

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12316UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
June 8, 2006

In the Matter of the Application of

HANS N. BEERBAUM and
BEERBAUM & BEERBAUM FINANCIAL AND
INSURANCE SERVICES, INC.
5881 Roblar Rd.
Petaluma, California 94952

For Review of Disciplinary Action Taken by
NASD

CO 1040019

ORDER DENYING STAY

I.

Hans N. Beerbaum, who during the relevant period was a general securities representative with Beerbaum & Beerbaum Financial and Insurance Services, Inc. (the "Firm"), an NASD member, appeals from NASD disciplinary action barring him from association with any member. NASD found that Beerbaum and the Firm violated NASD Membership and Registration Rule 1021 ("NASD Rule 1021") 1/ and NASD Conduct Rule 2110 ("NASD Rule 2110") 2/ when Beerbaum, from July 5, 2002 through June 3, 2004, acted as a general securities principal for the Firm without being registered as such. 3/ In connection with that appeal, Beerbaum requests that his bar be stayed. NASD opposes this request. 4/

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- 1/ NASD Membership and Registration Rule 1021 requires, among other things, that "[a]ll persons engaged . . . in the . . . securities business of a member who are to function as principals shall be registered as such with NASD" NASD Manual at 3131 (2003).
- 2/ NASD Conduct Rule 2110 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. NASD Manual at 4111.
- 3/ In addition to the bar imposed on Beerbaum, NASD also fined the Firm \$15,000. Under NASD Procedural Rule 9370, the Firm is not required to pay the fine pending the outcome of the Commission's review.
- 4/ Beerbaum filed a response to NASD's opposition. However, Rule 401(d) of the
- (continued...)

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II.

This proceeding follows a similar NASD proceeding in 2002, in which Beerbaum and the Firm were found to have violated NASD Rules 1021 and 2110 when Beerbaum acted as a principal for the Firm from March 4, 1996 through January 23, 1998 when he was registered only with another firm. ^{5/} In that earlier proceeding, NASD required Beerbaum to requalify as a principal within 90 days after the decision became final with the proviso that, if Beerbaum was unable to requalify during the 90-day period, he would be suspended as a principal until he requalified. Although Beerbaum took the principal examination three times in an effort to requalify, he failed to do so until June 2004, when he passed the examination. Notwithstanding his inability to requalify, which resulted in his suspension from July 2002 through June 2004, Beerbaum engaged in, and the Firm permitted him to engage in, activity that required Beerbaum to be registered as a principal.

NASD found that Beerbaum, while suspended as a principal, acted as a principal in that he, among other things, signed annual audit reports as the Firm's president, was designated as the principal submitting seven of the Firm's FOCUS reports, identified himself as the Firm's chief executive officer, executive representative, chief financial officer, contact for compliance issues, and supervisor in charge of training registered representatives, signed the Firm's anti-money laundering program compliance and supervisory procedures, supervised a general securities representative and principal of the Firm, and received override commissions from that person's transactions. In determining to bar Beerbaum, NASD found that he intentionally and knowingly violated NASD rules by ignoring the earlier NASD decision, thereby demonstrating a lack of appreciation for the importance of NASD's registration requirements.

III.

Beerbaum makes several claims in support of a stay. He asserts that NASD erred in that it "ignored mitigation which was the entire defense and was referred to regularly in the defense presentation." According to Beerbaum, in engaging in the actions at issue, he "chose to meet

4/ (...continued)

Commission's Rules of Practice, under which a stay of an action by a self-regulatory organization is considered, does not contemplate such a filing.

5/ NASD found that Beerbaum, during the relevant period, acted as a principal in that he supervised another registered representative of the Firm, acted as the Firm's president, and filed Financial and Operational Combined Uniform Single ("FOCUS") reports and an amendment to the Uniform Application for Broker-Dealer Registration ("Form BD") on behalf of the Firm.

compliance deadlines on a timely basis since he was the only one who knew how to do it.” 6/ He also asserts that the proceeding involves no allegations of “financial harm to clients” and that, therefore, staying the bar “will not pose a risk to the investing public.” He further claims that, without a stay, the bar will “impose financial consequences of not just the \$15,000 in fines that NASD seeks, but hundreds of thousands of dollars in personal financial losses and tax and other exposure.” Moreover, he claims that the bar would prevent him from preparing the Firm’s FOCUS and other required reports (or training anyone else to do so), forcing the Firm out of regulatory compliance. 7/

In determining whether to grant a stay, the Commission generally considers (1) whether there is a strong likelihood that the applicant will succeed on the merits of the appeal; (2) whether the applicant will suffer irreparable injury without a stay; (3) whether there will be substantial harm to the public if the stay were granted; and (4) whether a stay will serve the public interest. 8/ The applicant has the burden of demonstrating that a stay is warranted. 9/

In opposing the stay, NASD asserts that Beerbaum has not demonstrated a likelihood of success on the merits, noting that Beerbaum has never disputed the facts supporting NASD’s findings of violation. NASD also notes that the sanctions are within the range recommended in NASD’s Sanction Guidelines. NASD further asserts that Beerbaum’s claim of severe financial harm is unsupported, noting that Beerbaum “fails to articulate why Beerbaum Financial and another principal at the Firm would be unable to pay requisite broker-dealer expenses in Beerbaum’s absence” or to file the reports necessary to remain in compliance. 10/ In addition, NASD argues that allowing Beerbaum to remain in the industry during the pendency of his appeal would be “perilous to maintaining the integrity of NASD’s membership and to the investing public.” NASD asserts that Beerbaum’s claim that no investors were harmed is “illogical considering the egregiousness of his misconduct and his repeated disregard for regulatory requirements.”

A consideration of the relevant factors does not support Beerbaum’s request. While any final determination must await the Commission’s consideration of the merits of this proceeding, it does not appear that, at this stage, Beerbaum has demonstrated a strong likelihood that he will

6/ Beerbaum seems to concede that, in “choosing” to comply with reporting requirements, he and the Firm were violating NASD registration requirements.

7/ Beerbaum also claims, without elaboration, that “[a] bar prevents any action, including filing this appeal, which we intend to file.”

8/ E.g., Stratton Oakmont, Inc., 52 S.E.C. 1150 (1996) (citing Cuomo v. Nuclear Regulatory Comm’n, 772 F.2d 972, 974 (D.C. Cir. 1985)).

9/ Id. at 978.

10/ NASD asserts that nothing supports Beerbaum’s claim that the bar would prevent Beerbaum from pursuing his appeal.

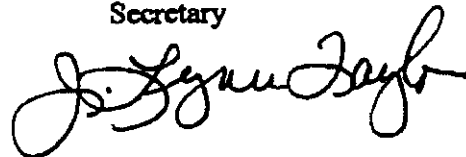
prevail on appeal. Nor does it appear that Beerbaum's vague and unsupported claim of financial harm justifies a stay. 11/

Granting a stay could result in substantial harm to the public and would not serve the public interest. In determining to impose a bar on Beerbaum, NASD found that his "extensive responsibilities for the Firm while he was suspended as a principal to be a significant aggravating factor" that evidenced egregious misconduct. NASD found as another aggravating factor that Beerbaum and the Firm "ignored the [earlier NASD] decision that found [them] in violation of the same NASD rules at issue in the present case." NASD further found that Beerbaum and the Firm engaged in several activities identical to those that the earlier NASD decision found violative, and thus demonstrated intentional and knowing violations of NASD's rules. NASD also found that Beerbaum's comments, "throughout the course of these proceedings," that the principal examination was "'a waste of everyone's time,' a 'farce,' and 'irrelevant' to the Firm's business" indicated his failure to "appreciate the importance of NASD's registration requirements, which, in turn, reflects on his ability to remain in the securities industry and supports barring him." Under the circumstances, it does not appear that a stay of Beerbaum's bar is warranted.

Accordingly, IT IS ORDERED that the request of Hans N. Beerbaum, for a stay of NASD's action against him be, and it hereby is, denied.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Nancy M. Morris
Secretary



By: J. Lynn Taylor
Assistant Secretary

11/ As the Commission has repeatedly held, "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay." Robert J. Prager, Securities Exchange Act Rel. No. 50634 (Nov. 4, 2004), 84 SEC Docket 171. See also Joseph A. Geraci, II, Admin. Proc. File No. 3-11772 at p.3 (Dec. 22, 2004) (denying stay of personal bar despite applicant's claim of being the family's sole source of income and suffering personal adverse financial effects).