

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-159

October 5, 2004

GEORGE PETTROSPOUR AVAKIAN
FORMER REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 477 by failing to appear and testify – Censure and bar until he complies, to become permanent if he does not comply within three months.

Appearances:

For the Division of Enforcement
Steven F. Korostoff, Esq.
Howard L. Kneller, Esq.

For the Respondent
David W. Studley, Esq.

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An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against George Pettrospour Avakian a former registered representative with PaineWebber Incorporated (the "Firm"). Mr. Avakian was charged with having violated Exchange Rule 477 by failing to comply with a request by the Exchange that he appear and testify concerning one or more matters which occurred prior to the termination of his status as a registered employee of a member organization.

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

Background and Jurisdiction

1. George Pettrospour Avakian ("Avakian") was born in June 1947. In or about February 1996, he joined Firm A, a non-member firm, where he was employed until July 1997. In July 1997, he joined Firm B, where he was first approved as a registered representative by the Exchange. Avakian was employed at such firm until September 1999. At that time, he joined the Firm, and was employed with the Firm and its successor as a registered representative until March of 2001, when his employment terminated.

2. In or about April 2001, Avakian joined Firm C, a non-member firm. He subsequently left that firm and is not currently employed within the securities industry in a registered capacity.
3. On or about April 26, 2001, the Exchange received from the Firm a Form U-5 (Uniform Termination Notice for Securities Industry Registration) reporting that Avakian was discharged from the Firm on March 26, 2001 due to, among other things, the receipt by the Firm of eight customer complaints concerning Avakian.
4. Subsequently, the Firm informed the Exchange of the filing of complaints concerning Avakian by approximately 100 customers who asserted that Avakian had engaged in sales practice misconduct with respect to their accounts.
5. According to the Firm, as of June 2004, it has settled approximately 75 customer complaints and paid over \$15 million in connection with such settlements. Avakian has not contributed to any of the settlements.

Failure to Cooperate

6. By letter dated June 28, 2001, which was sent to Avakian at his last place of residence as reflected in Exchange records and which Avakian received, the Exchange's Division of Enforcement ("Enforcement") notified Avakian that it was conducting a preliminary inquiry concerning certain customer complaints regarding Avakian, which related to matters that occurred prior to the termination of his status as an employee of a member organization. In the letter, Enforcement requested that Avakian submit a written explanation of such matters.
7. Thereafter, in or about August 2001, Avakian provided the requested explanation to Enforcement.
8. By letter dated March 20, 2002, which was sent to Avakian at his last place of residence as reflected in Exchange records and which Avakian received, Enforcement notified Avakian that it had commenced an investigation concerning the aforementioned complaints, which related to conduct occurring prior to the termination of his status as an employee of a member organization. In the letter, Enforcement requested that Avakian submit a written explanation.
9. In May 2002, Avakian provided the requested explanation to Enforcement in connection with its investigation.
10. Thereafter, Enforcement continued its investigation, seeking and obtaining documents and information from the Firm and persons other than Avakian.
11. In or about July 2003, Enforcement contacted Avakian through his counsel to obtain certain information concerning the events at issue with respect to its investigation.

12. Thereafter, in or about July 2003, Avakian provided the requested information to Enforcement.
13. Enforcement continued its investigation and subsequently sought and obtained additional documents and information from the Firm and persons other than Avakian in connection with such investigation.
14. On or about March 23, 2004, Enforcement staff contacted Avakian through his counsel and requested that he appear and testify in connection with Enforcement's investigation. Enforcement and Avakian, through his counsel, scheduled his appearance and testimony to occur in San Francisco, California on May 26, 2004.
15. By letter dated April 5, 2004, sent to Avakian's counsel, Enforcement confirmed that Avakian was requested to appear and testify in San Francisco, California on May 26, 2004.
16. On or about May 21, 2004, Enforcement spoke with counsel for Avakian, who confirmed that Avakian would appear and testify as scheduled.
17. On or about the afternoon of May 25, 2004, the day before Avakian was scheduled to appear and testify, Avakian, through counsel, sent a letter to Enforcement's offices which indicated, without explanation, that Avakian would not appear for the scheduled testimony.
18. Also on or about the afternoon of May 25, 2004, Avakian, through counsel, telephoned Enforcement staff and advised the staff that Avakian would not appear for the scheduled testimony. Counsel further indicated that Avakian had determined to not cooperate with Enforcement's investigation.
19. Avakian did not appear and testify before Enforcement on May 26, 2004 as requested.
20. To date, Avakian has not complied with Enforcement's request that he appear and testify.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Avakian 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. Further, if he does not comply within three months the bar shall become permanent.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
Brandon D. Gioffre
Marcus Norman