

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-94

May 15, 2003

ROBERT DANIEL COMSTOCK
FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to disclose criminal convictions on an employment application which convictions subjected him to a statutory disqualification – Censure and four and a half year bar.

Appearances:

For the Division of Enforcement
Virginia J. Harnisch, Esq.
Anne K. DeSimone, Esq.

For the Respondent
No Appearance

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An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Robert Daniel Comstock, a former non-registered employee with Charles Schwab & Co., Inc. (the "Firm"). Mr. Comstock was charged with having engaged in conduct inconsistent with just and equitable principles of trade by failing to disclose on an application for employment with a member organization one or more prior criminal convictions which rendered him subject to a statutory disqualification, as that term is defined in the Securities Exchange Act of 1934, as amended.

Mr. Comstock submitted an Answer to the Charge Memorandum in which he noted that he had reviewed the Memorandum and the charge against him and affirmed that they are valid. Neither he nor any person on his behalf appeared at the hearing in this matter. After receiving evidence the Hearing Panel found as follows:

Background and Jurisdiction

1. Robert Daniel Comstock ("Comstock") was born in February 1977. His only employment in the securities industry was with the Firm, where he was employed from November 27, 2000 to May 25, 2001 in a non-registered capacity.
2. Comstock has not been employed in the securities industry in a registered capacity since leaving the Firm in May 2001.
3. The Division of Enforcement ("Enforcement") of the New York Stock Exchange, Inc. (the "Exchange") began its investigation of Comstock's conduct after receiving an Enforcement Referral Memorandum from the Exchange's Qualifications and Registration Unit ("Q&R"). Q&R reported that, in connection with his employment

at the Firm, Comstock failed to disclose a prior criminal conviction on his employment application with the Firm.

4. By letter dated December 7, 2001, which Comstock received, Enforcement notified Comstock that it was investigating his failure to disclose to the Firm his prior criminal conviction.
5. Thereafter, Comstock responded and provided a written explanation to Enforcement.

Failure to Disclose Prior Criminal Convictions

6. In connection with his employment at the Firm, Comstock submitted an employment application, dated November 7, 2000 (the "Application").
7. The Application asked Comstock, "Have you, within the past 10 years, been convicted of, or plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to... any felony or its equivalent?"
8. In response, Comstock answered "No", which was not true.
9. The Application additionally asked Comstock, "Have you, within the past 10 years, been convicted of, or plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to...any misdemeanor or its equivalent involving: any fraud, false statements or omissions, wrongful taking of property, burglary or bribery, perjury, forgery, counterfeiting, extortion, or investments or an investment-related business, or a conspiracy to commit any of these offenses?"
10. In response, Comstock answered "No", which was not true.
11. According to court records, in October 1996, Comstock was arrested and charged, under Colorado state law, with, among other things, a misdemeanor charge of false reporting to authorities. In or about December 1996, Comstock entered a plea of guilty to the false reporting charge. He was sentenced to a fine and a suspended jail sentence of 10 days.
12. In November 1998, Comstock was arrested and charged with, among other things, a felony charge of possession of a narcotic. In January 1999, Comstock entered a plea of guilty to the felony drug charge. Pursuant to the plea agreement, the conviction was to be dismissed, and the record sealed, upon Comstock's completion of an eight-day jail sentence and a two-year probationary period. On or about February 12, 2001, after Comstock's successful completion of the plea agreement, the felony drug conviction was dismissed with prejudice.

Conduct Inconsistent With Just and Equitable Principles of Trade

13. Under Sections 3(a)(39)(F) and 15(b)(4)(B)(i) and (iii) of the Securities Exchange Act of 1934, as amended, an individual is subject to a statutory disqualification ("SD") for a period of ten years based upon a conviction of any felony or a

misdemeanor involving, among other things, the making of a false report or fraudulent concealment.

14. As a result of his misdemeanor false reporting conviction in 1996, Comstock is subject to an SD until 2006.
15. Additionally, Comstock was subject to an SD based upon his felony drug conviction in 1999 at the time he completed the Application in November 2000. (The SD with respect to the felony drug conviction ended at the time of the dismissal of the conviction in February 2001.)
16. Comstock failed to disclose on the Application prior criminal convictions, which made him subject to an SD.

DECISION

The Hearing Panel, by unanimous vote, found Mr. Comstock guilty as charged.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Comstock be censured and barred for four and a half years 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

Vincent F. Murphy
Hearing Officer