

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-75

June 16, 2005

ROBERT BURNS

FORMER REGISTERED REPRESENTATIVE

* * *

Engaged in conduct inconsistent with just and equitable principles of trade in that, while he was employed by a member firm, he used funds for his personal benefit which he knew, or should have known, did not belong to him and had been erroneously deposited into his firm account. – Consent to censure and a five year bar.

Appearances:

For the Division of Enforcement
Stephanie B. Fine, Esq.
Steven Korostoff, Esq.

For Respondent
John B. Cleary, Esq.

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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 Robert Burns (“Respondent”), a former registered representative 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 engaged in conduct inconsistent with just and equitable principles of trade in that, while he was employed by a member firm, he used funds for his personal benefit which he knew, or should have known, did not belong to him and had been erroneously deposited into his firm account.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Respondent, without admitting or denying the findings in the Stipulation of Facts and Consent to penalty stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Respondent was born in July 1976. He entered the securities industry with his employment with the Firm in 2000, where he remained until November 14, 2003, at which time his employment was terminated by the Firm. Since leaving the Firm, Respondent has not been employed in the securities industry.
2. Enforcement opened this investigation after receiving a Uniform Termination Notice for Securities Registration (“Form U-5”) filing, dated December 3, 2003, reporting the termination of Respondent because of his failure to notify management of a deposit made in error to his personal account.

3. By letter dated June 17, 2004, which he received, the Exchange informed Respondent that it was investigating this matter.

Overview

4. As set forth below, in October 2003, while employed at the Firm, Respondent was the recipient of \$12,000 erroneously credited to his personal account. Respondent used the funds for his personal benefit when he knew, or should have known, that the funds did not belong to him.

Personal use of Funds Erroneously Deposited into his Account

5. On October 7, 2003, \$12,000 was credited, erroneously, into the personal account maintained by Respondent at the Firm. The funds had in fact been deposited by a customer and intended for her account at the Firm.
6. Respondent became aware of the October 7, 2003 deposit and spent \$11,335.90 of the funds in the following days.
7. Respondent knew, or should have known, that the funds were erroneously deposited into his account.
8. When questioned by the Firm, Respondent acknowledged that the funds were not his, but said that he thought they did not belong to a customer of the Firm, or the Firm.
9. The Firm reimbursed the customer the \$12,000 in November 2003.
10. Respondent was terminated by the Firm as of November 14, 2003. To date, Respondent has repaid more than approximately \$700 to the Firm.

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 five year bar. In imposing this penalty, the Hearing Panel notes that two of the precedents cited by Enforcement in support of the penalty, In the matter of Paul Grassi, Jr., HPD 03-217 (Dec. 3, 2003, Supplement and Decision on Remand July 12, 2004) (5 year bar) and In the matter of Lawrence Alexander Westby, HPD 91-151 (Sept. 5, 1991) (4 year bar) involved penalties imposed after a contested hearing on substantially similar facts. A third precedent cited, In the matter of Barbara Nicole Wheeler, HPD 00-111 (June 27, 2000) (5 year bar) involved an additional charge of failing to comply with requests for records. The Hearing Panel is of the view that there should be some credit given to a

Respondent who acknowledges wrongdoing, stipulates to facts and consents to a penalty, thereby conserving Exchange resources.

Nevertheless, we accept the consent to penalty in this case as appropriate given the current regulatory climate.

For the Hearing Panel

Peggy Kuo – Chief Hearing Officer
Panelists:
Dale E. Miller
Mary Lou Peters, Esq.