

NEW YORK STOCK EXCHANGE INC.

EXCHANGE HEARING PANEL DECISION 05-43

April 14, 2005

GLENN ALBERT HAMLER
REGISTERED REPRESENTATIVE

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Violated Exchange Rule 408(a) by accepting orders for an account of a customer of his member firm employer from a person other than the customer without first obtaining written authorization of the customer; facilitated the issuance of checks against the account of a customer of his member firm employer upon the request of a person other than the customer; failed to follow a customer's instructions – Consent to censure and one month suspension.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Catherine P. Dawson, Esq.
Mr. Scott Minitier

For the Respondent
Andrew W. Sidman, Esq.

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A Hearing Panel of the New York Stock Exchange, Inc. ("Exchange") met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement ("Enforcement") and Glenn Albert Hamler ("Respondent"), a registered representative with Advest, Inc. (the "Firm"). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 408(a) in that he accepted orders for an account of a customer of his member organization employer from a person other than the customer without first obtaining written authorization of the customer.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he:
 - A. Facilitated the issuance of checks against the account of a customer of his member organization employer upon the request of a person other than the customer.
 - B. Failed to follow a customer's instructions.

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

Background and Jurisdiction

1. Respondent was born in November 1954. He entered the securities industry in September 1987. On July 16, 1992, Respondent began his employment with the Firm, his current employer.
2. At all times pertinent herein, Respondent was employed as a registered representative at the Firm's New London, CT branch office.
3. On May 1, 2003, Enforcement received a Form RE-3, Submission of Required Information Pertaining To Members, Member Organizations, Allied Members, Registered and Non-Registered Employees ("Form RE-3") from the Firm reporting that Respondent had accepted instructions to liquidate positions in a custodial account from the husband of the customer custodian ("Customer 1") without the customer's written authorization.
4. During the course of Enforcement's investigation, the Firm advised the Exchange of a complaint by another customer ("Customer 2") that Respondent had failed to follow his instructions.
5. By letter dated August 22, 2003, which Respondent received, Enforcement advised him that it was investigating the two matters.

Overview

6. In March 2003, Respondent liquidated positions in a custodial account and caused the issuance of checks drawn on the account, based on the instructions of a person other than the customer, without first obtaining the written authorization of the customer. In addition, in June 2002, Respondent failed to follow a customer's instructions to liquidate an estate account.

Accepting Orders and Causing Checks to be Delivered Without Proper Authorization

7. Exchange Rule 408(a) states, in relevant part, "*No member, allied member or employee of a member organization shall ... accept orders for an account from a person other than the customer without first obtaining written authorization of the customer.*"
8. In September 1999, Customer 1 and her husband transferred their son's custodial account, a joint account, and two retirement accounts to the Firm. Customer 1 was the custodian of the son's account.
9. In August 2002, after the registered representative servicing the accounts left the Firm, Customer 1's accounts were transferred to Respondent. From August 2002 to March 2003, the accounts were relatively inactive.

10. As of February 2003, Customer 1's son's custodial account portfolio contained four positions: two U.S. Treasury STRIPS due in 2005 and 2006 respectively, and shares in a Euro Pacific Growth Fund and a Capital Income Builder Fund, for a total account value of \$44,443.
11. On or around March 6, 2003, Customer 1's husband instructed Respondent to sell the STRIPS and the Euro Pacific Growth Fund in the son's account, and prepare a check for customer pick-up.
12. Respondent effected the sales and instructed his sales assistant to complete a check request.
13. Respondent did not receive Customer 1's authorization for these transactions, as custodian of the account.
14. Respondent also never sought or obtained Customer 1's written or oral authorization for her husband to place orders or give instructions for the son's custodial account.
15. In accordance with Respondent's request, the Firm issued two checks drawn on the son's account and made payable to Customer 1, the custodian, for customer pick-up.
16. On or around March 11, 2003, Customer 1's husband went to the branch office where Respondent worked, signed Customer 1's name on the disbursement log and picked up checks amounting to \$34,114,84.
17. In April 2003, upon receipt of the son's account statement, Customer 1 contacted Respondent and advised him that the sales in the son's account were unauthorized, and that her husband was not living at home and had not given the son the sales proceeds.
18. The Firm reimbursed the customer the full amount disbursed, half of which Respondent agreed to contribute.

Failure to Follow a Customer's Instruction

19. By letter dated June 5, 2002, "Customer 2, the executor of his brother's estate, advised Respondent to liquidate the estate account on June 17, 2002, and to issue a check as the estate planned to make a final distribution of assets.
20. Respondent failed to follow the customer's instructions to liquidate the estate account on June 17, 2002.
21. When the customer complained about the delay, Respondent liquidated the account in transactions effected June 27 through July 2, 2002.

22. The Firm reimbursed the customer for the loss that had occurred as a result of Respondent's conduct. Respondent contributed the entire amount of the settlement, \$2,279.

DISCUSSION

In response to a question from the Panel at the hearing with regard to paragraph 17, Enforcement stated that the husband signed Customer 1's name on the disbursement log in Respondent's presence.

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 Respondent of a censure and a one month suspension 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:
Tadeusz A. Kondratowicz
Anthony J. Raimondi