

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-97

May 29, 2003

SANTIAGO DAVID VALENZUELA
FORMER REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 477 by failing to comply with Exchange requests to testify – Censure, bar until he complies and an additional three month bar from when he fully complies.

Appearances:

For the Division of Enforcement
James D. O'Donnell, Esq.
Kathleen S. Lynch, Esq.

For the Respondent
Scott M. Zucker, Esq.

* * *

An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Santiago David Valenzuela, a former registered representative with PaineWebber Incorporated (the "Firm"). Mr. Valenzuela was charged with having violated Exchange Rule 477 by failing to comply with one or more requests to appear and testify before the Exchange regarding certain matters that had occurred prior to the termination of his status as a registered employee of a member organization.

Mr. Valenzuela submitted an Answer to the Charge Memorandum in which he denied any "wrong doing in this action" and consented to an on the record interview on certain specified dates in April 2003. No such interview took place. Two days prior to the hearing Mr. Valenzuela submitted a letter to the Division of Enforcement stating that he would be present for a scheduled on the record interview on June 9, 2003. Mr. Valenzuela's attorney appeared at the hearing by telephone. After receiving evidence the Hearing Panel found as follows:

Background and Jurisdiction

1. Santiago David Valenzuela ("Valenzuela") was born in November 1966. He entered the securities industry in April 1994 with Firm A in Buenos Aires, Argentina as a sales assistant. He left Firm A in July 1995 to join a non-member firm called XYZ Argentina in Buenos Aires, Argentina as a financial consultant. From December 1996 to June 1997, he was employed at UVW, a non-member firm, in Miami, Florida. After leaving UVW voluntarily in June 1997, Valenzuela did not work in the securities industry until November 1997, when he joined Firm B in Miami, Florida as a registered representative ("RR"). Valenzuela was approved by the Exchange as an RR in June 1998.

2. In December 1998, Valenzuela left Firm B voluntarily to join the Firm in Coral Gables, Florida as an RR.
3. On or about June 8, 2000, the Exchange received from the Firm a Form U-5 (Uniform Termination Notice for Securities Industry Registration) reporting that Valenzuela was discharged from employment on May 10, 2000 for failing to provide a timely explanation in response to a customer's complaint of unauthorized trading (the "Form U-5"). Amendments to the Form U-5 filed by the Firm reported additional complaints made by customers of Valenzuela.
4. Valenzuela has not been employed in the securities industry in a capacity known to the Exchange since his discharge from the Firm in May 2000.
5. By letter dated February 13, 2001, which he received, Enforcement notified Valenzuela that the Exchange was investigating matters reported in the Form U-5 and amendments thereto and requested that Valenzuela provide a written explanation to Enforcement. On or about May 21, 2002, Valenzuela complied with Enforcement's request.

Failure to Cooperate

6. By letter, dated August 6, 2002, Enforcement requested Valenzuela to appear and testify in connection with Enforcement's investigation. A copy of Enforcement's request was also sent to Valenzuela's attorney.
7. On or about August 22, 2002, Valenzuela's attorney informed Enforcement that Valenzuela's testimony could not take place until October 2002.
8. On September 17, 2002, after reaching agreement with Valenzuela's attorney, Enforcement sent a letter to Valenzuela confirming that his testimony was to take place in Miami, Florida on October 24, 2002. A copy of Enforcement's letter was sent to Valenzuela's attorney.
9. On or about October 21, 2002, Valenzuela's attorney contacted Enforcement and requested an adjournment. Valenzuela's testimony was adjourned and rescheduled to take place on November 19, 2002.
10. By letter, dated October 21, 2002, Enforcement informed Valenzuela that his testimony would take place on November 19, 2002, as agreed. A copy of Enforcement's letter was sent to Valenzuela's attorney.
11. On or about November 18, 2002, Valenzuela's attorney requested another adjournment of Valenzuela's testimony.
12. By letter to Valenzuela's attorney, dated November 19, 2002, Enforcement confirmed that Valenzuela's testimony on November 19, 2002 was adjourned and rescheduled to take place on January 15, 2003.

13. On January 13, 2003, Valenzuela's attorney forwarded to Enforcement a facsimile transmission from Valenzuela stating that Valenzuela was in Argentina and not able to travel to attend the January 15 testimony.
14. By letter dated January 13, 2003, Enforcement requested that Valenzuela select a date between January 24, 2003 and February 7, 2003 for his testimony and inform Enforcement of the date selected by January 21, 2003. Enforcement's January 13, 2003 letter to Valenzuela stated, "Your failure to appear and testify before Enforcement will result in Enforcement's recommendation to institute formal disciplinary proceedings against you based upon your failure to comply with Enforcement's request." A copy of Enforcement's letter was sent to Valenzuela's attorney.
15. Valenzuela did not contact Enforcement on or before January 21, 2003 to schedule his testimony, as requested by Enforcement's January 13, 2003 letter.
16. On or about January 24, 2003, Valenzuela's attorney informed Enforcement that Valenzuela would not appear and testify as requested by Enforcement's January 13, 2003 letter.
17. On or about January 27, 2003, in a telephone conference between Valenzuela, Valenzuela's attorney, and Enforcement, Valenzuela advised Enforcement that he was now living in Uruguay and not able to leave to testify until April 2003.
18. To date, Valenzuela has failed to appear and testify as requested by the Exchange.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Valenzuela 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 until he complies the Exchange's requests with which he has failed to comply, and for an additional period of three months from the time he fully complies.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer