

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-41

April 11, 2005

MARLEY KAY BURCHFIELD

FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated funds belonging to customers and violated Exchange Rule 477 in that she failed to comply with a request by the Exchange to appear and testify – Censure and a permanent bar.

Appearances:

For the Division of Enforcement

Myles L. Orosco, Esq.

Howard A. Grinsberg, Esq.

For the Respondent

No Appearance

* * *

An Exchange Hearing Panel conducted a hearing on a charge brought by the Division of Enforcement (“Enforcement”) of the New York Stock Exchange, Inc. (the “Exchange”) against Marley Kay Burchfield (“Respondent”), a former registered representative with Morgan Keegan & Company, Inc. (the “Firm”). Respondent was charged with having:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that she misappropriated funds belonging to customers of her member organization.
- II. Violated Exchange Rule 477 in that she failed to comply with a request by the Exchange to appear and testify in connection with an Exchange investigation regarding matters occurring prior to the termination of her employment with 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 moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since Respondent had failed to file an Answer. Enforcement represented that the United States Postal Service made three attempts to deliver the certified copy of the Charge Memorandum before it was returned to the Exchange. The copy sent by first class mail was not returned. The motion was granted and the Hearing Panel found as follows:

Background and Jurisdiction

1. Respondent was born on May 8, 1968. She entered the securities industry in 1985 as a sales assistant with Firm A where she remained until 1997 when she joined Firm B as a branch manager's administrative assistant. She remained with Firm B until June 2001 when she joined the Firm as a registered representative.
2. On May 17, 2004, the Firm filed an Amended Uniform Termination Notice for Securities Industry Registration ("Form U-5A") with the Exchange stating that after Respondent had been terminated on April 19, 2004, the Firm discovered that she had misappropriated funds from three customers.
3. Respondent has not been employed in the securities industry since April 19, 2004.
4. By letter dated August 16, 2004, sent to her by certified mail, return receipt requested and a copy by first class mail, the Exchange notified her that it was investigating the aforementioned matter and requested her written explanation.

Misappropriation of Customer Funds

5. After Respondent's termination in April 2004, the Firm conducted a review of all customer checks within the last six months prepared at the Houston branch office and delivered to the Firm's Palestine, Texas satellite office where she worked, as opposed to being mailed directly to the customer payee. The payees in question were customers whose accounts were serviced by Respondent.
6. She misappropriated funds from the following three Firm customers: J and SM (the "Ms"), JN ("N") and DW ("W").
7. Respondent caused a check dated February 23, 2004 in the amount of \$23,000 to be issued from the Ms' account without their knowledge or authorization.
8. Respondent arranged to have the check delivered to her attention at the Palestine office, endorsed or caused to be endorsed, the Ms' names on the check and converted the funds to Respondent's own use and benefit without the knowledge or authorization of the Ms.
9. On March 9, 2004, Respondent caused a wire transfer in the amount of \$30,000 to be issued from N's securities account to the bank account of Respondent's friend without N's knowledge or authorization.
10. Respondent caused a check dated March 26, 2004 in the amount of \$5,700 to be issued from W's account without his knowledge or authorization.
11. She arranged to have the check delivered to her attention at the Palestine office, endorsed or caused to be endorsed, W's name on the check and converted the funds to her own use and benefit without the knowledge or authorization of W.

12. The Firm reimbursed all three customers for the funds Respondent removed from their accounts without their knowledge or authorization.

Failure to Cooperate

13. The copy of the Exchange's letter of August 16, 2004 sent to Respondent by certified mail was returned to the Exchange by the postal authorities indicating that the letter was "unclaimed" despite three delivery attempts. The copy of the August 16, 2004 letter sent to her by first class mail was not returned to the Exchange.
14. She failed to respond to the aforementioned letter from Enforcement.
15. By letter dated September 20, 2004, sent to Respondent by certified mail, return receipt requested and a copy by first class mail, the Exchange notified her that since she had failed to respond to its letter dated August 16, 2004, she was now required to appear and give testimony on October 26, 2004 at 10:00 a.m. at the offices of the Division of Enforcement. The letter advised her that if her appearance on that date was inconvenient she should call the Exchange upon the receipt of the letter to schedule the interview at a mutually convenient time.
16. The copy of the Exchange's letter of September 20, 2004 sent to her by certified mail was returned to the Exchange by the postal authorities indicating that the letter was "unclaimed" despite three delivery attempts. The copy of the September 20, 2004 letter sent to her by first class mail was not returned to the Exchange.
17. She did not appear and testify as requested nor did she contact the Exchange to reschedule the interview.

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 permanently barred 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