

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 56962 / December 13, 2007

Admin. Proc. File No. 3-12416

In the Matter of the Application of

PERPETUAL SECURITIES, INC.,  
YOUWEI P. XU,

and

CATHY Y. HUANG  
1603 - 7300 Yonge Street  
Thornhill, Ontario L4J7Y5  
Canada

For Review of Disciplinary Action Taken by

NASD

ORDER DENYING  
MOTION FOR  
RECONSIDERATION

On October 4, 2007, we issued an Opinion ("the Opinion") sustaining the findings of violations and modifying the sanctions imposed by NASD on Applicants Perpetual Securities, Inc. ("Perpetual" or "the Firm"), Youwei P. Xu, a part owner and executive of Perpetual, and Cathy Y. Huang, a part owner and executive of Perpetual. <sup>1/</sup> We found that Perpetual operated a securities business when its NASD membership was suspended, that Xu and Huang allowed Perpetual to operate a securities business while its NASD membership was suspended, and that Huang failed to respond timely and completely to an information request from NASD. We sustained NASD's expulsion of Perpetual from NASD, its bar of Xu and Huang from association with any NASD member in connection with the operation of the Firm while suspended, and reduced to a two-year suspension NASD's bar of Huang for her untimely and incomplete response to NASD's information request. On October 26, 2007, after receiving an extension of time in which to file, Applicants filed a Motion for Reconsideration of the Opinion ("the Motion").

---

<sup>1/</sup> Perpetual Sec., Inc., Securities Exchange Act Rel. No. 56613 (Oct. 4, 2007), \_\_ SEC Docket \_\_.

We consider the Motion under Rule 470 of the Commission's Rules of Practice. <sup>2/</sup> The "exceptional remedy" of a motion for reconsideration is designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence. <sup>3/</sup> Applicants may not use motions for reconsideration to reiterate arguments previously made or to cite authority previously available; moreover, we will accept only such additional evidence that "the movant could not have known about or adduced before entry of the order subject to the motion for reconsideration." <sup>4/</sup> Applicants' motion does not meet this standard.

In general, Applicants' motion is a reiteration of the arguments already made in their briefs on the merits and specifically considered by us, including challenges to the service of NASD's November 2002 Order suspending Perpetual's membership ("Suspension Order"), to certain procedural rulings made by NASD, and to NASD's entry of a default order against Applicants. We will not readdress those matters here. However, the Motion raises some new points that require a brief response.

a. Applicants repeatedly allege that the Opinion is "covering up" NASD misconduct. For example, Applicants complain that the Opinion purposely ignored NASD's termination of Perpetual's NASD membership on July 11, 2005, while noting Perpetual's January 16, 2003 submission of a Form BDW to withdraw its registration as a broker-dealer. Applicants assert that, as a result, we ignored their complaints about their interactions with NASD between January 2003 and July 2005. However, we considered and rejected Applicants' repeated allegations of NASD misconduct because they were not supported by evidence.

b. While reiterating their argument that NASD improperly served the Suspension Order, Applicants suggest that our rejection of their argument is "against Commission's Secretary Ms. Morris own practices on legal order delivery service," citing what they believe is the normal practice of the Office of the Secretary to ensure that Applicants received the Opinion.

---

<sup>2/</sup> 17 C.F.R. § 201.470. The Comment to Rule 470 states that "[a] motion for reconsideration is intended to be an exceptional remedy." Exchange Act Rel. No. 35833 (Jan. 9, 1995), 59 SEC Docket 1546, 1588.

<sup>3/</sup> KPMG Peat Marwick LLP, Order Denying Request for Reconsideration, 55 S.E.C. 1, 3 n.7 (2001). See also John Montelbano, Order Denying Motions for Reconsideration, 56 S.E.C. 372, 378 (2003) (motion for reconsideration must be based on "matters of record alleged to have been erroneously decided, the grounds relied on, and the relief sought," and is not an appropriate vehicle for adducing new evidence).

<sup>4/</sup> Feeley & Wilcox Asset Mgmt. Corp., Order Denying Motion for Reconsideration, 56 S.E.C. 1264, 1269 n.18 (2003).

Service of a Commission order on an applicant is governed by Commission Rule of Practice 141(b) which permits service of decisions by mail. <sup>5/</sup> The Office of the Secretary initially transmitted the Opinion by both mail and facsimile. After Applicants informed the Office of the Secretary that there had been some problems with the initial facsimile transmission, the Office transmitted the Opinion by courier and confirmed its delivery. The additional steps taken by the Office of the Secretary to respond to an alleged transmission difficulty were an exercise of its discretion to ensure that there was no further miscommunication with Applicants. More critically, neither the Commission's Rule of Practice 141(b) nor the discretionary measures taken by the Office of the Secretary determine the propriety of NASD's actions in serving the Suspension Order on Applicants. As discussed in the Opinion, the Suspension Decision was served on Applicants' attorney properly and in accordance with NASD Rules.

c. The Opinion states "[h]ere the Applicants were aware of the Suspension Proceeding and had begun to close their New York office in anticipation of a possible sanction." Applicants assert that the Opinion's statement that Perpetual's office was closed in early November 2002 "in anticipation of sanctions" is a "false statement." However, in their opening brief, Applicants stated that they were attempting to settle the payment of the arbitration award (the basis for the suspension proceeding) and that they "followed NASD's . . . instructions . . . ready to close business if NASD in favor of [customer who won arbitration]." Applicants described further their actions before the decision in the suspension proceeding, "[t]o protect the Firm's clients . . . Firm contacted other brokerage firms for transferring [Perpetual's] clients to them . . . ." In the Motion, they reiterate that they had closed the office and laid off all "brokers and clerks." These statements support the Opinion's conclusion, which in turn underscores that Applicants were aware of the pendency of the suspension proceeding and, consequently, were responsible for monitoring their membership status.

d. The Motion argues, with respect to Huang's failure to respond to information requests, that the information "could be requested in the examination from January 2003 to May 2003, if NASD thought they were necessary . . . . It was NASD who did not request the information timely, on purpose." The Motion further asserts that Applicants had satisfied the examination staff. However, as noted in the Opinion, Perpetual was informed in NASD's May 2003 exit letter that the Firm's operation during its suspension had been referred to NASD's Department of Enforcement. The subsequent requests were made by Enforcement during the investigation of Applicants' conduct. To the extent the Motion purports to suggest that NASD's requests were somehow improper, the Opinion pointed out that Huang cannot "fulfill her obligation to provide information by 'second guessing' NASD's request[s]."

e. Applicants fault the Opinion's determination that there was not enough evidence to evaluate the claims with respect to a net-capital deficiency by Perpetual. The Opinion referred to the alleged deficiency solely in response to some of Applicants' allegations of NASD

---

<sup>5/</sup> 17 C.F.R. § 201.141(b).

misconduct. NASD did not charge Applicants with any net-capital violation in this proceeding, and the merits of that deficiency were never before us.

f. Applicants assert that NASD's New Jersey District Director improperly signed the Notice of Complaint advising Applicants that NASD had filed a Complaint against them. This allegation could have been raised earlier and, therefore, is not properly raised in a motion for reconsideration. <sup>6/</sup> The Opinion addressed Applicants' related claim that the New Jersey District Director had commenced this disciplinary proceeding in violation of NASD Rules by signing the Complaint without a co-signer from NASD's Department of Enforcement. The Opinion found that Applicants' claim was factually mistaken: an attorney for NASD Enforcement had also signed the Complaint, as required by NASD Rules. Moreover, NASD Rules do not specify who may or may not sign the Notice of Complaint. Accordingly, we find no reason to fault the actions of the New Jersey District Director.

Therefore, IT IS ORDERED that Applicants' October 26, 2007 Motion for Reconsideration be, and it hereby is, denied.

By the Commission.

Nancy M. Morris  
Secretary

---

<sup>6/</sup> Feeley & Wilcox, 56 S.E.C. at 1269 n.18.