

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-25

February 18, 2004

KENNETH ROGERS

FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to disclose a prior conviction on an employment application which made him subject to a statutory disqualification – Censure and eight year bar.

Appearances:

For the Division of Enforcement
Allison A. Bishop, Esq.
Deanna G.W. Logan, Esq.

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Kenneth Rogers, a former non-registered employee with the U.S. Clearing Division of Fleet Securities, Inc. (the "Firm"). Mr. Rogers was charged with having violating Exchange Rule 476(a)(6) in that he engaged in conduct inconsistent with just and equitable principles of trade in that he failed to disclose a prior conviction on an employment application he submitted to his member firm employer, which made him subject to a statutory disqualification.

Mr. Rogers 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. Rogers had failed to file an Answer. The motion was granted and the Hearing Panel found as follows:

Background and Jurisdiction

1. Kenneth Rogers ("Rogers") was born on April 12, 1979. Rogers entered the securities industry on May 6, 2002, working as a non-registered operations trainee in a branch office of the Firm.
2. On September 30, 2002, the Firm terminated Rogers' employment for failing to disclose an August 30, 2000 felony conviction on a Firm employment application.
3. Since his termination from the Firm, Rogers has not been employed in the securities industry.

4. On or about January 7, 2003, the Division of Enforcement of the New York Stock Exchange (the "Exchange") received a referral of this matter from the Division of Member Firm Regulation reporting Rogers was statutorily disqualified as a result of the felony conviction.
5. By letter dated February 6, 2003, which Rogers received, the Exchange notified Rogers that it was formally investigating allegations that he failed to disclose a felony conviction to his employer and thus made a material misrepresentation about his criminal history on an application for employment with the Firm.

Failure to Disclose Felony Conviction

6. On April 6, 2000, Rogers was arrested and charged with the crimes of eluding, speeding, reckless driving and unregistered vehicle. The underlying facts leading to Rogers' arrest arose when Rogers failed to bring the vehicle he was operating to a full stop after being signaled to do so by a law enforcement officer in Union County, New Jersey. A chase ensued in which Rogers was eventually apprehended and charged.
7. On August 30, 2000, Rogers plead guilty to the reduced charge of Eluding in the Third Degree, a felony.
8. On November 17, 2000, Rogers was sentenced to two years of probation and the payment of all applicable court fees.
9. On December 20, 2001, Rogers completed a written application for a management trainee position at the Firm. The application asked the following question, "Have you ever been convicted of or pleaded guilty to a criminal offense in this country ... i.e. misdemeanor or felony, but not including minor traffic violations or any conviction as a youthful offender or juvenile?"
10. Rogers indicated "No" by checking the corresponding box. Rogers signed the application and certified the truth and accuracy of all the information. This statement was not accurate in light of his felony conviction for Eluding in the Third Degree.
11. In connection with his employment, on June 3, 2002, Rogers' fingerprints were submitted to the Federal Bureau of Investigation. On June 14, 2002, the Firm was notified that Rogers had a prior conviction. In July 2002, unclear on whether Rogers' prior conviction constituted a felony, the Firm obtained copies of the court documents and submitted the documents to the Exchange and the National Association of Securities Dealers Regulation.
12. Subsequently, on September 9, 2002, the Exchange formally notified the Firm that Rogers' prior conviction was in fact a felony and thus he was subject to statutory disqualification.
13. On September 30, 2002 the Firm terminated Rogers' employment.
14. The Securities Exchange Act of 1934 ("the Exchange Act") Sections 3(a)(39)(F) states that a person is subject to statutory disqualification with respect to membership or

participation in, or association with a member of a self-regulatory organization if such member has committed any offense specified in subparagraph 4 of Section 15b.

15. Section 240.15b3-1(4)(B)(iii), specifies, in pertinent part, that a person is also statutorily disqualified when he or she “has been convicted within ten years preceding the filing of any application for registration ... of any felony....”
16. Based on the above Rogers failed to disclose his prior felony conviction on his employment application. He continues to be statutorily disqualified until August 2010.

DECISION

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

PENALTY

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

Vincent F. Murphy
Hearing Officer