

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-1

January 9, 2003

SCHUYLER M. TILNEY
FORMER REGISTERED REPRESENTATIVE

* * *

Violated Rule 476 by failing to provide testimony to the Exchange – Bar until he complies.

Appearances:

For the Division of Enforcement
Linda S. Riefberg, Esq.
Suzanne R. Elovic, Esq.
James E. Shipley, Jr., Esq.

For the Respondent
Robert P. Trout, Esq.
Amy Jackson, Esq.

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An Exchange Hearing Panel conducted a hearing on a charge contained in an Amended Charge Memorandum issued by the Exchange's Division of Enforcement against Schuyler M. Tilney, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm"). Mr. Tilney was charged with having violated Exchange Rule 476 by failing to provide testimony in connection with matters that occurred while he was a member firm employee.

Through his counsel, Mr. Tilney submitted an Answer to the Amended Charge Memorandum in which he essentially admitted the facts contained in the Amended Charge Memorandum, denied the charge and asserted facts in contradiction of the charge.

At the hearing at which Mr. Tilney was represented by counsel, the Division of Enforcement moved pursuant to Exchange Rule 476 to have the facts in the Amended Charge Memorandum deemed admitted because they were not specifically denied in the Answer. The motion was not opposed by counsel for the respondent and, accordingly, was granted by the Hearing Panel.

After receiving evidence and hearing arguments from counsel, the Hearing Panel found as follows:

Background and Jurisdiction

1. Schuyler M. Tilney ("Tilney") was born on September 27, 1955. He entered the securities industry in September 1983.
2. Tilney worked for the Firm from March 1993 to September 2002. In July 2002, Tilney was placed on administrative leave by the Firm. Tilney's employment was terminated by the Firm on September 18, 2002.
3. By letter dated July 29, 2002, and sent via Federal Express and certified mail-return receipt requested to Tilney's last known address per Exchange records (the "July 29th"),

letter”), the Exchange’s Division of Enforcement (“Enforcement”) notified Tilney that it was investigating his activities as an employee of the Firm.

4. A copy of the July 29th letter was sent via first class mail to Tilney’s attorney.

Failure to Cooperate

5. The July 29th letter requested that Tilney appear and provide testimony in the above matter. The letter advised Tilney that his failure to provide testimony may subject him to formal disciplinary action for failing to cooperate with an Exchange investigation.
6. On August 27, 2002, Tilney appeared at the Exchange’s offices to provide on-the-record testimony. During the course of questioning by Enforcement Staff, Tilney read a prepared statement indicating that, upon advice of counsel, he would not answer certain questions relating to certain activities at the Firm. Tilney did respond to questions concerning the Firm for approximately two hours.
7. Enforcement Staff informed Tilney repeatedly that his failure to answer questions relating to his activities as an employee of an Exchange member firm may subject him to formal disciplinary action for failing to cooperate with an Exchange investigation.
8. To date, Tilney has failed to answer certain questions related to his activities while an employee at the Firm.

DISCUSSION AND DECISION

Mr. Tilney appeared and testified before the Exchange and, upon advice of counsel, he asserted his Fifth Amendment right against self-incrimination in response to certain questions. It has universally been held that this right does not exist in Exchange proceedings. Nothing in this case warrants an exception to that policy. The Hearing Panel, therefore, by unanimous vote, found Mr. Tilney guilty as charged.

PENALTY

The Hearing Panel, by unanimous vote, determined that Mr. Tilney be barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until such time as he complies with the request of the Exchange with which he has failed to comply. The Hearing Panel notes that this penalty has been applied in similar cases, such as EHPD 93-14 Ralph William Siano, Jr.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer