

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 02-148
WALL STREET ACCESS
MEMBER ORGANIZATION

July 19, 2002

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Submitted a re-created document purporting to be the original in response to an Exchange request for information, and violated Rule 440 and SEC Rules 17a-3 and a-4 by creating and submitting to the Exchange a re-created document – Consent to censure and \$50,000 fine.

Appearances:

For the Division of Enforcement
Anthony J. Cavallaro, Esq.
John A. Mascarello, Esq.

For the Respondent
Nina McKenna, Esq.

EXCHANGE HEARING PANEL DECISION 02-149
DENNIS JOHN FITZGERALD
ALLIED MEMBER

* * *

Submitted a re-created document purporting to be the original in response to an Exchange request for information, and violated Rule 440 and SEC Rules 17a-3 and a-4 by creating and submitting to the Exchange a re-created document – Consent to censure and \$45,000 fine.

Appearances:

For the Division of Enforcement
Anthony J. Cavallaro, Esq.
John A. Mascarello, Esq.

For the Respondent
Dennis J. Block, Esq.
Jonathan Hoff

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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 Wall Street Access, a member organization, and Dennis John Fitzgerald, co-Chief Operating Officer of Wall Street Access.

For the sole purpose of settling this disciplinary proceeding, without admitting or denying guilt, the Firm consents to findings by the Hearing Panel that it:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that in response to a request for information from the Exchange, the Firm submitted a re-created document purporting to be the original document.
- II. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 pursuant to the Securities and Exchange Act of 1934 relating to the making and preservation of certain books and records in that in response to a request for information it created and submitted to the Exchange a re-created document.

For the sole purpose of settling this disciplinary proceeding, without admitting or denying guilt, Fitzgerald consents to findings by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that in response to a request for information from the Exchange, the Firm submitted a re-created document purporting to be the original document.
- II. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 pursuant to the Securities and Exchange Act of 1934 relating to the making and preservation of certain books and records in that in response to a request for information it created and submitted to the Exchange a re-created document.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement, Wall Street Access and Fitzgerald stipulate to the following:

Background and Jurisdiction

1. Wall Street Access is a registered, broker/dealer headquartered in New York City, and a member organization since 1982. The Firm is engaged in Exchange commission business other than Floor activities, retailing of corporate over-the-counter equity and debt securities, underwriting of corporate securities, and other securities related activities. The Firm has approximately 95 employees and one office.
2. Dennis Fitzgerald was born on July 5, 1953. Fitzgerald entered the securities industry in 1973. In 1987 he joined Wall Street Clearing, a predecessor firm of Wall Street Access, as a consultant for two years. In 1989, he became an officer of Wall Street Clearing. In 1991, Wall Street Clearing reorganized as Wall Street Access. In 2000, Fitzgerald became co-Chief Operating Officer of Wall Street Access, where he remains employed in that capacity.
3. By letter dated January 4, 2001, which he received, Enforcement notified Fitzgerald that it was investigating the facts surrounding the production of a document submitted to the Exchange by Wall Street Access in November 2000 in response to a request by the Exchange for documents and information.

Summary

4. In November 2000, Fitzgerald, the Co-Chief Operating Officer of Wall Street Access, in response to a written request for information by the Exchange, submitted a re-created document as an original document, as set forth below.

Submission to the Exchange of a Re-Created Document

5. During the course of an investigation relating to an employee at another member organization, Enforcement Staff requested by letter dated October 24, 2000, that the Firm produce securities and currency transaction records for the employee's personal securities accounts at the Firm. The document request included any Letters of Authorization related to a November 16, 1998 transaction involving the transfer and loan of approximately \$329,000 from the personal account of the Firm's Chairman and Chief Executive Officer to the account of a customer of the Firm.
6. When Fitzgerald learned that the Firm, despite efforts to do so, had not located the original Letter of Authorization, he contacted officials at the Firm who had knowledge of the November 16, 1998 transaction.
7. Based on those conversations, Fitzgerald re-created the Letter of Authorization to include the information he believed was in the original Letter of Authorization. The re-created Letter of Authorization was dated "November 16, 1998."
8. Fitzgerald presented the re-created document to the Firm's Chairman and Chief Executive Officer, who initialed the document.
9. By letter dated November 16, 2000, the Firm submitted the re-created document, along with other documents responsive to Enforcement's request, to the Exchange as if it was the original Letter of Authorization. In its letter, the Firm did not disclose that this document had been re-created by Fitzgerald.
10. On November 22, 2000, Fitzgerald learned that as a result of a continuing search the original Letter of Authorization had been located by the Firm's clearing firm. The substance of the original Letter of Authorization and the re-created document were similar but the re-created document included a reference to loan documents having been prepared.
11. By letter dated November 29, 2000, the Firm submitted the original Letter of Authorization to the Exchange. The Firm's letter stated that it "apologiz[ed] for sending the erroneous document for this transaction in our letter to you dated November 16, 2000." However, the Firm's letter did not specifically disclose that the re-created Letter of Authorization document previously submitted on November 16, 2000, had been re-created by Fitzgerald.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found the Firm and Mr. Fitzgerald 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 the Firm of a censure and a fine of \$50,000 and consented to by Mr. Fitzgerald of a censure and a fine of \$45,000.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer