

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-2

January 16, 2003

JESSE OGILVY FORBES

FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to disclose criminal history on employment application – Consent to censure and two year bar.

Appearances:

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

For the Respondent
Lawrence S. Goldman, Esq.
Jill R. Shellow-Levine, 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 Jesse Ogilvy Forbes, a former non-registered employee with Merrill Lynch, Pierce, Fenner & Smith, Inc. (the "Firm"). Without admitting or denying guilt, Mr. Forbes consents to a finding by the Hearing Panel that he engaged in conduct inconsistent with just and equitable principles of trade by failing to disclose, on an employment application submitted to his member firm employer, his criminal history that included a conviction that subjected him to a statutory disqualification.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Forbes stipulate to certain findings, the substance of which follows:

Background and Jurisdiction

1. Jesse Ogilvy Forbes ("Forbes") was born on July 27, 1979. He entered the securities industry in May 2001 as non-registered "seasonal help" with the Firm in its Englewood, Colorado office. The Firm terminated Forbes' employment on August 10, 2001, and he is not currently employed in the securities industry.
2. By Form RE-3 dated September 4, 2001, the Firm reported to the Exchange that Forbes' employment was terminated because he was subject to a statutory disqualification. The Form RE-3 stated that a fingerprint check revealed that Forbes received a four-year deferred sentence on a charge of second degree burglary.
3. By letter dated February 27, 2002, Enforcement notified Forbes that it was formally investigating his failure to disclose his criminal history to the Firm. This letter was

received by Forbes who, through his attorney, submitted a written explanation by letter dated April 8, 2002.

Overview

4. Forbes failed to disclose, on an employment application submitted to his member firm employer, his prior criminal history that included a conviction subjecting him to a statutory disqualification.

Criminal History

5. On October 15, 1997, Forbes was convicted, in the District Court of Boulder County, Colorado ("Boulder District Court"), of the misdemeanor offense of driving while ability impaired and was sentenced to 20 days in jail, which was suspended, 24 hours of community service, and six- to twelve-months of probation.
6. On August 12, 1998, Forbes entered into a twelve-month deferred prosecution agreement with the Boulder County District Attorney's Office in connection with a felony charge of criminal mischief \$400-\$15,000. The agreement required Forbes to pay restitution, submit to an alcohol evaluation and treatment program, and provide a letter of apology.
7. Forbes successfully completed the conditions of the deferred prosecution, and the Boulder District Court ordered the dismissal of the felony charge with prejudice on August 20, 1999.
8. On April 13, 2001, Forbes pled guilty, in Boulder District Court, to the felony charge of second degree burglary and was granted a four-year deferred sentence that was to commence on May 5, 2001. The conditions of the deferred sentence included ten days in jail, the payment of court costs and fees, and participation in a substance abuse evaluation and treatment program.
9. Also on April 13, 2001, Forbes pled guilty to and was convicted of the misdemeanors of obstructing a peace officer and second degree trespass. For these offenses, the Boulder District Court sentenced Forbes to probation under the same conditions as the deferred sentence.
10. On July 11, 2002, the Boulder District Court granted Forbes' "Motion for Early 'Successful' Termination of Deferred Sentence of Judgment" and dismissed the felony charge of second degree burglary with prejudice.

Statutory Disqualification

11. Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934 provide that an individual is subject to a statutory disqualification if he or she is "convicted" within the past ten years of any felony and certain specified misdemeanors.

12. Forbes was subject to a statutory disqualification based upon his April 13, 2001, guilty plea and deferred sentence for the felony charge of second degree burglary.
13. Forbes' statutory disqualification period for this offense ended on July 11, 2002, when the Boulder District Court ordered the termination of his deferred sentence and dismissed the felony charge with prejudice.

Failure to Disclose Criminal History

14. On or about May 14, 2001, Forbes completed and signed an application for employment with the Firm. The application contained the following question: "Have you ever been convicted of a crime? This includes misdemeanors. If yes, or you are unsure, please explain below."
15. Forbes responded "No" to this question. Based upon his criminal history, this question required a "Yes" answer.
16. When Forbes completed his employment application, he was subject to a statutory disqualification based upon his April 13, 2001 guilty plea and deferred sentence for the felony of second degree burglary.
17. Forbes improperly failed to disclose his criminal history on an employment application submitted to his member firm employer, including a conviction that subjected him to a statutory disqualification.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Forbes 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. Forbes of a censure and a two year 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

Milton M. Stein
Hearing Officer