

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-29

March 14, 2005

THOMAS S. LOWEY
FORMER REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 408(a) in that he exercised discretionary power in the account of one or more customers without first obtaining written authorization from the customer(s); made misstatements to his member organization employer – Consent to censure and nine month bar.

Appearances:

For the Division of Enforcement
Myles L. Orosco, Esq.
Gino F. Ercolino, Esq.

For the Respondent
David M. Greenberg, Esq.

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An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Thomas S. Lowey, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith Inc. (the "Firm"). Without admitting or denying guilt, Mr. Lowey consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 408(a) in that he exercised discretionary power in the account of one or more customers of his member organization employer without first obtaining written authorization from the customer(s).
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he made misstatements to his member organization employer.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Lowey stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Lowey was born on February 26, 1956. He began his employment in the securities industry in or about January 1989 when he became employed with the Firm. Lowey was employed as a registered representative ("RR") with the Firm until February 13, 2002, when he was terminated. From March 2002

through February 2003, Lowey was employed as an RR with Firm A, and from February 2003 through August 2004, he was employed as an RR with Firm B, a non-member organization. Lowey is not presently employed in the securities industry.

2. Enforcement received a Uniform Termination Notice of Securities Industry Registration ("Form U-5") dated March 14, 2002 from the Firm indicating that Lowey was terminated after a customer alleged he exercised discretion in the customer's account. The Form U-5 also stated that three other customers indicated to the Firm that Lowey did not regularly contact them before orders were entered.
3. By letters dated November 8, 2002 and January 29, 2003, which he received, Enforcement notified Lowey that it was formally investigating his activities while employed at the Firm.

Overview

4. As set forth in detail below, during the period of approximately 1998 through February 2002, Lowey exercised numerous discretionary trades without written authorization in the accounts of eight customers and, on two occasions, made misstatements to his member organization employer with regard to such trading.

Discretionary Transactions

Customer MJ

5. From 1990 through February 2002, MJ had a number of accounts at the Firm that were serviced by Lowey.
6. Lowey did not obtain written authorization from MJ to use discretion to effect trades in the account(s).
7. During the period 2000 through February 2002 Lowey exercised discretionary transactions in MJ's account(s) without first obtaining the required written authorization from MJ.

Customer RD

8. From 2000 through February 2002, RD had an account at the Firm that was serviced by Lowey.
9. Lowey did not obtain written authorization from RD to use discretion to effect trades in the account.

10. During the period 2000 through February 2002, Lowey exercised numerous discretionary transactions in RD's account without first obtaining the required written authorization from RD.

Customer JB

11. From 2000 through February 2002, JB had a number of accounts at the Firm that were serviced by Lowey.
12. Lowey did not obtain written authorization from JB to use discretion to effect trades in the account(s).
13. During the period 2000 through February 2002, Lowey exercised numerous discretionary transactions in JB's account(s) without first obtaining the required written authorization from JB.
14. On May 24, 2002, JB filed a written complaint with the Firm alleging that Lowey did not always contact him before trading in his accounts. JB provided the Firm with a five-page list detailing approximately 75 of the transactions that he claimed were purchased without his authority over an approximate two-year period.

Customers J and SH ("the Hs")

15. From 2000 through February 2002, the Hs had a number of accounts at the Firm that were serviced by Lowey.
16. Lowey did not obtain written authorization from the Hs to use discretion to effect trades in the account(s).
17. Between 2000 and 2001, Lowey exercised numerous discretionary transactions in one of the Hs' accounts without first obtaining the required written authorization from them.
18. The Hs orally complained on October 23, 2001 that Lowey was taking improper discretion in their accounts.

Customers C and GR ("the Rs")

19. From 2000 through February 2002, the Rs had a number of accounts at the Firm that were serviced by Lowey including two retirement accounts, a joint account and a fundraising account in which they were involved.
20. Lowey did not obtain written authorization from the Rs to use discretion to effect trades in the account(s).

21. During the period 2000 through February 2002, Lowey exercised numerous discretionary transactions in the Rs' account(s) without first obtaining the required written authorization from them.
22. The Rs complained about Lowey in writing to their new RR at the Firm on June 24, 2002. They alleged improper discretionary trading and mismanagement of their personal and joint accounts and in a separate fundraising account.

Customer DM

23. From approximately 1994 through February 2002, DM had a number of accounts at the Firm that were serviced by Lowey.
24. Lowey did not obtain written authorization from DM to use discretion to effect trades in the account(s).
25. During the period 2000 through February 2002, Lowey exercised numerous discretionary transactions in DM's account(s) without first obtaining the required written authorization from DM.

Customer ML

26. From approximately 1994 through the summer of 2000, ML had at least two accounts at the Firm that were serviced by Lowey.
27. Lowey did not obtain written authorization from ML to use discretion to effect trades in the account(s).
28. During approximately 1994 through August 2000, Lowey exercised numerous discretionary transactions in ML's account(s) without first obtaining the required written authorization from ML who had been in the Navy and out of contact during that period.

Customers WG and CL ("G and L")

29. From February 2001 through February 2002, G and L had at least three accounts at the Firm that were serviced by Lowey including two retirement accounts and a joint account.
30. Lowey did not obtain written authorization from G or L to use discretion to effect trades in the account(s).
31. During the period February 2001 through February 2002, Lowey exercised discretionary transactions in one of G and L's accounts without first obtaining the required written authorization from G or L.

32. On March 20, 2002, G orally complained that Lowey was taking improper discretion in G and L's account.

Misstatements to the Firm

33. In August 2000, the Firm questioned Lowey about trades that occurred in ML's account while she was in the Navy and out of contact with Lowey. Lowey admitted to the Firm that he made such trades without proper authorization; however, he denied making any such trades in the accounts of any other customers when asked by his supervisors.
34. During testimony before the Exchange, however, Lowey admitted that his response to the Firm at that time was not truthful.
35. In February 2002, Lowey was questioned by the Firm about his trading in RD's account as well as RD's statement to the Firm that he normally did not get a call from Lowey before trades were made in his account. Lowey told his supervisors that he contacted RD before every trade.
36. During testimony before the Exchange, however, Lowey admitted that his statement to the Firm was not truthful.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Lowey guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Lowey of a censure and a nine month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
William Hohausser
Barry S. Zucker