

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

Securities Exchange Act of 1934
Rel. No. 48917 / December 12, 2003

Admin. Proc. File No. 3-11073

In the Matter of the Application of
MARSHALL FINANCIAL, INC.
For Review of Disciplinary Action Taken by
NASD

ORDER DISMISSING PROCEEDINGS

On March 14, 2003, the Commission received an application for review from Marshall Financial, Inc. Marshall appealed an NASD decision ordering its registration to be suspended for failing to pay arbitration fees. 1/ NASD assessed these fees after Marshall was named as a party in arbitration proceedings. 2/ On June 26, 2003, the Commission directed the parties to brief the issue of whether the Commission has jurisdiction to hear Marshall's appeal in light of NASD action vacating the proceedings below. NASD argues that the Commission lacks jurisdiction and, alternatively, that Marshall was not aggrieved and the appeal is moot because no relief is available. Marshall does not assert a jurisdictional basis for Commission review, but contends that dismissal would result in a denial of due process inconsistent with the purposes of the federal securities laws.

An independent review of the record reveals the following

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- 1/ NASD Code of Procedure Rule 9531 provides that association staff may issue a written notice suspending the membership of a member who has failed to pay a fee.
- 2/ NASD Code of Arbitration Procedure Rule 10333 provides that each member who is named as a party to an arbitration proceeding shall be assessed surcharge and process fees.

pertinent facts. On February 21, 2003, NASD found that Marshall failed to pay fees resulting from arbitration proceedings in which Marshall was named as a party. NASD ordered that Marshall's registration be suspended effective as of the date of service of the decision and that such suspension continue until Marshall paid the fees in full, arranged an installment payment plan with NASD, or filed a bankruptcy petition in or had the fees discharged by a United States Bankruptcy Court. However, on February 21, 2003, the date the decision was issued but before it was served, Marshall paid the fees in full. On February 26, 2003, NASD stayed its decision pending verification that Marshall's checks had cleared, and then vacated the suspension proceedings upon receiving that verification. NASD never served its decision on Marshall.

It is well-recognized that the federal courts will dismiss a matter as moot unless the complaining party has "suffered some actual injury that can be redressed by a favorable judicial decision." ^{3/} Although we, like other administrative agencies, have "substantial discretion to determine whether the resolution of an issue . . . is precluded by mootness," ^{4/} we have declined to consider an appeal where "even a favorable decision by the Commission would entitle [the applicant] to no relief." ^{5/} We perceive no relief that is available here. Under the circumstances, we do not believe it would be appropriate to

^{3/} GTE California, Inc. v. FCC, 39 F.3d 940, 945 (9th Cir. 1994) (quoting Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 70 (1983) (per curium)). See also Enrico's Inc. v. Rice, 730 F.2d 1250, 1254 (9th Cir. 1984).

^{4/} Blinder, Robinson & Co., Inc., Securities Exchange Act Rel. No. 29496 (July 29, 1991), 49 SEC Docket 717, 718. See also Beatrice J. Feins, 51 S.E.C. 918, 920 n.8 (1993) ("Commission has substantial discretion in determining whether to decline deciding an appeal on mootness grounds."). As we also have noted, the Administrative Procedure Act "provides that an agency may in its discretion issue a declaratory order to terminate a controversy or remove uncertainty." Blinder, Robinson, 49 SEC Docket at 718.

^{5/} Blinder, Robinson, 49 SEC Docket at 718. See also Daniel M. Pecoraro, 48 S.E.C. 875, n.1 (1987) (no basis for appeal where party was not "'aggrieved'" by action of self-regulatory organization).

exercise our discretion to consider Marshall's appeal. 6/

Accordingly, it is ORDERED that this proceeding be, and it hereby is, dismissed.

By the Commission.

Jonathan G. Katz
Secretary

6/ In light of our determination to dismiss on the basis of mootness, we do not reach the question of whether the Commission has jurisdiction to hear Marshall's appeal.