

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-56

April 28, 2005

MICHAEL JOHN EINERSEN
FORMER EXCHANGE MEMBER

* * *

Violated Exchange Rule 627(g) in that he failed to timely pay an arbitration award – Consent to censure and ten week bar.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Michael W. Bautz, Esq.

For the Respondent
Dennis E. A. Lynch, Esq.

* * *

An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement ("Enforcement") and Michael John Einersen ("Respondent"), a former Exchange Member of the Exchange and Floor broker with Axis Global, LLC (the "Firm"). Without admitting or denying guilt, Respondent consents to a finding by the Hearing Panel that he violated Exchange Rule 627(g) in that he failed to timely pay an arbitration award.

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

Background and Jurisdiction

1. Respondent was born on October 23, 1950. He was employed in the securities industry as follows: From 1967 to 1972 and from 1982 to 1984 he was employed as a Floor clerk with several firms. From 1984 to February 2001 he was a Floor broker with five firms, including the Firm from June 1993 through October 2000. His employment in the industry continued until February 2005.
2. Respondent is currently employed as a non-registered consultant to a non-member firm.
3. By letter dated January 21, 2004, the Exchange notified Respondent that it had no record of his having satisfied or moving to vacate an August 26, 1997 award issued by the Exchange's Arbitration Department.

4. By letters dated March 22, 2004 and March 25, 2004, which Respondent received, Enforcement notified Respondent of its investigation into allegations that he failed to satisfy the August 26, 1997 award issued by the Exchange's Arbitration Department.
5. On October 21, 2004, Enforcement issued a Charge Memorandum in this matter.
6. Respondent filed an Answer on November 13, 2004.

Summary of Violative Conduct

7. As set forth below, Respondent failed to timely pay a monetary arbitration award issued by the Exchange's Arbitration Department.

Failure to Pay or Satisfy an Arbitration Award

8. Exchange Rule 627(g) states, in relevant part, that all arbitration monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.
9. On or about June 26, 1995, TH and DH filed an arbitration claim against Respondent with the Exchange's Arbitration Department. The claim concerned a disagreement about financial responsibility relating to the clearing of a trade. TH and DH claimed damages of \$16,950.
10. Respondent appeared at the arbitration hearing and had assistance of counsel.
11. On August 26, 1997, an Exchange Arbitration panel issued a written decision finding in favor of the TH and DH. The panel awarded them \$16,000 with simple interest of 5% per annum from September 1, 1995 to August 6, 1997 (the "Award").
12. Following receipt of the decision and in lieu of paying the Award, by petition dated October 30, 1997, Respondent, through an Order to Show Cause, commenced an action in the New York State Supreme Court, County of New York, to vacate the Award.
13. By decision dated February 11, 1998, Respondent's motion to vacate the Award was denied. Respondent did not pay the Award.
14. By letter dated October 28, 1998, the Exchange notified Respondent that it had become aware that the Award had not been satisfied. The Exchange requested that Respondent provide evidence that he had satisfied the Award.
15. By letter dated November 9, 1998, Respondent, through his attorney, stated that the parties had entered into settlement discussions and that TH and DH had abandoned their claim. Respondent's attorney further stated that Respondent had not exhausted his remedies to vacate the Award and would appeal the judgment when it was filed.

16. In or about September 2003, the Exchange became aware that, notwithstanding the claims made on behalf of Respondent in the November 9, 1998 letter, the Award was still outstanding.
17. In its January 21, 2004 letter, the Exchange requested that Respondent provide evidence that he had satisfied the Award to it by February 6, 2004.
18. By letter dated February 6, 2004, Respondent, through his attorney, responded to the Exchange stating that Respondent believed that TH and DH had abandoned their claim to the Award, since he had not heard from either of them for over five years.
19. Notwithstanding Respondent's belief, TH and DH did not abandon their claim to the Award.
20. Nevertheless, Respondent did not pay the Award until April 22, 2005.

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 ten week bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.

For the Hearing Panel

Vincent F. Murphy– Hearing Officer
Panelists:
Gordon Charlop
Daniel P. Logue