

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-131

August 4, 2004

SHAWN DWIGHT DAVIS

FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated customer funds; exercised discretion without written authorization; failed to comply with Exchange requests to furnish information or testify – Consent to censure and permanent bar.

Appearances:

For the Division of Enforcement
Joy A. Weber, Esq.
Anthony J. Cavallaro, Esq.
Robert K. Butani

For the Respondent
Samuel T. Currin, Esq.

* * *

An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Shawn Dwight Davis, a former registered representative with Edward D. Jones & Co. (the "Firm"). Without admitting or denying guilt, Mr. Davis consented to a finding by the Hearing Panel that he engaged in conduct inconsistent with just and equitable principles of trade in that he:

- I. Misappropriated funds from two customers of his member organization employer.
- II. Exercised discretionary power in the accounts of two customers of his member organization employer without first obtaining written authorization of the customers.
- III. Failed to comply with or respond to an Exchange request that he provide information concerning matters which occurred prior to the termination of his employment with a member organization.
- IV. Failed to comply with or respond to an Exchange request that he provide testimony concerning matters which occurred prior to the termination of his employment with a member organization.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Davis stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Shawn Dwight Davis ("Davis") was born on October 10, 1970. He entered the securities industry in July 2000 as an employee with the Firm. Davis had previously been employed as a State Trooper with the North Carolina State Highway Patrol.

2. Davis worked as an investment representative at the Firm's Smithfield, North Carolina office until his termination on May 12, 2003.
3. Davis is no longer employed in the securities industry.
4. On or about May 20, 2003 the New York Stock Exchange, Inc. (the "Exchange") received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") reporting Davis' termination from the Firm for "improper handling of customer funds."
5. By letter dated December 26, 2003, which Davis received, the Exchange notified Davis that it was investigating the matter and requested his written statement.

Overview

6. During the period 2001 to 2003, Davis misappropriated funds amounting to approximately \$210,458 from two customers of the Firm. Davis persuaded the two customers to write checks from their personal bank accounts payable to Davis for the purchase of securities. Davis told the two customers, who needed funds to pay for such things as medical bills, that they could reduce their commissions for the purchase of securities by writing checks to Davis. Instead, Davis used the funds received from the customers for himself. In addition, Davis effected trades in the customers' accounts without the customers' written authorization and also failed to comply with written requests of the Exchange to provide information and to appear and testify concerning matters that occurred while he was employed at the Firm.

Misappropriation of Customer Funds

The S and DB (the "Bs") Account

7. The Bs opened a joint account with Davis at the Firm in or around January 2001.
8. In or around May 2002, SB suffered a heart attack and a stroke.
9. Davis thereafter approached the Bs and offered to reduce the commissions they were paying in connection with the purchase of securities for their account by having the Bs write checks, from their outside bank account, made payable directly to Davis.
10. In order to fund the Bs' outside bank account, Davis sold securities in the Bs' Firm account without their prior authorization and caused the proceeds to be transferred to their outside bank account.
11. Between May 2002 and April 2003, Davis requested and received approximately \$163,730 from the Bs. This included approximately \$26,000 in cash and approximately \$137,730 in checks made payable to Davis.

12. Rather than using the checks and cash to purchase securities in the Bs' Firm account, Davis endorsed the checks and deposited them to his personal bank accounts.
13. In or around May 2003, the Bs called the Firm to inquire about a stock purchase that they thought Davis had made in their account and for which they had issued a check to Davis. No such stock was purchased for the Bs.
14. Davis never returned the \$163,730 to the Bs and did not have authorization to keep the funds.

The BG ("BG") Account

15. In or around July 2001, BG, whose husband had recently perished in a house fire, opened an account with Davis at the Firm.
16. Beginning in or around October 2001, Davis asked BG to write checks payable to Davis as a way to simplify the purchases of securities in her account.
17. Between approximately October 2001 to January 2002, Davis requested and received approximately \$46,728 in checks payable to Davis from BG.
18. From approximately October 2001 to January 2002, Davis also effected trades in BG's account without obtaining her prior authorization.
19. Davis never returned the \$46,728 to BG and did not have authorization to keep the funds.

Failure to Cooperate

20. As stated above, by letter dated December 26, 2003, sent via certified mail, return receipt requested and first class mail, which he received, Enforcement notified Davis of its investigation and requested that Davis provide a written explanation of the allegations by January 15, 2004.
21. Davis did not provide a written statement as requested.
22. By letter dated January 15, 2004, sent via certified mail, return receipt requested and first class mail, which he received, Enforcement requested Davis to provide testimony on January 27, 2004.
23. Davis did not appear for testimony on January 27, 2004.
24. Davis did not contact the Exchange or provide information and testimony as requested and on May 20, 2004, a Charge Memorandum was issued charging Davis with misappropriation, use of discretion without written authorization and failure to comply with Exchange requests that he submit a written explanation and provide testimony.

25. On June 24, 2001 Davis and Enforcement were notified that a hearing on the matter had been scheduled for August 4, 2004.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Davis guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Davis of a censure and a permanent bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer