DC 20006” (Order, p. 3).

On July 23, 2003, the Office of Hearing Officers served a copy of that order on Respondent by mailing it to his prison address, using the United States Postal Service’s Express Mail. The United States Postal Service did not return that mailing.

As of September 22, 2003, 28 days after the mailing deadline, the Office of Hearing Officers has received nothing from Respondent. Even allowing for three additional days for service by mail (Rule 9138(c)), any response mailed from Drescher’s Florida prison to Washington, DC should have been received by now. In these circumstances, the Panel concludes that Respondent chose to make no submission, and turns now to the Department’s request for imposition of a bar through summary disposition.

B. The Sanction

Under Rule 9264(e), the Panel “may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that filed the motion is entitled to summary disposition as a matter of law.” That standard is satisfied here.

The record consists of the Department’s unopposed request for the imposition of a bar. Indeed, Drescher’s silence practically amounts to acquiescence in a grant of the motion. See Rule 9146(d), which provides that “[i]f no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion.” In these circumstances, with the record containing nothing to counter Enforcement’s arguments for a bar, the Panel finds that there is no material issue of fact in dispute and that Enforcement is entitled to summary disposition as to sanctions.

The Panel concludes that a bar is the appropriate sanction for the instant misconduct. The Complaint charged – and Drescher was convicted of – fraud and a conspiracy to commit fraud. The SEC’s statement in John S. Brownson, Exchange Act Rel. No. 46161, 2002 SEC LEXIS 1715 at *8 (July 3, 2002) is entirely applicable here: “[s]ummary disposition is particularly appropriate where, as here, a respondent has pled guilty to securities fraud. Absent extraordinary circumstances, such an individual cannot be permitted to remain in the securities industry.” The same result should follow here, where the prosecution proved guilt beyond a reasonable doubt and the record supported imprisonment for over five years. As the Department notes, these offenses involve scienter and were thus committed at least recklessly, if not intentionally; moreover, they “occurred over extended periods of time and involve multiple securities and multiple acts in furtherance of an ongoing fraudulent scheme” (Memorandum in Support of Motion, pp. 5-6). In addition, the record contains nothing in mitigation, let alone the showing of “extraordinary mitigating circumstances” required under Brownson.

Finally Respondent’s conspiracy involved manipulation of prices (Complaint, paragraphs 12, 13, et seq.). As the National Adjudicatory Council recently explained, in the context of imposing a bar, “market manipulation is one of the most serious violations that a respondent can commit. Manipulation is a direct assault on NASD’s mission to bring integrity to the markets.” Dep’t of Market Regulation v. Amr “Tony” Elgindy, No. CMS000015, 2003 NASD Discip. LEXIS 14 at *35 (NAC, May 7, 2003).

C. Conclusion

In Docket No. CAF20029, Enforcement’s Motion for Summary Disposition, earlier granted as to liability, is hereby granted as to sanctions as well. The Panel found that Respondent engaged in a conspiracy to commit securities fraud and in securities fraud. For this misconduct,

the Panel determines that Respondent Drescher is barred from association with any NASD member firm in all capacities. The bar shall become effective immediately upon this Decision becoming the final disciplinary action of NASD.

HEARING PANEL

Jerome Nelson
Hearing Officer

Dated: Washington, DC
September 22, 2003

Copies to: Stephen Drescher (via overnight mail)
Leo F. Orenstein, Esq. (via facsimile and first class mail)
Rory C. Flynn, Esq. (via facsimile and first class mail)