

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-52

June 30, 2005

JOHN Y. BUCK

FORMER NON-REGISTERED EMPLOYEE

* * *

Misappropriated funds belonging to his member organization employer; caused violations of SEA Regulations 240.17a-3 and 240.17a-4 and Exchange Rule 440 by causing his member organization employer to make and maintain inaccurate books and records; violated Exchange Rule 477 by failing to comply with written requests to appear and testify – Censure and permanent bar.

Appearances:

For the Division of Enforcement
Julie Han Broderick, Esq.
Kevin T. McDonald, Esq.

For the Respondent
Wesley R. Stacknik, 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 John Y. Buck (“Respondent”), a non-registered employee with Merrill Lynch, Pierce, Fenner & Smith, Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds from his member organization employer.
- II. Caused violations of Regulations 240.17a-3 and 240.17a-4 promulgated under the Securities Exchange Act of 1934 and Exchange Rule 440 by causing his member organization employer to make and maintain inaccurate books and records.
- III. Violated Exchange Rule 477 in that he failed to comply with one or more written requests by the Exchange to appear and testify concerning matters which occurred prior to the termination of his status as an employee of a member firm.

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 1957. He entered the securities industry on or about February 21, 1991, as a wire operator in the Firm’s Pacific West Service Center and was employed there until December 14, 1992. Respondent then worked in the Firm’s Portland, Oregon office as a sales assistant until February 17, 1997, when he became employed as a cashier and service support controller in the Pacific West Service Center

until October 1999. He then worked as a cashier in the Firm's Countryside, Florida office until his termination from the Firm in July 2002.

2. On August 13, 2002, Enforcement received a Form RE-3 from the Firm, reporting that Respondent's employment had been terminated on July 26, 2002, when the Firm learned that he had taken unauthorized salary advances and funds from an account designated for postage payments.
3. By letter dated December 11, 2002, which he received, the Exchange notified Respondent that it was conducting an investigation into the possibility that he may have taken unauthorized salary advances and funds from an account designated for postage payments. Respondent responded in a letter from his counsel, dated December 18, 2002.

Overview

4. During the period November 2000 through July 2002, Respondent, a non-registered employee at the Firm, misappropriated funds which belonged to his member organization employer in the amount of approximately \$13,500, by redirecting third party checks from a Firm disbursement account for the branch to his own personal accounts, and by obtaining salary advances without appropriate authorization.

Misappropriation of Funds

5. In November 2000, Respondent was the cashier of the Countryside, Florida branch office of the Firm.
6. On four occasions beginning in November 2000, respondent obtained salary advances from a Firm disbursement account as follows:

11/09/00	\$ 250
05/29/01	\$2,500
01/03/02	\$2,200
07/10/92	\$2,500

7. Respondent did not have appropriate supervisory approval for these disbursements.
8. Respondent deposited each of these salary advances into his Cash Management Account ("CMA") at the Firm.
9. In total, Respondent misappropriated \$7,450 in salary advances*.
10. On two occasions, beginning in March 2002, Respondent drew checks against a Firm postal account which was used to pay for postage at the branch, and made them payable to him as follows:

03/21/02	\$3,000	Check to Postmaster
04/24/02	\$3,000	Check to Postmaster

* In the Stipulation of Facts and Consent to Penalty considered at the hearing, the number was incorrectly stated. A corrected document was submitted to the Hearing Panel at a later date.

11. These checks were not deposited into his CMA, but were negotiated by Respondent away from the Firm.
12. Respondent did not have appropriate supervisory approval for these disbursements.
13. In total, Respondent redirected \$6,000 to himself from Firm postage accounts.
14. Respondent did write a personal check from his personal CMA, in the amount of \$2,400, to cover some of the funds he had misappropriated from the Firm's postage account.

Failure to Cooperate

15. In a letter dated December 11, 2002, which he received, the Exchange notified Respondent of its investigation in this matter. Respondent, through counsel, provided a written explanation to Enforcement with regard to the misappropriation.
16. In a subsequent conversation with Respondent's counsel, Enforcement requested that Respondent provide his testimony to the Exchange. Respondent's counsel informed Enforcement that Respondent would not appear and testify.
17. To date, Respondent has failed to provide testimony to the Exchange.

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 permanent bar 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:
Joseph P. Fenton
Larry Youell