

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-81

April 10, 2002

KEVIN WALTER PYNE

FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to disclose criminal history to employer; violated Exchange Rule 476(a)(10) by making misstatement on Form U-4; caused a violation of Exchange Rule 345.12 by causing employer to submit an inaccurate Form U-4 to the Exchange – Censure and two year bar.

Appearances:

For the Division of Enforcement
Steven J. Brostoff, Esq.
Howard Alan Grinsberg, Esq.

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Kevin Walter Pyne, a former non-registered employee with Morgan Stanley Dean Witter, Inc. (the "Firm"). Mr. Pyne was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade by failing to disclose his prior criminal history to his member firm employer, which made him subject to a statutory disqualification.
- II. Violated Exchange Rule 476(a)(10) by making a misstatement and omission of fact on a Form U-4 (Uniform Application for Securities Industry Registration and Transfer) that was filed with the Exchange.
- III. Caused a violation of Exchange Rule 345.12 by causing his member firm employer to submit a Form U-4 to the Exchange containing information that was not accurate.

Mr. Pyne did not submit an Answer to the Charge Memorandum, and neither Mr. Pyne 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 alleged in the Charge Memorandum deemed admitted since Mr. Pyne did not submit an Answer. The motion was granted, and on that basis, and on evidence presented, the Hearing Panel found as follows:

Background and Jurisdiction

1. Kevin Walter Pyne ("Pyne") was born on May 19, 1966. He entered the securities industry in April 2001, as a registered representative trainee with the Firm, where he remained until May 14, 2001.

2. On May 21, 2001, the Exchange received a Uniform Termination Notice for Securities Industry Registration (Form U-5) from the Firm reporting that Pyne had been terminated on May 14, 2001 for failure to disclose on his employment application and Form U-4 that he had been convicted of a felony.
3. Pyne has not been employed in the securities industry since May 14, 2001.
4. By letters dated September 4 and October 8, 2001, which were mailed to Pyne's last place of residence as reflected in Exchange records, Enforcement notified Pyne that it was investigating the above allegations.

Criminal History

5. Pyne was arrested in Clark County, Nevada on December 11, 1990 on a narcotics felony charge.
6. On February 26, 1992, Pyne pled guilty to the felony crime of "Conspiracy to be Under the Influence of a Controlled Substance (Heroin)."
7. In April 1992, Pyne was sentenced to one year in jail, which the court suspended, three years probation, substance abuse counseling, and 120 hours of community service.

Misstatements

8. In April 2001, Pyne applied for employment as a registered representative trainee with the Firm in Arizona. Pyne filled out an employment application dated April 9, 2001, in which he answered "No" to the following question: "Have you ever been convicted of, or pleaded no contest to a felony of any kind ..."
9. Pyne also filled out a Form U-4 dated April 18, 2001, in which he answered "No" to the following question: "Have you ever been convicted of or pled guilty or nolo contendere ('no contest') ... to any felony, or been charged with any felony?"
10. Pyne's felony conviction required a "Yes" answer to both questions.
11. After completion of the employment application and Form U-4, the Firm hired Pyne as a registered representative trainee.
12. On May 7, 2001, Pyne advised his branch manager of his criminal history. The Firm terminated Pyne on May 14, 2001.

Statutory Disqualification

13. Under Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934 (the "Exchange Act"), a person is subject to a statutory disqualification if, within ten

years of the date of the filing of an application, such person has been convicted of *any felony*.

14. Pyne's felony conviction on February 26, 1992 subjected him to a statutory disqualification for a ten-year period through February 2002. As such, Pyne was statutorily disqualified from employment with an Exchange member organization.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Pyne be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization for a period of two years.

For the Hearing Panel

Milton M. Stein
Hearing Officer