

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DCISION 03-117

June 12, 2003

JAMES MILTON MARCUS, JR.

FORMER REGISTERED REPRESENTATIVE

* * *

Failed to disclose on an employment application a prior felony conviction that made him subject to a statutory disqualification; violated Rule 345.12 by submitting a Form U-4 containing false information; and violated Rule 476(a)(10) by making misstatements on an application for registration with the Exchange – Censure and 10 year 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 contained in a Charge Memorandum issued by the Exchange's Division of Enforcement against James Milton Marcus, Jr., a former registered representative with H & R Block Financial Advisors, Inc. (the "Firm"). Mr. Marcus was charged with having:

- I. 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, a prior felony conviction that made him subject to a statutory disqualification.
- II. Violated Exchange Rule 345.12 by submitting a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") containing false information.
- III. Violated Exchange Rule 476(a)(10) by making misstatements and/or omissions of fact on an application for registration with the Exchange.

Mr. Marcus did not submit an Answer to the Charge Memorandum and neither he nor any person on his behalf appeared at the hearing. At the hearing, the Division of Enforcement moved pursuant to Exchange Rule 476 to have the facts in the Charge Memorandum deemed admitted because Mr. Marcus did not submit an Answer. The Hearing Panel granted the motion and found as follows:

Background and Jurisdiction

1. James Milton Marcus, Jr. ("Marcus") was born on February 14, 1967. He entered the securities industry in 1992 and was employed by the Firm from March to August 2002.

2. The Division of Enforcement ("Enforcement") opened this case after receiving a Form RE-3 ("RE-3") from the Firm indicating that Marcus was terminated on August 19, 2002 for failing to disclose a 1999 felony conviction to the Firm that subjected him to statutory disqualification.
3. By letter dated November 20, 2002, which he received, Enforcement notified Marcus of its investigation and requested a written explanation.

Violative Conduct

4. On or about March 29, 1999, Marcus was arrested in Tarrant County, Texas for one felony count of Aggravated Sexual Assault by Threats and Placing in Fear. He pled guilty to this charge on April 30, 1999. Marcus received a suspended sentence and was placed on probation for a period of ten years and subject to a \$1,000 fine. He was also required to complete 320 hours of community service at a minimum rate of 20 hours per week.
5. In or about March 2002, when Marcus became employed as a financial advisor with the Firm, he completed an employment application and submitted his fingerprints to the Firm.
6. Marcus also submitted a Form U-4 to the Firm, which was filed with the Exchange. Marcus failed to disclose his 1999 felony conviction on both the Firm's employment Application and the Form U-4.
7. On the Firm's employment application, Marcus responded "no" to the question "Have you ever been convicted of a felony?"
8. He also answered "no" to Questions 14A(1)(a) and 14A(1)(b) on the Form U-4 application.
9. Question 14A(1)(a) reads, in pertinent part: "Have you ever ... been convicted of or plead guilty or nolo contendere ("no contest") in a domestic or foreign, or military court to any felony?" Question 14A(1)(b) reads: in pertinent part "Have you ever ... been charged with any felony?"
10. Along with the Firm's employment application, Marcus completed a Statutory Disqualification and Disclosure and Certification Form ("Disclosure and Certification form"), which he submitted to the Firm. Marcus was required to read an excerpt relating to statutory disqualification pursuant to the federal securities laws and to certify his fitness in this regard.
11. The Certification Form clearly stated that "[a] person is subject to a 'Statutory Disqualification' if such person: ... (F) has been convicted within ten years, whether by a domestic or foreign court, of (i) any felony."

12. Marcus signed the Disclosure and Certification form and improperly attested that he had no reason to believe that he was statutorily disqualified from employment with H&R Block.
13. Under Section 3(a)39(f) and Section 15(b)(4)(c) of the Securities Exchange Act of 1934, Marcus is statutorily disqualified from employment with an Exchange member organization because of his felony conviction.

DECISION

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

PENALTY

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

Edward W. Morris, Jr.
Chief Hearing Officer