

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-39

April 11, 2005

NICHOLAS MICHAEL CLEMENTS
FORMER REGISTERED REPRESENTATIVE

* * *

Failed to disclose his prior criminal history on his employment application including pending felony charges for which he was later convicted and made him subject to a statutory disqualification, caused a violation of Exchange Rule 345.12 by submitting a Uniform Application for Securities Registration and Transfer (Form U-4) containing false information, including the omission of pending felony charges for which he was later convicted and made him subject to statutory disqualification, violated Exchange Rule 476(a)(10) by making a misstatement and/or omission of fact on his application for registration filed with the Exchange, including the omission of pending felony charges for which he was later convicted and made him subject to statutory disqualification – Censure and a twelve year bar.

Appearances:

For the Division of Enforcement
James D. O'Donnell, Esq.
Josefina Martinez, Esq.

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 Nicholas Michael Clements (“Respondent”), a former registered representative with Morgan Stanley DW, Inc. (the “Firm”). Respondent was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he failed to disclose his prior criminal history on his employment application with a member-firm employer, including pending felony charges for which he was later convicted and made him subject to a statutory disqualification.
- II. Caused a violation of Exchange Rule 345.12 by submitting a Uniform Application for Securities Registration and Transfer (Form U-4) containing false information, including the omission of pending felony charges for which he was later convicted and made him subject to statutory disqualification.
- III. Violated Exchange Rule 476(a)(10) by making a misstatement and/or omission of fact on his application for registration filed with the Exchange, including the omission

of pending felony charges for which he was later convicted and made him subject to statutory disqualification.

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

At the hearing, Enforcement moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since the Respondent had failed to file an Answer. Enforcement represented that the certified copy of the Charge Memorandum was signed for at the Respondent's last known address on Exchange records. Copies sent by Federal Express and first class mail were not returned. The motion was granted and the Hearing Panel found as follows:

Background and Jurisdiction

1. Respondent was born in January 1979. He entered the securities industry in June 2000 as a registered representative ("RR") with Firm A, a non-member firm, and remained there until January 2001. He then commenced employment with Firm B, where he remained until July 2003. In July 2003, Respondent was hired by the Firm as an RR in its Scottsdale, Arizona branch office and remained there until his employment was terminated in September 2003. Since that time, he has not been employed in the securities industry in a capacity known to the Exchange.
2. On or about August 26, 2003, the Exchange received from the Firm a Form RE-3 (Submission of Required Information Pertaining to . . . Non-Registered Employees), dated August 25, 2003, reporting two felony charges pending against the Respondent in Northeast Phoenix Justice Court (the "Form RE-3"). On or about October 1, 2003, the Exchange received from the Firm an Amended Form U-5 (Uniform Termination Notice for Securities Industry Registration), dated October 1, 2003, (the "Amended Form U-5") reporting Respondent's conviction of the two felony charges.
3. By letter dated February 3, 2004, which he received, Enforcement requested a written explanation from the Respondent concerning the matters reported in the Form RE-3 and the Amended Form U-5. Thereafter, he provided a written statement to Enforcement.

Failure to Disclose Criminal History

4. On or about June 27, 2001, in Phoenix, Arizona, Respondent was arrested and charged with two counts of misdemeanor Driving Under the Influence and one count of Failing to Produce Proof of Financial Responsibility. On or about October 4, 2001, he pleaded guilty to the counts relating to Driving Under the Influence (the "Misdemeanor Convictions") and the remaining count was dismissed without prejudice.
5. On or about June 28, 2001, in Scottsdale, Arizona, Respondent was arrested and charged with misdemeanor Disorderly Conduct (the "Disorderly Conduct Charge").

The charge against him was dismissed on February 5, 2002, upon his successful completion of a court-monitored program.

6. On or about October 10, 2001, in Phoenix, Arizona, Respondent was arrested and charged with two counts of misdemeanor Driving Under the Influence. By a complaint filed in Northeast Phoenix Justice Court on February 28, 2002, the charges were elevated to two class 4 felony counts of Aggravated Driving While Under the Influence of Intoxicating Liquor While Driver's License or Privilege to Drive was Suspended and Aggravated Driving While there was an Alcohol Concentration of 0.08 or More (the "Felony Charges").
7. On or about February 7, 2003, he was notified by a representative of the Maricopa County Sheriff qualified to serve a subpoena, that the Felony Charges had been filed against him.
8. On or about June 17, 2003, in the process of seeking employment with the Firm, he completed and signed a Background Information/Authorization Form (the "Background Information Form").
9. One question on the Background Information Form asked, "Have you ever been charged with or convicted of a felony or misdemeanor?" Respondent answered "No," which was not true.
10. Respondent failed to disclose on the Background Information Form his misdemeanor charges that resulted in the Misdemeanor Convictions, the Disorderly Conduct misdemeanor charge, and the pending Felony Charges.
11. On or about June 23, 2003, he completed and signed an Application for Sales Employment (the "Employment Application") with the Firm.
12. One page of the Employment Application asked, "Have you or an organization over which you exercised management or policy control ever been charged with any felony . . .?" he answered "No," which was not true.
13. Respondent failed to disclose on the Employment Application his pending Felony Charges.
14. He commenced employment with the Firm on or about July 7, 2003. Thereafter, he completed a Uniform Application for Securities Registration and Transfer (Form U-4), which the Firm submitted to the Exchange on or about July 9, 2003.
15. On the Form U-4, Question 14A(1)(b) asked, "Have you ever been charged with any felony?" Respondent answered "No," which was not true.
16. He failed to disclose on the Form U-4 his pending Felony Charges.

17. On or about August 27, 2003, he was convicted of the Felony Charges after a jury trial (the “Felony Convictions”).
18. By virtue of the Felony Convictions, Respondent is a statutorily disqualified person under Sections 3(a)(39)(F) and 15(b)(4)(B) of the Securities Exchange Act of 1934.
19. As a result of the Felony Convictions in August 2003, he is subject to a statutory disqualification until August 2013.

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 twelve 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

Vincent F. Murphy – Hearing Officer
Panelists:
David M. Tarrío
Peter Tuzzo