



NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-30

March 14, 2005

ARLEN JOLFAIE SOOKIAS

FORMER NON-REGISTERED EMPLOYEE

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**Engaged in conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 476(a)(6) by failing to disclose his criminal history, including a conviction that subjected him to a statutory disqualification, on an employment application submitted to his member organization employer; violated Exchange Rule 351(b) and caused a violation of Exchange Rule 351(a) by failing to promptly report his criminal history, including a conviction that subjected him to a statutory disqualification; and caused a violation of Exchange Rule 346(f) by failing to disclose his criminal history – Consent to censure and eight year bar.**

**Appearances:**

For the Division of Enforcement

Myles L. Orosco, Esq.

Howard A. Grinsberg, Esq.

For the Respondent

Robert Heim, 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 Arlen Jolfaie Sookias, a former non-registered employee with Morgan Stanley DW Inc. (the “Firm”). Without admitting or denying guilt, Mr. Sookias consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 476(a)(6) by failing to disclose his criminal history, including a conviction that subjected him to a statutory disqualification, on an employment application submitted to his member organization employer.
- II. Violated Exchange Rule 351(b) by failing to promptly report his criminal history, including a conviction that subjected him to a statutory disqualification, to his member organization employer.
- III. Caused a violation of Exchange Rule 351(a) by failing to promptly report his criminal history, including a conviction that subjected him to a statutory disqualification, to his member organization employer.
- IV. Caused a violation of Exchange Rule 346(f) by failing to disclose his criminal history, including a conviction that subjected him to a statutory disqualification, to his member organization employer.

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

### **Background and Jurisdiction**

1. Sookias was born on November 10, 1970. He entered the securities industry on November 24, 1998, as a non-registered sales assistant with the Firm. The Firm determined that Sookias' criminal history subjected him to a statutory disqualification, and the Firm and Sookias mutually agreed to terminate his employment on September 24, 2002. Sookias worked at Firm A, a non-member firm, from May 12 until he terminated his employment on June 16, 2003.
2. By letter dated June 25, 2003, and by follow-up letter dated July 18, 2003, Enforcement notified Sookias that it was formally investigating allegations that his employment was terminated due to his criminal history. Those letters were received by Sookias, who submitted a written response dated August 15, 2003.

### **Overview**

3. Sookias failed to disclose, on an employment application submitted to his member organization employer, his criminal history that included a conviction that subjected him to a statutory disqualification. In addition, Sookias failed to promptly disclose this criminal history after he commenced employment with the Firm.

### **Criminal History**

4. On May 31, 1995, before the Municipal Court of the Pasadena Judicial District, in Los Angeles County, California, Sookias was charged with three felony offenses: "Injure/Destroy Insured Property" in violation of Section 548 of the California Penal Code ("Cal. P.C."), "Present False/Fraud Claim Payment" in violation of Section 550(a)(1) of the Cal. P.C., and "Insurance-Written False Claim" in violation of Section 550(a)(5) of the Cal. P.C., in connection with his filing of a false insurance claim and improperly receiving payment of approximately \$52,000.
5. On April 15, 1996, Sookias pled nolo contendere and was convicted of the misdemeanor offense of "Injure/Destroy Insured Property." The court suspended the imposition of the sentence and placed Sookias on summary probation for three years and required him to perform 200 hours of community service, pay restitution in the amount of \$52,000, and obey all laws and orders of the court. On April 18, 1997, the court granted Sookias' motion under Section 1203.4 of the Cal. P.C. and ordered that the plea, verdict, or finding of guilt be set aside and vacated, that a plea of not guilty be entered, and that the complaint be dismissed.
6. On May 25, 1999, before the Superior Court of the Northeast Judicial District, in Los Angeles County, California, Sookias was charged with seven felony offenses: two counts of "Grand Theft of Credit Card" in violation of Section 484e(e) of the Cal. P.C., two counts of "Burglary" in violation of Section 459 of the Cal. P.C., one count of "Forge

Name on Credit Card” in violation of Section 484f(b) of the Cal. P.C., one count of “Acqustn of Access Card-Defraud,” in violation of Section 484e(d) of the Cal. P.C., and one count of “Malicious Computer Credit System” in violation of Section 502(c) of the Cal. P.C., in connection with his falsely disputing a charge on his credit card and receiving funds credited to his account.\*

7. On August 9, 1999, Sookias pled nolo contendere and was convicted of the misdemeanor of “Grand Theft of Credit Card.” On August 11, 2000, the court suspended the imposition of sentence, placed Sookias on summary probation for two years, required him to perform 150 hours of community service and pay restitution in the amount of \$2,781.34, and prohibited him from possessing any credit cards not in his name.\*\*
8. On September 13, 2002, the court granted Sookias’ motion under Section 1203.4 and ordered that the plea, verdict, or finding of guilt be set aside and vacated, that a plea of not guilty be entered, and that the complaint be dismissed.

### **Failure to Disclose Criminal History**

9. On or about October 9, 1998, Sookias completed and signed an application for employment with the Firm. Question 1, in the “Miscellaneous Data” section of the application, stated: “Have you ever been: convicted, or pleaded no contest to a felony of any kind, or of a misdemeanor involving embezzlement, theft, counterfeiting, forgery, fraud, false statements, misappropriation of funds, abuse or misuse of a fiduciary relationship, or a purchase or sale of any security arising out of the conduct of a broker-dealer?”
10. Sookias responded “No” to this question. Because on April 15, 1996, Sookias was convicted of a misdemeanor offense involving his filing of a false insurance claim and improperly receiving funds,\*\*\* this question required a “Yes” answer.
11. Question 1, in the “Supplemental Information” section of the employment application stated: “Have you...ever been charged with any felony or charged with a misdemeanor specified in Miscellaneous Data, question 3?” Sookias responded “No” to this question.

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\* Addendum added on July 5, 2007: The California Superior Court Information, which contains the formal charges, states that Respondent was charged with two counts of Acquisition of Access Card Account Information, two counts of Second Degree Commercial Burglary, one count of Fraudulent Use of Another’s Access Card, one count of Excess Acquisition of Access Cards, and one count of Computer Access and Fraud.

\*\* Addendum added on July 5, 2007: Respondent pled nolo contendere to a violation of Section 484e(e) of the California Penal Code, which was described as “Acquisition of Access Card Account Information” in the California Superior Court Information.

\*\*\* Addendum added on July 5, 2007: On April 15, 1996, Respondent was convicted of a misdemeanor in violation of Section 548 of the California Penal Code, described as “Injure/Destroy Insured Property” in the computer print-out of the court proceedings. Two other counts, one described as “Present False/Fraud Claim Paym.” and another described as “Insurance Written False Claim,” were dismissed.

Because Sookias was charged with three felony offenses on May 31, 1995, this question required a “Yes” answer.

**Statutory Disqualification and Failure to Promptly Report Criminal History**

12. Sections 3(a)(39) and 15(b)(4)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) provide that an individual is subject to a statutory disqualification if he or she is “convicted” within the past ten years of any felony and certain specified misdemeanors, including misdemeanors “involving...the making of a false report...larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity.”
13. Sookias was subject to a statutory disqualification for his April 15, 1996 and August 9, 1999 misdemeanor convictions, which involved the filing of a false report, theft, and/or the fraudulent conversion of funds. \*\*\*\* Sookias was subject to a statutory disqualification under the Exchange Act even though these convictions were subsequently set aside and vacated under California law. To ensure compliance with Exchange rules and the federal securities laws, Sookias was required to disclose his criminal history to the Firm.
14. Exchange Rule 351(a) requires member organizations to promptly report to the Exchange if an employee “is arrested, arraigned, indicted or convicted of, or pleads guilty to, pleads no contest to, any felony” or any misdemeanor specified in Section 15(b)(4)(B) of the Exchange Act or if an employee is subject to a statutory disqualification. Exchange Rule 351(b) requires an employee to promptly report the occurrence of those events to his or her member organization employer.
15. Exchange Rule 346(f) prohibits member organizations from employing individuals who are known, or in the exercise of reasonable care should be known, to be subject to a statutory disqualification, unless approval is received from the Exchange.
16. After Sookias was employed at the Firm, he violated Exchange Rule 351(b) and caused a violation of Exchange Rules 351(a) and 346(f) by failing to report facts relating to his April 15, 1996 conviction to the Firm.

**DECISION**

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

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\*\*\*\* Addendum added on July 5, 2007: Respondent’s misdemeanor convictions on April 15, 1996 and August 9, 1999 involved, respectively, injury or destruction of insured property and the acquisition of access card account information. Respondent was not convicted on April 15, 1996 of a misdemeanor referred to as “Present False/Fraud Claim Paym” or one referred to as “Insurance Written False Claim,” as those two charges were dismissed on that date, as noted above.

**PENALTY**

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

For the Hearing Panel

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