

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-88

August 5, 2005

ANDREW DAVIS MILLS

FORMER REGISTERED REPRESENTATIVE

* * *

Failed to disclose a prior misdemeanor conviction on an employment application he submitted to his member organization employer, violated Exchange Rule 345.12 by submitting to his member organization employer a Form U-4 that contained false information, and violated Exchange Rule 476(a)(10) by making a material misstatement and/or omission of fact on his application for registration filed with the Exchange. – Consent to censure and a one year bar.

Appearances:

For the Division of Enforcement
Matthew Moore, Esq.
Radhika Bhargava, Esq.

For the Respondent
No Appearance

* * *

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 Andrew Davis Mills (“Respondent”), a registered representative with H&R Block Financial Advisors, Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Failed to disclose a prior misdemeanor conviction on an employment application he submitted to his member organization employer.
- II. Violated Exchange Rule 345.12 by submitting to his member organization employer a Form U-4 that contained false information; and
- III. Violated Exchange Rule 476(a)(10) by making a material misstatement and/or omission of fact on his application for registration filed with the Exchange.

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 September 1972. On or about April 3, 2000, he was hired as a registered representative at the San Diego, California office of the Firm.
2. Respondent was terminated from the Firm on August 13, 2004. Respondent is not currently employed in the securities industry.
3. On or about August 12, 2004, Enforcement received a Form RE-3 from the Firm reporting that Respondent had knowingly or willfully made a misstatement in an application to an Insurance Commissioner by representing that he had not been convicted of any crime. As a result his life insurance agent license issued by the California Department of Insurance had been permanently revoked.
4. On or about August 27, 2004, Enforcement received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from the Firm reporting that Respondent had failed to disclose his criminal history on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and employment application.
5. By letter dated November 29, 2004, which he received, the Exchange notified Respondent that it was investigating if he had made one or more misstatements on his employment applications to the Firm and /or on his Form U-4 application for registration.

Summary of Violative Conduct

6. In March 2000, in connection with his employment with a member organization, Respondent failed to disclose a prior misdemeanor conviction on an employment application that he submitted to his member firm employer. Further, in April 2000, while completing his Form U-4, Respondent failed to disclose his prior misdemeanor conviction.

Failure to Disclose Prior Conviction

7. On or about February 8, 1999, a criminal complaint was filed in the Superior Court of California, County of San Diego, charging Respondent with one count of Grand Theft and four counts of Embezzlement, all felonies. At that time, Respondent was employed as a salesperson and as an Assistant Manager in the women's shoe department at a Nordstorm retail outlet. As part of a fraudulent scheme, Respondent and his colleagues purchased shoes with their credit cards to meet monthly sales quotas, and later returned the shoes and credited their credit card accounts the following month.
8. On or about March 8, 1999, Respondent entered a plea of *nolo contendere* to Petty Theft, a misdemeanor. The remaining counts were dismissed. Respondent was

- placed on three-year summary probation. The terms and conditions of probation required Respondent to serve one day in custody, pay fines and restitution totaling \$400, complete a 15 day public service program, attend and complete a course, and agree to violate no other laws (excluding minor traffic offenses).
9. On or about March 10, 2000, Respondent completed a Firm document entitled “Employment Application & Statutory Disqualification Disclosure & Certification” (the “Employment Application”).
 10. In the Employment Application, Respondent was asked the following question: “Have you ever been convicted of a misdemeanor?” Respondent indicated “No” in response to this question, which was false and a material misstatement of fact.
 11. Thereafter, the Firm submitted Respondent’s fingerprints to the U.S. Department of Justice. The fingerprints were returned to the Firm, indicating that Respondent had no arrest record.¹ Respondent was hired on April 3, 2000.
 12. On or about April 14, 2000, Respondent completed and signed a Form U-4.
 13. Question 23B(1)(a) on the Form U-4 asked, in pertinent part, if Respondent had ever “been convicted of or pled guilty or nolo contendere (‘no contest’) in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business or any fraud, false statement or omissions, wrongful taking of property . . . any of these offenses?” Respondent answered “No,” which was not true.
 14. Question 23A(1)(b) on the Form U-4 asked, in pertinent part, if Respondent had ever been charged with any felony. Respondent answered “No,” which was not true.
 15. On or about January 21, 2003, Respondent applied for a life insurance agent license with the California Department of Insurance (“Department of Insurance”). Respondent received the license on May 5, 2003.
 16. On or about July 15, 2004, Respondent’s life insurance license was permanently revoked by the Department of Insurance, when the Department of Insurance detected Respondent’s conviction.
 17. On or about August 5, 2004, Respondent notified the Firm that the Department of Insurance had permanently revoked his life insurance agent license for non-disclosure of his criminal record. The Firm terminated Respondent’s employment on August 13, 2004.

¹ The investigative record does not indicate why the DOJ report did not disclose his conviction. Respondent’s criminal history should have appeared on his fingerprinting report.

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 one year from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

In support of the penalty, Enforcement cites the following precedents: In the Matter of Broderick N. Chapman, HPD 03-149 (July 29, 2003); In the Matter of Kevin Walter Pyne, HPD 02-81 (Apr. 10, 2003); and In the Matter of Timothy Scott Heetland, HPD 02-26 (Jan. 30, 2002). Chapman and Pyne involved statutory disqualifications based on a felony conviction and a misdemeanor conviction involving a false report, respectively. In both cases, the Hearing Panel imposed a penalty of a censure and two year bar after a hearing in which the facts in the Charge Memorandum were deemed admitted because respondents failed to submit an Answer. In Heetland, the respondent failed to disclose that he had been charged with (though not convicted of) a misdemeanor, as well as performed the duties of a registered representative without approval by the Exchange. After failing to submit an Answer or appear at the hearing, Heetland was found guilty and received a penalty of a censure and eight month bar.

In the present case, Respondent failed to disclose a prior misdemeanor which did not subject him to a statutory disqualification. Since failure to disclose a conviction is more serious than failure to disclose a criminal charge, a harsher penalty than that in Heetland is appropriate.

Accordingly, the Hearing Panel imposes the penalty agreed upon by the parties.

For the Hearing Panel

Chief Hearing Officer

Panelists:

Jasmin M. Martinez

Eric M. Schmidt, Esq.