

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 05-19**

January 27, 2005

JOHN R. JOHNSON

FORMER NON-REGISTERED EMPLOYEE

\* \* \*

**Failed to disclose criminal history on employment application – Censure and three year bar following period of statutory disqualification.**

**Appearances:**

For the Division of Enforcement

Anthony J. Cavallaro, Esq.

Penny Rosenberg, Esq.

Richard R. Best, Esq.

For the Respondent

No Appearance

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An Exchange Hearing Panel conducted a hearing on a charge brought by the Exchange's Division of Enforcement against John R. Johnson, a former non-registered employee with H & R Block Financial Advisors, Inc. (the "Firm"). Mr. Johnson was charged with having engaged in conduct inconsistent with just and equitable principles of trade by failing to disclose, on an employment application submitted to his member firm employer, a prior felony conviction that made him subject to statutory disqualification.

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

**Background and Jurisdiction**

1. John R. Johnson ("Johnson") was born on May 26, 1965. He entered the securities industry on January 27, 2003, when he joined the Firm in Kansas City, Missouri as a non-registered operations specialist.
2. On or about April 10, 2003, Enforcement received a Form RE-3 from the Firm reporting that Johnson's employment had been terminated on April 9, 2003 for failing to provide court documentation relating to a prior conviction he did not disclose. Johnson is no longer employed in the securities industry.

3. By letter dated February 20, 2004, which he received, Enforcement notified Johnson that it was investigating his failure to disclose a prior conviction on his employment application submitted to the Firm.

#### **Failure To Disclose Prior Criminal Conviction**

4. Under Sections 3(a)(39)(F) and 15(b)(4)(B) of the Securities Exchange Act of 1934, an individual is subject to a statutory disqualification for a period of ten years upon conviction of, among other things, any felony.
5. On May 28, 2001, a criminal complaint was filed against Johnson in the Circuit Court of Jackson County, Missouri. The complaint charged him with Unlawful Use of a Weapon and Domestic Assault in the Second Degree. Subsequently, on February 4, 2002, Johnson pleaded guilty and was convicted of Domestic Assault in the Second Degree, a felony. The imposition of Johnson's sentence was later suspended and he was placed on supervised probation for three years. If Johnson successfully completes the probation, the guilty plea may be withdrawn and the official record pertaining to the case sealed.
6. Johnson became subject to statutory disqualification as a result of his plea of guilty and conviction of a felony on February 4, 2002.
7. On January 20, 2003, Johnson completed an employment application with the Firm for a position as an operations specialist. In the application, despite being asked have you ever "been convicted of (or pleaded guilty or nolo contendere to) a felony", Johnson answered "no," denying his prior plea of guilty to a felony.
8. As part of the employment application, Johnson also completed the disclosure page of the Uniform Application for Securities Industries Registration or Transfer (the "disclosure page"). Question 14(A)(1)(a) of the disclosure page asked if he had ever been convicted or pled guilty to any felony. Johnson answered "no" to this question.
9. Likewise, question 14(A)(1)(b) of the disclosure page asked Johnson if he had ever been charged with any felony. Johnson answered "no" to this question.
10. Thereafter, the Firm received notification of a Department of Justice fingerprint report disclosing Johnson's prior felony conviction.
11. By denying his prior plea of guilty on his employment application, Johnson failed to disclose to the Firm his conviction for the felony of Domestic Assault in the Second Degree that subjected him to statutory disqualification.
12. The Firm terminated Johnson's employment on April 9, 2003, for failing to provide court documentation relating to his felony conviction.

**DECISION**

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

**PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Mr. Johnson 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 three years following the period of statutory disqualification.

For the Hearing Panel

Milton M. Stein – Hearing Officer  
Panelists:  
Ellen Hausler  
Mary Lou Peters