

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 03-109**

June 11, 2003

JOSEPH PATRICK MALONE  
FORMER FLOOR CLERK

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**Engaged in acts detrimental to the interest and welfare of the Exchange in that during the course of his employment on the Exchange Floor he committed acts which resulted in his conviction of a misdemeanor charge; violated Exchange Rule 477 in that he failed to comply with Exchange requests for testimony and information —Censure and permanent bar.**

**Appearances:**

For the Division of Enforcement  
Nancy Reich Jenkins, Esq.  
Julie Han, Esq.

For the Respondent  
No Appearance

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An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Joseph Patrick Malone, a former Floor clerk with Prudential Securities Incorporated (the "Firm"). Mr. Malone was charged with having:

- I. Engaged in acts detrimental to the interest and welfare of the Exchange in that, during the course of his employment on the Exchange Floor, he committed acts which resulted in his conviction of the misdemeanor charge of Soliciting Funds Without Written Permission.
- II. Violated Exchange Rule 477 in that he failed to comply with written requests by the Exchange for testimony and information.

Mr. Malone did not submit an Answer to the Charge Memorandum. Neither he nor any person on his behalf appeared at the hearing in this matter. At the hearing, the Division of Enforcement moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since Mr. Malone had failed to file an Answer. The motion was granted and the Hearing Panel found as follows:

**Background and Jurisdiction**

1. Joseph Patrick Malone ("Malone") was born on September 22, 1971. His employment in the securities industry is as follows:

The Firm	07/01 – 09/02
Temp Employer	03/01 – 07/01
Firm A (non-member firm)	08/00 – 02/01
Firm B	01/00 – 07/00
Firm C (non-member firm)	08/98 – 12/99

Malone was employed as a Floor clerk for the Firm and a runner for the Temp Employer. He worked as a trader for the other employers. Malone is no longer employed in the securities industry.

2. The Division of Enforcement (“Enforcement”) began its inquiry of Malone after receiving a referral from the Division of Market Surveillance (“Market Surveillance”) concerning Malone, a Floor booth clerk for the Firm, who was arrested on Exchange premises on September 9, 2002 for unlawfully soliciting funds as purported donations to the family of a deceased police officer. The Firm filed a Uniform Notice of Termination (“Form U-5”) reporting that Malone’s employment with the Firm terminated on September 10, 2002.
3. By letter dated December 31, 2002, which he received, Enforcement notified Malone of its investigation and requested his written response to the allegations.

**Acts Detrimental To the Interest and Welfare of the Exchange**

4. On or about Monday, September 9, 2002, Malone was arrested at the Exchange. He was charged with felony counts of Grand Larceny, Scheme to Defraud, Criminal Possession of Stolen Property and a misdemeanor count of Violation of Executive Law arising out of a scheme, which occurred during the course of his employment on the Exchange Floor, to defraud individuals by soliciting funds for a charitable purpose without remitting such funds to a charity.
5. In or about December 2001, Malone established a fund purportedly created in memory of a deceased police officer, EL to assist EL’s family. Malone solicited contributions to this fund on the trading Floor of the Exchange and publicized this Fund by posting flyers around the Floor. According to Malone’s flyers, EL was one of the first police officers to arrive at the scene of the terrorist attacks on the World Trade Center on September 11, 2001 but was tragically killed while off-duty. Malone’s flyers stated that a wife and three-year old child needed their help.
6. On or about January 9, 2003, Malone pled guilty to Soliciting Funds Without Written Permission, a Class A misdemeanor and was placed on conditional discharge. Malone was also required to donate \$4,000 to a legitimate charitable fund established in EL’s memory.

**Failure to Cooperate**

7. By letter dated September 11, 2002, which he received, the Exchange notified Malone that his on-the-record testimony (“OTR”) was scheduled for Monday, September 23, 2002 at the Exchange.
8. Malone was informed that his failure to appear and testify could result in the institution of formal disciplinary proceedings against him. The September letter also requested that Malone produce documents relating to the Exchange’s inquiry no later than September 18, 2002.
9. Malone did not appear to testify as scheduled on September 23, 2002 nor did he comply with the Exchange’s request for documents.

**DECISION**

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

**PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Malone be censured and permanently barred 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