

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-97

August 29, 2005

JOSEPH EDWARD HERNDON
FORMER REGISTERED REPRESENTATIVE

* * *

Misappropriated customer funds; engaged in acts detrimental to the interest or welfare of the Exchange in violation of Exchange Rule 476(a)(7) in that he was convicted of the criminal offense of exploitation of an elderly person, a felony, which involved the theft of customer funds – Consent to censure and permanent bar.

Appearances:

For the Division of Enforcement
Richard Y. Chin, Esq.
John W. Melican, Esq.

For the Respondent
Joseph Edward Herndon

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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 Joseph Edward Herndon (“Respondent”), a former registered representative with UBS PaineWebber Inc. now known as UBS Financial Services Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he misappropriated funds belonging to two customers of his member firm employer.
- II. Engaged in acts detrimental to the interest or welfare of the Exchange in violation of Exchange Rule 476(a)(7) in that he was convicted of the criminal offense of exploitation of an elderly person, a felony, which involved the theft of customer funds which occurred during the course of his employment at a member firm.

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 July 1951. He has been employed as a registered representative in the securities industry from January 1989 to November 1996 with two non-member firms and one member firm. From November 1996 until January 2003, Respondent was employed by the Firm.
2. Respondent is not currently employed in the securities industry.

3. On or about February 10, 2003, the Exchange received a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) from the Firm reporting Respondent’s termination on January 15, 2003, after a customer, CB, alleged, among other things, that Respondent was diverting the customer’s money to his own benefit.
4. On June 13, 2003, the Hillsborough County, Florida, authorities arrested Respondent in connection with his handling of CB’s funds and he was subsequently charged with exploitation of an elderly person, organized fraud, and grand theft first degree.
5. On or about June 19, 2003, Enforcement received a Form RE-3 from the Firm, which reported that it had reached a settlement with CB.
6. By letter dated October 7, 2003, Enforcement notified Respondent of its investigation and requested a written statement, which he subsequently provided.
7. On or about January 14, 2004, Enforcement received a Form U-5A from the Firm reporting that the personal representative of the Estate of CL (“CL’s Estate”) claimed that Respondent had engaged in unauthorized withdrawals and transactions in CL’s account.

Overview

8. Beginning as early as 1997 to 2003, Respondent misappropriated funds totaling almost \$1 million from two customers of UBS. For one of the customers, CB, Respondent endeared himself to CB such that CB came to rely on Respondent to assist him with all of his financial matters. Believing that Respondent was going to invest his account in stocks or mutual funds, CB entrusted Respondent with his money. However, Respondent diverted most of CB’s money, totaling approximately \$800,000, to his own benefit. Respondent did this by having CB sign checks, which Respondent had made payable to Respondent or Respondent’s creditors. Respondent plead guilty to a felony criminal offense as a result of his misconduct in connection with CB’s account. For another customer, CL, Respondent misappropriated approximately \$145,000 from her account through unauthorized withdrawals. One of these withdrawals was a check from CL’s account payable to CB.

Felony Criminal Conviction

9. On November 20, 2003, Respondent pleaded guilty to and was convicted of the criminal offense of exploitation of an elderly person (Fla. Stat. Ch. 825.103). Because of the amount of money involved, his conviction was a first degree felony.
10. The Hillsborough County, Florida Court (the “Court”) sentenced him to eight years probation, to perform 250 hours of community service, to pay \$313,000 in restitution to CB, and to pay \$8,559 in other fines and costs. Respondent’s sentence also required that he have “[n]o employment managing other persons [sic] monies.” (Respondent had already paid CB approximately \$187,000 in restitution.)

Misappropriation of Customer Funds

CB's Account

11. In or about November 1996, CB, who was elderly, retired, and mentally disabled, opened an account at the Firm.
12. Respondent, who worked as a registered representative at the Firm's St. Petersburg, Florida, Branch office, regularly went to CB's home to assist CB with his financial affairs, including paying CB's household bills and opening his mail.
13. Respondent had CB sign checks, and Respondent wrote to whom the check was payable.
14. Checks were being written from CB's bank account at First Bank and CB's account at the Firm.
15. Many of the checks Respondent had CB sign were actually being used to pay for Respondent's own expenses or being paid to directly to Respondent. In this way, he diverted approximately \$800,000 of CB's funds between 1997 and 2003.
16. Most of the checks that Respondent converted to his own benefit came from CB's bank account at First Bank.
17. Many of the checks drawn on CB's Firm account were payable to CB himself and deposited into CB's First Bank account. Thus, CB's funds were being moved from his Firm account to his First Bank account, from which Respondent then diverted CB's funds to his own use.
18. To effectuate his misappropriation scheme, Respondent told CB that CB was signing checks to invest in stocks and/or mutual funds, when in fact these checks were actually being used to pay Respondent's creditors.
19. To maintain the ruse, Respondent bought a few shares of a stock with a name similar to the name of Respondent's creditor for CB's account. Thus, he had CB sign a check payable to Delta Aircraft to make a payment on the airplane that Respondent owned, and he bought 100 shares of Delta Airlines Co. for CB's account.
20. For other checks, Respondent persuaded CB to sign checks that were made payable directly to Respondent.
21. When asked by the Firm, Respondent characterized these payments as "loans."
22. In January 2003, CB, through his attorney, complained to the Firm about Respondent misappropriating funds from CB's account.
23. After initially claiming CB made loans to him, Respondent plead guilty to elder exploitation in November 2003.

24. The Firm settled with CB for \$300,000.

CL's Account

25. On June 9, 2003, the Firm received a complaint from CL's Estate alleging unauthorized withdrawals and trading by Respondent.
26. Respondent misappropriated approximately \$145,000 from CL's account at the Firm through checks or other withdrawals.
27. After CL died on April 23, 2002, a check dated April 30, 2002, in the amount of \$20,000, made payable to CB, was drawn on her account.
28. Respondent used CB's account to siphon money from CL to himself.
29. The Firm reached a settlement with CL's Estate, reimbursing it \$90,000 for the losses.

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 permanent bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.

In support of the penalty, Enforcement cites the following Exchange precedents: In the Matter of William C. Stroup HPD 02-230 (November 20, 2002), In the Matter of Danyel D. Penix HPD 03-36 (March 12, 2003), and In the Matter of Qunaco Mitchell HPD 04-69 (April 28, 2004). All of the cases involved consents to a censure and a permanent bar. Two of the cases included findings of misappropriation with endorsing checks, making misstatements, failing to comply (Stroup) or with acts detrimental in that he was convicted of theft by unlawful taking (Penix). One case involved being convicted of attempted embezzlement involving theft of customer funds (Mitchell). Respondent's conduct clearly warrants the penalty of a censure and permanent bar which is supported by the cited precedents.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer
Panelists:
Jeffrey L. Friedman
David M. Tarrío