

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-3

June 10, 2005

MICHAEL C. HIRSCHI

FORMER REGISTERED REPRESENTATIVE

* * *

Caused documents to be concealed from his employer's internal inspectors during an inspection – Censure, 30-day suspension, 3-year supervisory bar and a requirement to retake the supervisory exam.

Appearances:

For the Division of Enforcement

Susan E. Light, Esq.

Kevin E. Pogue, Esq.

George Tidona, Esq.

For the Respondent

Mark W. Pugsley, Esq.

* * *

A Hearing Panel of the New York Stock Exchange conducted a hearing on charges brought by the Exchange's Division of Enforcement against Michael C. Hirschi ("Respondent"), a former registered representative and branch office manager with Fidelity Brokerage Services, LLC (the "Firm") (See Exchange Hearing Panel Decision 04-110). Respondent was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that, as the Branch Office Manager, Respondent caused documents to be concealed from his member firm employer's internal inspectors during an internal inspection.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that, as the Branch Office Manager, Respondent instructed a subordinate to conceal documents from their member firm employer's internal inspectors during an internal inspection.

Respondent submitted an Answer to the Charge Memorandum in which he admitted certain of the facts and denied others. He denied the specific charges. His defenses included that he had been trained and instructed by the Firm, he acted in compliance with *defacto* Firm policy, and he was concerned about losing his job for adverse inspection findings despite having a good inspection the year before. After the Hearing, the Hearing Panel found that:

Background and Jurisdiction

1. Respondent was born on September 3, 1971. He entered the securities industry in 1992 and has been employed in a registered capacity by the following organizations:

Firm A (non-member)

7/92 to 7/93

The Firm

7/93 to 8/02

Firm B (non-member)

1/03 to the present

2. On September 27, 2002, the Firm, submitted to the New York Stock Exchange (“Exchange”) a Uniform Termination Notice for Securities Industry Registration (Form U-5) reporting that on August 30, 2002, it terminated Respondent’s employment for causing the concealment of internal paperwork containing signature guarantees that were not prepared in accordance with Firm policy.
3. The Exchange gave Respondent notice of its investigation by letter dated October 22, 2002, which he received.

Concealment of Documents

4. During the relevant period, the Firm had 88 branch offices, called “investor centers,” throughout the United States. The Firm’s branch offices in Arizona, California, Colorado, Oregon, Washington and Utah comprised its “Western Region,” which was supervised by a team of managers.
5. Respondent joined the Firm in 1993 as a registered representative. In 2001, he became the Branch Office Manager (“BOM”) of the Salt Lake City, Utah branch office (“Salt Lake Office”). The Salt Lake Office had approximately five registered representatives and two customer service representatives under his supervision.
6. Employees from the Firm’s internal inspection department conducted on-site internal inspections of branch offices on an annual basis. At the conclusion of the inspection, branch managers were provided with an Annual Compliance Examination Report. During the relevant period, branch offices were notified in advance of the dates on which the inspections would occur.
7. In or about July 2002, Respondent was instructed by his regional manager to prepare for the annual inspection. His regional manager informed him of the date in July that the annual inspection was to begin. Respondent took advantage of the advance notification and prepared for the inspection. The Firm had an intensive preparation process for the annual inspection. It included classes for the managers, weekly telephone conferences and the distribution of substantial written material. In addition as the examinations began, managers relayed information about their branch inspection to those who were not yet inspected.
8. CSR, the Senior Customer Service representative in the branch testified at the hearing that during the preparation for the inspection, the support staff went through all the documents. It was presumed that they would put a date after a customer signature when a customer had failed to do so, check a box overcooked by a customer such as the citizenship box and add missing time stamps.
9. CSR testified that time stamps were rolled back and the document would be time stamped and copied so that the late time stamp would not be obvious. The Respondent himself testified that in all the branches in which he had worked the keys to the time stamp were left in the time stamp and not retained in a secure location.
10. In 2002, Respondent knew that the annual inspection was focused on compliance in a number of areas, including the Firm policy on signature guarantees.

11. Firm policy required that the authorization for any transfer of assets or disbursement from a customer's account be written and signed by the customer making such a request. In addition, the Firm's signature guarantee policy required the customer's signature to be "guaranteed" by a Firm employee who was approved to act as a signature guarantor. Documents that required signature guarantees included Letters of Instruction ("LOI").
12. The Firm's signature guarantee policy required that the customer provide two forms of identification to confirm or "guarantee" the identity of the person authorizing the transfer or disbursement. The signature guarantee policy further required a notation on the guarantee form of the pertinent identification information shown.
13. In preparation for the annual inspection, Respondent asked CSR, a customer service representative under Respondent's supervision, for assistance in reviewing documents because CSR was knowledgeable in such preparation from his long tenure at the branch.
14. During the inspection preparation, CSR testified that approximately 20 LOIs were found that had been signature guaranteed by individuals whose authority to signature guarantee had been previously revoked by the Respondent. These non-compliant LOIs would result in an adverse finding during the branch inspection.
15. CSR showed the non-compliant LOIs to Respondent. Since these were original documents with customer signatures they could not be fixed. There was a discussion between Respondent and CSR about hiding the non-conforming documents in the branch. Respondent spoke to other managers who confirmed that this was a common strategy for avoiding an adverse inspection finding. Respondent agreed to hide the documents in the branch. Later they learned that the auditors were searching in storage areas and locked files and desks for documents.
16. In an effort to conceal from the auditors that certain documents had been improperly signature guaranteed, CSR volunteered to remove the documents with the improper signature guarantees from the branch.
17. CSR removed the documents from the branch before the internal inspectors arrived. Although informed about CSR's actions, Respondent did not tell CSR to immediately return the documents to the branch.
18. Pursuant to Respondent's instructions, after the internal inspection was concluded, CSR returned the documents to the branch.
19. When Respondent first learned from CSR that documents were often hidden during the annual inspection, Respondent thought that this was wrong. He spoke to some other managers who informed him that it was common. Respondent still thought it was wrong but he agreed to it. Later when the documents were actually removed from the office, he failed to stop CSR or order him to immediately return the documents.

20. Both Respondent and CSR thought that approximately 20 documents were involved but they were not sure. At the hearing, Enforcement introduced approximately 70 documents that had been improperly guaranteed. These were all documents that Respondent had reviewed and signed. In each case, he had failed to meet his supervisory obligations and notice that they were improperly guaranteed when he signed them.
21. Respondent's office also had annuity suitability forms that were for other reasons incorrect. Respondent knew this but left the forms in the files. He was prepared to take an adverse finding on these forms, but he was not prepared to take a second adverse finding.
22. Other offices apparently did fix original documents by filling out new forms then tracing customer signatures through the forms. Respondent was not willing to do this.

DECISION

The Hearing Panel, by unanimous vote, found Respondent guilty of Charge I. The Hearing Panel, also by unanimous vote, found Respondent not guilty of Charge II. The Hearing Panel believes that CSR introduced the concealing of documents to Respondent. Although Respondent did not instruct CSR to conceal the documents, he did not stop him or order the documents immediately returned to the office. Respondent knew concealment was wrong but learned that it was a common practice at the firm. Still he must take responsibility for permitting it to happen.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured and barred for 30 days from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, and following that be barred from employment in a supervisory capacity for a period of 3 years and be required to retake the appropriate supervisory examination before being employed in a supervisory position. Respondent was employed in a Firm and region that had a seriously flawed compliance culture. He recognized what was right and what was wrong and was unwilling to perform actions like forging customer signatures. The documents that Respondent was willing to conceal but not alter were documents whose flaws were missed by him during his initial supervisory review. The Panel, therefore, believes that the penalty should primarily address his role as a supervisor. Hopefully, this will enable him to resist improper pressures for conformity if he is ever in a similar situation again.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
Brian J. Carlin
Philip J. Oelze