

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-73

June 6, 2005

KEITH ALLEN CARVELL

FORMER REGISTERED REPRESENTATIVE

* * *

Violated Exchange Rule 477 by failing to comply with requests for a written statement and for testimony – Censure and bar until he complies.

Appearances:

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

For the Respondent
No Appearance

* * *

A Hearing Panel of the New York Stock Exchange, Inc. (“Exchange”) conducted a hearing on charges brought by the Exchange’s Division of Enforcement (“Enforcement”) against Keith Allen Carvell (“Respondent”), a former registered representative with First Union Securities, Inc. (the “Firm”). The Respondent was charged with having:

- I. Failed to comply with the Exchange’s request for a written statement in violation of Exchange Rule 477.
- II. Failed to comply with the Exchange’s request to appear and testify in violation of Exchange Rule 477.

Respondent did not submit an Answer to the Charge Memorandum. Neither he nor any person on his behalf appeared at the hearing in this matter.

At the hearing, 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. The motion was granted upon proof of notice of the Charge Memorandum to the Respondent, and, on that basis, the Hearing Panel found as follows:

Background and Jurisdiction

1. Respondent was born in January 1958. Between December 1989 and September 1995, Carvell was employed with a non-member firm and with an insurance company. Respondent was then employed in the securities industry by two different member firms from January 1996 to April 1999 and from April 1999 to October 1999. In October 1999, Respondent joined the Firm as a registered representative. Respondent resigned from the Firm on January 23, 2002.

2. As far as Enforcement can ascertain, Respondent has not been employed in the securities industry since January 2002.
3. On or about September 17, 2002, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) reporting both the termination of Respondent’s employment and that Respondent was the subject of a customer complaint regarding substantial losses in the customer’s account. Thereafter, on September 19, 2002, the Exchange received a Form RE-3 from the Firm (then known as Wachovia Securities, Inc.) reporting that the Firm had settled an arbitration claim concerning trades by made Respondent in the account of a customer (the “Customer”) that were allegedly unauthorized, unsuitable and excessive.
4. On October 3, 2002, the Exchange, by first class mail, wrote to Respondent’s last known address reflected on his Central Records Depository record (“CRD”) advising him that the Exchange was conducting an inquiry regarding the reported matters. This letter was returned to the Exchange by the U.S. Postal Service; the return label affixed indicated that Respondent had a new address.
5. By letter dated January 15, 2003 (“the January 15 letter”), the Exchange, by first class mail, wrote to Respondent’s last known address as provided by the U.S. Postal Service, advising him that the Exchange was conducting an inquiry into the customer’s allegations and asked him to respond in writing to the Exchange. The first class letter was not returned to the Exchange.

Failure to Cooperate

6. Respondent did not respond to the January 15 letter.
7. Thereafter, the Exchange continued its investigation seeking, obtaining and reviewing documents and information from both the Firm and the Customer.
8. By letter dated November 11, 2004 (“the November 11 letter”), sent to his last known address by first class and certified mail, return receipt requested, Enforcement advised Respondent that it was investigating, among other things, the Customer’s account and requested that he provide testimony on December 13, 2004. The letter sent first class mail was not returned to the Exchange. The certified letter was returned to the Exchange by the U.S. Postal service as “unclaimed” mail.
9. Respondent did not appear or testify on December 13, 2004.
10. To date, Respondent has not provided the requested written explanation or testimony.

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 and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until he complies with the Exchange's requests with which he has failed to comply.

For the Hearing Panel

Peggy Kuo - Chief Hearing Officer

Panelists:

Audrey LaBolle

Robert P. Snyder