

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-89

August 5, 2005

TROY RICHARD MENZEL

FORMER NON-REGISTERED EMPLOYEE

* * *

Made false entries in the computer system of his member firm employer concerning the location of securities certificates, violated Exchange Rule 440, as prescribed by Regulations 240.17a-3 and 240.17a-4 of the Securities Exchange Act of 1934, in that he made, or caused to be made, false entries in the computer system of his member firm employer concerning the location of securities certificates. – Consent to censure and an eighteen month bar.

Appearances:

For the Division of Enforcement
Anthony J. Cavallaro, Esq.
Scott M. Andersen, Esq.
David L. Friedman, Esq.

For the Respondent
No Appearance

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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 Troy Richard Menzel (“Respondent”), a former non-registered employee with Charles Schwab & Co., Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 476 by engaging in conduct inconsistent with just and equitable principles of trade in that he made, or caused to be made, false entries in the computer system of his member firm employer concerning the location of securities certificates.
- II. Violated Exchange Rule 440, as prescribed by Regulations 240.17a-3 and 240.17a-4 of the Securities Exchange Act of 1934, in that he made, or caused to be made, false entries in the computer system of his member firm employer concerning the location of securities certificates.

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 January 1974. He entered the securities industry on November 1, 1998, working in a non-registered capacity in the Stock Reconciliation Department of the Firm, a former member Firm.¹
2. Respondent was employed at the Firm from November 1, 1998 until his termination on June 28, 2003.
3. Respondent is no longer employed in the securities industry.
4. On or about July 17, 2003, Enforcement received a Form RE-3 from the Firm reporting that it had terminated Respondent's employment on June 28, 2003 because it discovered that Respondent made a series of false entries in the Firm's internal accounts, via its computer systems, in order to prevent detection of an error that erroneously credited a client's account with shares of a stock.
5. By letter dated November 21, 2003, which Respondent received, Enforcement notified Respondent that it was formally investigating the allegations set forth in the Form RE-3 filed with the Exchange.

Summary of Violative Conduct

6. During the period October 2002 through June 2003, Respondent made false entries in the computer system of his member firm employer concerning the location of securities certificates in order to prevent the detection of an out of balance position resulting from a trading error that erroneously credited a customer account with stock.

Violative Conduct

7. On or about November of 1998, Respondent was assigned to the Stock Reconciliation Department of the Firm's San Francisco office. From October 2002 through June of 2003 (the "relevant period"), Respondent's duties included the reconciliation of high priced securities (securities priced over \$9,999).
8. In the course of this duty, Respondent received a report of all physical certificates deposited with the Firm, and reconciled that number with the physical certificates held in the vaults of the Firm.
9. Because of limits with the Firm's computer system, which could not compute securities priced over \$9,999 (due to a field limit of 4 characters), the Firm used a fractional tracking security (the "fractional"), equal to 1/10 of a "parent" share, to account for such holdings.

¹ The Firm withdrew as a member organization of the Exchange in January of 2005.

10. With high priced securities, Respondent was required to manually adjust this security by performing a series of securities adjustments, which debited the parent security on the Firm books while subsequently crediting a balancing number of fractional shares. For instance, if a customer deposited one high-priced share with the Firm, Respondent would perform an adjustment indicating that ten fractional shares were held, while eliminating the one parent share. The reverse transaction would occur whenever shares were prepared for delivery outside of the Firm.

The False Entries

11. On or about October 2002, a Firm client unknown to Respondent purchased one share of a high priced stock. Due to a trading error, the client's account was erroneously credited with ten shares of the stock, as opposed to ten shares of the fractional security.
12. This trading error created an out-of-balance position on the Firm's books, resulting in the Firm being "short" nine shares of the stock. Part of Respondent's responsibility was to reconcile the Firm's books by finding and correcting these trading errors.
13. When Respondent was unable to reconcile the high priced securities report, he created a fictitious "long" position on the Firm's books reflecting that nine shares of the stock were held in the Firm vault.
14. Respondent made this false entry in order to conceal from the Firm his failure to reconcile the Firm's books, which could have negatively impacted Respondent's performance review.
15. The Firm conducts a quarterly "box count" during which all physical shares held by the Firm are manually counted and then compared to the Firm's accounting records. In order to avoid detection of his false entry during these box counts, Respondent made additional false entries, using the Firm's computer system, which reflected that the shares in question were "in transit", and therefore, not in the "vault". Following a box count, Respondent then created an additional false entry indicating that the shares had been placed back into the vault.
16. Respondent made this series of false entries at least four times during the relevant period. The false entries were carried on the Firm's books for eight months, and ultimately contributed to the Firm's loss of approximately \$90,000 as a result of a failure to reconcile the initial trading error and the customer selling the shares he was not entitled to.

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 an eighteen month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

In support of this penalty, Enforcement relies on the following precedents: In the Matter of Margaret Ann Hall, HPD 03-114 (June 11, 2003), In the Matter of Michael Joseph Pandolfino, HPD 03-198 (Oct. 24, 2003), and In the Matter of Joseph Clifford Fiorino, HPD 01-6 (Jan. 22, 2001). In Hall, the Respondent consented to a censure and fifteen month bar for altering a firm document to cover up her erroneous transfers of stock positions, and failing to cooperate in a timely manner with Exchange requests for information. In Pandolfino, the Respondent submitted falsified letters of authorization to the Firm's internal audit department. He consented to a censure and one year bar. In Fiorino, the Respondent consented to a censure and three year bar for mismarking the prices of bonds, which resulted in concealing trading losses and caused false information to be entered on the books and records of his employer.

In the present case, Respondent engaged in violative conduct not once, as Hall did, but several times, in order to cover up the initial error. On the other hand, his misconduct was not as great as that of Fiorino, whose actions affected his firm's proprietary accounts' profit and loss as well as benefited him personally. Respondent did not directly benefit from his actions, and it appears that his actions in concealing the initial error - which was not of his doing - was to buy more time for him to resolve the error, not for his personal gain. At the Hearing, Enforcement stated that Respondent, not the Firm, had voluntarily brought up the issue of how his performance review might be impacted. Nevertheless, Respondent should have notified his supervisor of the initial error instead of compounding it through his own repeated violations. Therefore, in light of the amount of money involved, the repeated nature of the conduct, the fact that the conduct involved falsehood, and the deterrence value of a penalty, the Hearing Panel finds that a censure and eighteen month bar an appropriate penalty.

For the Hearing Panel

Chief Hearing Officer
Panelists:
Jasmin M. Martinez
Eric M. Schmidt, Esq.