

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-131

June 19, 2002

MATTHEW D. MITCHELL

FORMER REGISTERED REPRESENTATIVE

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Violated Rule 476(a) by effecting transactions in the account of a deceased customer without proper authorization; violated Rule 408(a) by exercising discretion without written authorization and caused a violation of Rule 342.16 by failing to submit communications to customers for supervisory approval – Censure and sixteen month bar.

Appearances:

For the Division of Enforcement

Allison A. Bishop, Esq.

Toni C. Hamburg, Esq.

For the Respondent

William Briendel, Esq.

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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 Matthew D. Mitchell, a former registered representative with Gruntal & Co., L.L.C. and Wheat First Securities, Inc. Without admitting or denying guilt, Mitchell consents to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 476(a) by engaging in conduct inconsistent with just and equitable principles of trade by effecting transactions in the account of a deceased customer without proper authorization.
- II. Violated Exchange Rule 408(a) in that he exercised discretion without prior written authorization based upon oral grants of discretion from four customers.
- III. Caused a violation of Exchange Rule 342.16 by failing to submit communications sent to a customer via e-mail relating to the customer's account and transactions for supervisory review and/or approval.

For the sole purpose of settling this disciplinary proceeding and without Mitchell admitting or denying any facts or allegations contained herein, Mitchell and the Division of Enforcement stipulate to the following:

Background and Jurisdiction

1. Matthew D. Mitchell ("Mitchell") was born on January 13, 1960. He was employed by Gruntal & Co., L.L.C. from April 1999 to July 2000 and by Wheat First Securities,

Inc. from July 1998 to April 1999. Mitchell has not been employed in the securities industry since his termination from Gruntal in July 2000.

2. On or about May 24, 1999, the Exchange received a Uniform Termination Notice for Securities Industry Employees ("Form U-5"), reporting that Mitchell was permitted to resign from Wheat First Securities, Inc. ("Wheat First") on April 22, 1999, following an internal investigation concerning checks Mitchell wrote on his deceased father's account at Wheat First. Subsequently, the Exchange received notice of other complaints from Gruntal & Co., L.L.C. ("Gruntal") and Wheat First reporting allegations of various sales practice violations. Mitchell was terminated from Gruntal on or about July 18, 2000, for engaging in discretionary trading in a customer account and for sending unapproved e-mail communications to a customer.
3. Mitchell was notified of Enforcement's investigation by letter dated February 15, 2000, which he received.

Violative Conduct

Overview

4. Over an eight-month period, Mitchell effected discretionary trades in the account of a deceased customer pursuant to an expired power of attorney. Mitchell also effected trades in three customer accounts based upon oral grants of discretion from the customers. Additionally, Mitchell sent e-mail communications to a customer without first obtaining supervisory approval from his branch office manager.

Discretionary Trading

The AB Account

5. On July 27, 1998, AB, Mitchell's father, executed a Power of Attorney (the "power of attorney") giving Mitchell full authority to manage his securities account at Wheat First. AB passed away in August 1998.
6. The power of attorney expired upon AB's death and thus did not provide authorization for Mitchell's trading in the account after his father's death. Mitchell, however, continued trading in the account until April 1999, when he was permitted to resign from Wheat First.
7. During the August 1998 to April 1999 time period, Mitchell engaged in discretionary trading in the AB account, earning commissions totaling approximately \$125,000 from the account.

The D Family Accounts

8. Mr. and Mrs. CD and their two daughters, established accounts with Mitchell both at Wheat First and at Gruntal. CD had written third party discretionary authority over these accounts, including the three accounts at issue here, a joint account with his wife and an individual account for each of his two daughters (the "D accounts").

9. Mitchell was the registered representative servicing the D accounts throughout his tenure at both Wheat First and Gruntal, from July 1998 to July 2000. Throughout this time period, Mitchell repeatedly exercised discretion in the D accounts, effecting trades and reporting them to Mr. D afterwards, often by e-mail.
10. During this time period, Mitchell effected more than thirty discretionary trades in the D accounts. Mitchell engaged in this trading pursuant to an oral grant of discretion from Mr. D, without obtaining written authorization as required by Exchange Rule 408(a).

Reverend EF

11. Rev. EF, a priest and a close friend of the D family, was referred to Mitchell by Mr. D. Rev. EF opened an account with Mitchell in August 1998, while Mitchell was employed at Wheat First, and also maintained an account with Mitchell at Gruntal until Mitchell was terminated by Gruntal in July 2000.
12. Between August 1998 and July 2000, Mitchell effected more than ten discretionary trades in Rev. EF's account. Mitchell engaged in this trading pursuant to an oral grant of discretion from Rev. EF, without obtaining written authorization as required by Exchange Rule 408(a).

XYZ/GH

13. GH, a resident of New Zealand, was referred to Mitchell by a business associate, and opened an account with Mitchell at Wheat First in February 1999, for his business, XYZ.
14. GH traveled extensively and therefore gave Mitchell oral authority to trade in his account at the time he opened the account in February 1999.
15. Mitchell was the registered representative for the XYZ account from February 1999 until Mitchell's termination from Gruntal in July 2000. Throughout this time period, Mitchell effected more than ten discretionary trades in the XYZ Account. Mitchell engaged in this trading pursuant to an oral grant of discretion from GH, without obtaining written authorization as required by Rule 408(a).
16. GH brought a complaint against Gruntal and Mitchell in October 2000, which Gruntal settled for \$50,000. Mitchell did not contribute to this settlement.

Unapproved E-Mail Communications

17. Exchange Rule 342.16 requires member organizations to conduct reasonable supervision of the communications of registered representatives with respect to customer accounts.
18. Throughout Mitchell's employment with Gruntal, from April 1999 to July 2000, Mitchell sent e-mail communications to Mr. D without first obtaining the approval of

Gruntal's branch office management. Mitchell also failed to provide his branch management with copies of all of his e-mail communications with Mr. D concerning the D accounts.

19. By sending unapproved e-mail communications to Mr. D concerning the D accounts, Mitchell circumvented the review procedures in place at Gruntal for reviewing customer communications with its registered representatives. In so doing, Mitchell caused a violation of Exchange Rule 342.16, which requires reasonable review of such communications.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Mitchell 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. Mitchell of a censure and a 16 month 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

Edward W. Morris, Jr.
Chief Hearing Officer