

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-202

November 12, 2003

JOYCE GARCIA

FORMER NON-REGISTERED EMPLOYEE

* * *

Misappropriated funds belonging to another employee of her firm, engaged in acts detrimental to the interest or welfare of the Exchange in that she was convicted of felony criminal charges involving theft of funds during the course of her employment with the Firm and violated Exchange Rule 476 in that she failed to comply with Exchange requests for information – Censure and permanent bar.

Appearances:

For the Division of Enforcement
Linda S. Riefberg, Esq.
Scott M. Andersen, 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 Joyce Garcia, a former non-registered employee with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm"). Ms. Garcia was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that she misappropriated funds belonging to another employee of her member firm employer.
- II. Engaged in acts detrimental to the interest or welfare of the Exchange in that she was convicted of felony criminal charges involving the theft of funds during the course of her employment with a member firm organization.
- III. Violated Exchange Rule 476 in that she failed to comply with written requests by the Exchange for a written statement.

Ms. Garcia did not submit an Answer to the Charge Memorandum. Neither she nor any person on her 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 Ms. Garcia had failed to file an Answer. After receiving evidence the motion was granted and the Hearing Panel found as follows:

Background and Jurisdiction

1. Joyce Garcia (“Garcia”) was born in November 1974. Garcia was hired by the Palo Alto, California branch of the Firm in February 2001 as a secretary in the Global Markets and Investment Banking Department.
2. On March 19, 2002, Garcia was terminated from her position, and she has not been employed in any capacity in the securities industry since that time.
3. The Division of Enforcement (“Enforcement”) of the New York Stock Exchange, Inc. (the “Exchange”) opened its investigation of Garcia based upon the receipt of a Form RE-3, dated April 12, 2002, disclosing Garcia’s termination based upon the Firm’s discovery that Garcia had signed the signature of her supervisor to a payroll advance check without authorization.
4. Enforcement notified Garcia of its investigation by letters dated August 12, 2002 and January 15, 2003, via certified mail return receipt requested, and first class mail.

Unauthorized Use of Corporate Credit Card and Misappropriation

5. As an Administrative Assistant in the Investment Banking Department, Garcia’s responsibilities included the completion of expense reports for several investment bankers. In March 2002, the Firm discovered that Garcia used an investment banker’s corporate credit card to make unauthorized purchase of a digital camera.
6. The Firm subsequently learned that Garcia took a blank personal check from another investment banker’s desk and made the check out to her fiancé in the amount of \$10,000. The check was cashed and the employee discovered the debit from his account while reviewing his monthly bank statement
7. A subsequent audit revealed other unauthorized purchases during the first two weeks of March 2002, including the services of a florist, wedding flowers, wedding favors and bridal party gifts.
8. The investment banker never authorized Garcia or her fiancé to use the credit card.

Felony Conviction for Theft

9. The Firm reported the thefts to the local police department and a warrant for Garcia’s arrest was issued on April 10, 2002. On July 3, 2002, Garcia pleaded no contest in Superior Court, Santa Clara County, California, to the following two felony charges:
 - Misrepresenting Self as Holder of an Access Card
 - Attempted Grand Theft by Employee, Agent or Servant.

10. On August 29, 2002, Garcia was sentenced to five months incarceration and three years probation.

Failure to Cooperate

11. By letter dated May 17, 2002 (“May 17 Letter”), sent by first class mail to Garcia’s most recent home address, Enforcement notified Garcia that it was conducting an inquiry into the possibility that she used another employee’s corporate credit card without authorization for personal gain. The May 17 Letter has not been returned to the Exchange.
12. By letter dated July 1, 2002 (“July 1 Letter”), sent by certified mail, return receipt requested to Garcia’s most recent home address, Enforcement again notified Garcia that it was conducting an inquiry into the possibility that she used another employee’s corporate credit card without authorization for personal gain and that she wrote a personal check to her fiancé from another employee’s checking account in the amount of \$10,000. The certified mail return card for the July 1 Letter was never returned to the Exchange.
13. By letter dated August 12, 2002 (“August 12 Letter”), sent by first class and certified mail, return receipt requested to Garcia’s most recent home address obtained from the Firm, Enforcement notified Garcia of its formal investigation and requested that she provide a written explanation of the matters under investigation. The letter also advised Garcia that her failure to provide the requested information might result in the institution of formal disciplinary proceedings against her based upon her failure to comply with the Exchange’s request for information pursuant to Exchange Rule 476(a)(11).
14. The certified mail receipt card for the August 12 Letter was returned to Enforcement signed by a relative and dated August 16, 2002. The first class mail letter was not returned to the Exchange.
15. By letter dated January 15, 2003 (“January 15 Letter”), sent first class and certified mail, return receipt requested to Garcia, Enforcement again notified Garcia of its formal investigation and requested that she provide a written explanation of the matters under investigation. The letter also advised Garcia that her failure to provide the requested information might result in the institution of formal disciplinary proceedings against her based upon her failure to comply with the Exchange’s request for information pursuant to Exchange Rule 476(a)(11).
16. The certified mail receipt card was returned to the Exchange and was dated January 18, 2003. The signature of the individual who picked up the letter was illegible. The first class letter was not returned to the Exchange.
17. Garcia has not contacted staff during the course of this investigation.

DECISION

The Hearing Panel, by unanimous vote, found Ms. Garcia guilty as charged.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determine that Ms. Garcia 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