

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 04-141**

September 8, 2004

OMAR SHAHIN

FORMER REGISTERED REPRESENTATIVE

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**Violated Exchange Rule 477 by failing to comply with requests for information and for testimony – Censure and bar until he complies, to become permanent if he does not comply within three months.**

**Appearances:**

For the Division of Enforcement  
Virginia J. Harnisch, Esq.  
Anne K. DeSimone, 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 Omar Shahin, a former registered representative with Morgan Stanley DW Inc. (the "Firm"). Mr. Shahin was charged with having:

- I. Violated Exchange Rule 477 by failing to comply with one or more written requests for documents and information.
- II. Violated Exchange Rule 477 by failing to comply with one or more written requests to provide testimony.

Mr. Shahin did not submit an Answer to the Charge Memorandum, and neither Mr. Shahin 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. Shahin did not submit an Answer. The motion was granted on proof of notice to Mr. Shahin and, on that basis, and on evidence presented, the Hearing Panel found as follows:

**Background and Jurisdiction**

1. Omar Shahin ("Shahin") was born in September 1963. Shahin was employed in the securities industry in a registered capacity from approximately April 1999 through August 2002, at the Firm.
2. On or about August 13, 2002, the Exchange received a Form U-5 reporting that the Firm had terminated Shahin on or about August 7, 2002 (the "Form U-5").
3. On or about March 17, 2003, the Exchange's Division of Enforcement ("Enforcement") sent a letter by certified mail, return receipt requested, and by first

class mail to Shahin (the “March 2003 Letter”), which he received, notifying him that pursuant to Exchange Rule 477 Enforcement was investigating the possibility that Shahin had borrowed money from one or more Firm customers, had misappropriated money from one or more Firm customers, and had provided false information to the Firm on an annual questionnaire (the “Allegations”). Enforcement sent the March 2003 Letter to Shahin at his last known address as reflected in Exchange records, in Lancaster, California.

4. In the March 2003 Letter, Enforcement requested Shahin to provide a detailed written explanation in response to the Allegations by April 7, 2003.
5. Shahin failed to respond to the March 2003 Letter as requested.

#### **Failure to Cooperate**

6. By an April 15, 2003 letter sent to Shahin at his last known address in Lancaster, California (the “April 2003 Letter”), which Shahin received, Enforcement noted Shahin’s failure to comply with the request for information set forth in the March 2003 Letter and again requested that Shahin provide a detailed written explanation in response to the Allegations.
7. Also in the April 2003 Letter, Enforcement requested Shahin to appear at Enforcement’s offices in New York, New York, on May 20, 2003, to testify in connection with the investigation.
8. On or about May 7, 2003, Shahin faxed two letters to Enforcement, one dated May 3, 2003, and the other dated May 5, 2003. Shahin indicated that his letters were in response to the March 2003 Letter and the April 2003 Letter, both of which he acknowledged receiving. Shahin’s letters were on letterhead bearing an address in Lancaster, California (the “Lancaster Address”), which in substance is the same address where Enforcement sent the March 2003 Letter and the April 2003 Letter. Shahin’s letterhead also reflected that he had a Post Office box address in Lancaster, California (the “Post Office Box Address”).
9. Shahin, in his letter dated May 3, 2003, provided a written statement as requested by Enforcement in the March 2003 Letter and the April 2003 Letter.
10. In his letter dated May 5, 2003, Shahin responded to Enforcement’s request that he appear in New York for testimony. Therein, Shahin stated that because he resides in a suburb of Los Angeles, California, and is unemployed, “having to travel to New York would certainly cause me severe financial hardship. . . . I will be unable to appear on the date you requested. . . . I do hope that you do have alternatives to personal appearance in New York . . . .”
11. On or about May 9, 2003, Enforcement advised Shahin in writing that Enforcement agreed to adjourn his testimony and to consider alternatives to his personal appearance in New York.
12. Thereafter, Enforcement continued its investigation, obtaining documents and information from the Firm and customers of the Firm.

### **The Investigative Request for Documents and Information**

13. On or about April 1, 2004, Enforcement sent to Shahin a written investigative request that he provide certain documents and information to Enforcement by April 8, 2004 (the “April 1, 2004 Letter”).
14. Enforcement notified Shahin in the April 1, 2004 Letter that any failure to provide any requested information or documents may result in the institution of formal disciplinary proceedings against him pursuant to Exchange Rule 477.
15. Enforcement sent the April 1, 2004 Letter to Shahin at the Lancaster Address by Federal Express and by certified mail, return receipt requested. Enforcement also sent the April 1, 2004 Letter to Shahin at the Post Office Box Address by Express Mail.
16. The copy of the April 1, 2004 Letter sent to Shahin by Federal Express was delivered to him on or about April 2, 2004.
17. The copies of the April 1, 2004 Letter sent to Shahin by certified mail and by Express Mail were returned to Enforcement marked “Unclaimed”.
18. Shahin did not provide any requested documents or information to Enforcement in response to the investigative request in the April 1, 2004 Letter. Shahin did not otherwise respond to the April 1, 2004 Letter in any way.
19. Enforcement, in a letter dated April 13, 2004, sent to the Lancaster Address (the “April 13, 2004 Letter”), advised Shahin that he was in non-compliance with Enforcement’s investigative request for documents and information set forth in the April 1, 2004 Letter.
20. To date, Shahin has failed to provide the documents and information requested by Enforcement in the April 1, 2004 Letter.

### **The Investigative Request for Testimony**

21. In the April 1, 2004 Letter, Enforcement requested Shahin, in light of his assertion that he cannot, due to financial hardship, appear in New York for testimony, to appear in Long Beach, California for testimony. Enforcement advised Shahin that it intended to schedule his testimony for one day during the period of April 27 through April 29, 2004, and requested Shahin to provide written notice by April 8, 2004, “as to all days during the period April 27 – 29, on which [he] would be available to testify in Long Beach.”
22. Shahin did not respond to the April 1, 2004 Letter in any way (*see* paragraph 18, above).
23. Thereafter, Enforcement sent the April 13, 2004 Letter to Shahin, in which Enforcement requested that he appear and testify on April 27, 2004, at 9:30 a.m. at a hotel located in Long Beach, California.

24. In the April 13, 2004 Letter, Enforcement advised Shahin that any failure to appear and testify as requested may result in the institution of formal disciplinary proceedings against him pursuant to Exchange Rule 477.
25. Enforcement sent the April 13, 2004 Letter to Shahin at the Lancaster Address by Federal Express and by certified mail, return receipt requested.
26. The copy of the April 13, 2004 Letter sent to Shahin by Federal Express was delivered to him on or about April 14, 2004.
27. The copy of the April 13, 2004 Letter sent to Shahin by certified mail, according to the United States Postal Service Web site, has been returned to Enforcement as "Unclaimed".
28. After receiving the April 13, 2004 Letter, Shahin did not contact Enforcement to request that his testimony be rescheduled or relocated. Shahin did not otherwise communicate to Enforcement any objection to the date, time, or location of his testimony.
29. On April 27, 2004, Shahin failed to appear for testimony in Long Beach, California, as requested.
30. To date, Shahin has not provided testimony in connection with the Exchange's investigation as requested.

### **DECISION**

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

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Shahin be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until he complies with the Exchange's requests with which he has failed to comply. Given this most serious allegation of misconduct and the Exchange's need for prompt investigation, the Hearing Panel, by unanimous vote, further determined that Mr. Shahin be permanently barred from membership, allied membership, approved person status and from employment or association in any capacity with any member or member organization if he does not comply with the Exchange's requests, with which he has failed to comply, within three months from the date this decision becomes final.

For the Hearing Panel

Milton M. Stein  
Hearing Officer