

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 05-119**

October 20, 2005

JASON ANDREW BANDER

FORMER REGISTERED REPRESENTATIVE

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**Violated Exchange Rule 477 by failing to comply with one or more requests to appear and testify before the Exchange regarding certain matters that had occurred prior to termination of Respondent's status as registered employee of member organization – Censure and temporary bar, to become permanent if Respondent does not comply within three months.**

**Appearances:**

For the Division of Enforcement

James O'Donnell, Esq.

Jean Elmadany, Esq.

For the Respondent

Frank H. Wright, Esq.

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A Hearing Panel of the New York Stock Exchange, Inc. (the "Exchange") conducted a hearing on a charge brought by the Exchange's Division of Enforcement ("Enforcement") against Jason Andrew Bander ("Respondent"), a former stock loan trader with Dresdner Kleinwort Benson North America (the "Firm"). Respondent was charged with having violated Exchange Rule 477 by failing to comply with one or more requests to appear and testify before the Exchange regarding certain matters that had occurred prior to the termination of his status as a registered employee of a member organization.

**Procedural Background**

The Charge Memorandum in this matter was issued on June 2, 2005. Respondent submitted an Answer to the Charge Memorandum by letter of his counsel dated June 27, 2005.

By motion dated July 28, 2005, Enforcement asked that all factual allegations made in the Charge Memorandum be deemed admitted. I ruled on September 28, 2005 that paragraphs 4-10 and 12 would be deemed admitted. By letter dated September 30, 2005 (the "September 30 Letter"), counsel for Respondent conceded that the allegation made in paragraph 11 was also true. Accordingly, at the hearing, I noted that paragraphs 4 through 12, inclusively, would be deemed admitted.

Neither Respondent nor his counsel, appeared at the hearing in this matter.

### **Background and Jurisdiction**

1. Respondent was born in June 1971. His employment in the securities industry was primarily in the stock loan area and began in March 1994 with a non-member firm, where he was a trading assistant until June 1997. From June 1997 to July 2001, he was a stock loan trader at a different non-member firm. From July 24, 2001 to August 5, 2003, he was employed as a stock loan trader for the Firm. Respondent was approved as a registered representative by the Exchange on August 7, 2001.
2. On or about August 28, 2003, the Exchange received a Uniform Termination Notice for Securities Industry Registration from the Firm reporting the voluntary termination of Respondent's employment with the Firm (the "Form U-5"). The Form U-5 stated that at the time of Respondent's resignation on August 5, 2003: "A review of Mr. Bander's conduct relating to certain stock loan transactions is being undertaken following a significant billing dispute with a counterparty relating to those transactions. Mr. Bander resigned from the Firm during the course of the review."
3. Respondent has not been employed in the securities industry in a capacity known to the Exchange since his resignation from Dresdner in August 2003.

### **Failure to Cooperate**

4. By letter dated October 1, 2003, sent first class and certified mail, which Respondent received, Enforcement advised Respondent that the Exchange was investigating the matter reported on the Form U-5, and requested that he appear and provide on-the-record testimony on October 16, 2003.
5. On or about October 7, 2003, Respondent contacted Enforcement and requested an adjournment of his testimony on October 16, 2003. An adjournment was granted to October 22, 2003.
6. On or about October 9, 2003, Respondent again contacted Enforcement and stated that he was going to be away on vacation, that he was seeking counsel, and would contact Enforcement to re-schedule his testimony after he had consulted with his attorney.
7. On or about November 20, 2003, Respondent's counsel contacted Enforcement and stated that Respondent would not cooperate with Enforcement's investigation or provide the required testimony.
8. On or about September 22, 2004, Enforcement again contacted Respondent's counsel to request that Respondent provide the required testimony.
9. On or about October 18, 2004, Respondent advised Enforcement, in writing, that he would not cooperate with Enforcement's investigation nor provide the required testimony.

10. On or about May 19, 2005, Enforcement again contacted Respondent's counsel and requested that he appear and testify.
11. On or about May 26, 2005, Respondent's counsel advised Enforcement that Respondent would not appear and provide the required testimony.
12. To date, Respondent has failed to appear and testify as required by the Exchange.

### **DECISION**

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

### **PENALTY**

The parties disagreed on the appropriate penalty. In the September 30 Letter, Respondent, through his counsel, proposed a temporary bar of "30 to 60 days" beyond the time that the U.S. Attorney's Office determined that Respondent's cooperation with the U.S. Attorney's investigation was at an end. Respondent argued that a permanent bar was not fair under the circumstances because, unlike "some recalcitrant member who has basically snubbed his nose" at the Exchange's investigative efforts, Respondent here had cooperated with Enforcement by providing written information; moreover, he claimed that his cooperation with the U.S. Attorney's investigation "debar[red] him from giving testimony under oath in the Exchange's investigation." Respondent never provided any specific explanation of why he was "debar[red]" from cooperating with the Exchange, and Enforcement was not aware of any formal legal impediment to Respondent's ability to provide testimony to the Exchange. In addition, the U.S. Attorney was aware of the Exchange's investigation and hearing and did not request the Exchange to stay its proceedings.

Enforcement, in contrast, proposed a temporary bar, which would become permanent if Respondent did not cooperate with Enforcement's requests within three months. Enforcement argued that the matter under investigation here—an alleged stock loan transaction scheme—was a serious one and, therefore, that Respondent's failure to provide testimony about it was also serious. Moreover, Enforcement argued that Respondent's promise to testify in the future was vague and, in effect, amounted to no promise at all. In support of its proposed penalty, Enforcement referred to three precedents: In re George Petrosspour Avakian, Decision 04-159 (N.Y.S.E. Hearing Panel Oct. 5, 2004); In re Neil John Scarfuto, Jr., Decision 03-166 (N.Y.S.E. Hearing Panel Sept. 9, 2003); and In re Robert Magaraci, Decision 96-148 (N.Y.S.E. Hearing Panel Dec. 19, 1996). In each of those cases, the respondent had declined to cooperate with at least one request from Enforcement for information, and the penalty imposed was a temporary bar, which would become permanent if the respondent did not cooperate within three months.

The Hearing Panel has considered the arguments on both sides and holds that Respondent's proposed penalty must be rejected insofar as it would leave the duration of the bar effectively indeterminate. Indeed, more than two years have already passed since Enforcement's first request for testimony, and there is no indication that the U.S. Attorney's investigation will end at

any point in the near future. Moreover, an argument similar to the one made by Respondent was soundly rejected in the Magaraci case. As the hearing panel deciding that case held:

[A] person under investigation by the Exchange for alleged personal misconduct is not privileged to withhold specific information concerning his activities while employed by a member organization; he owes an explanation of his conduct to the Exchange, as well as to prospective employers.

Magaraci, Decision 96-148, at 3.

While the Hearing Panel also considered an immediate permanent bar, that penalty was found not to be appropriate in this case. Unlike a party who simply does not respond in any way to an investigation or an issuance of charges, Respondent in this case was engaged in the proceeding through counsel. His involvement included the filing of an Answer and the offer of other oral and written submissions to Enforcement or the Hearing Panel.

In view of the above findings, the Hearing Panel, by unanimous vote, determined that Respondent be censured and barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until he complies with the Exchange's requests with which he has failed to comply. Further, if he does not comply within three months, the bar shall become permanent.

For the Hearing Panel

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