

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-36

March 12, 2003

DANYEL D. PENIX

FORMER NON-REGISTERED EMPLOYEE

* * *

Misappropriated customer funds; violated Exchange Rule 476(a)(7) in that he was convicted of theft of customer funds – Consent to censure and permanent bar.

Appearances:

For the Division of Enforcement
Susan F. Axelrod, Esq.
Julie R. Vasady-Kovacs, Esq.

For the Respondent
Danyel D. Penix
pro se

* * *

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 Danyel D. Penix, a former non-registered employee with Merrill Lynch, Pierce, Fenner & Smith, Inc. (the "Firm"). Without admitting or denying guilt, Mr. Penix consents to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds belonging to a customer of his member firm employer.
- II. Violated Exchange Rule 476(a)(7) in that he engaged in acts detrimental to the interest or welfare of the Exchange, in that he was convicted of Theft by Unlawfully Taking which involved, among other things, the theft of customer funds during the course of his employment at a member organization.

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

Background and Jurisdiction

1. Danyel D. Penix ("Penix") was born on February 27, 1973. From March 12, 2001 to July 19, 2002, Penix was employed by the Firm as a Service Team Representative in the Firm's Customer Accounting Administration Department. On July 19, 2002, Penix was terminated after the Firm learned that he had misappropriated customer funds. Penix is not currently employed in the securities industry.

2. On or about July 26, 2002, the Exchange received a Submission of Required Information Pertaining to Members, Member Organizations, Allied Members, Registered and Non-Registered Employees (“Form RE-3”) from the Firm, dated July 25, 2002, reporting the facts surrounding Penix’s termination.
3. By letter dated November 4, 2002, which he received, Enforcement notified Penix of its inquiry concerning the allegation of misappropriation of funds.

Overview

4. As set forth in detail below, from June 14, 2002 through July 19, 2002 (the “relevant period”), Penix misappropriated customer funds in the amount of approximately \$18,515.

Misappropriation of Funds

5. Penix worked as a Service Team Representative in the Firm’s Customer Accounting Administration Department. As part of his duties, Penix was the Technology Liaison for his Department, and as such he had access to the computer sign-on and password information of his colleagues. In addition, Penix was the Department’s No-name (Dormant) Account Coordinator, and had access to a list of all outstanding dormant account numbers and fund balances. (Dormant accounts were customer accounts that had been inactive for several years.) On June 14, 2002 Penix established a Firm Direct account on-line (the “on-line account”), utilizing the name and pedigree information of a personal friend.
6. On July 3, 2002, using the sign-on of an employee who was out of the office on vacation, Penix arranged to journal funds totaling \$18,515 from a dormant customer into the on-line account which he had opened. Almost immediately after the funds were deposited into the on-line account, Penix withdrew funds totaling approximately \$3,000 via Automatic Teller Machine (“ATM”) transactions using the ATM card that was issued to the on-line account.
7. During the relevant period, Penix replaced some of the funds withdrawn by having a friend wire approximately \$1,900 into the on-line account on July 12, 2002. (The friend wired the money to the on-line account created by Penix. At no time did Penix replace any of the customer funds back to the dormant account where he had originally misappropriated the funds.)
8. Penix’s actions were discovered by the Firm and on July 19, 2002 he admitted the above conduct, whereupon he was immediately terminated

Acts Detrimental to the Interest or Welfare of the Exchange

9. On September 10, 2002 Penix was convicted of N.J. Stat. Sec. 2C:20-3A, Theft by Unlawful Taking, as a result of the conduct set forth above.

DECISION

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

Milton M. Stein
Hearing Officer