

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-178

November 17, 2004

MARTIN P. MAXWELL

FORMER NON-REGISTERED EMPLOYEE

* * *

Misappropriated customer funds, and violated Exchange Rule 477 in that he failed to comply with an Exchange request for information – Censure and permanent bar.

Appearances:

For the Division of Enforcement
Margaret M. Tolan, Esq.

For the Respondent
Seth P. Chazin, Esq.

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Martin P. Maxwell, a former non-registered employee with Lehman Brothers, Inc. (the "Firm"). Mr. Maxwell 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. Violated Exchange Rule 477 in that he failed to comply with a written request by the Exchange for information.

Mr. Maxwell, through his counsel, submitted an Answer in which he denied both the facts alleged and the charges asserted in the Charge Memorandum. Neither Mr. Maxwell nor any person on his behalf appeared at the hearing in this matter. After receiving evidence, the Hearing Panel found as follows:

Background and Jurisdiction

1. Martin P. Maxwell ("Maxwell") was born on [REDACTED]. He began his employment in the securities industry at the Firm in June 1988 and remained in the employ of the Firm as an unregistered employee until his employment was terminated on February 13, 2003.
2. On March 11, 2003, the Exchange was notified by the Firm, through a Form RE-3 dated March 11, 2003, of allegations that Maxwell misappropriated funds from customers.

3. By letter dated March 21, 2003, sent by first class mail to Maxwell's last known address as reflected in Exchange records, Enforcement informed Maxwell of its investigation and requested that Maxwell submit a detailed written explanation to the Division of Enforcement.

Misappropriation

4. During the period Maxwell was employed at the Firm, he held various positions within the Firm's Fixed Income and Operations Divisions, including analyst and senior analyst. Maxwell's job responsibilities as analyst and senior analyst, included the investigation and resolution of unreconciled credits and debits caused by trade settlement discrepancies.
5. During the period February 2001 through September 2002, Maxwell effected wire transfers of funds from approximately 30 institutional customer accounts to his own Bank X account, his wife's two Bank Y accounts and his brother-in-law's two Bank Y accounts by manually overriding clients' standing wire transfer instructions.
6. The source of the funds Maxwell transferred was, for the most part, credits to the customer accounts caused by residual dollar balances that arose during trade settlement or other security-related transactions (i.e., money differences in connection with the settlement of trades, proceeds arising during the trade pair-off and interest payments).
7. Maxwell took advantage of certain situations when these settlement, pair-off and payment transactions resulted in a credit balance in a customer's account.
8. Maxwell effected 141 wire transfers during the period February 20, 2001 through September 12, 2002 totaling \$792,537.80. These funds were wired to the Bank X and Bank Y accounts outside the Firm in the names of Maxwell, his wife and brother-in-law (the "Wire Transfers").
9. For example, on March 5, 2002, Maxwell wired \$1,500 from XYZ Asset Management's Firm account to Maxwell's brother-in-laws account at Bank Y. In a notation on the wire instruction Maxwell wrote "account change."
10. In another transfer dated September 26, 2001, Maxwell transferred \$433.59 from XYZ Assets Management's Firm account to his brother-in-law's account at Bank Y. The transfer wire notes in the memo section: XYZ Investment's Attn: BL. BL is Maxwell's brother-in-law and was not employed at Bank Y or the Firm.
11. Of the \$792,537.80 wired out, \$106,180.24 was immediately returned by the Firm to its customers, leaving a net outflow of \$686,357.56. The Firm has reconciled these wires and as of March 31, 2004, all the effected customers have been made whole.

12. Maxwell admitted to the Firm that he transferred the Firm client funds to accounts under his control at Bank Y and Bank X without authority to do so and used his knowledge of the Firm's systems and wire transfer procedures to effect the transfers.

Failure to Cooperate

13. By letter dated March 21, 2003, which he received, Enforcement requested that Maxwell provide a written explanation to Enforcement regarding his alleged misappropriation.
14. In a facsimile dated April 2, 2003, an attorney, on behalf of Maxwell, informed Enforcement that Maxwell would not cooperate with Enforcement's request for a written explanation due to the pending investigation by the FBI and the US Attorney's office, which investigation is still pending.
15. To date Maxwell has failed to provide the Exchange with a written explanation regarding his activities prior to his termination of employment with the Firm.

DECISION

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

PENALTY

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

Vincent F. Murphy – Hearing Officer
Panelists:
Kevin M. Fitzgerald
Daniel A. Greenstone