

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-193

December 28, 2004

PATRICIA A. VALDEZ

FORMER NON-REGISTERED EMPLOYEE

* * *

Misappropriated firm funds, made material misstatements on an employment application, and made material misstatements to her member firm employer – Consent to censure and permanent bar.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Andrew D. Kampel, Esq.

For the Respondent
Jerald D. Crow, Esq.

* * *

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 Patricia A. Valdez, a former non-registered employee with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and UBS PaineWebber, Inc. ("UBS"). Without admitting or denying guilt, Ms. Valdez consented to a finding by the Hearing Panel that she:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that she misappropriated funds belonging to her member organization employer.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that she made material misstatements on an employment application for employment with a member organization.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that she made material misstatements to staff of her member organization employer.

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

Background and Jurisdiction

1. Valdez was born in June 1959. She entered the securities industry in April 1999 as a non-registered administrative assistant with Merrill Lynch. Merrill Lynch terminated the employment of Valdez on November 18, 2003. Valdez was next employed with UBS on December 2, 2003, where she remained until her employment was terminated on December 23, 2003. Valdez is not currently employed in the securities industry.

2. On or about December 5, 2003, the Exchange received a Form RE-3 from Merrill Lynch reporting the termination of Valdez's employment with the Firm.
3. By letter dated December 22, 2003, which Valdez received, Enforcement notified Valdez that it was investigating certain matters that had occurred while she was employed at Merrill Lynch.
4. On or about January 12, 2004, the Exchange received a Form RE-3 reporting the termination of Valdez's employment with UBS.
5. By letter dated January 22, 2004, which Valdez received, Enforcement notified Valdez that it was investigating certain matters that had occurred while she was employed at UBS.
6. Thereafter, Valdez responded and appeared and gave testimony before the Exchange.

Overview

7. During the period of September 2002 to October 2003, Valdez misappropriated funds belonging to Merrill Lynch by taking and cashing \$17,500 in Gift Checks ("gift checks") from the branch where she was employed. Further, on November 20, 2003, Valdez made material misstatements on her employment application filed with UBS and on December 22, 2003, Valdez made material misstatements to staff of UBS.

Misappropriation

8. During the period of April 1999 to November 2003, Valdez worked as an administrative assistant for Merrill Lynch in three branches in the Houston, Texas area. In 2002, Valdez was assigned to the Firm's Houston Galleria branch ("the Galleria").
9. During the period September 2002 to October 2003, Valdez took, endorsed and cashed approximately 300 Gift Checks ("gift checks") with a total value of approximately \$17,500 from the Galleria.
10. Valdez took and endorsed the gift checks without the knowledge or authorization of Merrill Lynch.
11. Thereafter, she deposited the gift checks into credit union accounts of Valdez and her husband.
12. In October 2003, the administrative manager of the Galleria and Valdez's supervisor, discovered that gift checks were missing and conducted an investigation regarding the gift checks.

13. As a result of the findings of the investigation, Merrill Lynch terminated Valdez's employment.

Material Misstatements

14. On, November 20, 2003, Ms. Valdez completed an employment application for a position with UBS. On this application, Ms. Valdez responded to the question "Have you ever been discharged or forced/permitted to resign from a job?" by writing that she had "resigned from a job effective immediately due to confidential information" when in fact her employment had been terminated by Merrill Lynch based on her misappropriation. She further wrote that she was presently employed by Merrill Lynch.
15. On December 22, 2003, UBS had been advised by the Exchange of the Merrill Lynch termination. UBS staff questioned Valdez who unequivocally denied that she had been terminated by Merrill Lynch for misappropriating gift checks.
16. On December 23, 2003, after communicating with Merrill Lynch, UBS terminated Valdez's employment.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Ms. Valdez 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 Ms. Valdez 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:
Roger S. Begelman
William Y. Chan