

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-49

May 9, 2005

ERIC MATTHEW WINOKUR a/k/a ERIC MATTHEW WIENER
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 Eric Matthew Winokur a/k/a Eric Matthew Wiener (“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 March 1976. He entered the securities industry on October 25, 1999 when he joined the Firm, where he was approved as a general securities representative by the Exchange and remained until April 19, 2001. For three months in 2001, Respondent worked for another firm, and in January 2003, Respondent joined a non-member firm, where he was employed as an independent contractor until August 2004. Respondent 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 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 investigated the conduct of Respondent and other registered representatives at his branch office.

3. By letter dated February 27, 2002, Enforcement notified Respondent that the Exchange commenced a formal investigation. Enforcement received Respondent's written response on April 15, 2002.

Overview

4. On or about July 2000 through March 2001, Respondent engaged in an improper outside business activity without receiving prior written Firm authorization to do so.

Outside Business Activity

5. 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.
6. 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 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.
7. The Firm had a clear policy, consistent with Exchange Rules, that engagement in outside business activity without prior written employer approval was 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.
8. 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 "AF" accounting firm made referral payments totaling \$155,000 to Respondent. These payments were provided, at Respondent's direction, to a corporation owned by Respondent's father.

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, of which he has any knowledge, 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.
- B. Respondent shall fully, fairly and truthfully testify at any contested hearing brought by Enforcement concerning any matter falling within paragraph A above.
- C. Respondent shall actively cooperate with Enforcement's investigation and prosecution of any matter within paragraph A above, including meeting with Enforcement 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