

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-70

June 13, 2005

MARIA J. MALITO

FORMER NON-REGISTERED EMPLOYEE

* * *

Failed to comply with the Exchange request to appear and testify. – Censure, bar until she complies, to become permanent if she does not comply in three months.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Kevin E. Pogue, Esq.

For the Respondent
Michael Santangelo, Esq.

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A Hearing Panel of the New York Stock Exchange, Inc. (“Exchange”) conducted a hearing on a charge brought by the Exchange’s Division of Enforcement (“Enforcement”) against Maria J. Malito (“Respondent”), a former non-registered employee with the J.P. Morgan Securities Corp. (the “Firm”). Respondent was charged with having violated Exchange Rule 477 in that she failed to comply with the Exchange’s written request to appear and testify.

Respondent did not submit an Answer to the Charge Memorandum. Neither she nor any person on her behalf appeared at the hearing in this matter. At the hearing, the Division of Enforcement moved, pursuant to Exchange Rule 476, to have the facts alleged in the Charge Memorandum deemed admitted since Respondent had failed to file an Answer. After receiving evidence the motion was granted and the Hearing Panel found as follows:

Background and Jurisdiction

1. Respondent was born in February 1975. She entered the securities industry on April 4, 1994 in a non-registered capacity, as a secretary with the Firm. During her tenure with the Firm, Respondent was employed in a non-registered capacity. Her employment with the Firm was terminated on December 1, 2003.
2. As far as the Enforcement Division of the Exchange can ascertain, Respondent has not been employed in the securities industry since December 2003.

3. On or about December 19, 2003, the Exchange received a Form RE-3 from the Firm reporting that Respondent's employment had been terminated for her failure to cooperate during an internal investigation concerning, among other things, unauthorized expenses.
3. On January 15, 2004, the Exchange wrote to Respondent advising her that it was inquiring into the matters reported by the Firm and asked her to respond to the Exchange concerning them. On January 27, 2004, her attorney responded to Enforcement's letter.
4. Thereafter, by letter dated August 25, 2004, sent by first class and certified mail, return receipt requested, the Exchange wrote to Respondent, with a copy sent to her attorney, advising her that the Exchange had opened a formal investigation into the allegations of the Firm, concerning, among other things, unauthorized expenses, as well as her failure to cooperate during the Firm's internal investigation. The Exchange's letter sent by certified mail, return receipt requested, was returned to the Exchange by the U.S. Postal service as unclaimed. The first class letter, however, was not returned.

Failure to Cooperate

6. By letter dated November 16, 2004, sent by first class and certified mail, return receipt requested, with a copy sent to her attorney, the Exchange requested Respondent to appear and testify on December 20, 2004, concerning alleged misappropriations of Firm funds through the unauthorized use of the Firm's corporate credit card. Neither the certified letter to Respondent and its accompanying receipt nor the first class letter to her was returned to the Exchange.
7. By letter dated December 7, 2004, her attorney notified the Exchange that, among other things, she would not appear and testify on December 20, 2004.
8. Respondent did not appear or testify on December 20, 2004.
9. To the date of the Hearing, Respondent has failed to appear and provide testimony as requested.

DECISION

The Hearing Panel, by unanimous vote, found Respondent guilty as charged.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until she complies with the Exchange's requests with which she has failed to comply. Further, if she does not comply within three months from the date this decision becomes final, the bar shall become permanent.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer

Panelists:

Paul Giappone, Esq.

William J. Taft