

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-34

April 4, 2005

DARLA ANN CALLIHAN

FORMER NON-REGISTERED EMPLOYEE

\* \* \*

**Engaged in conduct inconsistent with just and equitable principles of trade in that she failed to disclose on an employment application submitted to her member organization employer a prior criminal conviction; violated Exchange Rule 477, by failing to comply with one or more written requests by the Exchange for information concerning one or more matters that occurred prior to the termination of her status as a non-registered employee of a member organization – Censure and a four year bar.**

**Appearances:**

For the Division of Enforcement  
Robert J. Goerke, Esq.  
Joseph Theis

For the Respondent  
No Appearance

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An Exchange Hearing Panel conducted a hearing on charges brought by the Division of Enforcement (“Enforcement”) of the New York Stock Exchange, Inc. (the “Exchange”) against Darla Ann Callihan (“Respondent”), a former non-registered representative with Edward D. Jones & Co. (the “Firm”). Respondent was charged with having:

- A. Engaged in conduct inconsistent with just and equitable principles of trade in that she failed to disclose on an employment application submitted to her member organization employer a prior criminal conviction.
- B. Violated Exchange Rule 477, by failing to comply with one or more written requests by the Exchange for information concerning one or more matters that occurred prior to the termination of her status as a non-registered employee of a member organization.

Respondent did not submit an Answer to the Charge Memorandum. Neither she nor any person on her behalf appeared at the hearing in this matter.

At the hearing, Enforcement presented evidence that a copy of the Charge Memorandum had been sent to Respondent’s last known address via certified mail and that it was returned by the U.S. Postal Service as unclaimed after three attempts at delivery. Enforcement also represented that a copy of the Charge Memorandum which was sent via first class mail to Respondent was not returned by the U.S. Postal Service. Enforcement then moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since Respondent failed to file an Answer. The motion was granted, and the Hearing Panel found as follows:

### **Background and Jurisdiction**

1. Respondent was born in May 1975. In August 2003, she joined the Firm as a non-registered branch office administrator. Respondent worked in that capacity until the Firm terminated her employment in October 2003. Since that time, Respondent has not been employed in the securities industry.
2. On October 29, 2003 the Exchange received a Form RE-3 from the Firm reporting that it had terminated Respondent's employment on October 28, 2003 after it determined Respondent provided inaccurate information during the hiring process.
3. By letter dated November 24, 2003 (the "November 24<sup>th</sup> Letter"), Enforcement notified Respondent that it was conducting an inquiry of the circumstances surrounding the termination of her employment with the Firm. Enforcement requested that Respondent provide a written detailed explanation with respect to the information reported by the Firm on the Form RE-3.

### **Misstatement on Employment Application**

4. On August 9, 2003, Respondent completed and signed a Firm employment application seeking to obtain a position as a branch office administrator. In completing her employment application, Respondent answered "No" to the question that asked whether she had ever been convicted or pled guilty or no contest to any felony or misdemeanor other than a minor traffic offense.
5. Subsequent to the Firm hiring Respondent, it received a Notice of Receipt of Criminal History Record Information from the Exchange disclosing Respondent's June 2002 arrest for felony theft.
6. Respondent pled no contest to the charge of misdemeanor attempted theft and was found guilty on August 30, 2002. Respondent was sentenced to a fine of \$250 (plus court costs) and a 90 day jail sentence (80 days suspended if she did not reappear in court and if she made restitution). According to the Court's Judgment Entry, Respondent made restitution in full.

### **Failure to Cooperate**

7. The November 24<sup>th</sup> Letter, which was sent by first class mail to Respondent's last home address known to the Exchange, informed Respondent that her failure to comply with Enforcement's request by December 24, 2003 may subject her to appropriate disciplinary action pursuant to Exchange rules.
8. Respondent did not provide Enforcement with a response to the November 24<sup>th</sup> Letter. Moreover, the November 24<sup>th</sup> Letter was not returned to Enforcement by the United States postal authorities.
9. By letter dated February 4, 2004 (the "February 4<sup>th</sup> Letter"), Enforcement renewed its request that Respondent provide the aforementioned written detailed explanation.

10. The February 4<sup>th</sup> Letter, which was sent by certified mail, return receipt requested, to Respondent's last home address known to the Exchange, informed Respondent that her failure to comply with Enforcement's request by February 18, 2004 may subject her to appropriate disciplinary action pursuant to Exchange rules.
11. The February 4<sup>th</sup> Letter was returned to Enforcement by the United States postal authorities marked "Unclaimed."
12. By letter dated July 15, 2004 (the "July 15th Letter"), Enforcement gave Respondent notice under Exchange Rule 477 that the Exchange was investigating, among other things, the possibility that she provided the Firm with inaccurate information concerning her criminal background during the hiring process. Enforcement again requested that Respondent provide a written detailed explanation of the matter.
13. The July 15th Letter, which was sent by certified mail, return receipt requested, to Respondent's last home address known to the Exchange, informed Respondent that her failure to comply with Enforcement's request by August 4, 2004 may result in the institution of formal disciplinary proceedings. The certified July 15th Letter was returned to Enforcement by the United States postal authorities marked "Unclaimed." A copy of the July 15th Letter, which was sent to Respondent's last home address known to the Exchange via first class mail, was not returned to Enforcement by the United States postal authorities.
14. To date, Respondent has not provided the written detailed explanation requested by Enforcement or otherwise contacted Enforcement.

### **DECISION**

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

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured and barred for four years 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