

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-165

October 19, 2004

VINCE EARL CUNNINGHAM

FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated customer funds; caused violations of Sections 17(a) of the Securities Exchange Act and Exchange Rule 440 by forging customer signatures on letters of authorization and backdating a discretionary trading authorization; violated Exchange Rule 477 by failing to testify – Censure and permanent bar.

Appearances:

For the Division of Enforcement

Allison A. Bishop, Esq.

Melissa G. Gable, Esq.

For the Respondent

No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Vince Earl Cunningham, a former registered representative with Edward D. Jones & Co. (the "Firm"). Mr. Cunningham was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds from customers of his member firm employer.
- II. Caused violations of Section 17(a) of the Securities and Exchange Act of 1934 and Exchange Rule 440 in that he forged customers' signatures on Letters of Authorization and backdated a discretionary trading authority document.
- III. Violated Exchange Rule 477 in that he failed to comply with a written request for on-the-record testimony concerning matters that occurred prior to his termination of employment with a member organization.

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

Background and Jurisdiction

1. Vince Earl Cunningham (“Cunningham”) was born on September 6, 1968. He entered the securities industry in October 1999 at a member organization where he remained until March 2001. From March 2001 through October 2001 Cunningham was employed outside the securities industry. In October 2001 Cunningham became employed with the Firm where he worked until his termination on April 15, 2003.
2. Since his termination, Cunningham has not been employed in the securities industry.
3. On April 28, 2003, the New York Stock Exchange, Inc. (the “Exchange”) received a Form U-5 Termination Notice for Securities Industry Registration (“Form U-5”) reporting the termination of Cunningham for mishandling customer funds and acknowledging that he signed a customer’s name on a Letter of Authorization.
4. On May 22, 2003, the Exchange received an amended Form U-5 reporting the complaint of Customers A and B, who alleged that Cunningham removed funds from their account without their permission.
5. The Exchange notified Cunningham of its investigation via letter dated November 14, 2003, which he received.

Misappropriation of Customer Funds and Forging of Customer Signatures

Account of Customers A and B

6. In January 2003, Cunningham forged customer signatures on two Letters of Authorization which caused funds totaling \$28,992 to be wired to third parties from the account of Customers A and B.
7. The transactions are as follows:

Date	Recipient of Funds	Amount
January 27, 2003	Z	\$14,000
January 29, 2003	Y	\$14,992

8. On or about April 23, 2003, Customer B, the authorized party on the account for the benefit of Customers A and B (the “B account”), complained to the Firm that funds totaling approximately \$30,000 had been removed from the B account without her authorization.
9. Cunningham subsequently admitted orally to the Firm that he forged the customer signatures on the two Letters of Authorization.

10. As a result of this matter, Cunningham was terminated on April 15, 2003. On November 24, 2003, the Firm settled the matter with Customers A and B by reimbursing them a total of \$32,000.

Account of Customer C

11. Customer C opened an account at the Firm in August 2002 after the death of her husband, as she was expecting life insurance monies and desired to invest them safely.
12. Over a period of approximately five months, Cunningham forged at least 11 Letters of Authorization to wire funds from the C account at the Firm to parties with whom the customer denies any affiliation.
13. The transactions are as follows:

Date	Recipient of Funds	Amount
August 8, 2002	X	\$20,000
August 23, 2002	W, Inc.	\$5,000
August 30, 2002	V, Inc.	\$100,000
September 4, 2002	W, Inc.	\$90,000
September 10, 2002	V, Inc.	\$75,000
September 10, 2002	V, Inc.	\$25,000
October 16, 2002	Vince Cunningham	\$5,000
November 4, 2002	U	\$4,985
November 18, 2002	Vince Cunningham	\$5,985
December 6, 2002	T	\$7,000
January 10, 2003	S Co.	\$50,000

Total: \$387,970

14. Additionally, starting the day after the August 8, 2002 \$20,000 wire from Customer C's account to X, \$22,740 was sent from the X account to Cunningham's bank account at another institution through a series of wire transfers.
15. The transactions are as follows:

Date	Amount
August 9, 2002	\$17,985
October 2, 2002	\$1,985
September 13, 2002	\$1,085
September 20, 2002	\$1,685

Total: \$22,740

16. Within a few months of the opening of the account, Customer C stated that she noticed suspicious activities in the account. However, she stated that when she questioned Cunningham about certain transactions, he told her not to worry.

17. Cunningham provided Customer C with a letter dated November 19, 2003 in which he stated that Customer C was “owed \$330,000 from [a named person] and \$56,000 from [another named person] and it was because of me.” Additionally, Cunningham stated in the letter to Customer C that he enclosed a check for \$500 with the letter since he was beginning to repay her immediately, in installments of \$1,000 per month.
18. In addition, Cunningham backdated a discretionary trading authority for the Customer C account. Customer C signed the form in April 2003. Cunningham, however, backdated the form to read June 6, 2002.
19. To date, Customer C has yet to be reimbursed by the Firm

Failure to Cooperate

20. By letter dated January 12, 2004 sent via Certified Mail Return Receipt Requested and First Class Mail, the Exchange requested that Cunningham appear at the offices of the Division of Enforcement to give testimony concerning these matters and was directed to contact staff to schedule an appropriate date and time.
21. The copy of the January 12 letter sent via Certified Mail Return Receipt Requested was received and signed for by Cunningham on January 20, 2004. The copy of the January 12 letter sent via First Class Mail was not returned.
22. Subsequently, in a letter dated February 26, 2004 which was sent via Certified Mail Return Receipt Requested with a copy sent via First Class Mail, the Exchange requested that Cunningham appear at the offices of the Division of Enforcement at 10:00 a.m. on Monday, March 15, 2004 to give testimony concerning the matters described above.
23. The copy of the February 26 letter sent Certified Mail Return Receipt Requested was returned to Enforcement offices stamped “Unclaimed.” The copy sent via First Class Mail was not returned and Cunningham did not appear for testimony.
24. To date, Cunningham has not responded to any Enforcement request to testify in connection with these matters.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Cunningham be censured and permanently barred 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

Milton M. Stein – Hearing Officer

Panelists:

Domitilia dos Santos

Joseph L. Dicandio