

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-92

June 16, 2004

CARLOS SOTO

FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated customer funds; violated Exchange Rule 477 in that he failed to comply with Exchange requests for testimony and information; caused a violation of Regulation 240.17a-3 promulgated under the '34 Act and Exchange Rule 440 by creating fictitious accounts that caused the books and records maintained by his firm to be inaccurate – Censure and permanent bar.

Appearances:

For the Division of Enforcement
Margaret M. Tolan, Esq.
Daniel Labovitz, 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 Carlos Soto, a former registered representative with Morgan Stanley DW, Inc. (the "Firm"). Mr. Soto was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds from customers of his member firm employer.
- II. Violated Exchange Rule 477 in that he failed to comply with written requests by the Exchange for testimony and information
- III. Caused a violation of SEA Regulation 240.17a-3 promulgated under the Securities Exchange Act of 1934 and Exchange Rule 440 by creating fictitious accounts that caused the books and records maintained by his member organization employer to be inaccurate.

Mr. Soto did not submit an Answer to the Charge Memorandum. Neither he nor any person on his behalf appeared at the hearing in this matter. After receiving evidence, the Hearing Panel found as follows:

Background and Jurisdiction

1. Carlos Soto ("Soto") was born on October 14, 1944. He has been employed at the Firm as a financial advisor and at its predecessor firm, Dean Witter Reynolds, Inc.

since 1989. Soto was employed at the Firm's Hato Rey, San Juan, Puerto Rico branch.

2. On February 12, 2004, the Exchange was notified by the Firm of allegations that Soto misappropriated funds from customers. The Firm terminated Soto's employment on or about February 11, 2004.
3. By letter sent February 12, 2004, sent by Federal Express to Soto's last known address as reflected in Exchange records, Enforcement informed Soto of its investigation and requested that he appear and provide testimony on February 17, 2004. A copy of this letter was also sent by facsimile to Soto's attorney.

Misappropriation

4. Approximately 10 years ago, Soto began opening fictitious corporate accounts in the names of the following entities: ABC (two accounts); DEF (five accounts); GHI (one account); JKL (five accounts) and MNO (three accounts).
5. On or about September 10, 2003, a wire in the amount of \$20 million was received by the Hato Rey branch of the Firm from a Guatemalan Bank. The funds were deposited into the ABC corporate account for which Soto was the registered representative.
6. On or about October 21, 2003, a second wire in the amount of \$20 million was received by the branch from the same customer and deposited into the ABC account. Soto began to actively sell short in the ABC account.
7. Soon after receipt of these wires, the Branch Office Manager ("BOM") attempted to contact the individual identified as the contact person for the ABC account. He was unable to do so.
8. The BOM expressed his concerns to Soto who, in the form of two memoranda, dated January 20, 2004 and February 2, 2004, detailed conversations he had with his short selling customers, ABC, MNO, GHI, JKL and DEF regarding their approval of the trading in their accounts.
9. In his memorandum dated February 2, 2004, Soto informed the BOM that his customers had decided to transfer their accounts away from the Firm because of the BOM's desire to contact them. These memoranda contained misstatements as the customers represented in the memoranda were fictitious.
10. When confronted by the BOM in February 2004, Soto confessed to engaging in a scheme to divert customer monies for personal uses and to use the customers' funds to engage in speculative trading such as short sales.
11. On or about February 10, 2004, Soto faxed a confession containing a written narrative describing his fraudulent activities to the Firm's branch manager.

12. In his confession, Soto admitted to opening fictitious corporate accounts at Dean Witter and outside bank accounts in the name of fictitious corporations. At least one of the accounts with Dean Witter was an account with checking privileges.
13. Soto admitted approaching 15 customers with the idea that they invest in coupon-bearing GNMA or GNMA zero coupons. Soto wrote that his plan was to take the customers' money, invest it on his own, have it increase substantially over the years, return the principal to the customers and keep the trading profits.
14. When he received the customer's initial investment, Soto used a local printing company to create falsified Firm account statements he then sent to the customers.
15. In order to facilitate his plan, Soto requested that his customers give him a bank – issued check in the name of the Firm. He then deposited the checks in one of the fictitious accounts. In the case of customers who agreed to investments that would pay interest coupons, Soto transferred money out of the fictitious Firm accounts into the outside bank account and deposited checks into the customer's Firm accounts as if they had been regular coupon-payments.
16. In addition to the 15 customers Soto identified as being involved in his scheme, at least six additional customers received monies totaling \$951,770 from Soto's fictitious accounts.
17. In addition to using customer funds to provide distributions to customers in the form of false interest payments and false bond principal repayments, Soto also siphoned funds from these fictitious accounts by writing checks and making withdrawals via debit cards.
18. Soto admitted to fraudulently raising over \$56 million from investors. Approximately \$32 million is currently located in various accounts. He asserted that he returned approximately \$7 million to investors by way of interest payments or otherwise. Soto failed to account for approximately \$17 million.
19. On February 18, 2004, Soto was arrested and arraigned in United States District Court for the District of Puerto Rico.

Failure to Cooperate

20. As stated above, by letter sent by Federal Express on February 12, 2004, to Soto's last known address as reflected in Exchange records, Enforcement informed Soto of its investigation and requested that he appear and provide testimony in San Juan on February 17, 2004 and advised him that his failure to comply with the Exchange's request for testimony might result in the institution of formal disciplinary proceedings against him for his failure to cooperate.
21. The letter sent by Federal Express was returned to sender. The letter sent by facsimile to Soto's attorney was received.

22. Soto failed to appear and testify at the time and date set for his testimony. Soto's attorney represented that Soto would not be cooperating with the Exchange.
23. In a letter dated February 27, 2004, Soto's attorney wrote that it is Soto's decision not to cooperate with the New York Stock Exchange investigation.
24. On March 4, 2004, a letter was sent to Soto's current address by Federal Express, certified and first class mail informing him of the Exchange's investigation and his continuing obligation to cooperate with the Exchange's investigation.
25. To date Soto has failed to cooperate with the Exchange's investigation.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Soto 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