

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-107

September 19, 2005

KIMBERLY A. VONDUHN
FORMER NON-REGISTERED EMPLOYEE

* * *

Violated Exchange Rule 476(a)(7) by committing felonies of forgery and theft with elderly specification; violated Exchange Rule 477 by failing to comply with request for written information – Censure and permanent bar.

Appearances:

For the Division of Enforcement
Penny Rosenberg, Esq.
Bettina Sacklowski, Esq.
Gerard Murphy, Esq.

For the Respondent
No Appearance

* * *

A Hearing Panel of the New York Stock Exchange, Inc. (the “Exchange”) conducted a hearing on charges brought by the Exchange’s Division of Enforcement (“Enforcement”) against Kimberly A. Vonduhn (“Respondent”), former non-registered Senior Sales Assistant with Citigroup Global Markets, Inc. (the “Firm”). Respondent was charged with having:

- I. Engaged in acts detrimental to the interest or welfare of the Exchange in that she was convicted of Forgery and Theft with Elderly Specification, which involved the misappropriation of funds belonging to another employee of the Firm during the course of her employment, and she is, therefore, subject to discipline pursuant to Exchange Rules 476(a)(7) and 477; and
- II. Violated Exchange Rule 477 in that she failed to comply with the Exchange’s requests for information concerning matters that occurred prior to the termination of her employment with a member organization, and she is, therefore, subject to discipline pursuant to Exchange Rules 476(a) and 477.

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

Procedural History

Prior to the hearing, Enforcement moved, pursuant to Exchange Rule 476(d), to have the facts and charges alleged in the Charge Memorandum deemed admitted since Respondent had failed to file an Answer. By letter-decision dated September 2, 2005, Hearing Officer Vincent F. Murphy granted the motion in part, by deeming the facts alleged in paragraphs 1 through 12 of the Charge Memorandum admitted, and denied the motion to the extent that it asked for the charges to be admitted, insofar as Exchange Rule 476(d) does not authorize a Hearing Officer to grant such a dispositive motion.

On the basis of the above, the Hearing Panel found as follows:

Background and Jurisdiction

1. Respondent was born in August 1966. During the period of June 29, 1998 through January 15, 2004, Respondent was employed as a non-registered Senior Sales Assistant by the Firm. Respondent was terminated on January 15, 2004, when the Firm learned that she had misappropriated approximately \$56,000 from the personal checking account of another employee of the Firm.
2. On or about February 13, 2004, the Exchange received a Form RE-3 notifying it of Respondent's termination. The Exchange has no record that Respondent is currently employed in the securities industry.
3. By letters dated June 8, 2004 (the "June 8 Letter"), and August 12, 2004 (the "August 12 Letter"), sent via certified mail return receipt requested and first class mail, Enforcement notified Respondent of its formal investigation and requested that she provide an explanation of the matters that led to her termination.

Acts Detrimental

4. Respondent worked for a Firm financial consultant who had given Respondent access to his personal checking account so that she could assist him in the payment of his personal expenses. During the period from December 2002 to January 2004, Respondent forged checks on his account to pay approximately \$56,000 of her own expenses.
5. On or about January 15, 2004, the financial consultant discovered Respondent's forged checks, and the Firm terminated Respondent's employment. The financial consultant filed a criminal complaint against Respondent.
6. On November 5, 2004, in the Court of Common Pleas in Cuyahoga County, Ohio, Respondent pled guilty to, and was convicted of, one count of Theft with Elderly Specification, a felony, and one count of Forgery, also a felony.

7. On December 14, 2004, the Court sentenced Respondent to five years probation and ordered her to pay restitution in the amount of \$2,205.

Failure to Cooperate

8. The June 8 Letter was sent via certified mail return receipt requested and first class mail to the last known address as reflected in Exchange records. The letter notified Respondent of the Exchange's formal investigation and requested that she provide a detailed written explanation on or before June 28, 2004, regarding allegations that she misappropriated funds from a co-worker.
9. The certified copy of the June 8 Letter was returned to the Exchange marked "not deliverable as addressed." The copy of the June 8 Letter sent via first class mail was returned to the Exchange marked "moved left no address, unable to forward, return to sender."
10. The August 12 Letter was sent via certified mail return receipt requested and first class mail to an updated address. The letter notified Respondent of the Exchange's formal investigation and requested that she provide a detailed written explanation on or before September 1, 2004.
11. The return receipt returned to the Exchange reflected that "Kimberly Vonduhn" received and signed for the August 12 Letter on or about August 16, 2004. The copy of the August 12 Letter sent via first class mail was not returned to the Exchange.

To date, Respondent has failed to respond to the Exchange's requests for information concerning the matter reported in the Form RE-3.

DECISION

The Hearing Panel, by unanimous vote, found Respondent guilty as charged.

PENALTY

At the hearing, Enforcement referred the Hearing Panel to the standards to be applied in determining the appropriate penalty in any given case, as set forth in McCarthy v. SEC, 406 F.3d 179 (2d Cir. 2005). Those standards include the seriousness of the offense, the harm to the trading public, the potential gain to the respondent, and the deterrent value to the offending party and third parties. Id. at 190. The Hearing Panel agrees that the felony crimes of forgery and theft with elderly specification to which Respondent pled guilty are very serious. They were committed for personal gain and harm the trading public by undermining trust. In order to deter such conduct in the future, a severe penalty in this case is justified. In addition, Respondent's failure to comply with the Exchange's requests for information constitutes a serious violation, especially because there is no evidence that she is likely to cooperate in the future.

Enforcement referred the Hearing Panel to three decisions of the Hearing Board in which the respondent had been convicted of a felony involving theft and had refused to cooperate with Enforcement's requests for written information or testimony. See In re Charles Harry Eisenhuth, Decision 04-10 (N.Y.S.E. Hearing Panel Jan. 21, 2004); In re Joyce Garcia, Decision 03-202 (N.Y.S.E. Hearing Panel Nov. 12, 2003); In re Christopher Michael Springer, Decision 03-186 (N.Y.S.E. Hearing Panel Oct. 2, 2003). In each of those cases, the penalty imposed was censure and a permanent bar.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured and permanently barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Panel

- Peggy Kuo – Chief Hearing Officer
- Panelists: Anthony Prestia
Larry Youell