

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-20

January 27, 2005

LATANYA A. SMITH
FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to disclose criminal history on employment application; violated Exchange Rule 477 by failing to comply with requests for written statement – Censure and four year bar.

Appearances:

For the Division of Enforcement
Anthony J. Cavallaro, Esq.
Penny Rosenberg, Esq.
Richard R. Best, Esq.

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on charges brought by the Exchange's Division of Enforcement against Latanya A. Smith, a former non-registered employee with H & R Block Financial Advisors, Inc. (the "Firm"). Ms. Smith was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade by failing to disclose, on an employment application submitted to her member firm employer, her prior criminal history which subjected her to statutory disqualification.
- II. Violated Exchange Rule 477 in that she failed to comply with the Exchange's written requests for a written statement relating to her conduct while employed by a member organization.

Ms. Smith did not submit an Answer to the Charge Memorandum, and neither Ms. Smith nor any person on her 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 Ms. Smith did not submit an Answer. The motion was granted on proof of notice to Ms. Smith and, on that basis, and on evidence presented, the Hearing Panel found as follows:

Background and Jurisdiction

1. Latanya A. Smith ("Smith") was born on February 9, 1971 and her employment in the securities industry had been solely with the Firm, where she was employed as an unregistered operations specialist from December 2, 2002 until June 17, 2003, at the

Firm's Kansas City Missouri office. Smith is no longer employed in the securities industry.

2. On or about June 17, 2003, the Exchange received a Form RE-3, from the Firm, notifying the Exchange of criminal disclosures in Smith's Department of Justice Report ("DOJ Report").
3. On or about June 20, 2003, the Exchange received another Form RE-3, from the Firm, notifying the Exchange of the termination of Smith's employment.
4. By letter dated April 19, 2004, which Smith received, Enforcement notified her that it was conducting an investigation of the possibility that she failed to provide the Firm with information concerning her criminal history.

Failure To Disclose Prior Criminal Record

5. Under Section 3(a)(39)(F) and Section 15(b)(4)(B) of the Securities and Exchange Act of 1934 (the "Exchange Act"), a person is subject to a statutory disqualification for a period of ten years upon conviction of, among other things, any felony.
6. On December 5, 1993, Smith was arrested in Overland Park, Kansas and charged with Felony Theft. On November 7, 1994, Smith pleaded guilty to and was convicted of one count of Felony Theft. She was sentenced to 24-months probation. Smith's felony conviction subjected her to statutory disqualification until November 7, 2004.
7. As part of her employment with the Firm, on or about November 14, 2002, Smith completed an employment application which contained the disclosure page of the Uniform Application for Securities Industries Registration or Transfer (the "disclosure page").
8. The employment application asked Smith whether she had ever been convicted of or pleaded guilty to a felony. Smith answered "no" to this question.
9. Question 14(A)(1)(a) of the disclosure page asked Smith if she had ever been convicted of or pled guilty to any felony. Smith answered "no" to this question.
10. Likewise, question 14(A)(1)(b) of the disclosure page asked Smith if she had ever been charged with any felony. Smith denied ever being charged with a felony.
11. On December 2, 2002, Smith began employment with the Firm.
12. On June 13, 2003, the Firm received a DOJ Report for Smith, which disclosed her criminal history.

13. By denying her prior plea of guilty on her employment application, Smith failed to disclose to the Firm her conviction for the felony of Felony Theft that subjected her to statutory disqualification.
14. The Firm discussed the incidents in the report with Smith and her employment was terminated on June 17, 2003.

Failure To Cooperate

15. On or about April 19, 2004, Enforcement sent a letter to Smith at the last known address contained in Exchange records. The letter informed her of the investigation and requested that she provide information about her criminal history. It was sent via certified mail, return receipt requested, and a copy was sent by first class mail.
16. Enforcement received the return receipt card, confirming that the letter was received at the posted address, and the copy sent by first class mail was not returned to the Exchange.
17. To date, Smith has failed to contact the Exchange or provide the information about her criminal history as requested.

DECISION

The Hearing Panel, by unanimous vote, found Ms. Smith guilty as charged.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Ms. Smith 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 four years.

For the Hearing Panel

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