

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-133

November 7, 2005

BELLER SECURITIES CORPORATION, INC.
MEMBER ORGANIZATION

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Violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and Exchange Rule 440 by maintaining inaccurate books and records with respect to certain order tickets; and violated Exchange Rules 440 and 134(d) by failing to retain records of error transactions – Consent to censure and \$35,000 joint fine.

EXCHANGE HEARING PANEL DECISION 05-134

November 7, 2005

RANDY S. BELLER
EXCHANGE MEMBER

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Violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and Exchange Rule 440 by maintaining inaccurate books and records with respect to certain order tickets; and violated Exchange Rules 440 and 134(d) by failing to retain records of error transactions – Consent to censure and \$35,000 joint fine.

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Appearances:

For the Division of Enforcement
Linda Riefberg, Esq.
Nancy Reich Jenkins, Esq.
Craig P. Hammond, Esq.
Joseph O. Okpaku, Esq.

For the Respondent
Albert Ferrer, III, Esq.

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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 Beller Securities Corporation, Inc. (“Respondent Firm”) and Randy S. Beller (“Respondent”). Without admitting or denying guilt, Respondent and Respondent Firm consented to a finding by the Hearing Panel that they:

- I. Violated Section 17(a) of the Securities Exchange Act of 1934 (the “1934 Act”) and Rules 17a-3 and 17a-4 thereunder and Exchange Rule 440 by maintaining inaccurate books and records with respect to certain order tickets.
- II. Violated Exchange Rules 440 and 134(d) by failing to retain records of error transactions.

For the sole purpose of settling this disciplinary proceeding, Enforcement, Respondent and Respondent Firm stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Respondent was born in [REDACTED]. He entered the securities industry in 1981, working as a squad (Floor messenger) on the Floor of the Exchange. He worked as a Floor clerk for Member Firm A from 1982 to 1983, then as a Floor clerk for Member Firm B. In 1985, he became a Floor broker for Member Firm B and a member of the Exchange.
2. Respondent Firm is a lessee member organization which conducts business as an independent broker. Respondent began leasing a seat on the Exchange from Member Firm B in 1988 and registered as a self-employed independent Floor broker-dealer under the name Randy S. Beller. He still leases his seat from Member Firm B. In 1993, Respondent incorporated his business, thereby creating Beller Securities Corp., Inc.
3. On or about February 26, 2004, Enforcement received a referral from the Exchange’s Division of Member Firm Regulation (“MFR”) reporting certain findings made by MFR during its 2003 examination of the Respondent Firm’s financial, operational and sales practice procedures (“Fin/Op”). The results of the 2003 examination are contained in the “Report on the Examination of Beller Securities Corp.” dated January 20, 2004 (the “2003 Report”).
4. By letter dated April 8, 2004, which Respondent received, Enforcement notified Respondent and Respondent Firm that Enforcement was formally investigating the allegations contained in the 2003 Report. Respondent responded thereafter and provided information and testimony in connection with Enforcement’s investigation.

Prior Discipline

5. In prior Hearing Panel decisions, after a contested hearing, an Exchange Hearing Panel found that Respondent and Respondent Firm violated Exchange Rule 440 and Section 17(a) of the 1934 Act and Rule 17a-4, thereunder, in that Respondent and Respondent Firm, jointly and severally, failed to maintain certain required books and records in that certain records, which were being stored in the basement at Respondent’s home, were destroyed by a flood in Respondent’s basement caused by a significant rainfall and a displaced downspout near a basement window well. In re

Randy S. Beller, Decision 03-187 (N.Y.S.E Hearing Panel Feb. 25, 2004); In re Beller Securities Corporation, Decision 03-188 (N.Y.S.E. Hearing Panel Feb. 25, 2004). The Hearing Panel imposed a penalty of a censure and a fine in the amount of \$30,000.

Overview

6. As reported in MFR's 2003 Report, Respondent Firm was cited for several violations, including its failure to retain original order tickets, and its failure to maintain certain documentation pertaining to error transactions.

Violative Conduct

Books and Records—Order Tickets

7. Exchange Rule 440 requires members to “make and preserve books and records as the Exchange may prescribe and as prescribed by Rule 17a-3. The recordkeeping format, medium and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.” Rule 17a-3(a)(6)(i) provides that a member must make and keep “a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.”
8. During the 2003 examination, it was discovered that out of 114 orders received by the Firm on July 8, 2003, 54 order tickets were not retained.
9. Following the Exchange's examination, Respondent Firm subsequently retained the services of the William Ryan Group (the “Ryan Group”) for the purpose of obtaining and retaining all such additional original order tickets by electronic record keeping through automated processing and analysis of NYSE Merged Order (“MRO”) Logs.

Differences and Omissions—Cleared Transactions (Error Records)

10. The 2003 examination revealed that Respondent Firm failed to keep adequate records of its error transactions. Specifically, the examiner found that while Respondent Firm was properly forwarding input sheets relating to the errors to the clearing firm, it was not maintaining its own set of the input sheets. In addition, Respondent Firm was unable to produce the original order tickets for five of seven error trades.
11. Exchange Rule 134(d)(iii) provides that “[r]ecords as to all errors shall be maintained by the member or his or her member organization.”
12. Respondent and Respondent Firm have since retained all originals of any error documentation and forwarded the clearing firm only copies, and they engaged the Ryan Group to ensure retention of all original order tickets, including but not limited to those relating to any errors.

13. During the subsequent 2004 examination of Respondent Firm, no exceptions were noted in this or any other area.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent and Respondent Firm 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 and Respondent Firm of a censure and a fine, payable jointly and severally by Respondent and Respondent Firm, in the amount of \$35,000.

Enforcement cited three Exchange precedents in which a censure and fine of \$20,000 or \$30,000 was imposed for failure to preserve books and records: In re Ralph Steven Parilla, Decision 04-161 (N.Y.S.E. Hearing Panel Oct. 5, 2004); In re John Edward Wilson, Jr., Decision 04-78 (N.Y.S.E. Hearing Panel May 19, 2004); and In re Matthew J. Murray, Jr., Decision 04-56 (N.Y.S.E. Hearing Panel March 31, 2004).

The Hearing Panel notes that this is the second time Respondent and Respondent Firm have been found guilty of essentially the same violations. However, the scope of the present violation is narrower than in the previous case, and Respondent and Respondent Firm have taken adequate steps to remedy the problems which led to the violation. Taking these factors into account, the Hearing Panel finds that the agreed-upon penalty in this case is appropriate.

For the Hearing Panel

Peggy Kuo
Chief Hearing Officer
Panelists:
Maryellen Crawford
Stephen G. MacKenzie