

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-115

October 19, 2005

RAYMOND BURTON

FORMER NON-REGISTERED EMPLOYEE

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**Violated Exchange Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that he failed to disclose pending criminal charges on an employment application he submitted to his member firm employer; violated Exchange Rule 476(a)(10) by making one or more misstatements and/or omissions of fact on his application for registration filed with the Exchange; caused a violation of Exchange Rule 345.12 by submitting a Form U-4 containing false information – Consent to censure and twelve-month bar beyond the period of his statutory disqualification.**

**Appearances:**

For the Division of Enforcement  
Scott M. Andersen, Esq.  
Miranda Chatelain, Esq.

For the Respondent  
Raymond Burton  
*pro se*

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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 Raymond Burton (“Respondent”), a former Financial Advisor Trainee with Morgan Stanley DW Inc. (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that he failed to disclose his criminal history on an employment application he submitted to his member firm employer.
- II. Violated Exchange Rule 476(a)(10) by making one or more misstatements and/or omissions of fact on his application for registration filed with the Exchange.
- III. Caused a violation of Exchange Rule 345.12 by submitting a Form U-4 containing false information.

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 April 1966. He entered the securities industry on or about June 28, 2004 as a Financial Advisor Trainee in the Livonia, Michigan office of the Firm until his employment was terminated on or about September 8, 2004. Respondent has not been employed in the securities industry since his employment was terminated by the Firm.
2. On or about October 5, 2004, the Exchange received a Form RE-3 from the Firm reporting that Respondent's employment had been terminated for failing to disclose his criminal history in connection with his employment.
3. By letter dated March 10, 2005, which he received, Enforcement notified Respondent that it had opened an investigation into the matter and requested he provide a written statement regarding the circumstances of his employment termination. By letter dated March 22, 2005, Respondent responded to Enforcement's request for information.

### **Summary of Violative Conduct**

4. During April 2004, Respondent failed to disclose on an employment application, that he submitted to his member firm employer, his prior criminal history, made a misstatement or omission of fact on his Form U-4 and submitted a Form U-4 to the Exchange that contained false information.

### **Violative Conduct**

5. On March 18, 2004, Respondent was arrested and charged with one felony count of "Possession Narcotic/Cocaine," one misdemeanor count of "Possession of Marijuana," and one count of misdemeanor "Operating Intoxicated/Impaired/ Controlled Substance."
6. On April 26, 2004, Respondent completed an Application for Employment with the Firm. Question 5(a) of the application asked, "Have you ever been arrested, charged with, convicted of or plead no contest to any FELONY?" After Question 5(a), Respondent placed an "X" in the No box.
7. Respondent was required to place an "X" in the Yes box in response to Question 5(a) based on his felony arrest and charge for cocaine possession. The footnote to Question 5 stated "[a]rrests or indictments are not considered by Morgan Stanley in any employment decisions but records of such are required, by regulatory bodies, to be maintained. Further, in your response to Question No. 5, please include any arrests, charges or convictions which have been dismissed or expunged."
8. On April 27, 2004, Respondent completed a Background Information Authorization Form. Question 6 of the authorization form asked, "Have you ever been charged with

or convicted of a: Felony? Misdemeanor?” After both questions, Respondent falsely placed an “X” in the No box. Based on the felony drug possession, misdemeanor drug possession and the misdemeanor driving while impaired charges, Respondent was required to answer Yes in response to Question 6.

9. On July 9, 2004, Respondent completed the Form U-4. Question 14A asked, “Have you ever: ... (b) been *charged* with any *felony*?” In response to Question 14A, Respondent falsely checked the No box. Based upon his March 2004 felony cocaine possession charge, Respondent was required to answer Yes to the question.
10. Respondent’s misstatements were designed to lead the Firm to believe that he had not been arrested or charged with a crime.
11. The Firm hired Respondent on June 28, 2004 as a Financial Adviser Trainee. The initial background search conducted on April 29, 2004 failed to disclose Respondent’s criminal history. On July 15, 2004, the Firm received the results of a United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division fingerprint report (“DOJ report”), which disclosed that Respondent had been arrested and charged with two dangerous drug charges and one traffic offense. After receiving the DOJ Report, the Firm ordered the relevant court documents and requested a written statement from Respondent, which Respondent supplied. The Firm ultimately terminated Respondent’s employment on September 8, 2004 for failing to disclose his criminal history.
12. On December 2, 2004, Respondent entered a plea agreement covering all three counts,<sup>1</sup> whereby guilt was deferred pending the completion by Respondent of probation and ninety days of incarceration.
13. Sections 3(a)(39) and 15(b)(4)(B) of the Securities Exchange Act of 1934 provide that an individual is subject to a statutory disqualification for a period of ten years if convicted of any felony and certain specified misdemeanors.
14. Respondent became statutorily disqualified upon entering his deferred guilty plea, but the statutory disqualification did not go into effect until after Respondent had already been terminated from the Firm. Respondent will remain subject to a statutory disqualification until the successful completion of his probationary period.

### **DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent guilty as set forth above by unanimous vote.

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<sup>1</sup> The Hearing Panel notes that, upon questioning, Enforcement clarified that the guilty plea included a felony.

**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 twelve-month bar beyond the period of his statutory disqualification, from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization. In determining the appropriateness of the penalty in this case, the Hearing Panel considered the following Exchange precedents cited by Enforcement: In re Andrew Davis Mills, Decision 05-88 (N.Y.S.E. Hearing Panel Aug. 5, 2005) (respondent failed to disclose a prior misdemeanor conviction; censure and one year bar); In re Catherine McLelland, Decision 04-81 (N.Y.S.E. Hearing Panel May 19, 2004) (misstatement regarding the reason for termination from prior employment; censure and three month bar); In re Broderick N. Chapman, Decision 03-149 (N.Y.S.E. Hearing Panel July 29, 2003) (failure to disclose a prior conviction which subjected the respondent to a statutory disqualification; censure and two year bar).

In the present case, Respondent gave false information in that he denied having been arrested for and charged with a felony and two misdemeanors. That he was subsequently convicted of those crimes through a guilty plea does not raise the initial misstatement to the level of a failure to disclose an actual conviction. See Mills at 4 (“failure to disclose a conviction is more serious than failure to disclose a criminal charge). Nevertheless, because the criminal charges included a felony, which upon conviction would subject Respondent to a statutory disqualification, the Hearing Panel regards the agreed upon penalty as appropriate in relation to other Exchange precedents.

For the Hearing Panel

Peggy Kuo - Chief Hearing Officer  
Panelists:  
Thomas Liriano  
Peter Tuzzo