

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 08-41

MARSHALL ROBERT LARUSSO
FORMER ASSISTANT TRADER

August 1, 2008

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Violated NYSE Rule 476(a)(6) by (a) entering fictitious trades in trading account of employer in order to conceal long position of stock that had accumulated and losses associated with that position, (b) entering fictitious trades in trading account of employer in order to create false profit in trading account and (c) misrepresenting fictitious trades to employer as “errors.”; caused violation of Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and NYSE Rule 440 by making or causing to be made, false entries in books and records of employer – Consent to censure and nine-month bar.

Appearances:

For the Division of Enforcement
Susan Light, Esq.
Suzanne Elovic, Esq.
Jacqueline Davis, Esq.

For Respondent
Marshall Robert LaRusso, pro se

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A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Marshall Robert LaRusso (“Respondent”), an assistant trader formerly with Lehman Brothers, Inc., an NYSE member organization. Without admitting or denying guilt, Respondent consented to a finding by a Hearing Officer that he:

- I. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade in that he:

- a. entered fictitious trades in a trading account of his member firm employer in order to conceal a long position of stock that he had accumulated and losses associated with that position;
 - b. entered fictitious trades in a trading account of his member firm employer in order to create a false profit in that trading account; and
 - c. misrepresented certain fictitious trades to his member firm employer as “errors.”
- II. Caused a violation of Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder, and NYSE Rule 440, in that he made, or caused to be made, false entries in books and records of his member firm employer.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. LaRusso was born in 1970. He entered the securities industry in May 1994, when he joined Member Firm A in sales. In May 1997, he joined Lehman Brothers, Inc. (the “Firm”), where he worked in Operations reconciling NASDAQ trades for approximately three years. In 2001, the Firm promoted LaRusso from his Operations position to an assistant trader on the equity sales and trading desk.
2. On or about March 15, 2005, the Firm terminated LaRusso’s employment as a result of the matter involved herein.
3. On or about April 13, 2005, the NYSE received a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) from the Firm, which reported the termination of LaRusso for “creat[ing] inaccurate entries in the Firm’s trading records.”
4. By letter dated February 22, 2006, which LaRusso received, Enforcement notified LaRusso that Enforcement was investigating allegations that, while employed at the Firm, he created inaccurate entries in the Firm’s trading records. Thereafter, LaRusso provided information to Enforcement both in writing and during an interview.
5. LaRusso is not currently employed in the securities industry.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 16 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer, except that pseudonyms have been provided to protect the privacy of non-parties.

Summary of Violative Conduct

6. On March 3, 2005, LaRusso entered three fictitious sales of ABC in the Firm's trading systems, each in the amount of 25,000 shares. LaRusso falsely identified the contra-broker on the trades as "MARS," although no such contra-broker existed. LaRusso misrepresented these trades to the Firm as "errors." The three fictitious sales of ABC to MARS created the false appearance that LaRusso's position had been reduced by 75,000 shares. Further, these sell entries created the appearance of realized profits that did not exist. These transactions also served to conceal the unrealized loss associated with these shares.
7. Also on March 3, 2005, in the Firm's facilitation account, LaRusso entered two orders purchasing 100,000 shares each of ABC from the Firm's proprietary account and two orders immediately reselling the same 100,000 shares back to the Firm's proprietary account. These four trades were a wash, and thus did not result in a change in LaRusso's ABC position. These trades, however, generated an artificial profit of \$74,000, which offset and concealed the true size of trading losses in ABC that day.
8. The total loss to the Firm resulting from the position that LaRusso had accumulated in ABC was \$125,000.

Background

9. From in or about November 2004 to March 2005, LaRusso worked as a senior assistant to a senior trader (the "Trader"). Among his other tasks as the Trader's assistant, LaRusso was responsible for trading approximately 50 health care sector stocks in which the Firm made a market. LaRusso did not have his own trading book, but rather traded for the Trader's account. LaRusso had the authority to make both customer trades and proprietary trades, and to instruct Operations to move shares to the Firm's error account.

Violative Conduct

10. At the close of business on March 2, 2005, LaRusso had a position of 23,862 shares of ABC, one of the stocks he routinely traded, at a cost of approximately \$65.066 per share. On Thursday, March 3, 2005, the Trader was out of the office. That day, LaRusso purchased approximately 78,055 shares of ABC in the facilitation book at a total cost of approximately \$5 million in a steadily declining market. The Health Sector head noticed LaRusso's long position in ABC, and instructed him to move the position to the proprietary account.
11. Rather than do so, however, at various times during the day, LaRusso entered a total of three fictitious sales of ABC in the amount of 25,000 shares, two of which were at prices above the then current market price for the stock. He falsely identified the

contra-broker on the trades as “MARS,” although no such contra-broker existed. Thus, there was no legitimate counterparty to any of these transactions.

12. The three sell orders of ABC to MARS were as follows: (1) at 9:58 a.m., a sale of 25,000 shares to MARS at a price of 64.65, when the bid price was 64.58 and the ask price was 64.66; (2) at 10:25 a.m., a sale of 25,000 shares to MARS at a price of 64.35, when the bid price was 64.26 and the ask price was 64.27; and (3) at 2:06 p.m., a sale of 25,000 shares to MARS at a price of 63.35, when the bid price was 63.13 and the ask price was 63.14. Because the position no longer appeared in the facilitation book, the Health Sector head mistakenly believed that LaRusso had followed his instruction to move the position into the proprietary book.
13. The three fictitious sales of ABC to MARS created the false appearance that LaRusso’s ABC position had been reduced by 75,000 shares. Further, these sell entries created the appearance of realized profits that did not actually exist. These transactions also served to conceal the unrealized loss associated with these shares. These transactions did not result in any harm to the Firm’s customers.
14. On March 3, 2005, LaRusso actually sold 25,505 shares of ABC, comprised of the 23,862 position from the previous day and 1,643 shares purchased early on March 3, 2005. LaRusso realized a loss of approximately \$43,778 on the sale of these shares.
15. Later that day, in the facilitation book, LaRusso entered two orders purchasing 100,000 shares each of ABC from the proprietary book at \$62.64 per share, and two orders immediately reselling the same 200,000 shares back to the proprietary book at \$63.01 per share. The sell and buy orders of ABC to and from the proprietary account were all entered at 3:38 p.m., at which time the bid price was 62.62 and the ask price was 62.65. These transactions did not involve customers and were executed intra-firm, thereby having no impact on the market. These four trades were a wash, and thus did not result in a change in LaRusso’s ABC position, but generated an artificial profit in the facilitation book of 37 cents per share, totaling \$74,000, which offset and concealed the true size of trading losses in ABC that day.
16. On Friday, March 4, 2005, LaRusso’s three orders, each selling 25,000 shares of ABC stock to MARS, broke. The Firm’s Operations Department contacted LaRusso to determine the cause of the trade breaks. LaRusso misrepresented to Operations that the trades were “errors,” and claimed that he was discussing the errors with the Compliance Department. For the next several days, Operations continued to seek a resolution of the trade breaks from LaRusso. Although LaRusso indicated that he would follow up shortly with an explanation, Operations never received a satisfactory explanation of the trade breaks from LaRusso.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondent committed the offenses as set forth above.

PENALTY

In view of the above findings, the Hearing Officer, imposed the penalty consented to by Respondent of a censure and a nine-month 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 Board

Peggy Kuo - Chief Hearing Officer