

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52215 / August 5, 2005

Admin. Proc. File No. 3-11967

In the Matter of the Application of

ANTHONY JOHNSON
and
ARA PROUDIAN

For Review of Action Taken by

NASD

ORDER DENYING LEAVE TO APPEAL

Anthony Johnson and Ara Proudian ("Applicants"), respondents in an ongoing NASD disciplinary proceeding, seek leave to appeal from an interlocutory order of a Review Subcommittee of NASD's National Adjudicatory Council ("NAC"). NASD opposes Applicants' request. The facts are as follows.

In October 2003, NASD brought proceedings against Park Capital Securities, LLC, an NASD member firm, and numerous individuals including Applicants. On January 7, 2005, NASD's Department of Market Regulation ("the Department") filed a motion with the Hearing Officer seeking to disqualify attorney David A Schrader from representing Applicants. Schrader had previously represented Robert Delaplain, Park Capital's former compliance officer, during NASD's investigation of this matter, and the Department intends to call Delaplain as a witness against Applicants. The Department contended that Schrader should be disqualified because of his asserted conflict of interest.

The Hearing Officer disqualified Schrader, subject to certain conditions, and Applicants appealed that ruling to the NAC. After reviewing this issue, the NAC remanded the matter to the Hearing Officer for further consideration of "whether a material conflict exists. . . [that] would taint the disciplinary proceeding." It is from this ruling that Applicants seek to appeal.¹

Section 19(d) of the Securities Exchange Act² authorizes us to review any NASD action that (1) imposes any final disciplinary sanction on a member or a person associated with a

¹/ Applicants have requested the NAC either to certify its decision for appeal to this Commission or reconsider its ruling. That request is still pending.

member; (2) denies membership or participation to any applicant; (3) prohibits or limits any person with respect to services offered by NASD or an NASD member; or (4) bars any person from becoming associated with an NASD member.

It is evident that the present matter does not fall within any of the categories identified in Section 19(d). Accordingly, we lack jurisdiction to consider it.³ It would be premature and inappropriate for us to intervene in this proceeding before NASD has rendered a final decision.

Accordingly, IT IS ORDERED that the request of Anthony Johnson and Ara Proudian for leave to appeal from NASD action be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary

2/ 15 U.S.C § 78s (d).

3/ See, e.g., Allen Douglas Securities, Inc., Securities Exchange Act Rel. No. 50513 (October 12, 2004), 83 SEC Docket 3570.