

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-39

February 19, 2002

SAM J. JIN

FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated customer funds; made misrepresentations and omissions of material facts to a customer; falsified account documentation; created and issued account statements containing false information; caused a violation of Exchange Rules 440 and 409 and SEC Rules 17a-3 and a-4 by entering false information on his firm's books and records; violated Rule 476 by failing to comply with Exchange requests for a statement and violated Rule 476 by failing to comply with an Exchange request for testimony – Censure and permanent bar.

Appearances:

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

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on charges contained in a Charge Memorandum issued by the Exchange's Division of Enforcement against Sam J. Jin, a former registered representative with UBS PaineWebber, Inc. Mr. Jin was charged with having:

- 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 conduct inconsistent with just and equitable principles of trade in that he made misrepresentations and omissions of material facts to a customer regarding investments in an account belonging to the customer and that he had opened an account for the customers when in fact, he never opened the account.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that he, on one or more occasions, falsified account related documentation which he then provided to a customer of his member firm employer.
- IV. Engaged in conduct inconsistent with just and equitable principles of trade in that he created and issued to a customer account statements containing false and misleading information.

- V. Caused a violation of Exchange Rules 440 and 409 and SEC Rules 17a-3 and 17a-4 by entering falsified information on the books and records of his member organization employer regarding his changing of a customer's address without the customer's authorization.
- VI. Violated Exchange Rule 476 in that he failed to comply with written requests by the Exchange for a written statement.
- VII. Violated Exchange Rule 476 in that he failed to comply with a written request by the Exchange for testimony.

Mr. Jin did not submit an Answer to the Charge Memorandum and neither he nor any person on his behalf appeared at the hearing in this matter. At the hearing the Division of Enforcement moved, pursuant to Exchange Rule 476, to have the facts in the Charge Memorandum deemed admitted since he did not submit an Answer. The Hearing Panel granted the motion and found as follows:

Background and Jurisdiction

1. Sam J. Jin ("Jin") was born on January 26, 1972. Jin earned his Series 7 license on May 8, 1998. He was employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") from October 1999 to August 2000 and by PaineWebber ("PW") from August to November 2000.
2. According to the Central Registration Depository, Jin has not been employed in the securities industry since November 30, 2000.
3. The Division of Enforcement ("Enforcement") of the New York Stock Exchange ("Exchange") opened an investigation of Jin on March 16, 2001 based on the receipt from Merrill Lynch of an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5A") reporting the complaint of customers A and BC (the "Cs") who alleged that Jin had effected unsuitable, excessive and unauthorized transactions in their account, some of which were on margin, made misrepresentations and engaged in negligence and fraud. Merrill Lynch and PW subsequently reported additional customer complaints, including that of customers D and EF (the "Fs").
4. The Fs alleged that Jin misappropriated their funds, falsified account related documents, changed their address without authorization and made misrepresentations to them, including that he had opened an account for the Fs when, in fact, Jin never did.

Misappropriation of Customer Funds

5. Jin and the Fs, who were all from Korea, were longtime friends. D and EF are respectively 46 and 43 years of age and speak limited English. The Fs gave Jin large

- amounts of cash for deposit into their Merrill Lynch and PW accounts because Jin told them it would be simpler to deal in cash. The Fs delivered the cash to Jin at places outside of Jin's Merrill Lynch and PW offices.
6. Jin serviced a Merrill Lynch account for the Fs from February 2000 through approximately July 2000. During the period February through July 2000, the Fs deposited a total of \$63,000 in their Merrill Lynch account.
 7. The Fs instructed Jin to purchase mutual funds, stock and a certificate of deposit ("CD") with the \$63,000 that they deposited into their account. Jin subsequently informed the Fs that he had purchased the securities, including a \$30,000 CD with a maturity date of January 2001, for the Fs Merrill Lynch account. In fact, Jin never purchased the securities for the Fs Merrill Lynch account.
 8. Without the authorization or knowledge of the Fs, Jin electronically changed the address of record for the F account.
 9. Jin also provided the Fs with falsified Merrill Lynch monthly account statements misrepresenting the value and status of the securities in their Merrill Lynch account.
 10. In August 2000, Jin informed the Fs that he was joining PW. He requested that the Fs sign documents to effect the transfer of the funds in their Merrill Lynch account to PW. The Fs signed the documents presented to them by Jin for the opening of a PW account and the transfer of their assets from the Merrill Lynch to their PW account. In fact, Jin never opened a PW account for the Fs.
 11. On or about September 11, 2000, Jin Federal Expressed the Fs a copy of a financial statement purportedly on PW stationery indicating that the value of the Fs account for the period ending August 31, 2000 was \$64,715 and consisted of \$34,715 in mutual funds and \$30,000 in CDs. The Fs believed that the assets listed on the financial statement were the assets transferred into their PW account from Merrill Lynch. In fact, the PW monthly account statements were falsified documents.
 12. On October 17, 2000, Mrs. F hand delivered \$48,000 in cash to Jin for the purchase of securities in the Fs PW account. Jin gave Mrs. F a deposit receipt for the \$48,000. However, Jin never deposited the funds into any account belonging to the Fs.
 13. In November 2000, the Fs received a document purportedly from PW indicating that the Fs had a PW joint account containing \$31,590.15 in mutual funds, a \$30,000 six-month certificate issued by Bank of America and \$49,839.95 in stocks, for a total of approximately \$111,430. In fact, the PW account statements were falsified documents.
 14. In January 2001, Mr. F visited the PW branch office to cash out the CD which he believed that Jin had purchased for the Fs. Mr. F was informed that there were no open accounts at PW in the name of the Fs. When Mr. F produced the documents

purporting to be PW financial statements and the receipt for the CD, Mr. F was informed that the documents had not been issued by PW and were falsified.

15. Mr. F then visited Merrill Lynch to obtain records of what he believed to be the Fs closed account. Mr. F learned from Merrill Lynch that the Merrill Lynch account in June 2000 contained approximately \$707, that a check in the amount of \$707 had been issued out of the account in July 2000 to an address of record which was unknown to the Fs and which Jin had changed earlier in the year without the Fs knowledge or authorization.
16. After discovering the theft of their \$111,000, the Fs visited Jin at his home. At that time, Jin admitted to the Fs that he had not opened an account for them at PW and claimed that he held their money in his own Merrill Lynch account which was temporarily frozen but would be released by the Internal Revenue Service in March 2001. According to the Fs, Jin subsequently told them that he was looking for a bank loan to replace the Fs funds. To date, Jin has not repaid the Fs any part of the \$111,000 they entrusted to him for investment.

Failure to Cooperate

17. By letter dated April 3, 2001 (“April 3 Letter”), sent by certified and first class mail to Jin at his last place of residence as reflected in Exchange Records, Enforcement notified Jin of the Exchange’s investigation of three customer complaints against him, including the F complaint, and requested that he provide a written explanation of the matters under investigation to Enforcement by April 30, 2001. The April 3 Letter also advised Jin that his failure to provide the requested information by April 30, 2001 might result in the institution of formal disciplinary proceedings against him based upon his failure to comply with the Exchange’s request for information pursuant to Exchange Rule 477.
18. By letter dated April 30, 2001 (“April 30 Letter”), Jin responded to Enforcement’s April 3 Letter with respect to two of the three matters under investigation. Jin, however, failed to provide a written response to the third matter involving the F complaint. In his April 30 Letter, Jin referred Enforcement to his lawyer with respect to the F matter.
19. On May 22, 2001, Enforcement left a message on Jin’s voicemail informing Jin that the Exchange wanted to take his on-the-record testimony in June 2001 and requested that the return the call by the following day.
20. By letter dated May 22, 2001 (“May 22 Letter”), sent by first class mail to Jin at his last place of residence as reflected in Exchange Records, Enforcement requested that Jin provide on-the-record testimony on June 28, 2001 concerning the three customer complaints referenced in the April 3 Letter and further requested that he call Enforcement by May 29, 2001 to confirm the June 28 date for the deposition. In the May 22 Letter, Enforcement advised Jin that he could become subject to formal

disciplinary action as a result of a failure on his part to provide the requested testimony.

21. On May 31, 2001, Enforcement telephoned the lawyer to whom Jin had referred in his April 30 Letter regarding the F complaint. The lawyer informed Enforcement that he was not aware of the Exchange's investigation of Jin, of the existence of any complaints against Jin except for that of the Fs nor of the Exchange's May 22 Letter requesting Jin's deposition.
22. On June 8, 2001, Jin left a voicemail message for Enforcement stating that he had received the May 22, 2001 letter requesting his deposition and asked that Enforcement call him. Enforcement responded to Jin's June 8 message by leaving a total of three messages on Jin's answering machine on June 12 and 13.
23. On June 27, 2001, Jin again called and spoke to Enforcement. At that time, Jin informed Enforcement that B was not his lawyer. Jin gave the staff the name of another lawyer whom he claimed was representing him, said he would have that lawyer call the staff and that he (Jin) would try to locate that lawyer's number to provide Enforcement.
24. During the June 27 telephone conversation, Jin informed Enforcement that he was out of the country but said he would be appearing at the June 28 deposition. Jin declined to relay his whereabouts and said Enforcement would have to discuss his whereabouts with his lawyer.
25. To date, Jin has failed to provide a written explanation concerning the F complaint or to appear and testify as requested.

DECISION

The Hearing Panel, by unanimous vote, found Mr. Jin guilty as charged.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Jin be censured and permanently barred 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

Edward W. Morris, Jr.
Chief Hearing Officer