

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-160

October 5, 2004

RICHARD SPINALE

FORMER REGISTERED REPRESENTATIVE

* * *

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

Appearances:

For the Division of Enforcement

Susan F. Axelrod, Esq.

Craig P. Hammond, Esq.

Joseph O. Okpaka, Esq.

For the Respondent

Norman A. Moscovitz, Esq.

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An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against Richard Spinale a former registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc., (the "Firm"). Mr. Spinale was charged with having violated Exchange Rule 477 in that he failed to comply with one or more written requests by the Exchange for information regarding matters that occurred prior to the termination of his employment with a member organization.

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

Background and Jurisdiction

1. Richard Spinale ("Spinale") was born on June 24, 1959. Spinale began working in the securities industry in or around September 1989 when he became employed by the Firm. Spinale was employed as a registered representative ("RR") with the Firm until the Firm terminated his employment on October 2, 2003. Spinale is not currently employed in the securities industry.
2. On or about November 4, 2003, the Division of Enforcement ("Enforcement") of the New York Stock Exchange ("Exchange") received a Uniform Notice of Securities Industry Registration ("Form U-5") reporting that Spinale's employment at the Firm

had been terminated on October 2, 2003. The Firm cited allegations of possible misappropriation as the reason for Spinale's termination on the Form U-5.

3. By letters dated May 7, 2004 (the "May 7th letter") sent by certified mail return receipt requested and first-class mail, and June 1, 2004 (the "June 1st letter") sent by Federal Express Overnight Delivery, certified mail return receipt requested and first-class mail, Enforcement notified Spinale that it was formally investigating allegations that he misappropriated funds from one or more customers.

Failure to Cooperate

4. As noted above, by letter dated May 7, 2004 (the "May 7th Letter") sent by certified mail return receipt requested and first-class mail to Spinale's last known address as reflected in Exchange records, Exchange notified Spinale of its formal investigation and requested a detailed written explanation of the matter reported on the Form U-5. The letter advised Spinale that his failure to comply with the request could result in the institution of disciplinary action against him based upon his failure to cooperate pursuant to Exchange Rules 476(a) and 477. The green United States Postal Service Return Receipt was signed for by "Miranda" on May 11, 2004, and the box marked "Agent" was checked. The May 7th letter sent via first class mail was not returned to the Exchange.
5. On May 25, 2004, Staff received a telephone call from Spinale, who stated that he had received the May 7th letter and asked whether Enforcement's investigation was criminal in nature. Staff informed Spinale that Enforcement's investigation was not of a criminal nature, and advised Spinale that future communications with Enforcement should be conducted through his attorney.
6. The June 1st letter, which was sent via Federal Express Overnight Delivery, certified mail return receipt requested and first-class mail, to the above-noted address, again requested that Spinale submit a detailed written explanation of the allegations that he misappropriated funds from one or more customers. The letter again advised Spinale that his failure to comply with the Exchange's request for information could result in the institution of disciplinary charges against him based on his failure to cooperate pursuant to Exchange Rules 476(a) and 477. The copy of the June 1st letter sent by Federal Express was signed for by "Richard" on June 2, 2004 at 9:42 a.m. The copy of the letter sent via first class mail was not returned to the Exchange.
7. To date, Spinale has failed to respond to the Exchange's requests for information contained in the May 7th and June 1st letters.

DECISION

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

PENALTY

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