

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
BARRYTOWN TRADING, L.L.C.

:
:
: Case No. 03-70
: Hearing Officer – JN

: **DISCIPLINARY PANEL DECISION**
: October 13, 2004
:

Digest

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rule 31, as stipulated, and as a penalty, imposed a censure and a \$2,500 fine.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Barrytown Trading, L.L.C. (“Barrytown”), a former Regular Member organization of the Exchange. A Disciplinary Panel held a hearing on September 9, 2004, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Barrytown entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Barrytown based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Barrytown, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that Barrytown violated Exchange Rule 31 in that it delayed and impeded an Exchange investigation by not providing the Firm's anti-money laundering procedures to the Exchange in a timely manner, as set forth in paragraphs 2.0 through 3.3 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose upon Barrytown a censure and a \$2,500 fine. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.¹

The Disciplinary Panel further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.²

¹ The sanctions agreed upon here are in line with those imposed in other Exchange proceedings involving similar misconduct. See, e.g., STR Trading Partners, LLC, (No. 03-73), decided June 24, 2004.

² Rule 12 exempts from publicity those cases where the Panel finds that the offense "related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors." Those exemptions do not apply to the facts of this case.

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Barrytown a censure and a \$2,500 fine.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Copies to: Drew Hurni, Esq. (*via facsimile and first class mail*)
Eric S. Brown, Esq. (*via electronic and first class mail*)
Arlene Collins-Day (*via first class mail*)

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	STIPULATION OF FACTS
IN THE MATTER	X	AND
OF	X	CONSENT TO PENALTY
BARRYTOWN TRADING, L.L.C.	X	Case No. 03-70
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (“AMEX” or the “Exchange”), against BARRYTOWN TRADING, L.L.C. (“Barrytown” or the “Firm”) (CRD# 120495), a former Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty (“Stipulation”) is entered into with Barrytown pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Barrytown based upon or arising out of the facts hereinafter stipulated. Barrytown, without admitting or denying the facts, allegations and conclusions contained in this Stipulation, hereby consents to the findings of a violation of Exchange Rules and to the imposition of the penalties hereinafter provided. Barrytown understands that this Stipulation is subject to approval by an Exchange Disciplinary Panel and by the AMEX Adjudicatory Council and that, if so approved, shall constitute a final decision that may not be appealed by the parties. Barrytown understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of its disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

- 1.0 In 2002, Barrytown became a Regular Member organization of the Exchange.
- 1.1 Barrytown terminated its Regular Member organization status with the Exchange on December 26, 2003.
- 1.2 During all relevant periods herein, Exchange Rule 31 provided that a member organization shall comply with any request by an authorized representative or committee of the Exchange to produce its books, papers or records, or to appear and testify as to any matter pertaining to its business, within the time specified by the representative or committee of the Exchange making the request.

The Exchange's Requests for Information:

- 2.0 On or about May 1, 2003, the Sales Practice Regulation Department ("SPR") of the Exchange initiated an examination program to ensure that all registered brokers and dealers, including all AMEX member organizations, members not associated with a member organization, and all AMEX Limited Trading Permits Holders had reasonably and sufficiently met requirements to develop and implement anti-money laundering programs as prescribed by federal law and Exchange Rules.
- 2.1 On May 7, 2003, SPR sent a letter via First Class U.S. Mail to Barrytown, indicating that an inquiry into its anti-money laundering procedures had commenced and requesting certain documents be provided to SPR no later than May 23, 2003.

- 2.2 No response, either verbal or written, was received from Barrytown regarding SPR's May 7, 2003 letter and the U.S. Post Office did not return SPR's letter to Barrytown.
- 2.3 On June 10, 2003, SPR sent a second letter via First Class U.S. Mail to Barrytown, indicating that an inquiry into its anti-money laundering procedures had commenced and requesting certain documents be provided to SPR no later than June 25, 2003.
- 2.4 No response, either verbal or written, was received from Barrytown regarding SPR's June 10, 2003 letter and the U.S. Post Office did not return SPR's letter to Barrytown.
- 2.5 On July 1, 2003, SPR sent a third letter via Certified Mail/Return Receipt Requested to Barrytown, indicating that an inquiry into the its anti-money laundering program had commenced and requesting certain documents be provided to SPR no later than July 17, 2003. SPR received the certified receipt to its July 1, 2003 letter, indicating receipt by an unknown person at Barrytown. No receipt date was indicated on the return receipt.
- 2.6 No other response, either verbal or written, was received from Barrytown regarding SPR's July 1, 2003 letter.

Enforcement's Investigation of Barrytown:

- 3.0 On October 28, 2003, the Exchange's Enforcement Department ("Enforcement") sent a letter via First Class U.S. Mail and Certified Mail/Return Receipt Requested to George R. Buck ("Buck") and David G. Saferstein ("Saferstein"),

- both Managing Members of Barrytown, regarding Barrytown's failure to comply with document requests made by SPR for documents pertaining to the Firm's development and implementation of an anti-money laundering program. The certified mail return receipt was returned to Enforcement, indicating receipt by Saferstein on November 6, 2003 and receipt by Buck on November 12, 2003.
- 3.1 On November 12, 2003, Enforcement received a call from Buck wherein he indicated he was aware that Barrytown had not responded to SPR's several requests for anti-money laundering materials.
 - 3.2 On November 13, 2003, Enforcement received a call from Howard Kamil ("Kamil"), a partner of the Firm. Kamil stated Barrytown had sent the requested materials on or about October 20, 2003. As neither SPR nor Enforcement had any indication that the Exchange ever received such documentation, Enforcement requested Kamil to resend the anti-money laundering documentation and any materials verifying the anti-money laundering documentation was, in fact, sent on October 20, 2003.
 - 3.3 On or about December 8, December 22, and December 23, 2003, Enforcement received the requested anti-money laundering materials from Barrytown. Nothing in those productions indicated that Barrytown had sent the requested anti-money laundering documentation on October 20, 2003, or any date prior to Enforcement's October 28, 2003 letter.

CONCLUSION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

4.0 Barrytown violated Exchange Rule 31 in that it delayed and impeded an Exchange investigation by not providing the Firm's anti-money laundering procedures to the Exchange in a timely manner, as described in paragraphs 2.0 through 3.3.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Barrytown:

- (a) a censure; and
- (b) a \$2,500 fine.

In entering into this Stipulation with Barrytown, the Exchange considered that Barrytown did not have a relevant prior disciplinary history.

AMERICAN STOCK EXCHANGE LLC

By: _____
David Rosenstein
Vice President and Chief Counsel

Agreed to this _____ day of May 2004.

on behalf of Barrytown Trading LLC