

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Non-Summary Suspension Proceeding

No. ARB000011

Hearing Officer—AHP

**DECISION**

April 26, 2001

*Digest*

The Office of Dispute Resolution of NASD Regulation, Inc.<sup>1</sup> pursuant to Rule 9513(a), notified Respondent \_\_\_\_\_ (“\_\_\_\_\_”) that its registration would be suspended, in accordance with Article VI, Section 3 of the NASD By-Laws and Rule 9510 *et seq.*, for failing to pay an arbitration award. \_\_\_\_\_ requested a hearing, pursuant to Rule 9514(a), at which time it acknowledged that it was subject to the award and had not paid it, but argued that its membership should not be suspended because it is appealing the denial of its motion to vacate the arbitration award. The Hearing Officer, sitting as the Hearing Panel pursuant to Rule 9514(b), held that \_\_\_\_\_ had failed to pay the award and that its obligation to do so was not stayed pending its appeal.

---

<sup>1</sup> Prior to July 1, 2000, the Office of Dispute Resolution was a part of NASD Regulation, Inc. Effective July 1, 2000, the functions of the Office of Dispute Resolution were transferred to a new corporation, NASD Dispute Regulation, Inc. For simplicity both are referred to in this Decision as “Dispute Resolution.”

**This Decision has been published by the NASDR Office of Hearing Officers and should be cited as OHO Redacted Decision ARB000011.**

Accordingly, pursuant to Article VI, Section 3 of the NASD By-Laws and Rule 9514(g), the Hearing Officer held that \_\_\_\_\_'s registration shall be suspended effective as of the date of the issuance of this Decision, and that such suspension shall continue until it provides documentary evidence to NASD Regulation, Inc. ("NASD Regulation") that: (1) it has made payment to the Claimants in NASD Arbitration No. 97-02538; (2) it and the Arbitration Claimants have agreed to a settlement; or (3) it has either filed a bankruptcy petition in a United States Bankruptcy Court or the debt has been discharged by a United States Bankruptcy Court.

*Appearances*

David A. Greene, Esq., Regional Attorney, Los Angeles, California for the Department of Enforcement.

\_\_\_\_\_, Esq. and \_\_\_\_\_, Esq., for \_\_\_\_\_.

**DECISION**

**I. Introduction**

Pursuant to Rule 9513(a), Dispute Resolution notified \_\_\_\_\_, by letter dated June 20, 2000, that its registration would be suspended in accordance with Article VI, Section 3 of the NASD By-Laws and Rule 9150, et seq., as a result of its failure to pay the arbitration award entered on February 21, 2000, in the matter of \_\_\_\_\_,<sup>2</sup> NASD Arbitration No. 97-02538 (the "Award"). By letter dated June 22, 2000, \_\_\_\_\_ requested a hearing pursuant to Rule 9514(a), asserting that it may not be suspended because its appeal from the U.S. District Court's denial of its motion to vacate the Award was still pending before the U.S. Court of Appeals for the Ninth Circuit. A hearing was held in Los Angeles on January 18, 2001.

---

<sup>2</sup> \_\_\_\_\_ was formerly known as \_\_\_\_\_, Inc.

After a review of the entire record, the Hearing Officer finds that \_\_\_\_\_ failed timely to pay the Award. Accordingly, \_\_\_\_\_ is suspended until it provides documentary evidence to NASD Regulation that: (1) it has paid the Award; (2) it and the Arbitration Claimants have agreed to a settlement; or (3) it has either filed a bankruptcy petition in a United States Bankruptcy Court or the debt has been discharged by a United States Bankruptcy Court.<sup>3</sup>

## **II. Facts**

The underlying facts are undisputed.<sup>4</sup> On February 21, 2000, a monetary award was entered against \_\_\_\_\_ in the matter of \_\_\_\_\_, NASD Arbitration No. 97-02538. (Ex A.)<sup>5</sup> On March 22, 2000, \_\_\_\_\_ filed a motion to vacate the Award in the U.S. District Court for the Central District of California. The court denied the motion, and, on May 15, 2000, \_\_\_\_\_ filed a Notice of Appeal. \_\_\_\_\_ did not at that time request that the Award be stayed pending the appeal. The appeal was pending both at the time Dispute Resolution sent \_\_\_\_\_ notice that it would be suspended for failure to pay the Award and at the time of the hearing. \_\_\_\_\_ has not paid any part of the Award.

## **III. Discussion**

The sole issue presented is whether \_\_\_\_\_ is subject to non-summary suspension for failure to pay the Award while its appeal from the order denying its motion to vacate the Award is pending. \_\_\_\_\_ contends that under Article VI, Section 3 of the NASD By-Laws it cannot be suspended while it is actively appealing the denial of its motion to vacate the Award. (See Respondent's Brief in

---

<sup>3</sup> \_\_\_\_\_ conceded at the hearing that it is financially able to pay the Award.

<sup>4</sup> At the hearing, the Parties agreed that the underlying facts are not disputed. (Hearing Tr. at 5.)

<sup>5</sup> The Department of Enforcement filed seven exhibits with its Brief in Support of the Non-Summary Suspension of \_\_\_\_\_.

**This Decision has been published by the NASDR Office of Hearing Officers and should be cited as OHO Redacted Decision ARB000011.**

Opposition.) In essence, \_\_\_\_\_ argues that once it files a motion to vacate, it has satisfied the requirements of Article VI, Section 3 and that thereafter the NASD may not institute non-summary suspension proceedings until it has exhausted all of its appeals without success. \_\_\_\_\_'s reading of this provision, however, overlooks its plain language.

Article VI, Section 3 provides in relevant part:

The NASD after 15 days notice in writing, may suspend . . . the registration of any person . . . for failure to comply with an award of arbitrators properly rendered pursuant to the Rules of the Association, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied . . . . (Emphasis added.)

It expressly provides that there are two situations in which the NASD may suspend a registered representative for non-payment of an arbitration award.<sup>6</sup> The first is where a motion to vacate the award has not been filed. The second is where such a motion has been made and denied. The obvious and clear intent of this provision, read as a whole, is to allow a respondent an opportunity to file a motion to modify or vacate an arbitration award before the respondent's obligation to pay becomes final. But Article VI, Section 3 does not provide similarly for a stay of the respondent's payment obligation pending an appeal of a denial of such a motion to modify or vacate.

---

<sup>6</sup> Article VI, Section 3 was added to the NASD By-Laws in 1993. In its order approving the proposed amendment, the Securities and Exchange Commission ("SEC") acknowledged as follows that the rule change provided for the suspension of a registered representative in either event described above:

The rule change amends Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend the membership or registration of a party that has failed to comply with a valid arbitration award, when the award is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

Exchange Act Release No. 31763, 1993 SEC LEXIS 124, at \*1 (Jan. 26, 1993) (emphasis added).

**This Decision has been published by the NASDR Office of Hearing Officers and should be cited as OHO Redacted Decision ARB000011.**

The foregoing strict construction of Article VI, Section 3 is consistent with the NASD's goal of fostering an effective and speedy dispute resolution system.<sup>7</sup> Absent such a strict enforcement policy, public customers would be discouraged from using the NASD's arbitration process.

Recently, the NASD reaffirmed its position that Article VI, Section 3 of the NASD By-Laws requires the prompt payment of arbitration awards absent a court order staying compliance with the award. In NASD Notice to Members 00-55 the NASD set forth the five bases an associated person may raise in justification for non-payment of an arbitration award.<sup>8</sup> One such basis is a "pending" motion to vacate or modify the arbitration award.<sup>9</sup> In the corresponding endnote, the NASD further specified that "[a]n award must be paid immediately when a court denies a motion to vacate or modify the award, absent a court order staying compliance with the award."<sup>10</sup>

The Hearing Officer further notes that the result reached in this case is entirely consistent with the treatment of judgments in the federal courts under the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Federal Rules of Civil Procedure 62(a) and (d) provide that a district court judgment is final 10 days after its entry, and the judgment creditor may thereafter enforce the judgment unless the judgment debtor obtains a court-approved supersedeas bond. The pendency of an appeal from the district court judgment does not otherwise stay enforcement and collection of the money judgment.

Finally, \_\_\_\_\_'s argument that it will be denied due process if it is required to pay the Award before its appeal is decided is without merit. \_\_\_\_\_ has cited no authority in support of this argument.

---

<sup>7</sup> See Department of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*25 n.15 (NAC June 2, 2000) ("The purpose of the arbitration system is 'to provide speedy resolution of disputes among members, their employees and the public.'") (quoting In re Stix & Co., Inc., 46 S.E.C. 578, 579 (1976)).

<sup>8</sup> NASD Notice to Members 00-55, 2000 NASD LEXIS 63 (Aug. 2000).

<sup>9</sup> Id. at \*5.

<sup>10</sup> Id. at \*6 n.5.

**This Decision has been published by the NASDR Office of Hearing Officers and should be cited as OHO Redacted Decision ARB000011.**

In addition, the Hearing Officer notes that on September 5, 2000, the District Court denied \_\_\_\_\_'s motion for a stay pending appeal. \_\_\_\_\_ also fails to show that its payment of the Award would moot its appeal. Thus, there is no basis in the record to find that this proceeding has in any way violated \_\_\_\_\_'s rights.

Accordingly, it is hereby ordered, pursuant to Article VI, Section 3 of the NASD By-Laws and Rule 9514(g), that \_\_\_\_\_'s registration shall be suspended effective as of the date of the issuance of this Decision.<sup>11</sup> Such suspensions shall continue until \_\_\_\_\_ provides NASD Regulation with documentary evidence showing that: (1) the award is paid in full; (2) \_\_\_\_\_ and the arbitration claimants have entered into a settlement agreement; or (3) \_\_\_\_\_ has filed a bankruptcy petition in a United States Bankruptcy Court or that the debt underlying the Award has been discharged by a United States Bankruptcy Court.

---

Andrew H. Perkins  
Hearing Officer

---

<sup>11</sup> The Hearing Officer considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.