

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-32

April 4, 2005

NOEL PURIEFOY BRINKLEY

FORMER REGISTERED REPRESENTATIVE

Engaged in conduct inconsistent with just and equitable principles of trade in that he attempted to misappropriate funds from a customer of his member firm employer and violated Exchange Rule 477 by failing to comply with a request by the Exchange to provide information – Consent to censure and a permanent bar.

Appearances:

For the Division of Enforcement
Julie Han Broderick, Esq.
Adeline Liu, Esq.

For the Respondent
No Appearance

* * *

An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement ("Enforcement") and Noel Puriefoy Brinkley ("Respondent"), a former registered representative with A.G. Edwards (the "Firm"). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he attempted to misappropriate funds from a customer of his member firm employer.
- II. Violated Exchange Rule 477 by failing to comply with a request by the Exchange to provide information.

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

Background and Jurisdiction

1. Respondent was born in July 1969. He has been employed in the securities industry since 2000, and began work at the Firm in June 2002.
2. Respondent is not currently employed in the securities industry.
3. By Form RE-3 from the Firm dated August 6, 2003, Enforcement received notice that the Firm placed Respondent on compliance leave of absence effective August 1, 2003. By Uniform Notice of Termination ("Form U-5") from the Firm dated

September 5, 2003, Enforcement received notice that following an investigation, the Firm terminated Respondent for attempting to misappropriate assets from a client account.

4. By letter dated May 11, 2004, which he received, Enforcement notified Respondent of its investigation and requested his written response to the allegations.

Overview

5. In connection with his position as a registered representative at the Firm's Boston Back Bay office (the "Boston Office"), Respondent attempted to misappropriate \$5,600 from a customer account.
6. Respondent failed to cooperate with Enforcement's investigation regarding his attempted misappropriation by failing to provide information in response to Enforcement's request.

Attempted Misappropriation

7. Beginning in or about June 2002, Respondent was employed in the Firm's Boston Office as a registered representative who serviced customer accounts.
8. On or about July 18, 2003, Respondent called a financial assistant working in the Firm's Boston Office and purported to be a particular customer of the Firm. He stated that he was sending a letter to the Boston Office instructing that two checks be issued from his account at the Firm.
9. On or about July 19, 2003, Respondent sent the Firm a letter (the July 19th Letter) purportedly from and signed by the customer, requesting the Firm to issue two checks for \$2,800 payable to a third party, and indicated to whom the checks should be sent.
10. On or about July 23, 2003, the Firm issued the two checks against the customer's account and mailed them as directed.
11. The signature on the July 19th Letter was not the customer's signature, and that customer never authorized the transfer of assets out of his account at the Firm.
12. On or about July 27, 2003, Respondent called the customer and identified himself as someone from the Firm's call center. During this telephone call, Respondent told the customer that the Firm had mistakenly issued two checks from his account, but had caught the mistake and would correct the error.
13. On July 28, 2003, the customer called his financial consultant at the Firm to inform her of the telephone call that he had received the previous day from the Firm's call center. He informed the Firm that he did not authorize the transfer of funds from his account to the third party.

14. On July 31, 2003, the Firm contacted the person to whom the checks were sent, who reported that Respondent had provided him with the checks in question. According to that person, the checks represented the first and last month's rent for an apartment that Respondent wanted to rent. The Firm stopped payment on the two checks, and no money was paid from the customer's account.
15. On August 1, 2003, in a meeting with the Firm's counsel and the branch office manager and assistant branch office manager of the Boston Back Bay Office, Respondent admitted that it was he who had telephoned the financial assistant at the Firm claiming to be the customer, written the July 19th Letter, and called the customer about the supposed error in his account.
16. Upon completion of its internal investigation, the Firm terminated Respondent's employment.

Failure to Cooperate

17. By letter dated May 11, 2004 (the May 11th Letter"), which he received, Enforcement notified Respondent of its investigation and requested a detailed written explanation of the events reported by the Firm on the Form RE-3. In the May 11th Letter, Enforcement informed Respondent that his failure to cooperate with the Exchange's request would constitute a violation of Exchange Rule 477 and might result in the institution of a formal disciplinary proceeding against him.
18. On May 19, 2004, Respondent called Enforcement indicating that he had received the letter and requested a short extension of time until May 26, 2004 to submit a written explanation, which was granted. Respondent did not submit a detailed written explanation to Enforcement.
19. By letter dated June 3, 2004, which he received, Enforcement informed Respondent that his written statement was overdue and requested that he provide Enforcement with a telephone number at which he could be reached. Respondent did not provide the requested information to Enforcement.
20. By letter dated June 16, 2004, which he received, Enforcement notified Respondent that he was in non-compliance with Enforcement's request for information. Enforcement also provided an additional opportunity for Respondent to submit the required written explanation, stating that failure to do so by June 30, 2004 may result in the institution of formal disciplinary proceedings against him based upon his failure to cooperate.
21. On July 12, 2004, Respondent called Enforcement and stated that he had received Enforcement's letters. Enforcement informed Respondent that his written statement was still overdue. Respondent stated that he had prepared a statement but had not mailed it to Enforcement. Respondent indicated that he would send a written statement to Enforcement no later than July 13, 2004.

22. On or about July 29, 2004, Enforcement received a letter from Respondent in which he stated that he wanted to refrain from making any statements to Enforcement until such time that he retained legal representation. Respondent made no representation as to when he would obtain counsel and failed to provide his updated address to Enforcement in response to its request for that information.
23. To date, Respondent has failed to provide information as requested by Enforcement.
24. On January 6, 2005, a Charge Memorandum was issued against Respondent relating to the matters described above.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent 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 the Respondent of a censure and a permanent 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

Peggy Kuo – Chief Hearing Officer
Panelists:
Sarah Gill
Robert F. Schnell