

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-163

October 18, 2004

MICHAEL F. STERN
FORMER EXCHANGE MEMBER

* * *

Failed to comply with an Exchange request to appear and testify – Consent to censure and permanent bar.

Appearances:

For the Division of Enforcement
Steven J. Brostoff, Esq.
Cynthia Kitay, Esq.

For the Respondent
Barry H. Berke, Esq.
Steven S. Sparling, Esq.

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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 Michael F. Stern, formerly an Exchange Member with Van der Moolen Specialists USA, LLC (the "Firm"). Without admitting or denying guilt, Mr. Stern consented to findings by the Hearing Panel that he violated Exchange Rules 476(a) and 477 in that he failed to comply with a request by the Exchange to appear and testify in connection with an Exchange investigation regarding matters occurring prior to the termination of his status as a member of the Exchange.

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

Background and Jurisdiction

1. Stern was born on October 20, 1950. Stern entered the securities industry in 1972. He worked as a front line trading assistant at Firm A (1972-75), Firm B (1975-78), and Firm C (1978-79). From 1979 through 1980, Stern worked as an options clerk with Firm D at the American Stock Exchange. In or about 1981, Stern worked as an options trader for Firm E until in or about 1983. In or about 1984, he became a member of the Exchange and worked for Firm E as a specialist on the Floor. In or about June 1999, Firm E became the Firm. Stern retired on or about April 1, 2004. After his retirement, Stern leased his seat on the Exchange to an individual at the Firm. Stern has not been employed in the securities industry since he retired.
2. On January 7, 2004, the Exchange's Division of Market Surveillance ("Market Surveillance") referred a matter to the Exchange's Division of Enforcement ("Enforcement") concerning allegations that Stern may have violated Exchange rules and federal securities laws in connection with his trading in the Firm's dealer account.

Prior to the referral, Stern had testified before the Exchange on May 28 and July 10, 2003.

3. By letter dated January 21, 2004, which Stern received, the Exchange notified him that Enforcement was formally investigating allegations that while he was employed at the Firm he may have violated Exchange rules and federal securities laws in connection with his performance as a specialist in various securities, including XYZ, during the five-year period 1999 - 2003.

Summary of Violative Conduct

4. On July 13, 2004, Stern failed to appear and give testimony, in violation of Exchange Rules 476(a) and 477, concerning his trading activities while a specialist at the Firm during 1999 - 2003.

Failure to Cooperate

5. On June 7, 2004, pursuant to Enforcement's request, Stern agreed to appear and give additional on-the-record testimony on July 13, 2004. The testimony was to cover, among other things, allegations that Stern may have violated Exchange rules and federal securities laws in connection with his trading as a specialist in the Firm's dealer account during the five-year period 1999 - 2003.
6. In a telephone conversation with Stern's counsel on July 8, 2004, counsel advised Enforcement that Stern would not comply with the Exchange's request for on-the-record testimony on July 13, 2004, or on any other date. Stern understood that his failure to appear and testify on July 13, 2004, could result in his being charged with a violation of Exchange Rules 476(a) and 477 for his failure to cooperate.
7. On July 13, 2004, Stern failed to appear and give testimony as required.
8. To date, Stern has failed to comply with Enforcement's request that he appear and testify before the Exchange.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Stern 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. Stern of a censure and a permanent bar 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
Panelists:
Karen Nelson Hackett
Andrew M. Silverman