

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-118

October 20, 2005

ALAN EARL MORRIS

FORMER REGISTERED REPRESENTATIVE

* * *

**Violated Exchange Rule 477 by failing to comply with requests to testify –
Consent to censure and permanent bar.**

Appearances:

For the Division of Enforcement
Joy Weber, Esq.
Richard Chin, Esq.
Steven Gonzalez, Esq.

For the Respondent
Alan Earl Morris, *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 Alan Earl Morris (“Respondent”), a former registered representative with Shields & Company (the “Firm”). Without admitting or denying guilt, Respondent consented to a finding by the Hearing Panel that he violated Exchange Rule 477 by failing to comply with one or more written requests by the Exchange that he appear and testify concerning one or more matters which occurred prior to the termination of his status as an employee of a member organization.

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 August 1938. He has been employed as a registered representative in the securities industry as follows:

Firm A	9/68 - 6/72, 8/76 - 3/88
Firm B	3/88 -5/93
Firm C	5/93 - 2/00
The Firm	3/00 - 12/02

2. Respondent is not currently employed in the securities industry.
3. By letter dated December 23, 2003, which Respondent received, Enforcement informed Respondent that it was investigating certain customer complaints

against him alleging, among other things, unsuitable and unauthorized trading. The unsuitable and unauthorized trading resulted in customer losses in excess of \$1.5 million.

4. Respondent provided a written statement, which Enforcement received on or about January 7, 2004.
5. In or about January 2005, Enforcement received an amended Uniform Termination Notice for Securities Industry Registration from the Firm reporting that one of the complaining customers obtained an NASD arbitration award in the amount of approximately \$1.3 million against Respondent for violations including breach of fiduciary duty, misrepresentation, and fraud.

Failure To Cooperate

6. On or about February 3, 2005, Enforcement contacted Respondent by telephone to schedule his on-the-record (“OTR”) testimony. In addition to allegations of unauthorized and unsuitable trading, Enforcement wished to question Respondent about allegations that he inflated the assets in several customers’ fee-based accounts by purchasing U.S. Treasury Securities, on margin, thereby improperly increasing his earnings.¹
7. On or about February 14, 2005, Respondent informed Enforcement, by telephone, that he did not intend to cooperate with Enforcement’s investigation and would not appear and provide testimony as requested. Enforcement informed Respondent during this telephone conversation that his failure to appear and provide testimony could result in formal disciplinary action against him for failure to cooperate.
8. By letter dated February 16, 2005 (the “February 16th Letter”), which Respondent received, Enforcement requested that Respondent appear and provide OTR testimony on March 2, 2005.
9. The February 16th Letter informed Respondent that his failure to appear and provide testimony on the scheduled date could result in formal disciplinary action against him for failure to cooperate.
10. On or about February 22, 2005, Enforcement contacted Respondent by telephone and Respondent informed Enforcement that he would not appear and provide OTR testimony on March 2, 2005. Enforcement informed Respondent during this telephone conversation that his failure to appear and provide testimony on March 2, 2005 could result in formal disciplinary action against him for failure to cooperate.

¹ During the relevant period, the Firm calculated the wrap fee charged to a customer based on the total assets in the account. By increasing the assets, Respondent increased his earnings because he received a portion of the fee collected by the Firm.

11. Respondent did not appear and provide testimony on March 2, 2005.
12. To date, Respondent has not complied with the Exchange's requests that he appear and provide OTR testimony.

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

Respondent has chosen not to cooperate with Enforcement's investigation and, instead, to consent to a permanent bar from membership or association with the Exchange. Hearing panels have approved of such a choice in other cases involving a similar failure to cooperate. See In re George Ellis McDowell, Decision 04-120 (N.Y.S.E. Hearing Panel July 22, 2004) (consent to permanent bar approved where respondent refused to testify and represented orally in telephone call with Enforcement and confirmed by letter that he had no intention of returning to securities industry); In re Robert Melo, Decision 04-44 (N.Y.S.E. Hearing Panel Mar. 24, 2004) (consent to permanent bar accepted where respondent provided written statement, but then failed to give on-the-record testimony). See also In re Raj Singhal, Decision 05-80 (N.Y.S.E. Hearing Panel July 6, 2005) (permanent bar justified on basis of either misappropriation or failure to cooperate, where, through his attorney, respondent declined to cooperate three times).

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 member or member organization.

For the Hearing Panel

Vincent F. Murphy – Hearing Officer
Panelists:
Glenn Garofalo
Ruth Fialko