

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 03-217

March 29, 2007

PAUL K. GRASSI
FORMER MEMBER

* * *

DECISION ON REMAND FROM THE BOARD OF DIRECTORS

Appearances:

For the Division of Enforcement
Susan Light, Esq.
Barry M. Hochhauser, Esq.
Kelli R. Stieh, Esq.

For Respondent
Alfred Ferrer II, Esq.

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In a decision dated December 3, 2003, a Hearing Panel of the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”)¹ unanimously found Paul K. Grassi, Jr. (“Respondent”) guilty of engaging in acts detrimental to the interest or welfare of the Exchange in violation of NYSE Rule 476(a)(7) by obtaining a blank prescription form from a medical office located on the NYSE’s premises, causing the prescription form to be completed and signed, and presenting the form to a pharmacy for the purpose of obtaining an unauthorized prescription. The Hearing Panel censured Respondent, barred him for five years from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, and barred Respondent an additional five years from membership.

Respondent requested review of the decision by the NYSE Board of Directors (the “Board of Directors”). On June 28, 2004, the Board of Directors affirmed the finding of guilt, but remanded the matter to the Hearing Panel with instructions to provide a more detailed explanation of the rationale for the sanction imposed.

On July 12, 2004, the Hearing Panel issued a supplemental opinion detailing the reasoning supporting the two five-year bars. On December 2, 2004, the Board of Directors again affirmed the Hearing Panel’s finding of guilt, but modified the sanction so that the five-year bar from membership would run concurrently with the five-year plenary bar.

Respondent subsequently appealed to the U.S. Securities and Exchange Commission (the “SEC”). Respondent challenged the NYSE’s finding of guilt based on his contention that

¹ On March 8, 2006, the New York Stock Exchange, Inc. became the New York Stock Exchange LLC.

there was: (1) a lack of nexus between his conduct and the business of the Exchange; (2) denial of a fair hearing because his expert witness was precluded from testifying about the adequacy of his medical treatment; and (3) bias on the part of the Hearing Panel members, based on their prior contact with the doctor who testified on behalf of Enforcement. In its November 30, 2005 decision, the SEC rejected each of Respondent's arguments and thereby affirmed the NYSE's finding of guilt. See Paul K. Grassi, Jr., Exchange Act Release No. 34-52,858, 2005 SEC LEXIS 3072, at *7-13, *19 (Nov. 30, 2005) (the "SEC Opinion").

However, the SEC remanded the matter to the NYSE for reconsideration of sanctions, requiring three specific tasks. First, the SEC required that the NYSE specify what standard it is using to judge the seriousness of the violation and the appropriateness of the sanction; specifically, the NYSE was asked to articulate the elements of this type of misconduct and how those elements threaten the integrity and reputation of the Exchange. Second, the NYSE was asked to explain how the sanction it chooses will serve to protect the integrity and reputation of the Exchange from future harm, including the extent to which the sanction will deter similar misconduct on the part of Respondent or other members. Finally, the NYSE was asked to consider all of Respondent's mitigation claims—including the claims that his misconduct was an isolated incident that did not relate to any of his duties or responsibilities on the Floor and did not directly impact any customer, employee, or member—and explain whether and to what extent his mitigation claims justify a reduction in the sanction imposed. See SEC Opinion, at *16-18. The SEC also stated, "On remand, the parties should more fully develop whether, under the circumstances of this case, the concurrent five-year bars are consistent with the purposes of the [Securities] Exchange Act [of 1934 (the "Exchange Act").]" Id. at *18.

On May 31, 2006, the Board of Directors remanded the case to the Hearing Panel² for action consistent with the SEC Opinion. In accord with the SEC Opinion, the Hearing Panel ordered the parties to submit Supplemental Briefs. See Paul K. Grassi, Order for Supplemental Briefs on Penalty (Aug. 8, 2006), at 1. Thereafter, the Panel reconsidered the sanctions.

Standard for Determining Sanctions for Violations Involving Acts Detrimental to the Interest or Welfare of the NYSE

As the SEC points out, the NYSE has not previously addressed the standard used to judge the seriousness of the type of misconduct in which Respondent engaged—an act detrimental to the interest or welfare of the Exchange under NYSE Rule 476(a)(7), as distinguished from conduct inconsistent with just and equitable principles of trade under NYSE Rule 476(a)(6). See SEC Opinion, at *15-16.

We note at the outset the similarity in scope and purpose between subsections (a)(6) and (a)(7) of NYSE Rule 476. The SEC has found that NYSE Rule 476 generally states

² Because Milton Stein, the Hearing Officer who presided over the Hearing Panel that originally considered this case, has retired, the current Chief Hearing Officer presided over the Hearing Panel for purposes of this Decision on Remand.

“broad ethical principles that implement the requirements of Section 6(b) of the Exchange Act,” empowering the NYSE to “discipline ... members for unethical behavior as well as violations of law.” SEC Opinion, at *7-8 (citations omitted). With regard to conduct inconsistent with just and equitable principles of trade under subsection (a)(6), the SEC has “held repeatedly that a self-regulatory organization’s disciplinary authority is broad enough to encompass conduct that does not involve a security if that conduct reflects on a person’s ability to comply with the regulatory requirements of the securities industry and to fulfill his fiduciary duties.” *Id.* at *8-9. In its Opinion, the SEC stated: “We believe that this is equally true of acts detrimental to the interests or welfare of the Exchange [under NYSE Rule 476(a)(7)]....” *Id.* at *9.

Consistent with the broad principles underlying both subsections (a)(6) and (a)(7) of Rule 476, the Hearing Panel places great emphasis on the degree to which Respondent’s actions “call[] into serious question his ability to comply with the fundamental requirements of candor and truthful representation required of persons employed in the securities industry.” *Id.* Specifically, in determining which standard should be used to judge the seriousness of an act detrimental to the interest and welfare of the Exchange and the appropriateness of any sanction for such violation, the Hearing Panel here considered: Respondent’s state of mind; the scope and extent of the violation; the purpose of the wrongdoing, including whether it was for personal gain; the nature of the wrongdoing; and the extent of the injury to the NYSE, including the degree to which the violation undermines the reputation of the NYSE and its ability to properly function within the securities industry. *See, e.g.,* Factors Considered by the New York Stock Exchange Division of Enforcement in Determining Sanctions, Info. Memo. No. 05-77 (Oct. 7, 2005) (“Info. Memo. No. 05-77”).

The Hearing Panel considered the fact that Respondent acted with specific intent and testified that his conduct was ““very inappropriate”” and that he ““knew it was wrong.”” SEC Opinion, at *12. In addition, his actions were not the result of a spontaneous decision, but rather, they were clearly premeditated. In an effort to avoid detection, Respondent sought out an acquaintance, whom he paid \$20 to write a false prescription for the drug and forge the doctor’s signature, and submitted the forged form in an attempt to obtain a drug which the doctor at Comprehensive Medical Services (“CHS”), a clinic associated with the NYSE, had specifically denied him. Such detailed planning and the enlisting of a collaborator underscore Respondent’s wrongful intent.

The Hearing Panel also considered the scope and extent of the violation. Although this was a single violation, it nevertheless comprised several distinct acts of bad faith that spanned a period of 43 days, from the time Respondent came into possession of a blank prescription form and retained it, paid a third party to forge the blank form, and attempted to fill the fraudulent prescription.

The Hearing Panel considered the Respondent’s purpose in committing the violation, including whether the violation was committed for personal gain or enrichment, or whether it was the result of other considerations, such as an attempt to cut corners, save costs or benefit customers. While Respondent may not have profited financially from his

misconduct, his acts were aimed at achieving a personal benefit, namely, securing additional prescription medication without having to consult his personal physician as instructed by the CHS doctor.

Finally, the Hearing Panel considered the nature of the wrongdoing and the harm to the NYSE. The integrity of the NYSE and those who work in the securities industry is paramount to the NYSE's success. Therefore, fraudulent acts are among the highest categories of wrongful conduct in the industry. Respondent's actions were fraudulent and deceitful, and they clearly raise questions as to his trustworthiness and ability to uphold the duties required of persons employed on the NYSE Floor, in particular, and in the securities industry, in general. The trustworthiness of Floor brokers, including Respondent, is essential to the proper functioning of the NYSE, since they are routinely placed in positions of power over customer orders, information, and property. Clearly deceptive behavior of the type in which Respondent engaged reflects poorly on the NYSE and jeopardizes the trust that the investing public places in those who work there.

By analogy, we note that the Exchange Act provides for a ten-year statutory disqualification for those individuals who have been convicted of a felony or certain enumerated misdemeanors involving fraud, including forgery, based on a recognition that people who have committed those types of acts should not be allowed to work in the securities industry for some significant period of time, in order to protect the investing public. See Exchange Act, Sections 3(a)(39), 15(b)(4); NYSE Rule 346(f). The Hearing Panel acknowledges that Respondent was not criminally convicted and, therefore, is not subject to statutory disqualification.³ Nevertheless, the underlying fraudulent acts are not in dispute, and the Exchange Act gives some guidance as to the seriousness with which the Hearing Panel should regard fraudulent acts, even if they are unrelated to the business of the NYSE or its members.

Deterrent Effect of Sanction

The purpose of a disciplinary penalty is to protect investors, not to penalize brokers. See McCarthy v. SEC, 406 F.3d 179, 188 (2d Cir. 2005); Howard F. Rubin, Exchange Act Release No. 34-35179, 58 S.E.C. Docket 1426, 1994 WL 730446 (Dec. 30, 1994). The Hearing Panel finds that a censure and bar for a significant period of time is necessary to protect investors by deterring similarly fraudulent misconduct on the part of Respondent and others. See SEC Opinion, at *7-8.

Respondent claims that the five-year bars imposed by the NYSE are excessive, citing McCarthy, where a less severe penalty of a two-year suspension—in addition to a censure

³ While criminal charges brought against Respondent for forgery and criminal possession of stolen property by the New York District Attorney's office were eventually dismissed, the dismissal came about as a result of an adjournment in contemplation of dismissal, not because the court considered the charges against Respondent and found that he had not committed the acts underlying those charges. See SEC Opinion, at *3, n.2.

and \$75,000 fine—was imposed by the Board of Directors,⁴ even though the mishandling of customer property was involved. The facts in McCarthy, however, differ from those in this case in significant respects. In McCarthy, the Second Circuit specifically noted that the respondent was a minor participant in a larger scheme of misconduct. McCarthy, 406 F.3d. at 190. In contrast, Respondent here initiated and fully planned his scheme to obtain the fraudulent prescription, including recruiting another person’s assistance. Furthermore, after committing the violations for which he was found guilty, McCarthy continued to trade on the NYSE Floor for nine years without incident. Id. Here, Respondent was terminated shortly after his fraudulent conduct and has not established a reliable record of rule-abiding behavior in the securities industry as had McCarthy. Finally, the Second Circuit found that the regulations that McCarthy violated, which governed the billing process at the NYSE, were ambiguous at the time when McCarthy engaged in the underlying acts at issue in that case and that those regulations had subsequently been reformed and made more transparent. See id. In the present case, the violative nature of Respondent’s fraudulent conduct was self-evident, and Respondent himself even admitted to knowing that his conduct was wrong. See SEC Opinion, at *12.

The Hearing Panel finds that a bar of a significant period of time is necessary to deter future misconduct of this nature.

Respondent’s Mitigation Claims

In addition to those claims raised before the Hearing Panel originally and those cited by the SEC in its Opinion, Respondent advances several new claims in his Supplemental Brief, which he contends serve as mitigating factors and thus justify a lesser penalty. See Reply Br. of Paul K. Grassi, Jr. Regarding Penalty on Remand from the U.S. Securities and Exchange Commission (Sept. 21, 2006) (“Resp. Reply”).

Respondent asserts that, at the time of the misconduct, he was acting under “medical duress” due to a dependency on the prescription drug Vicodin, and that he therefore did not act intentionally or with a state of mind that warrants a significant bar. Respondent further claims that he has since been treated for his addiction and is now rehabilitated. The Hearing Panel does not consider drug dependency a valid factor in mitigation of penalty. The Board of Directors has held that the effect of addiction on a person’s ability to judge right from wrong is not relevant in determining sanctions. See James L.

⁴ Edward John McCarthy, Decision 01-106 (NYSE Dec. 5, 2002). That decision was appealed to the SEC, which affirmed the decision of the Board of Directors, including the two-year suspension. See Edward John McCarthy, Exchange Act Release No. 34-48,554, 81 S.E.C. Docket 465, 2003 WL 22233276 (Sept. 26, 2003). However, the SEC’s decision was appealed to the Second Circuit Court of Appeals, which vacated the SEC’s decision with respect to the two-year suspension imposed and remanded the case to the SEC, which was directed “to reconsider its decision in light of the mitigating facts and circumstances presented by the record.” McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2005). The SEC thereafter remanded the matter to the NYSE to explain further the findings and conclusions that support the sanction that was imposed by the Board of Directors. See Edward John McCarthy, Exchange Act Release No. 34-53,138, 2006 WL 126703 (Jan. 18, 2006).

Rummel, Decision 84-80 (NYSE Sept. 5, 1985). In Rummel, the respondent, James Rummel, was found guilty of violating NYSE Rule 476(a)(6) for having misappropriated \$1,500 given to him by his mother-in-law to open a securities account in her name. After formally finding that Rummel was an alcoholic, the Hearing Panel originally found that Rummel had not acted with the intent to steal, but was overcome by an urge to preserve his access to alcohol. See James L. Rummel, Decision 84-80 (NYSE Hearing Board Mar. 6, 1985). As a result, the Hearing Panel unanimously voted to censure Rummel and require that he attend Alcoholics Anonymous under supervision of his firm; accordingly—and specifically in light of Respondent’s addiction—the Hearing Panel denied Enforcement’s request for a permanent bar. See id. at 5-6. On review, however, the Board of Directors reversed the Hearing Panel’s sanction and imposed a permanent bar, holding that, despite the fact that Rummel had been rehabilitated, “there can be no exception to the long-standing policy of the Exchange to impose the established penalty of a permanent bar for conduct of this type, conversion of funds.” James L. Rummel, Decision 84-80 (NYSE Sept. 5, 1985). Relying on the Board of Directors’ specific holding that alcohol addiction is not a valid mitigating factor, the Hearing Panel here gives little weight to Respondent’s claims of addiction and subsequent rehabilitation in considering a reasonable and appropriate penalty.⁵

Respondent also argues that his immediate removal from the Floor of the NYSE upon discovery of his fraudulent conduct, but before charges were made against him, is a factor that should be considered in mitigation of his penalty; additionally, Respondent claims that his absence from the securities industry and from the NYSE for over four years is also a mitigating factor that must be considered in determining his penalty. To the extent that Respondent is claiming that he has already been punished for his misdeeds—a factor that may be relevant to the determination of sanctions, see Info. Memo. No. 05-77, at 3-4—the Hearing Panel does not give much weight to this factor, since it is not unusual for an individual to be removed from employment once misconduct has been alleged and is being investigated. With regard to Respondent’s four-year absence from the industry, our view is that giving him credit for that absence would amount to a retroactive application of his penalty to the date when he was removed from the NYSE Floor, and we do not find that any exceptional circumstances exist to justify a departure from the normal practice that a sanction be prospective, i.e., that it commence at the point when the Hearing Board decision imposing it becomes final.

Respondent claims that since the misdemeanors he was charged with by the State of New York for the same acts were subsequently dismissed, a lesser sanction should be imposed. The Hearing Panel takes into account that Respondent was not convicted of a crime and is not subject to statutory disqualification under Exchange Act Sections 3(a)(39) and

⁵ In any event, the record does not support a finding that Respondent acted while suffering from addiction. As the SEC observed in its review of this case, although Respondent was offered an opportunity at the hearing to present evidence on his state of mind, he never did so. Instead, he presented expert testimony regarding the state of mind of an individual addicted to Vicodin, generally. Furthermore, there was no evidence that Respondent did not know right from wrong; on the contrary, he specifically testified that he knew his conduct was wrong. See SEC Opinion, at *12.

15(b)(4) because the criminal charges against him were dismissed. We find that a ten-year bar commensurate with statutory disqualification would not be appropriate here. Nevertheless, the strong policy reasons supporting the mandatory exclusion of persons convicted of criminal acts apply as strongly to an individual who has been found to have committed—and indeed has admitted—those same underlying acts.

Respondent additionally claims that he should receive a lesser sanction because his actions did not result in harm to any customer, investor, or other participant in the NYSE. Although no money or property linked to his business is involved in the case at hand, and no particular individual suffered loss, Respondent caused harm to the NYSE by threatening its integrity and reputation, as discussed above. See supra p. 3. Furthermore, the sanction we impose now, which is less than a permanent bar, already reflects the fact that Respondent was not found guilty of misappropriation and that his misconduct did not involve mishandling of property or funds connected to his business.⁶

Finally, Respondent advances two further claims in mitigation of the penalty. First, he alleges a “tenuous relationship” between his “off-Exchange conduct” and “any expertise or other legitimate basis for imposing a regulatory sanction.” Resp. Reply at 7. He seems to be suggesting that, since his actions took place away from the premises of the NYSE Floor, the NYSE has no standing to impose a sanction. Second, he alleges that the original Hearing Officer in this case, who excluded much of Respondent’s medical defense, and had a doctor-patient relationship with Enforcement’s primary witness, was biased, and, therefore, the sanction imposed is unfair. We find that these two claims do not relate to the appropriateness of the sanctions at issue whatsoever. Rather, Respondent is attempting to call into question the legitimacy of the entire process, including the Hearing Panel’s finding of guilt, which the SEC specifically precluded in its Opinion. See SEC Opinion, at *7-13; see also, supra, at 1-2. Since the SEC itself thoroughly reviewed the record and was satisfied as to the legitimacy of the process—and, in turn, affirmed the Hearing Panel’s finding of guilt—we hold that such claims have no bearing on the sanction we impose.

In addition to the claims advanced above, the Hearing Panel, in considering a reasonable and appropriate penalty, took into account the fact that this was an isolated incident. However, for the reasons stated above, the premeditated and elaborate nature of the violative conduct counteract the singularity of this act.

⁶ Had Respondent been found guilty of misappropriation of money or property linked to his business, long-standing practice of the NYSE would have been to impose a permanent bar. See James L. Rummel, Decision 84-80 (NYSE Sept. 5, 1985) (noting long-standing policy of NYSE to impose permanent bar in cases involving misappropriation); Charles Jay Brittain, Decision 91-89 (NYSE Hearing Board June 4, 1991), at 3 (noting that permanent bar was “the Exchange’s precedent for penalty in [misappropriation] matters”). Indeed, a censure and permanent bar are routinely imposed to punish misappropriation even in matters resolved by stipulation and consent. See, e.g., Shawn William Sorrells, Decision 05-128 (NYSE Hearing Board Nov. 14, 2005); Ernie Cecil Fuller, Decision 00-171 (NYSE Hearing Board Oct. 4, 2000).

Conclusion

The Hearing Panel has reconsidered the sanction in this case and concludes that a sanction of a censure and a five-year bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization is reasonable and appropriate and is consistent with the purposes of the Exchange Act. In reaching this conclusion, the Hearing Panel took into account, as discussed above: the seriousness of Respondent's misconduct, through which he violated his position of trust as a broker on the Floor of the NYSE by engaging in a fraudulent plot intentionally and with premeditation; the effectiveness of the sanction to deter similar conduct in the future by Respondent and others in the securities industry by sending a clear message that acts of fraud—even those unrelated to the duties of someone working in the securities industry—can seriously tarnish the integrity and reputation of the Exchange and cause investors to lose faith in the fairness of the market; and each of Respondent's mitigation claims.

Accordingly, taking into consideration all of the facts and circumstances of this case, as well as all of the arguments presented, the Hearing Panel imposes a penalty of a censure and a five-year bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization.

For the Hearing Panel

Peggy Kuo
Chief Hearing Officer

In the Matter of)
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 Paul K. Grassi) Request for Review of
 NYSE Hearing Board
 Decision 03-217 (On Remand from
 SEC Release 52858)

This case has an extensive procedural history. In December 2003, Respondent Paul K. Grassi, a former NYSE member and floor broker, was found guilty of conduct detrimental to the interest or welfare of the Exchange in violation of NYSE Rule 476(a)(7), based on his admitted forgery of a prescription form for painkillers and presentation of same to a pharmacist. NYSE Hearing Panel Decision 03-217 (December 3, 2003). This Board affirmed the guilt finding but modified the Hearing Panel’s penalty, imposing a censure, five-year bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization (“plenary bar”), and concurrent five-year membership bar.¹ Regulation Board Decision 03-217 (December 2, 2004). Grassi appealed. The SEC affirmed the guilty finding but remanded for reconsideration of the penalty and further information about the basis for any sanctions imposed. SEC Rel. No. 52858 (November 20, 2005). Grassi now requests review of the Hearing Panel’s March 29, 2007 penalty decision on remand.

In its remand decision, the SEC specifically asked NYSE to explain how Grassi’s conduct threatened the “integrity and reputation of the Exchange” and how its chosen sanction “will serve to protect the integrity and reputation of the Exchange from harm in the future, including the extent to which the Exchange believes that sanction will deter similar misconduct on the part of Grassi and other members of the Exchange.” SEC Rel. No. 52858 at 7. The SEC also directed NYSE to address and explain how the chosen sanction was impacted by Grassi’s mitigation arguments. *Id.*

On remand, the Hearing Panel ordered additional briefing, issued a lengthy decision addressing the SEC’s questions and imposed a censure and a five-year plenary bar. In accordance with NYSE Rule 476(f), after consideration of the record in this matter as well as the written submissions and oral argument of the parties, the Board affirms the Hearing Panel’s decision.

¹ The Board revised the Hearing Panel’s penalty of censure, five-year plenary bar and consecutive five-year membership bar, so that the two bars instead would run concurrently.

In affirming, and in addition to the arguments made by the Hearing Panel, the Board notes that the determination of this sanction is driven by the nature of the underlying conduct that led to the violation. Here, Mr. Grassi orchestrated a fraudulent scheme that involved forgery and other deceptive acts undertaken for personal gain. When confronted with adversity – a physician who told Mr. Grassi that he would not write any more painkiller prescriptions – Mr. Grassi took several affirmative, deceptive steps, over a course of days, to obtain the medication. Mr. Grassi paid another person to forge the doctor’s name on a blank prescription form that Mr. Grassi had obtained by accident on a prior visit and inexplicably retained. He then presented the forged prescription at a pharmacy and was only prevented from completing his scheme because the pharmacist recognized that the doctor’s signature had been forged.

As the SEC and the Hearing Panel pointed out, there are no decisions under Rule 476(a)(7) that are direct analogies to this situation. SEC Rel. No. 52858 at 7. However, NYSE and SEC rules are designed to protect investors, McCarthy v. SEC, 406 F.3d 179 (2nd Cir. 2005), and Rule 476(a)(7) permits NYSE to discipline conduct that reflects on a person’s ability to comply with the regulatory requirements of the securities industry. SEC Rel. No. 52858 at 4-5. Here, Mr. Grassi not only engaged in forgery, he devised a scheme to do so and involved a third party whom he paid to forge the document for him. Then, the next day, with ample time to reconsider his actions, Mr. Grassi presented the forged prescription to a pharmacist.

Although no investors were harmed by Mr. Grassi’s actions in this instance, the SEC found and the Board concurs that his pre-meditated, deceptive conduct leaves serious questions about Mr. Grassi’s integrity and commitment to truthfulness in other situations. SEC Rel. No. 52858 at 5. Moreover, his willingness to involve a third party in fraudulent activity so that he could obtain a personal benefit, and his position of member, reinforces the Board’s belief that Mr. Grassi engaged in activity that seriously harmed the integrity and reputation of the Exchange. The five-year bar will not only protect the Exchange from further misbehavior by Mr. Grassi, it will also serve to deter other participants in the Exchange community from engaging in similar conduct.

The Board also considered Mr. Grassi’s mitigation arguments in affirming the sanction and agrees with the Hearing Panel’s detailed assessment of those arguments and their impact on the chosen sanction.

Finally, Mr. Grassi argues that his penalty should begin not on the date calculated by NYSE rules but on the date in 2002 that Mr. Grassi was fired by CIBC and removed from the trading floor. NYSE Rule 476(e) specifically states “the determination of the Hearing Panel . . . and any penalty imposed, shall be final and conclusive twenty-five days after notice thereof has been served upon the respondent,” but any penalty imposed “shall be stayed pending the outcome” of a review by the Board if such a request is made. Here, the start date chosen by the Hearing Board for Mr. Grassi’s penalty follows Rule 476(e). Mr. Grassi has not presented any reason either to open a new issue at this stage of the case or to alter NYSE’s rule with regard to the date on which a disciplinary sanction starts to run.

* * *

For all these reasons, the Board finds that the penalty imposed by the Hearing Panel in its March 29, 2007 Decision on Remand was an appropriate sanction for the violation.

December 17, 2007

By the Board of Directors
NYSE Regulation, Inc.

NEW YORK STOCK EXCHANGE, INC.

In the Matter of)	Request for Review of
)	Exchange Hearing Panel
Paul K. Grassi, Jr.)	Decision 03-217

In accordance with Exchange Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties, oral argument and the Hearing Panel's *Supplemental Decision on Remand*, the Board affirms the Hearing Panel's finding of guilt.

With respect to penalty, the Board modifies the penalty imposed by the Hearing Panel. The Board has determined that Mr. Grassi be censured, barred for a period of five years from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, and barred for an additional five years from membership, which bar, however, shall run concurrently with the five-year plenary bar. After a thorough review and consideration, the Board believes that this penalty is appropriate in view of the particular facts and circumstances of this case.

December 2, 2004

By the Board of Directors
New York Stock Exchange, Inc.

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-217

July 12, 2004

PAUL K. GRASSI, JR.
FORMER EXCHANGE MEMBER

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Supplemental Decision on Remand
From the Board of Directors

* * *

On June 28, 2004, the Board of Directors of the Exchange affirmed the Hearing Panel's finding of guilt in this matter, and remanded the matter to the Hearing Panel, directing the Hearing Panel to provide a detailed rationale of its penalty that includes an explanation of the precedents it applied and any other factors that entered into its penalty determination.

The Hearing Board determined that Mr. Grassi be censured, barred for a period of five years from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization ("plenary bar"), and barred for an additional five years from membership.

Mr. Grassi was found guilty of engaging in acts detrimental to the interest or welfare of the Exchange in that he falsely obtained a blank prescription form from a medical office located on the Exchange's premises, caused the blank prescription form to be completed and signed, and presented the prescription form to a pharmacy for the purpose of obtaining the prescription written on the form. The Hearing Panel believed this conduct, while short of misappropriation, to be analogous to cases in which employees of member firms were found to have used funds mistakenly deposited into an account or to have abused their expense accounts. For example, in the Matter of Wheeler, Hearing Panel Decision ("HPD") 00-111 and the Matter of Friedberg, HPD 01-133, five-year plenary bars were imposed; in the Matter of Westby, HPD 91-151, a four-year plenary bar was imposed. Accordingly, Mr. Grassi may, in five years' time, seek employment in the securities industry, hopefully under the careful supervision of his employer.

But the Hearing Panel considered that Mr. Grassi's misconduct, while he was a member of the Exchange, harmed the interests and welfare of the Exchange. Exchange members are subject to individual approval by the Board of Directors and are pledged to uphold and represent Exchange principles in obtaining the privileges of membership. (See Exchange Constitution, Article II, Sections 3 and 5.) Established precedents provide for additional periods of time before an Exchange member who has dishonored his position can stand again for Exchange membership. For example, in the Matter of Berger, HPD 92-44, a Hearing Panel accepted a consent to a penalty of a three-year plenary bar and an additional two-year bar as a Floor broker for a member who had reneged on a trade, but commented that such misconduct violated the trust and integrity

that must be expected of a member, and penalties in such matters should be increased in the future; the Board of Directors remanded, suggesting a minimum plenary bar of ten years and a permanent bar from membership, which he subsequently accepted (HPD 93-47). More recently, in the Matter of Sohmer, HPD 02-156, sanctions sustained by the SEC (Release No. 49052, January 12, 2004), the Hearing Panel imposed a three-year plenary bar and a permanent bar from membership for a member who had traded on the Floor for accounts in which he had an interest, commenting that, “Mr. Sohmer may be due some mercy in consideration of his years in the industry, but in accepting these accounts, he threw away his years of professional integrity”; the SEC found that, “in imposing these sanctions, the Exchange properly considered the magnitude of [respondent’s] misconduct, as well as any mitigating factors.” Similar misconduct resulted in a five-year plenary bar and permanent bar from membership in the Matter of Bertoncini, HPD 01-39. In the Matter of Sinclair, HPD 99-3, a two-year plenary bar, \$250,000 fine and permanent bar from being a specialist was imposed on a member for misusing his position to ensure profitable orders for a family account. See also the Matter of McLaughlin, HPD 93-141, in which a twelve-month plenary bar and additional three-year membership bar was imposed on a member for net capital deficiencies and failure to cooperate with the Exchange; Matter of Santangelo, HPD 87-20, in which a two-month plenary bar and five-year bar from membership was imposed on a member who had net capital violations and presented checks on insufficient funds; Matter of Costanzo, HPD 92-72, in which a four-year plenary bar and additional two-year bar as a Floor broker was imposed for misrepresentation of trading information with respect to an account in which the member had an interest.

In the Matter of Mirra, HPD 96-128, the Hearing Panel, imposing a plenary permanent bar on a member who refused to cooperate in an Exchange investigation, commented that “Exchange membership carries with it the responsibility to conduct oneself according to the highest standards of honor and integrity.” In the Matter of Volpe, HPD 81-32, concerning a member who concealed trades for his own account on the Floor of the Exchange, the Hearing Panel, imposing a plenary permanent bar on the member, stated that “the nature of a member’s duties and the operations of the Exchange’s trading floor on which a member’s word in his bond require the highest level of honesty and integrity on the part of every member, Mr. Volpe’s conduct indicates a failure to meet these requirements and casts serious doubt on his ability to meet them in the future.” The SEC, quoting the Hearing Panel, sustained the sanction. (Release No. 34-19262, November 19, 1982). Similarly, in the Matter of Simek, HPD 86-86, concerning a member’s false trading representations, the Hearing Panel commented that, “A member whose word is false is a danger to other members and the entire trading process.” Nor does the fact that the member’s dishonorable conduct does not involve Floor trading mitigate his responsibility to the Exchange. In the Matter of Meyers, HPD 78-37, the Board of Directors imposed a permanent bar on a member for filing a fraudulent tax return, commenting that “it is clear to us that the conviction for a felonious crime involving fraud need not entail an act directly involving the performance of Exchange related duties in order to mandate expulsion. The Exchange community cannot tolerate members who commit felonious frauds.”

In the matter before us, the Hearing Panel considered Mr. Grassi’s relative youth and that his misconduct, while intentional and inexcusable, did not amount to misappropriation. Mr. Grassi did not deserve to be permanently barred from his profession. But the Hearing Panel does believe that “misconduct by a member of the Exchange, expected to be a scrupulously honest

professional, who abused a service made available to him at the Exchange, certainly constitutes an act detrimental to the interest or welfare of the Exchange” and that “his failure of integrity cannot be readily forgiven with regard to his responsibilities to the Exchange.” In the Hearing Panel’s view, Mr. Grassi’s demonstrated lack of integrity calls for an additional period of time before he can seek to resume the privileges of membership.

For the Hearing Panel

Milton M. Stein
Hearing Officer

NEW YORK STOCK EXCHANGE, INC.

In the Matter of)	Request for Review of
)	Exchange Hearing Panel
Paul K. Grassi, Jr.)	Decision 03-217

In accordance with Exchange Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties, and oral argument, the Board affirms the Hearing Panel's finding of guilt.

With respect to penalty, the Board remands the matter to the Hearing Panel and directs the Hearing Panel to provide a detailed rationale of its penalty that includes an explanation of the precedents it applied and any other factors that entered into its penalty determination.

June 28, 2004

By the Board of Directors
New York Stock Exchange, Inc.

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-217

December 3, 2003

PAUL K. GRASSI, JR.
FORMER EXCHANGE MEMBER

* * *

Falsely obtained, caused to be completed and signed, and presented a medical prescription form – Censure and five year plenary bar, and additional five year bar from membership.*

Appearances:

For the Division of Enforcement
Barry M. Hochhauser, Esq.
Margaret M. Tolan, Esq.
Kelli Rose McGhee

For the Respondent
Alfred Ferrer III, Esq.

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Paul K. Grassi, Jr., a former Member of the Exchange and Floor broker, employed by CIBC World Markets Corp. (the "Firm"). Mr. Grassi was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated a medical prescription form from CHS.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he completed and signed, or caused to be completed and signed, a medical prescription form from CHS without authorization to do so.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that he attempted to fill the prescription at a pharmacy by presenting the completed, signed prescription form, which he knew to be false.
- IV. Engaged in conduct inconsistent with just and equitable principles of trade in that he falsely obtained a blank prescription form from a medical office located on the Exchange's premises, completed and signed, or caused to be completed and signed, the blank prescription form and presented the prescription form to a pharmacy for the purpose of obtaining the prescription written on the form.
- V. Engaged in acts detrimental to the interest or welfare of the Exchange in that he falsely obtained a blank prescription form from a medical office located on the Exchange's premises, completed and signed, or caused to be completed and signed, the blank prescription form and presented the prescription form to a pharmacy for the purpose of obtaining the prescription written on the form.

* See decision by the Board of Directors dated June 28, 2004, Hearing Panel decision on penalty dated July 12, 2004, and decision by the Board of Directors dated December 2, 2004.

- VI. Violated Exchange Rule 477 by failing to timely comply with an Exchange request that he appear and testify on-the-record before the Exchange.

Mr. Grassi, through his attorney, submitted an Answer to the Charge Memorandum in which he denied the charges. Rather, he claimed that the conduct at issue was the result of improper medical treatment, which had resulted in a dependency on the prescribed medication. Mr. Grassi further asserted that the alleged conduct did not involve any trading activity or any issue within the jurisdiction of the Exchange. As to the charge of failure to timely comply with a request to testify, Mr. Grassi alleged that he had relied on counsel for scheduling his testimony and that the failure to grant his counsel's request to reschedule was unreasonable. He did subsequently testify.

At the hearing, Mr. Grassi appeared with counsel and testified. On the basis of the evidence and testimony presented at the hearing, the Hearing Panel found as follows:

Background and Jurisdiction

1. Paul K. Grassi, Jr. ("Grassi") entered the securities industry in November 1996. From November 1996 to January 1998, Grassi was employed by a securities firm as an unregistered floor clerk. Grassi was employed by the Firm from February 1998 to June 2002. In February 1998, Grassi was approved by the Exchange as a registered representative while employed at the Firm. In February 2002, he became a Floor broker for the Firm. Grassi is not currently employed in the securities industry.
2. In July 2002, the Exchange was notified that Grassi's employment had been terminated by the Firm.
3. By letter dated November 26, 2002 (the "November Letter"), sent to Grassi by certified and first class mail, the Exchange's Division of Enforcement ("Enforcement") notified Grassi that it was investigating the matter of his arrest for conduct which occurred while he was employed by the Firm¹.

Unauthorized Prescription

4. On or about May 1, 2002, Grassi was examined by a doctor ("the Doctor") at Comprehensive Health Services, Inc. ("CHS"), a business corporation that arranges for the provision of health-related services through its clinic located on the Exchange's premises at 11 Wall Street, New York, New York. CHS, while not affiliated with the Exchange, offers its services to Exchange members, employees of members and member organizations, Exchange employees, and others.
5. Grassi suffered from chronic back pain and, during his May visit, the Doctor wrote out a prescription for him. The Doctor did not recall the visit. Grassi testified that when he went to fill the prescription, he found that a blank prescription form was inadvertently attached to the filled out prescription; Grassi kept the blank form, without any specific purpose in mind.

¹ A criminal prosecution of this matter was dismissed on three days' community service by Grassi.

6. The next month, on June 10, 2002, Grassi returned to CHS with his back pain, and another doctor at the clinic wrote another prescription to him for the painkiller, Vicodin. The doctor warned Grassi, however, that he would not write additional prescriptions, because Grassi had overused the drug.
7. On the evening of June 12, 2002, Grassi, concerned that he had no more Vicodin left, sought out a person whom he believed knew how to write out prescription forms, and asked her to fill out the blank prescription form, signing the Doctor's name.
8. The next day, Grassi then attempted to fill the prescription at a pharmacy located near the Exchange. The pharmacist noticed the signature was not the Doctor's signature and called CHS to inquire about the legitimacy of the prescription. At that time, CHS informed the pharmacist that the Doctor did not write the prescription.

Alleged Failure to Timely Cooperate

9. By the November Letter, Enforcement notified Grassi that it was investigating this matter. Enforcement requested that Grassi provide a detailed written explanation of that matter within 14 days from the date of the November Letter.
10. By facsimile dated December 18, 2002, Enforcement received from Grassi's attorney a request for an extension of time for Grassi's response to the November Letter.
11. Enforcement granted an extension until January 15, 2003. Prior to January 15, 2003, Grassi's counsel requested an additional extension until January 21, 2003, which Enforcement granted.
12. On January 21, 2003 Enforcement received Grassi's full and detailed response to the November Letter.
13. By letter dated March 20, 2003 (the "March Letter"), Enforcement requested Grassi testify at an on-the-record interview scheduled on April 2, 2003, at the Division of Enforcement. The March Letter also advised Grassi that failure to appear for this interview, as scheduled, or to promptly make alternative arrangements, may result in a recommendation that formal disciplinary proceedings be instituted against him.
14. On or about March 25, 2003, Grassi's counsel requested a postponement of the testimony scheduled for April 2, 2003. At that time, Enforcement agreed to reschedule the testimony on or around the week of April 14, 2003.
15. By letter dated April 3, 2003 (the "April Letter"), Enforcement rescheduled the testimony for April 17, 2003. The April Letter also advised Grassi that his failure to appear for this interview, as scheduled, would result in a recommendation that formal disciplinary proceedings be instituted against him.
16. By letter dated April 15, 2003, Grassi requested an additional rescheduling of the testimony to the following week, in order to consider settlement of the matter. This request was denied by Enforcement.

17. On April 17, 2003, Grassi failed to appear and testify as requested by the Exchange. His attorney, however, appeared and reiterated Grassi's position.
18. On August 1, 2003, Grassi appeared and testified before the Exchange.

DISCUSSION

Mr. Grassi admits that he intentionally ordered the preparation of a false prescription for a drug, and tendered that prescription to be filled at a pharmacy, with full knowledge that his conduct was wrongful. He did so using a blank prescription form which he had obtained, without authorization, while being treated at a medical clinic available to Exchange members during the workday. Unfortunately, for him, he was caught in the act.

Mr. Grassi argues that the Exchange should not exercise jurisdiction over this matter, because this misconduct does not involve trading activity and has no sufficient nexus to the interest of the Exchange. He also argues that he did not initially misappropriate the blank prescription form; rather, he found it attached to a legitimate prescription form which he had obtained, and kept it. Further, he argues that his misconduct was the result of an addiction he had developed to a drug that had been previously prescribed to him for chronic pain.

The Hearing Panel accepts that Mr. Grassi obtained the blank prescription form when it was inadvertently attached to a legitimate prescription that he obtained, and that he kept the blank form with no definite purpose in mind. Accordingly, he had no intention at the time to misappropriate the prescription form. However, when he later perceived a need for the medication, he purposefully schemed to take illicit advantage of his possession of the blank form. That misconduct by a member of the Exchange, expected to be a scrupulously honest professional, who abused a service made available to him at the Exchange, certainly constitutes an act detrimental to the interest or welfare of the Exchange².

We cannot accept that Mr. Grassi's misconduct is a necessary consequence of his addiction. He is responsible for his own conduct. Indeed, Mr. Grassi claims to have been unaware at the time of his addiction to the drug he sought to illicitly obtain; rather, he was responding to his chronic pain. But he sought no further treatment, no alternative for pain relief. He plotted out a means to obtain easy relief, means he knew to be wrongful. He claims that he did not want to lose time from work, but in seeking a dishonest short-cut to treatment he betrayed the integrity expected of a person in his position.

That a criminal prosecution was dismissed, in lieu of community service, does not exculpate him from his acts or reduce his responsibility to the Exchange for his conduct. Nor do his subsequent efforts at rehabilitation from addiction warrant a prompt return to the securities industry; his failure of integrity cannot be readily forgiven with regard to his responsibilities to the Exchange³.

² A majority of the Hearing Panel believes that this misconduct did not constitute conduct inconsistent with just and equitable principles of trade, within the meaning of Charges II, III and IV, insofar as the misconduct did not involve professional trading responsibilities. The Hearing Officer, however, would have found guilt on these charges, in the view that conduct inconsistent with just and equitable principles of trade encompasses a broad range of ethical violations by a securities professional.

³ The Division of Enforcement sought a permanent bar in this matter, based on precedents involving misappropriation or theft of property. The penalty set here is based on precedents involving egregious misconduct

With respect to the claim of non-cooperation in failing to timely appear to testify in his investigation, the Hearing Panel recognizes that Mr. Grassi had previously fully cooperated in providing materials to the Division of Enforcement. The only accusation against him with respect to a failure to cooperate is that he, on his attorney's advice, belatedly sought an adjournment of a scheduled date for his testimony, in order to consider settlement. A majority of the Hearing Panel recognizes, however, that, given Mr. Grassi's previous cooperation and his subsequent appearance for testimony, there was no intention here to delay or frustrate the investigation⁴.

DECISION

The Hearing Panel, by unanimous vote, found Mr. Grassi guilty of Charge V.

The Hearing Panel, by unanimous vote, found Mr. Grassi not guilty of Charge I and, by majority vote, found Mr. Grassi not guilty of Charges II, III, IV and VI.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Grassi be censured, barred for a period of five years from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, and barred for an additional five years from membership

For the Hearing Panel

Milton M. Stein
Hearing Officer

short of misappropriation, such as use of funds mistakenly deposited into an account (e.g., Matter of Wheeler, Hearing Panel Decision 00-111; Matter of Westby, Hearing Panel Decision 91-151), or abuse of expense accounts (e.g., Matter of Friedberg, Hearing Panel Decision 01-133).

⁴ The Hearing Officer would have found Mr. Grassi guilty of this charge, insofar as it was Mr. Grassi's responsibility to be available for testimony, absent a grant of an extension of time. The Hearing Officer agreed, however, that this failing would not warrant a substantial penalty, given Mr. Grassi's cooperation before and after this incident.