

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-47

May 9, 2005

DANIEL CHRISTOPHER McDONALD
FORMER REGISTERED REPRESENTATIVE

* * *

Engaged in an outside business activity without written employer consent in violation of Exchange Rule 346(b) – Consent to penalty of censure and six month bar.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Scott M. Andersen, Esq.
George Tidona, Esq.

For Respondent
Pro Se

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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 Daniel Christopher McDonald (“Respondent”), a former registered representative with Morgan Stanley DW Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he violated Exchange Rule 346(b) by engaging in an outside business activity without written employer consent.

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 December 1972. He entered the securities industry on October 13, 1998 at a non-member firm. Respondent joined the Firm in May 1999, where he was approved as a general securities representative by the Exchange. After leaving the Firm, from August 13, 2001 through October 4, 2002, Respondent worked for two non-member firms in succession. He is no longer employed in the securities industry.
2. Enforcement commenced its investigation on February 11, 2002 after receiving a Uniform Termination Notice for Securities Industry Representatives (“Form U-5”) from the Firm, that notified the Exchange that a co-worker of Respondent was discharged on April 19, 2001, based upon the Firm’s determination that he engaged in outside employment without prior written employer consent, and as a result of his

refusal to cooperate with the Firm's internal investigation. Enforcement concurrently investigated the conduct of Respondent and others, all of whom worked with the terminated employee, to determine whether they also engaged in an outside business activity without prior written Firm consent. Respondent voluntarily left the Firm prior to the completion of the Firm's internal investigation.

3. In addition, the Exchange also investigated Respondent after being notified by the Firm that a customer arbitration was commenced against Respondent and others, and which included allegations of misrepresentations, unsuitable investments and the failure to execute a sale order when instructed to do so.
4. By letter dated February 27, 2002, Enforcement notified Respondent that the Exchange commenced a formal investigation. Enforcement received Respondent's written response on April 16, 2002.

Overview

5. On or about July 2000 through January 2001, Respondent engaged in an improper outside business activity without receiving prior Firm authorization to do so, and failed to follow the instructions of a customer of his member firm employer.

Outside Business Activity

6. Accounting firm "AF" offered its clients programs in tax solutions, tailored to the financial circumstances of individual clients, with the purpose of reducing or deferring their tax liabilities.
7. Respondent, a registered representative at the Firm's Cupertino (Silicon Valley) branch office (the "branch office"), was encouraged, at the branch office level, to network with, and refer, in appropriate circumstances, clients to professionals such as lawyers, accountants and financial planners. In the course of his dealings with the "AF" accountant who frequently received referrals from the branch office's registered representatives, Respondent and others learned that referral fees could be paid to those referring clients for tax solutions.
8. The Firm had a clear policy, consistent with Exchange Rules, that engagement in outside business or the receipt of outside compensation, without prior employer approval, were prohibited. Under Exchange Rule 346(b), no employee may be engaged in any other business, or be employed or compensated by any other person, without receiving prior written consent of his member firm.
9. After Firm management heard rumors that some branch office employees were engaged in the outside business activity of referring clients to the "AF" accounting firm in exchange for referral fees, the Firm opened up an internal investigation. The Firm learned from its internal review that the "AF" accounting firm made referral payments totaling \$155,000 to the corporation of the Firm employee who was

terminated, via payment to a company which was owned by the terminated employee's father. The referral fees of the "AF" accounting firm ultimately flowed from that company's account at the Firm to Respondent and others.

Failure to Follow a Customer's Instructions

10. MH, a customer, filed an arbitration against Respondent and others alleging various sales practice violations. The complaint arose out of a sale by MH of various mutual fund investments including various International Fund B shares, Mid Cap Growth B shares, Tax Managed Growth Fund B shares and Select Growth B shares.
11. MH contended that Respondent failed to sell her mutual funds after she specifically instructed him to do so during a telephone conversation. Respondent conceded his failure to execute this sale, but explained that there were mitigating circumstances for the delay, specifically, that the delay was the result of Respondent's attempt to forestall MH's sale, as it would have resulted in significant penalties resulting from an early sale of the mutual funds.

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 bar for six months from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

In addition, Respondent agreed to cooperate with the Exchange as follows:

- A. Respondent shall fully, fairly and truthfully disclose all information and produce all records in his possession and other evidence relevant to the inquiries by Enforcement concerning any violations of the federal securities laws or Exchange rules by co-workers of Respondent during his tenure at the Firm's Cupertino branch office of which he has any knowledge or information.
- B. Respondent shall fully, fairly and truthfully testify at any contested hearing brought by the Exchange, concerning any matter falling within paragraph A above.

- C. Respondent shall actively participate in the Exchange's investigation and prosecution of any matter within paragraph A above, including meeting with Exchange staff when requested in order to prepare to testify at any contested hearing.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer

Panelists:

Joan McGrath

Lisa E. Waters