

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISIO 02-182

September 19, 2002

LLOYDA WITTER

FORMER NON-REGISTERED EMPLOYEE

\* \* \*

**Violated Exchange Rule 351(b) by failing to report arrest and conviction which occurred during her employment – Censure and ten year bar.**

**Appearances:**

For the Division of Enforcement  
Linda S. Riefberg, Esq.  
Penny Rosenberg, Esq.

For the Respondent  
Lloyda Witter  
*pro se*

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An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Lloyda Witter, a former non-registered employee with Banc of America Securities LLC ("the Firm"). Ms. Witter was charged with having violated Exchange Rule 351(b) by failing to report to her member firm employer her arrest and conviction that occurred during her employment with the Firm, which subjected her to a statutory disqualification.

Neither Ms. Witter, nor any person on her behalf, appeared at the hearing in this matter. Ms. Witter did, however, submit letters in response to the allegations (See paragraph 4, *infra*). At the hearing, and after considering Ms. Witter's written responses, and on evidence presented, the Hearing Panel found as follows:

**Background and Jurisdiction**

1. Lloyda Witter ("Witter") was born on January 24, 1956. She entered the securities industry in April 1987 and has held numerous non-registered positions over the period from April 1987 to March 2001.
2. Witter was hired as an Administrative Assistant at the Firm on June 12, 2000. The Firm terminated Witter's employment on March 20, 2001, and she is not currently employed in the securities industry.
3. The Exchange's Division of Enforcement ("Enforcement") received a Form RE-3 dated March 21, 2001, reporting that Witter was terminated when the Firm learned that she was subject to a statutory disqualification and had failed to disclose to the Firm her arrest and conviction for Petit Larceny.

4. By letter dated June 5, 2001, Enforcement notified Witter that it had opened a formal investigation into this matter. Witter responded by letter dated June 21, 2001. In that letter, she asserted that she had not realized that she was subject to criminal charges until she appeared in court and that she was at that time granted a certificate of relief from disabilities resulting from the conviction; she was informed that her record would be sealed and was advised that she did not have to disclose her conviction to her employer. She reiterated these assertions in a letter addressed to the Hearing Board, dated September 4, 2002, which the Hearing Panel has considered as her Answer to Enforcement's charge in this proceeding.

### **Failure to Disclose Reportable Events**

5. On May 10, 2000, Witter completed an "Employment Application" with the Firm for a position as an Administrative Assistant. The Firm hired Witter, who began employment in the New York Office of the Firm on June 12, 2000. At that time, Witter was fingerprinted and her fingerprint cards were submitted to the New York Stock Exchange (the "Exchange") within two weeks of that date.
6. In connection with her hiring, Witter was given a copy of the Firm's new employee materials, including a certification that she agreed to read the Firm Compliance Manual within five days of her start date and abide by all of its rules, regulations and guidelines. Witter signed that certification on June 15, 2000. The Firm's Compliance Manual clearly states that any Firm employee who is arrested or convicted for any offense must immediately report that event to his or her supervisor.
7. Witter was arrested on June 13, 2000 for Grand Larceny in connection with her receipt of unemployment checks for a period of approximately 10 weeks after she ceased being eligible for such payment. On November 6, 2000, Witter pleaded guilty to Petit Larceny. On or about December 18, 2000, Witter was sentenced to a conditional discharge and was ordered to make full restitution, which she did. Witter never advised anyone at the Firm of either her arrest or conviction.
8. As a result of her conviction of Petit Larceny, Witter is subject to a statutory disqualification as defined in Sections 3(a)(39) and 15(b)(4) of the Securities and Exchange Act of 1934.
9. By letter dated March 13, 2001, the Exchange informed the Firm that it had determined that Witter was subject to statutory disqualification because of her Petit Larceny conviction. On March 20, 2001, the Firm terminated Witter.

### **DISCUSSION**

Ms. Witter points out that she has already served her penalty and made restitution pursuant to her conviction in a New York criminal court and she seeks an end to this matter. The present proceeding, however, concerns the consequences of her arrest and conviction with respect to her

status in the securities industry, including her failure to report that criminal proceeding to her securities industry employer.

The Hearing Panel has considered Ms. Witter's assertion that, although represented by an attorney, she did not understand the significance of her arrest until the time she appeared in criminal court and pled guilty to petit larceny. Further, when she pled guilty, she was given a certificate of relief from disabilities, which she believed excused her from reporting the conviction to her employer. Nevertheless, she also understood that her conditional discharge would not be effective for a year.

More important, these events occurred shortly upon her commencement of her employment with the Firm. She had been long enough in the securities industry to understand her duty to report accusations of criminal involvement. Moreover, she received, just at the time she was questioned by the police and given an appearance date in criminal court, the Firm's compliance manual, setting forth the Firm's requirement that she report any arrest or conviction. She owed the Firm, at the very least, an inquiry as to whether she should report her legal difficulties and her required court appearance.

In any event, the certificate of relieve from disabilities and her conditional discharge do not serve to vacate the conviction and do not override the requirement to report her conviction to her securities industry employer. The penalty herein imposed, therefore, is based on Ms. Witter's remaining period of statutory disqualification, pursuant to the Securities and Exchange Act, as well as her failure to inform the Firm of the criminal proceedings from the time of initiation.<sup>1</sup>

### **DECISION**

The Hearing Panel, by unanimous vote, found Ms. Witter guilty as charged.

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Ms. Witter 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 ten years.

For the Hearing Panel

Milton M. Stein  
Hearing Officer

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<sup>1</sup> Ms. Witter also contends she was unfairly convicted. Should her conviction be vacated, she may apply to the Hearing Panel for reconsideration of this penalty.