

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 01-120

July 6, 2001

EUGENE SHVARTSMAN  
FORMER REGISTERED EMPLOYEE

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**Misappropriated customer funds, engaged in acts detrimental to the interest or welfare of the Exchange in that he opened a fictitious account in order to facilitate the conversion of funds, caused a violation of SEC Regulation 240.17a-3 and 17a-4 and Exchange Rule 440 by opening a fictitious account and submitting forged documents to facilitate the conversion and/or misappropriation of funds – Consent to censure and permanent bar.**

**Appearances:**

For the Division of Enforcement  
Linda S. Riefberg, Esq.  
Anthony Traina, Esq.

For the Respondent  
Eugene Shvartsman  
*Pro se*

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An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Eugene Shvartsman a former registered representative with Dean Witter Reynolds Inc. (the "Firm"). Without admitting or denying guilt Mr. Shvartsman consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds belonging to a customer of his member firm employer.
- II. Engaged in acts detrimental to the interest or welfare of the Exchange in that he opened a fictitious account at his member firm employer in order to facilitate the conversion of funds.
- III. Caused a violation of SEC Regulation 240.17a-3 and 17a-4 and Exchange Rule 440 by opening a fictitious account at his member firm employer and by submitting forged documents requesting the transfer of funds and/or securities to facilitate the conversion and/or misappropriation of funds from a customer of his member firm employer and another individual.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Shvartsman stipulate to certain facts, the substance of which follows:

### **Background and Jurisdiction**

1. Eugene Shvartsman (“Shvartsman”) was born on January 25, 1976. Shvartsman entered the securities industry in March 1998 when he joined Firm A, a non-member firm. In October 1998, Shvartsman joined Firm B, a member firm, and was approved by the Exchange as a General Securities Representative (“RR”) on February 10, 1999. A review of Shvartsman’s Central Registration Depository (“CRD”) record indicates that he has been employed at the following firms

Firm A (non-member firm)	March 1998 – October 1998
Firm B (member firm)	October 1998 – February 1999
Firm C (member firm)	March 1999 – May 1999
The Firm	June 1999 – May 2000
Firm D (non-member firm)	June 2000 – October 2000

Shvartsman has no prior disciplinary history and is not currently employed in the securities industry. (Shvartsman is currently trading his own account at a day trading firm.)

2. On May 12, 2000, the Exchange received a Form RE-3 that reported that the Firm terminated Shvartsman, a registered sales assistant, on May 5, 2000 based upon Shvartsman’s admission that he had misappropriated funds from a customer’s account and admitted that he had established a fictitious account in order to facilitate the conversion of funds from a non-customer. The Firm also reported Shvartsman’s misconduct on a Uniform Termination Notice for Securities Industry Registration (“Form U-5”).
3. By letter dated June 13, 2000, which he received, Shvartsman was informed that the Exchange had opened a formal investigation regarding his alleged acts and admissions involving the misappropriation of funds from a customer’s account and that he had established a fictitious account in order to facilitate the conversion of funds from another individual who was not a customer of his member firm employer.

### **Overview**

4. In October 1999, while employed as a registered sales assistant at the Firm, Shvartsman opened an account, without authorization, to facilitate the conversion of funds from an individual who was not a customer of his member firm employer. After opening the fictitious account in the individual’s name, Shvartsman purchased securities for the account and later transferred the securities to his own securities account for his own use. In March 2000, Shvartsman misappropriated funds from an account belonging to a customer of his member firm employer. The total amount of funds taken by Shvartsman totaled approximately \$4,683.

### **The Conversion of Funds**

5. In August 1999, the U.S. Treasury issued a check payable to AB for \$996. Shvartsman came into possession of the check issued to AB, who lived in the same apartment building as Shvartsman.
6. On or about October 6, 1999, unbeknownst to AB, Shvartsman opened a cash account at the Firm in the name of AB and deposited AB's check into the account. AB was not a customer of the Firm and did not request that Shvartsman open an account for him.
7. Shvartsman was listed as the financial advisor for the account on the new account form. Shvartsman submitted fictitious information and/or forged signatures in connection with the opening of the AB account.
8. On or about October 14, 1999, Shvartsman placed an order for 15 shares of XYZ for the AB account.
9. On October 27, 1999, Shvartsman submitted a Firm form entitled Authorization to Journal Securities or Funds ("Journal Authorization Form") which contained a forged signature for AB and authorized the transfer of all cash, securities and debits from the AB account to Shvartsman's own Firm account.
10. Shvartsman opened his Firm account in August, 1999. Shvartsman's account did not have any cash or securities prior to the transfer of the 15 shares of XYZ from the AB account.
11. Between November 9, 1999 and December 13, 1999, Shvartsman used the transferred XYZ shares and/or the proceeds from the sale of the XYZ shares to engage in option trading in his own account.
12. On December 21, 1999, Shvartsman withdrew \$1,433 from his account, which represented 100% of his account's equity.

### **The Misappropriation of Funds from CD**

13. The AB account did not contain any cash or securities between November 9, 1999 and March 16, 2000.
14. On March 16, 2000, Shvartsman submitted a forged Journal Authorization Form requesting that \$3,687 be transferred from the customer account of CD to the AB account.
15. CD did not authorize the transfer of \$3,687 from her account to the AB account.

16. On or about March 20, 2000, Shvartsman submitted a forged Letter of Authorization (“LOA”) that requested a check for \$3,687 be issued from the AB account to a friend of Shvartsman, EF.
17. EF turned over the proceeds from the check to Shvartsman.

**DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Shvartsman guilty as set forth above by unanimous vote.

**PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Shvartsman of a censure and a permanent bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Panel

Vincent F. Murphy  
Hearing Officer