

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 50691 / November 18, 2004

Admin. Proc. File No. 3-11376

In the Matter of the Application of

JOSEPH J. VASTANO, JR.
c/o John P. Cione, Esq.
474 Palmitas Street
Solana Beach, California 92075

For Review of Disciplinary Action Taken by

NASD

ORDER DENYING MOTION FOR RECONSIDERATION

On August 19, 2004, we sustained disciplinary action by NASD against Joseph J. Vastano, Jr., who was formerly employed as an investment company and variable contracts products representative with L.M. Kohn & Company ("L.M. Kohn"), an NASD member firm. 1/ Vastano now requests reconsideration of the Commission's opinion.

We found that Vastano had engaged in private securities transactions without giving prior written notice to L.M. Kohn in violation of NASD Conduct Rules 3040 and 2110. 2/ We further sustained the sanctions imposed by NASD, suspending Vastano from

1/ Joseph J. Vastano, Jr., Securities Exchange Act Release No. 50219 (Aug. 19, 2004), ___ SEC Docket ____.

2/ Conduct Rule 3040 prohibits any person associated with a member firm from participating in any manner in a private securities transaction outside the regular course or scope of his employment without providing prior written notice to the member firm. Such notice must describe in detail the proposed transaction and the person's proposed role in it. The notice must also state whether the associated person has received or may receive selling compensation in connection with the transaction. If the associated person will receive compensation, the person must receive written approval from the member firm.

Conduct Rule 2110 requires that members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."

association with any NASD member in any capacity for 18 months and fining him \$62,000. 3/

Vastano alleges that our opinion erred in finding that he had engaged in private securities transactions without giving prior written notice to his employer. As he did initially, Vastano asserts that the Alliance Leasing Corp. sales that he effected were done with the express approval of his supervisor Michael Yoakum. Vastano restates the same contentions that he urged on us previously and does not offer any new arguments or factual assertions. He identifies no basis for altering our original determination.

In addition, Vastano now asserts that he is "practically destitute." The NASD Hearing Panel imposed a \$62,000 fine on Vastano. Before the National Adjudicatory Council, Vastano mentioned that he had financial difficulties, but he did not claim that he was unable to pay a fine. He further did not raise this argument in his initial appeal to us.

In support of his assertion of inability to pay, Vastano now has submitted a two-sentence letter stating that his only asset is an automobile with a lien on it, that he is unemployed. and that he has incurred unspecified debts. 4/ Vastano has not submitted any financial documentation detailing his financial situation. We have previously held that a respondent carries the

3/ NASD also assessed costs on Vastano.

4/ He further states that he is "in the process of filing bankruptcy."

burden of demonstrating an inability to pay. 5/ We conclude that Vastano has not satisfied his burden of demonstrating an inability to pay. 6/

Accordingly, IT IS ORDERED that the motion for reconsideration filed by Joseph J. Vastano, Jr. be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary

5/ Robert Tretiak, Exchange Act Rel. No. 47534 (Mar. 19, 2003), 79 SEC Docket 3166, 3174; William J. Gallagher, Exchange Act Rel. No. 47501 (Mar. 14, 2003), 79 SEC Docket 3071, 3076. Cf. Rule of Practice 630(e), 17 C.F.R. § 201.630(e) (respondent in Commission administrative action who fails to file required financial information will be deemed to have waived the claim of inability to pay).

6/ The sanctions here were within NASD Sanction Guidelines for violations of Conduct Rule 3040, which permit a suspension of up to two years, or, in egregious cases, a bar. The Guidelines further permit a fine of up to \$50,000 to which NASD may add the amount of the Applicant's financial benefit. NASD has assessed Vastano \$62,000 - a \$10,000 fine, plus the \$52,000 he earned in commissions.