

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56215 / August 7, 2007

Admin. Proc. File No. 3-12659

In the Matter of the Application of

MICHAEL FREDERICK SIEGEL
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For Review of Action Taken by

NASD

ORDER POSTPONING ISSUANCE OF BRIEFING SCHEDULE

On June 21, 2007, NASD filed a motion styled as a request that the Commission stay the issuance of the briefing scheduling order in this appeal either for 120 days or until the time that Applicant Michael F. Siegel appeals an expected but not yet made NASD determination about the amount of restitution he must pay under NASD's decision against him, as discussed in greater detail below. On May 11, 2007, NASD issued a decision (the "May 11 Decision") finding that Siegel, an associated person of NASD member firm Rauscher Pierce Refsnes, Inc. ("Rauscher Pierce") from October 1997 until June 1999, 1/ participated in private securities transactions without providing Rauscher Pierce with prior written notice, in violation of NASD Conduct Rule 3040, 2/ and made unsuitable recommendations to four customers, in violation of NASD Conduct

1/ Rauscher Pierce Refsnes, Inc. was succeeded by Dain Rauscher Inc. and then by RBC Dain Rauscher, Inc.

2/ NASD Conduct Rule 3040 prohibits any person associated with a member firm from "participat[ing] in any manner in a private securities transaction" unless, prior to such participation, the associated person provides "written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction."

Rule 2310(a). ^{3/} NASD fined Siegel \$20,000 and suspended him in all capacities for six months with respect to the Rule 3040 violations, fined him \$10,000 and suspended him for six months with respect to the Rule 2310(a) violations, with the two suspensions to be served consecutively, and assessed hearing and appeal costs.

NASD also ordered Siegel to pay a total of \$400,300 in restitution to four customers subject to offsets described in the May 11 Decision. In the May 11 Decision, NASD referred the calculation of the precise amounts of the restitution and offsets to a subcommittee of the National Adjudicatory Council (the “NAC Subcommittee”). The NAC Subcommittee has not yet reached its decision as to the precise amounts of restitution Siegel is obligated to pay under the May 11 Decision. In the May 11 Decision, NASD declared, “Solely on the issue of the restitution amount, this decision is not a final disciplinary action within the meaning of Section 19(d)(1) of the Securities Exchange Act of 1934. All other aspects of this decision, however, including all findings of liability and other sanctions, do constitute a final disciplinary action within the meaning of Section 19(d)(1) of the Exchange Act.” ^{4/}

On June 12, 2007, Siegel filed with the Commission an application for review of the May 11 Decision. By operation of NASD Conduct Rule 9370, “[t]he filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar” Consequently, Siegel’s obligation to pay the ordered fines and serve the ordered suspensions is stayed during the pendency of his appeal. Siegel has declared that he “anticipates appealing [the NAC Subcommittee’s restitution] decision when made.”

In light of the procedural posture of this proceeding, in which Siegel has appealed the May 11 Decision while the amount of restitution that he owes under the May 11 Decision remains under consideration by NASD, NASD has filed a motion styled as a request that we stay the issuance of a briefing scheduling order in this proceeding for 120 days or until Siegel appeals the eventual restitution order of the NAC Subcommittee, whichever comes first. NASD suggests that when Siegel applies for review of the NAC Subcommittee’s restitution decision, the Commission could consolidate that review with the instant review, thus enabling the Commission to address at

^{3/} NASD Conduct Rule 2310(a) provides that “[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his security holdings and as to his financial situation and needs.”

^{4/} Exchange Act Section 19(d)(1) provides that a self-regulatory organization shall provide the Commission with notice of “any final disciplinary sanction” imposed on any person associated with a member of the self-regulatory organization. According to Exchange Act Section 19(d)(2), any final disciplinary sanction is subject to Commission review “upon application by any person aggrieved thereby.”

one time all the issues that might be raised in this proceeding. NASD represents that Siegel consents to NASD's request that we stay the issuance of the briefing scheduling order.

Although NASD has styled its motion as a request for a stay of the issuance of the briefing scheduling order, NASD's request is more appropriately considered under Commission Rule of Practice 161, which permits the Commission to postpone proceedings under certain circumstances. Absent a postponement of this proceeding, the Commission would have been required to issue the briefing scheduling order by July 2, 2007, within twenty-one days of Siegel's application for review, under Rule of Practice 450(a). Under Rule 161(b), the factors the Commission must consider in determining whether to grant a postponement are (1) the length of the proceeding to date; (2) the number of postponements, adjournments or extensions already granted; (3) the stage of the proceedings at the time of the request; (4) the impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (5) any other such matters as justice may require.

NASD has requested postponement at the outset of this appeal, and no prior postponements of this proceeding have occurred to date. Furthermore, as the Commission has stated previously, "we do not favor" any procedures that require the "piecemeal disposition of a proceeding." ^{5/} As noted above, Siegel has already stated that he intends to appeal the NAC Subcommittee's restitution order once it is made. Therefore, absent a postponement of the issuance of the briefing scheduling order, the Commission would be in a position of considering two separate appeals arising from the same NASD disciplinary action. Given NASD's assurances that it "plans to move expeditiously in considering the remaining restitution issues" and Siegel's apparent consent to the postponement, a postponement of the proceeding will not prejudice either party or harm the public interest. In granting NASD's request, however, we expect in the future that NASD will not take a final disciplinary action against a member or an associated person until all elements of the case, including any restitution amounts under consideration by a NAC Subcommittee, have also been finally determined. Such an approach will best serve the public interest in administrative efficiency.

^{5/} Rita Villa, 53 S.E.C. 399, 404 (1998) (noting, in a decision affirming administrative law judge's use of an "abbreviated procedure" by granting respondent's motion for a "directed verdict," that we generally prefer "to avoid piecemeal appeals and to promote administrative economy" absent "extreme circumstances").

Accordingly, IT IS ORDERED that NASD's request to postpone the issuance of the briefing scheduling order in this proceeding until the earlier of either 120 days from the date of this order or the date Applicant Michael Frederick Siegel applies for review of NASD's final order requiring the payment of restitution under NASD's May 11, 2007 Decision be, and it hereby is, granted.

By the Commission.

Nancy M. Morris
Secretary