

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51237 / February 22, 2005

Admin. Proc. File No. 3-11277

In the Matter of the Application of

REUBEN D. PETERS
PETERS SECURITIES CO., LP
c/o Schiff Hardin & Waite
1101 Connecticut Avenue, NW
Washington, DC 20036

For Review of Action Taken by NASD

ORDER DENYING MOTION FOR RECONSIDERATION

I.

On June 7, 2004, we issued an opinion (the "Opinion") remanding to NASD the application by Peters Securities Co., LP to continue to employ Reuben D. Peters as a registered representative. ^{1/} NASD had denied Peters Securities' application to employ Peters as a registered representative. Peters is statutorily disqualified as the result of his having been enjoined against future violations of Sections 17(a)(2) and (3) of the Securities Act of 1933. ^{2/}

In remanding the proceeding to NASD, we stated that we were unable to conclude that NASD had applied its rules in a manner consistent with the purposes of the Exchange Act. Specifically, we held that it was unclear whether NASD's decision, which emphasized the seriousness of Peters' misconduct underlying the injunction in support of its determination to deny the application, appropriately considered the record before it consistent with the analysis

^{1/} Reuben D. Peters, Securities Exchange Act Rel. No. 49819 (June 7, 2004), 82 SEC Docket 3959.

^{2/} 15 U.S.C. §§ 77q(a)(2) & (3).

required by our decisions in Arthur H. Ross ^{3/} and Paul Van Dusen. ^{4/} NASD seeks clarification of certain language of our Opinion.

II.

We review NASD's motion to reconsider under Rule 470 of the Commission's Rules of Practice. ^{5/} Rule 470 permits us to reconsider our decisions in exceptional cases. ^{6/} The remedy is intended to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence. ^{7/} NASD's motion provides no basis for our reconsideration of our Opinion. ^{8/}

^{3/} 50 S.E.C. 1082 (1992).

^{4/} 47 S.E.C. 668 (1981).

^{5/} 17 C.F.R. § 201.470.

^{6/} The comment to Rule 470 states that "[a] motion for reconsideration is intended to be an exceptional remedy."

^{7/} KPMG Peat Marwick LLP, Order Denying Request for Reconsideration, Exchange Act Rel. No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, 1352-53 n.7 (specifying that efficiency and fairness concerns embodied in federal court practice of rejecting motions for reconsideration unless correction of manifest errors of law or fact or presentation of newly discovered evidence is sought "likewise inform our review of motions for reconsideration under Rule 470").

^{8/} On October 7, 2004, NASD informed us that on June 14, 2004, Peters Securities filed with NASD a Uniform Request Withdrawal From Broker-Dealer Registration, withdrawing from NASD membership. Also on June 14, the Firm filed a Uniform Termination Notice for Securities Industry Registration on behalf of Peters, terminating his registration. Accordingly, NASD states, the issue raised in this appeal is now moot before NASD and it will not be proceeding with a remand hearing for Peters. NASD continues to request, however, that the Commission rule on its Motion for Reconsideration. Although NASD will not conduct a remand hearing with respect to Peters' application, the matter is not moot before the Commission. Once NASD timely filed its Motion for Reconsideration, the Opinion ceased to be a final order of the Commission. Thus, absent a ruling from the Commission on the Motion, NASD's original order denying Peter Securities' application would continue to be part of the Peter Securities' and Peters' regulatory history. Moreover, because the Opinion did not resolve whether Peters' application should be affirmed, but merely articulated the correct legal standard to be applied, the issue raised in this appeal is not moot.

____ NASD argues that certain language in our Opinion should be clarified to narrow the meaning to apply only to the facts relating to Peters. ^{9/} NASD asserts that this language "broadly suggests" that individuals who are subject to permanent injunctions, but who do not have a right to reapply as part of their administrative sanctions,

would have an opportunity to rejoin the securities industry immediately if they were able to meet the threshold tests of having engaged in no intervening misconduct, being sponsored by a firm and a supervisor with little or no disciplinary history, and having proposed an adequate plan of heightened supervision.

NASD claims that this creates the "bizarre result" that a disqualified individual who is barred without a right to reapply is in a better position than a disqualified person with a right to reapply. NASD asks that we modify our Opinion to state that the analysis enunciated in Ross and Van Dusen only applies to a "statutorily disqualified person whose disqualifying conduct has also resulted in an administrative suspension of less than 12 months imposed by us pursuant to Section 15 of the Exchange Act." ^{10/}

Our Opinion did not intend the result suggested by NASD. Van Dusen and Ross instructed, with regard to an application for reentry after the expiration of the time period contained in a conditional bar imposed by the Commission, that NASD ordinarily may not deny reentry based solely on the underlying misconduct; something more is needed. ^{11/} In the present

^{9/} Specifically, NASD objects to the following language in the Opinion:

Although the administrative sanctions at issue in both Van Dusen and Ross were conditional bars, nothing in the rationale of those two decisions suggests that the standard set forth therein is not equally applicable to any statutorily disqualified person whose disqualifying conduct has also resulted in administrative sanctions imposed by us pursuant to Section 15 of the Exchange Act.

Peters, 82 SEC Docket at 3968. Peters was subjected to a 60-day suspension in an administrative proceeding based on the 2000 injunction.

^{10/} NASD correctly notes that footnote 15 of our Opinion should have cross-referenced to prior footnote 7, rather than to footnote 6.

^{11/} As we note in In the Matter of Harry M. Richardson, Exchange Act Rel. No. 51236, (Feb. 22, 2005) __ SEC Docket __, there may be rare circumstances in which the underlying conduct that led to the statutory disqualification and conditional bar or suspension is sufficiently egregious, in light of the environment at the time of the

(continued...)

case, we extended that analysis to applications for reentry after the period of a suspension imposed by us.

However, the Commission has made a different sanction determination in the case of an unqualified permanent bar. In that situation, the Commission has concluded that, based on the nature and seriousness of the misconduct, the public interest requires that the respondent be barred from the industry without a finding that there is a time period after which it would be appropriate to consider reentry. A decision by NASD to deny such person's application to associate would not be inconsistent – indeed, it would be consistent – with the sanction determination made by us. ^{12/} Thus, in a case involving an unqualified bar, the principle enunciated in Van Dusen and Ross would result in a different analysis than in a case involving a bar with a right to reapply or a suspension. Nothing more than the nature and seriousness of the underlying conduct that led to the statutory disqualification and bar as assessed by the Commission is necessarily required to deny the application. We thus find that NASD's motion does not present the exceptional circumstances required for us to reconsider our earlier Opinion.

Accordingly, IT IS ORDERED that the motion for reconsideration filed by NASD be, and it hereby is, DENIED.

_____By the Commission.

Jonathan G. Katz
Secretary

^{11/} (...continued)
application, that denial of the application on that basis would be warranted in the public interest.

^{12/} See, e.g., Michael J. Markowski, Exchange Act Release No. 44086 (Mar. 20, 2001), 74 SEC Docket 1537, aff'd, No. 01-1181 (D.C. Cir. 2002) (where fraudulent conduct underlying injunction was egregious, respondent demonstrated a high degree of scienter and refused to accept responsibility for his misconduct, the investing public had been harmed, and respondent had disciplinary history and gave no credible assurances against future violations, the Commission found that it was in the public interest to impose a bar with no provision for a later reentry).