

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-15

January 25, 2005

JONATHAN HENRY

FORMER REGISTERED REPRESENTATIVE

* * *

Failed to disclose criminal record on Form U-4; violated Exchange Rule 477 by failing to comply with requests for information – Censure and five year bar following period of statutory disqualification.

Appearances:

For the Division of Enforcement
Anthony J. Cavallaro, Esq.
Cynthia Kitay, Esq.

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Jonathan Henry, a former registered representative with H & R Block Financial Advisors (the "Firm"). Mr. Henry was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he failed to disclose his criminal record on a Form U-4 submitted to his member firm employer.
- II. Violated Exchange Rule 476(a)(10) in that he made a misstatement and/or omission of fact on a Form U-4 that was filed with the Exchange.
- III. Caused a violation of Exchange Rule 345.12 in that he submitted a Form U-4 to the Exchange that contained false information.
- IV. Violated Exchange Rule 477 in that he failed to comply with written requests by the Exchange for information with respect to activities that occurred while he was an employee of a member organization.

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

Background and Jurisdiction

1. Jonathan Henry ("Henry") was born on October 5, 1964. He was employed in the securities industry with a number of member and non-member firms in the period of June 1984 to November 2003. He was employed by the Firm in February 2004. Henry is not currently employed in the securities industry.
2. The Division of Enforcement ("Enforcement") received a Uniform Termination Notice ("Form U-5") and Reportable Event Form ("Form RE-3") dated March 12, 2004 from the Firm reporting that Henry's employment with the Firm as a financial advisor was terminated on February 20, 2004 because he had provided erroneous information regarding his criminal history on his Uniform Application for Securities Industry Registration or Transfer ("Form U-4").
3. By letter dated April 7, 2004, Enforcement sent a letter to Henry's last known address of record notifying him that it was conducting a preliminary inquiry into the matter leading to his termination from the Firm.
4. By letter dated August 6, 2004, sent via Federal Express and first class mail to both Henry's last known address of record and a different address that was listed on his Firm Form U-4, Enforcement notified Henry it was investigating the circumstances leading to his termination from the Firm.

Misstatement on Form U-4

5. During the period of 1995 through 1999, Henry was arrested and charged on four occasions with violations of local municipal ordinances and, therefore, classified as being neither felonies or misdemeanors.
6. On November 16, 2003, Henry was arrested by the Miami Beach police department and, the following day, was charged with burglary (3rd degree – felony), cocaine possession (3rd degree – felony), possession of controlled substance (3rd degree – felony), battery (misdemeanor) and probation violation. Henry was convicted of the charges on or about May 20, 2004 after a judge withheld adjudication and sentenced Henry to one year probation. (Florida Rules of Criminal Procedures 3.702 (d)(2): "Conviction means a determination of guilt resulting from a plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended").
7. On the Form U-4 dated February 9, 2004 that Henry completed with respect to his employment at the Firm, Henry answered "no" to question 14A(1)(b) that asked if Henry had ever been charged with any felony. As of that date, Henry knew or should have known that his November 16, 2003 arrest resulted in felony charges of burglary, cocaine possession and controlled substance possession.

8. In answering “no” to the above noted question, Henry made a misstatement and/or omission of fact on his registration application and caused his member firm employer to submit to the Exchange a Form U-4 containing false information.
9. Under Sections 3(a)(39)(F) and 15(b)(4)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”) an individual is subject to a statutory disqualification for a period of ten years upon conviction for any felony or for certain specified types of misdemeanors.
10. As a result of Henry’s conviction of felony charges on or about May 20, 2004, he became statutorily disqualified at that time, after his employment with the Firm had already been terminated.

Failure to Cooperate

11. Under Rules 476(d) and 477, in order to serve effective notice of its investigation, the Exchange is entitled to rely on Henry’s last known residential address as reflected in Exchange records.
12. The Form U-5 requires a registered representative to forward any residential address changes for a period of two years following his termination date or last Form U-5 amendment for inclusion on the Central Registry Depository (“CRD”).
13. By letter dated April 7, 2004, Enforcement sent a letter to Henry’s last known address of record. Henry did not respond and the letter was returned to the Exchange marked “Moved, Not Forwardable.”
14. By letter dated August 6, 2004, sent via Federal Express and first class mail to both Henry’s last known address of record and the address listed on his Firm Form U-4 completed during February 2004, Enforcement attempted to notify Henry it was investigating the circumstances leading to his termination from the Firm.
15. The letter also requested that Henry submit to Enforcement a detailed written explanation of all material events and facts relating to his Firm termination and advised that his failure to supply the requested information might result in the institution of formal disciplinary proceedings against him based upon his failure to comply with the Exchange’s request for information pursuant to Exchange Rule 476(a)(11).
16. The first class letter sent to Henry’s last known address of record was returned to Enforcement stamped “Return to Sender. Forwarding order expired” and the Federal Express envelope sent to the same address was returned to Enforcement marked “Moved.” The Federal Express envelope sent to the address listed on Henry’s Form U-4 for the Firm was returned marked that delivery of the envelope had been attempted three times but no one was available to sign for it. The first class letter sent

to the Firm Form U-4 address was returned marked “Not Deliverable as Addressed – Unable to Forward.”

17. To date, Henry has failed to provide the Exchange with the information it requested.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Henry be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization for a period of five years following the period of statutory disqualification.

For the Hearing Panel

Milton M. Stein – Hearing Officer
Panelists:
Joseph L. Dicandio
Jeffrey L. Friedman