

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-44

April 14, 2005

WILLIAM M. SCOTT
FORMER BRANCH OFFICE MANAGER

* * *

Violated Exchange Rule 342(a) by failing to reasonably discharge his duties and obligations in connection with his supervisory responsibilities as branch office and complex manager; made misstatements to his member organization employer in violation of Exchange Rule 476(a)(6); violated Exchange Rule 476(a)(4) by making material misstatements to the Exchange – Consent to censure and eight month bar and requirement to retake the Series 9 and 10 examinations.

Appearances:

For the Division of Enforcement
Suzanne R. Elovic, Esq.
Julie R. Vasady-Kovacs, Esq.

For Respondent
James Hartke, Esq.

* * *

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 William M. Scott (“Respondent”), a former branch office manager with Prudential Securities, Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 342(a) by failing to reasonably discharge his duties and obligations in connection with his supervisory responsibilities as a branch office and complex manager.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he made misstatements to his member organization employer in violation of Exchange Rule 476(a)(6).
- III. Violated Exchange Rule 476(a)(4) by making material misstatements to the Exchange.

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 July 1958. He has been employed in the securities industry since September 1989. Respondent joined the Firm in March 2001 as the Branch Office Manager (“BOM”) of the Dayton, Ohio office. In September 2002, the Cincinnati and Dayton offices were joined as a complex (the “Complex”) and Respondent became Complex Manager. During his tenure, the Firm was purchased by Wachovia. Wachovia terminated Respondent’s employment on or about February 2, 2004.
2. Respondent is not currently employed in the securities industry.
3. On or about October 21, 2003, Respondent sent a letter to the Exchange in connection with an investigation of an employee whom Respondent supervised.
4. On February 12, 2004, Respondent was interviewed on the record and under oath and advised that any statements he made during that testimony were deemed as statements to the Exchange.
5. On or about February 23, 2004, the Exchange sent Respondent a letter advising him that the Exchange was retaining jurisdiction over him.

Overview

6. Respondent failed to reasonably discharge his duties and obligations in connection with his supervisory responsibilities as a branch office and complex manager by delegating his responsibilities to others, including allowing other employees to access and send electronic mail (“e-mail”) from his member organization’s e-mail account under his signature in contravention of the policies and procedures of the Firm. When questioned by his supervisor about a particular e-mail dated January 22, 2003, Respondent denied authorship of the e-mail and stated that his Administrative Manager (“AM”) had accessed his e-mail account without his permission. Respondent subsequently wrote a letter to Enforcement denying that he allowed AM access to his Firm e-mail account. During his on-the-record testimony, Respondent again denied providing AM or anyone else with his computer sign-on and Lotus Notes password. When he was confronted with the evidence of e-mails, which were clearly authored by others but were sent from his own e-mail account to his personal portable e-mail device (“Blackberry”), Respondent recanted his previous testimony. He admitted that his prior written statement to the Exchange was false and that he, in fact, had provided his computer sign-on and e-mail password to AM as well as other employees.

Failure to Supervise

7. According to the Firm’s policies and procedures, each employee was accountable for all activity performed while using his or her assigned e-mail user identification. The

policy manual specifically stated that sharing passwords was prohibited and the failure to abide by the Firm's policies and procedures in this regard would be grounds for termination.

8. When Respondent was installed as the Complex Manager of both the Cincinnati and Dayton offices, AM was initially demoted from BOM of the Cincinnati office back to the position of Financial Advisor. However, Respondent almost immediately offered him the position of Administrative Manager, which he accepted.
9. Respondent provided AM with his username and the password to his computer and Lotus Notes e-mail account, on multiple occasions, shortly after AM assumed his position.
10. Respondent directed AM and other employees to access his e-mail; to forward messages to his Blackberry when he was not in the office, and asked them to respond to his e-mail in his absence.
11. AM would review Respondent's incoming and outgoing e-mail pursuant to his directive to check for any supervisory issues. In addition, AM would check Respondent's own e-mail if he was absent from the office. AM also performed many administrative tasks in Respondent's office where the files were physically maintained.
12. AM was directed by Respondent to answer and send e-mails under Respondent's name regarding administrative functions with his knowledge and authorization.
13. In addition to AM, there were other employees privy to Respondent's passwords, including his administrative assistant and operations managers. Respondent delegated many administrative tasks to these employees.

Misstatements to the Firm

14. In January 2003, the Firm hired two new employees through a referral by AM. Respondent believed AM was entitled to receive a finder's fee from the Firm.
15. On January 22, 2003, while working at Respondent's computer, AM sent an e-mail to two of Respondent's supervisors at the Firm, from Respondent's e-mail account, with regard to obtaining authorization for a finder's fee for two new employees. This e-mail was sent under Respondent's signature.
16. However, prior to AM sending the January 22nd e-mail, one or both of Respondent's supervisors orally told Respondent that AM did not qualify for the referral fee.
17. After receiving the January 22nd e-mail, one or both of Respondent's supervisors contacted Respondent. Respondent informed one or both of his supervisors that he did not write the e-mail.

18. Respondent further told one or both of his supervisors that AM wrote the e-mail under Respondent's signature and that he did not authorize AM to do so.
19. Respondent later told the Firm that he did not ever allow AM to use his workstation and did not ever give AM his password. This statement was not true because Respondent later admitted to the Exchange that he did give AM his password.
20. Respondent subsequently received a directive to terminate AM's employment based on Respondent's assertion that AM had accessed Respondent's computer without Respondent's authorization for monetary gain.
21. Respondent terminated AM's employment on February 7, 2003.

Misstatements to the Exchange

22. In a letter to the Exchange dated October 21, 2003, Respondent denied having authorized AM to use his workstation or having given AM his password.
23. On February 12, 2004, during sworn testimony to the Exchange, Respondent stated that he understood the Firm's no-share policy concerning each employee's individual password and attested that he did not share his computer sign-on or e-mail password with anyone.
24. Respondent further testified to the Exchange on the same date, that he could provide his assistants, and other employees, access to reading and sending e-mails on his behalf without providing his password. According to Respondent, employees would be allowed to read and respond to Respondent's e-mail, but the actual response would come from them, permitting the employees to assist Respondent in his tasks without requiring Respondent to divulge his computer sign-on or password.
25. When confronted with numerous e-mails sent directly from Respondent's office computer to Respondent's Blackberry, none of which evidenced third party intervention, but which had been clearly written and sent by others, Respondent admitted that he had provided AM and other employees with his computer sign-on and password in violation of Firm policy.
26. In fact, Respondent directed at least three employees, including AM, to use his Firm e-mail account to write messages to others under his signature without indicating that they were the authors of the messages, in direct contravention of the written statement provided to the Exchange dated October 21, 2003 and his sworn testimony to the Exchange on February 12, 2004.

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 an eight month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization and a requirement to retake the Series 9 and 10 examinations.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer

Panelists:

Tadeusz A. Kondratowicz

Anthony J. Raimondi