

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-133

June 19, 2002

REED M. BADGLEY

FORMER REGISTERED REPRESENTATIVE

* * *

Violated Rule 346(b) by engaging in an outside business activity without the consent of his employer, made recommendations to customers to invest in an unapproved outside business; made misstatements on a disclosure questionnaire used by his employer; and caused a violation of SEA Section 17(a) and Exchange Rule 440 by submitting inaccurate information on books and records of his employer – Consent to censure, six month suspension and \$5,000 fine.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Ellen R. McCarthy, Esq.

For the Respondent
J. William Holland, 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 Reed M. Badgley, a former registered representative with Howe, Barnes Investment, Inc. Without admitting or denying guilt, Badgley consents to findings by the Hearing Panel that he:

- I. Violated Exchange Rule 346(b) in that he engaged in an outside business activity, without making a written request and receiving the prior written consent of his member organization employer.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he made recommendations to customers to invest in an unapproved outside business, and one or more customers invested based upon such recommendation.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that he made one or more misstatements on a disclosure questionnaire utilized by his member organization employer to fulfill its compliance responsibility to the Exchange.
- IV. Caused a violation of Section 17(a) of the Securities and Exchange Act of 1934, as amended, and Regulations 17a-3 and 17a-4 thereunder, and Exchange Rule 440 by submitting inaccurate information on the books and records of his member organization employer.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Badgley stipulate to the following:

Background and Jurisdiction

1. Badgley was born on February 17, 1929. He entered the securities industry in or about July 1966 as a registered representative trainee. In July 1992, he joined Howe, Barnes Investment, Inc. (“Howe, Barnes” or the “Firm”).
2. On June 12, 2000, the Exchange received a Form U-5 from Howe, Barnes reporting that Badgley, formerly a registered representative in the Firm’s Chicago, IL branch office, was terminated on May 3, 2000, in connection with his failure to disclose outside activity to the Firm.
3. By letter dated November 3, 2000, which he received, Enforcement notified Badgley that it was investigating the matter reported in the Form U-5.

Summary of Violative Conduct

4. While employed as a registered representative with Howe, Barnes, Badgley engaged in an unapproved outside business activity in another, non-public organization involved in a securities, financial or kindred business. At Badgley’s recommendation, four Howe, Barnes customers invested in two outside private placements. Badgley, himself, was an investor in at least one of the private placements. Badgley failed to disclose such outside business activity to Howe, Barnes.

Undisclosed Outside Business Activity

5. Exchange Rule 346(b) states in relevant part, that “without making a written request and receiving the prior written consent of his member or member organization employer, no...employee of a member or member organization shall at any time be engaged in any other business.”
6. At various times in 1997 and 1998, at Badgley’s recommendation, four Howe, Barnes customers invested in two outside private placements, XYZ International and UVW Partners, two Russian hedge funds. XYZ sought arbitrage opportunities in the Russian fixed income markets, and UVW sought arbitrage opportunities in all Russian financial markets.
7. Badgley, himself, became an investor in XYZ in or about April 1996.
8. Badgley introduced the referenced Howe, Barnes customers to the independent entrepreneur who managed the specified private placements. At various times between 1996 and 1998 Badgley sent correspondence from his home to prospective investors regarding the specified private placements, in which Badgley enclosed certain materials pertaining to the independent entrepreneur and his companies.

9. Badgley failed to disclose such outside business activity to Howe, Barnes.

Misstatements/Submission of Inaccurate Information on Firm Disclosure Form

10. Pursuant to Section 17(a) of the Securities and Exchange Act of 1934, and SEC Regulations §240.17a-3 and §240.17a-4, promulgated pursuant to the Securities and Exchange Act of 1934, and Exchange Rule 440, a broker/dealer is required to accurately maintain and preserve certain books and records relating to its business.
11. Pursuant to applicable Howe, Barnes procedure, Badgley was required to disclose to the Firm, on an annual basis via a written disclosure questionnaire, any outside business activity in which he was engaged, any outside investments he made, and any use of sales literature not reviewed and approved by the Firm.
12. Badgley completed the required Firm disclosure questionnaire for the years 1996, 1997, and 1998. In each of those years, Badgley had made recommendations of XYZ and UVW to the referenced Howe, Barnes customers; had maintained his own investment in XYZ; and had sent correspondence containing unapproved sales materials to prospective investors in the specified private placements. Nevertheless, Badgley consistently falsely answered “no” to the questions of whether he was engaged in outside business activity, had any outside investments, and was using only Firm-approved sales materials.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Badgley 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. Badgley of a censure, a six month suspension from membership, allied membership, approved person status and from employment or association in any capacity with any member or member organization, and a fine of \$5,000.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer