

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-145

July 17, 2002

DOUGLAS E. SPAINER

FORMER NON-REGISTERED EMPLOYEE

* * *

**Misappropriated funds from his employer; violated Rule 346(b) by engaging in an outside business activity without the written consent of his employer; and violated Rule 440 and SEC Rules 17a-3 and a-4 by causing his employer to maintain inaccurate books and records –
Consent to censure and permanent bar.**

Appearances:

For the Division of Enforcement

Anthony J. Cavallaro, Esq.

Julie Han, Esq.

Myles L. Orosco, Esq.

For the Respondent

Sandra C. Maliszewski, 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 Douglas E. Spainer, a former non-registered employee with Lehman Brothers, Inc. (the "Firm"). Without admitting or denying guilt, Spainer consents to findings by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds from his member firm employer.
- II. Violated Exchange Rule 346(b) in that he engaged in an outside business activity without receiving prior written consent of his member organization.
- III. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 pursuant to the Securities and Exchange Act of 1934 in that, on one or more occasions, he caused his member firm employer to maintain inaccurate books and records.

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

Background and Jurisdiction

1. Spainer was born on September 26, 1960. His only employment in the securities industry had been with the Firm.

2. Spainer became employed with the Firm in September 2000 where he worked as a non-registered employee in the Firm's Event Marketing Department until his termination of employment in July 2001. Spainer is no longer employed in the securities industry.
3. Enforcement received a Form RE-3 reporting that Spainer's employment had been terminated on July 20, 2001 after Spainer caused the Firm to make improper payments to three flight corporations in which Spainer had undisclosed interests.
4. By letter dated March 26, 2002, which he received, the Exchange notified Spainer of its investigation and requested a written response to the allegations.

Overview

5. During the period November 2000 to May 2001 (the "relevant period"), Spainer, the Firm's Aviation Manager, submitted false invoices for payment and, as a result, caused the Firm to make improper payments totaling approximately \$371,000 to three corporations of which Spainer worked as an independent contractor, without the Firm's knowledge, as set forth below.

Misappropriation of Firm Funds **Outside Business Activity and Inaccurate Books and Records**

6. As the Firm's Aviation Manager, Spainer was responsible for managing the Firm's use of private and charter aircraft by Firm personnel. Additionally, Spainer controlled the scheduling, invoices and check disbursement requests for all Firm flights.
7. During the relevant period, Spainer caused the Firm to make improper payments to three corporations - XYZ, UVW and RST - in which he had undisclosed interests as an independent contractor.
8. When the Firm hired Spainer as the Firm's Aviation Manager, Spainer never, despite being asked, disclosed to the Firm that he had personal interests in these or any other corporation.
9. On twelve occasions during the relevant period, Spainer caused the Firm to make multiple payments for one flight chartered by the Firm. In these instances, Spainer caused payments to the legitimate vendor who provided the aircraft but also, by submitting fictitious invoices, caused the Firm to make additional payments to one of his three corporations even though none of them had provided services for that particular flight. The improper payments totaled approximately \$325,000.
10. On two occasions during the relevant period, Spainer also caused the Firm to make payments to his companies for flights that never occurred by submitting fictitious invoices. These unauthorized payments totaled approximately \$17,500.

11. Additionally, on several occasions during the relevant period, Spainer's corporations, XYZ and UVW, operated as brokers that chartered aircraft on behalf of the Firm. According to Firm policy, Spainer was not entitled to brokerage commissions for any services they provided the Firm because Spainer had interests in these corporations. The unnecessary brokerage commissions Spainer charged the Firm totaled approximately \$28,500.
12. As a result of the additional payments, the payments for the flights that never occurred and the commission payments to which he was not entitled. Spainer and his corporations received unauthorized payments totaling approximately \$371,000 from the Firm.
13. The Firm suspended Spainer on July 2, 2001 and terminated his employment on July 20, 2001.
14. To date, Spainer has reimbursed the Firm \$292,740 of the misappropriated funds and continues to reimburse the Firm for the balance he owes.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Spainer 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. Spainer 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

Edward W. Morris, Jr.
Chief Hearing Officer