

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-21

January 27, 2005

LINDA F. DUNCAN

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 Linda F. Duncan, a former non-registered employee with H & R. Block Financial Advisors, Inc. (the "Firm"). Ms. Duncan 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.
- 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 firm employer.

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

Background and Jurisdiction

1. Linda F. Duncan ("Duncan") was born on October 23, 1957 and her employment in the securities industry had been solely with the Firm, where she was employed as an unregistered operations specialist from January 20, 2003 until April 10, 2003. Duncan is no longer employed in the securities industry.

2. On or about March 21, 2003, the Exchange received a Form RE-3, from the Firm, notifying the Exchange of disclosures in Duncan's Department of Justice report ("DOJ Report"). It also stated that Duncan had been suspended from the Firm and instructed to return to the Firm with documentation regarding her criminal history.
3. On April 14, 2003, the Firm informed the Exchange that Duncan ceased employment with the Firm as of April 10, 2003, after Duncan failed to provide documentation regarding her criminal history
4. By letter dated June 12, 2003, which Duncan 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. On or about October 4, 1978, Duncan pleaded guilty to one count of misdemeanor theft in the Criminal Court of Harris County, Texas. On the same day, she was sentenced to pay a fine of \$25.
6. On or about January 2, 1997, a criminal complaint was filed in the District Court of Johnson County, Kansas, charging Duncan with one count of Unauthorized Control Over Property, a felony, and one misdemeanor count of Unauthorized Control Over Property. On June 30, 1997, Duncan pleaded guilty and was convicted of one count of Unlawfully Transporting Liquor in an Open Container, a misdemeanor offense. She was sentenced to 30 days jail, that was later suspended and an order of payment of court costs was imposed.
7. On January 3, 2003, Duncan completed an employment application with the Firm for a position as an operations specialist. In the application, she answered in the negative when asked about, among other things, prior pleas of guilty to misdemeanor charges.
8. Duncan also completed the disclosure page of the Uniform Application for Securities Registration (the "disclosure page"). Question 14(A)(1)(b) of the disclosure page asked if she had ever been charged with a felony. Duncan answered "no" to this question.
9. Further, question 14(B)(1)(b) of the disclosure page asked if she had ever been charged with a misdemeanor involving, among other things, wrongful taking of property. Duncan also answered "no" to this question.
10. Duncan began employment with the Firm on January 20, 2003.
11. By denying her prior pleas of guilty on her employment application, Duncan failed to disclose to the Firm her prior misdemeanor convictions for Theft and Unlawfully Transporting Liquor in an Open Container. Duncan also failed to disclose on the

disclosure page of her application, the prior felony charge against her of Unauthorized Control Over Property.

12. Duncan was terminated from the Firm on April 10, 2003, after she failed to produce any documentation regarding the matters reported in her DOJ Report.

Failure To Cooperate

13. On or about June 12, 2003, Enforcement sent a letter to Duncan at her last known address in Exchange records. The letter was sent via certified mail, return receipt requested, and requested information regarding Duncan's criminal history. Enforcement received the return receipt dated June 16, 2003, signed by Duncan. Duncan did not respond to the letter.
14. On February 20, 2004, Enforcement sent another letter to Duncan requesting information about her prior criminal history. The letter was also sent via certified mail, return receipt requested, and a copy was sent by first class mail. The return receipt dated February 25, 2004 was received by Enforcement, confirming delivery of the letter at the posted address, and the copy that was sent by first class mail was not returned.
15. On March 16, 2004, Enforcement received a voicemail message from Duncan confirming receipt of the above letter. In the message, she stated that she was unable to leave a telephone number and that she would not attempt to contact the Exchange again.
16. To date, Duncan has failed to provide information about her prior criminal history as requested.

DECISION

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

PENALTY

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