

**Disciplinary Panel  
American Stock Exchange LLC**

---

IN THE MATTER  
OF  
EMCEE INVESTMENTS, L.L.C.

---

:  
:  
Case No. 03-71  
Hearing Officer – JN

:  
:  
**DISCIPLINARY PANEL DECISION**  
October 26, 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 \$2,000 fine.**

**DECISION**

**I. Introduction**

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Emcee Investments, L.L.C., a 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 Emcee entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Emcee based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Emcee, 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 Emcee 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 3.4 of the Stipulation.

### **IV. Penalties and Publicity**

The firm initially ignored the Exchange's written requests for information about its compliance with anti money laundering requirements, apparently because its principal (Mr. Cohen) read only those Exchange mailings which he assumed applied to his firm (Hearing transcript, pp. 12-13). Enforcement later communicated with him out on the Exchange floor (where he was present at all relevant times) and requested an interview, where Cohen appeared and produced the requested compliance material.

The Stipulation proposes a \$2,500 fine. Though the Exchange has been settling cases like this for a censure, coupled with a \$2,500 fine,<sup>1</sup> it sought no censure here, explaining that a telephone call to Mr. Cohen (the firm's principal) on the floor "probably would have resulted in much quicker compliance and relieved Mr. Cohen of any confusion that he may have had that these (anti money laundering) rules didn't apply to him" (*Id.* at 9). The Panel agrees that a censure is unnecessary here.

Under Article V, Section 2 of the Exchange Constitution, a Panel reviewing a Stipulation of Facts and Consent to Penalty may impose a lesser penalty than that proposed. The Panel believes that a modest reduction in the proposed fine is appropriate here. After Enforcement reached Mr. Cohen on the floor, he "cooperated with Enforcement ... by presenting himself for the interview requested and delivered the requested [documents] at that interview" (*Id.* at 7).

---

<sup>1</sup> See, e.g., *STR Trading Partners, LLC*, (No. 03-73), decided June 24, 2004.

Indeed, that interview occurred because Mr. Cohen “was anxious to speak with Enforcement about the situation and wanted to clear things up” (Id. at 15).

Although his prior ignorance is no excuse, Mr. Cohen nevertheless cooperated promptly and fully once Enforcement communicated with him on the floor. The Panel concludes that the circumstances warrant a reduction from the usual fine and that a \$2,000 fine is appropriate here.

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.<sup>2</sup>

## **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 Emcee Investments, L.L.C. a \$2,000 fine.

**FOR THE DISCIPLINARY PANEL**

---

Jerome Nelson, Chair

Copies to: Mark D. Cohen (*via overnight and first class mail*)  
Eric S. Brown, Esq. (*via electronic and first class mail*)  
Arlene Collins-Day (*via first class mail*)

---

<sup>2</sup> 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.

Disciplinary Panel  
American Stock Exchange LLC

.....X  
X  
IN THE MATTER X  
OF X  
EMCEE INVESTMENTS LLC X  
.....X

STIPULATION OF FACTS  
AND  
CONSENT TO PENALTY  
Case No. 03-71

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) against EMCEE INVESTMENTS LLC (“Emcee” or the “Firm”) (CRD#46469), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Emcee pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Emcee based upon or arising out of the facts hereinafter stipulated. Emcee, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Constitution and Rules and Federal Securities Laws and to the imposition of the penalties hereinafter provided. Emcee understands that this settlement 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 which may not be appealed by the parties. Emcee understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of the Firm’s disciplinary record and may be considered in any future proceeding brought by the Exchange.

**STIPULATED FACTS:**

1.0 Emcee has been a Regular Member organization of the Exchange since June 1993, with the exception of July and August 2000. Jurisdiction was retained over Emcee pursuant to a certified letter dated October 29, 2003, receipt of which was acknowledged on November 8, 2003.

1.1 At all relevant times herein, Exchange Rule 31 provided that:

“A member, member organization, approved person or any employee, partner, trustee or director of a member organization or member shall comply with any request by an authorized representative or committee of the Exchange to produce his or its books, papers or records, or to appear and testify as to any matter pertaining to his or its business, within the time specified by the representative or committee of the Exchange making the request.”

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 (hereinafter, collectively referred to as “covered persons”), had reasonably and sufficiently met requirements to develop and implement anti-money laundering programs as prescribed by federal law and Exchange Rules (hereinafter, collectively referred to as the “Exchange’s Anti-Money Laundering Compliance Program”).

2.1 In an effort to effect compliance, an Exchange Notice to Members entitled, “Anti-Money Laundering Compliance Programs Required By Federal Law” was published and distributed to all Exchange members, including Floor Members, on March 5, 2003. This notice provided guidance on the minimum standards

- required for each covered person with regard to the Exchange's Anti-Money Laundering Compliance Program.
- 2.2 A subsequent Exchange Notice to Members entitled, "Examination of Firms' Anti-Money Laundering Procedures by the Sales Practice Regulation Department" was published and distributed to all Exchange members, including Floor Members, on April 16, 2003. This notice reminded all covered persons that SPR would begin requesting documentation on or about May 1, 2003 to determine whether covered persons were in compliance with the Exchange's Anti-Money Laundering Compliance Program.
  - 2.3 On May 7, 2003, SPR sent a letter via First Class U.S. Mail to Emcee at the Firm's CRD address, indicating that an inquiry into its anti-money laundering procedures had commenced and requesting that certain documents be provided to SPR no later than May 23, 2003.
  - 2.4 No response, either verbal or written, was received from Emcee regarding SPR's May 7, 2003 letter, and the U.S. Post Office did not return SPR's letter.
  - 2.5 On June 10, 2003, SPR sent a second letter via First Class U.S. Mail to Emcee at the Firm's CRD address, again indicating that an inquiry into their anti-money laundering procedures had commenced and requesting that certain documents be provided to SPR no later than June 25, 2003. The words "Second Notice," bordered by asterisks, were printed in the top right corner of the letter in large, bold letters.
  - 2.6 No response, either verbal or written, was received from Emcee regarding SPR's June 10, 2003 letter, and the U.S. Post Office did not return SPR's letter.

- 2.7 On July 1, 2003, SPR sent a third letter via Certified Mail/Return Receipt Requested to Emcee at the Firm's CRD address, indicating that an inquiry into the their anti-money laundering program had commenced and requesting that certain documents be provided to SPR no later than July 17, 2003. SPR's July 1, 2003 letter stated that "requests for extensions must be made in writing and submitted at least one day prior to the due date to be considered – the granting of extension is not guaranteed and will be done on an exception basis only." Additionally, the letter reminded the non-responding covered persons of their obligations under Exchange Rule 31 and stated "failure to respond to this inquiry may result in disciplinary action." The words "Third & Final Notice," bordered by asterisks, were printed in the top right corner of the letter in large, bold letters. SPR received the certified return receipt for its July 1, 2003 letter, signed by "Mark D. Cohen," but undated. SPR accessed the U.S. Post Office's "Track and Confirm" webpage for its July 1, 2003 letter and determined that the letter was delivered on July 19, 2003.
- 2.8 No response, either verbal or written, was received from Emcee regarding SPR's July 1, 2003 letter, and the U.S. Post Office did not return SPR's letter.
- 2.9 A third Exchange Notice to Members entitled, "Guidance for Preparing Anti-Money Laundering Procedures by the Sales Practice Regulation Department" was published and distributed to all Exchange members, including Floor Members, on July 25, 2003. This notice provided guidance, including sample language, on how to comply with the Exchange's Anti-Money Laundering Compliance Program.

- 2.10 Despite this third Exchange Notice to Members, Emcee provided no response to SPR's requests for anti-money laundering program materials.
- 2.11 On October 22, 2003, SPR referred the issue of Emcee's failure to cooperate with the requests for documentation set forth above in paragraphs 2.0 to 2.10, to the Exchange's Enforcement Department ("Enforcement").
- 3.0 On October 29, 2003, Enforcement sent a letter via Certified Mail/Return Receipt Requested to Mark D. Cohen ("Cohen"), Managing Member of Emcee, at Emcee's CRD listed address, regarding the Firm's failure to comply with the Exchange's requests for documentation set forth above in paragraphs 2.0 to 2.10. The certified mail return receipt for the October 29, 2003 letter was returned to Enforcement, indicating receipt by Cohen on or about November 8, 2003.
- 3.1 On November 11, 2003, Enforcement received a voicemail message from Cohen. Enforcement returned Cohen's call on November 11, 2003 but there was no answer and no voice mail message could be left.
- 3.2 On November 17, 2003, Enforcement sent a letter via Hand Delivery to the Exchange Floor, First Class U.S. Mail, and Certified Mail/Return Receipt Requested to Cohen requesting an interview on November 20, 2003. Enforcement received a signed Acknowledgement of Receipt, which had been attached to the hand delivered copy, with Cohen's signature dated November 20, 2003. Enforcement also received the certified mail return receipt with Cohen's signature, dated November 22, 2003.
- 3.3 On November 20, 2003, Cohen presented himself at Enforcement's offices for the requested interview. Cohen stated he was in receipt of at least one (1) of the two

- (2) letters originally sent by SPR but that he ignored both. He further stated that he had received SPR's certified July 1, 2003 but that he ignored that letter as well.
- 3.4 Enforcement received the requested materials from Emcee pertaining to the Firm's development and implementation of an anti-money laundering program at the November 20, 2003 interview.

**CONCLUSION:**

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

- 4.0 Emcee violated Exchange Rule 31 by delaying and impeding an Exchange examination, as described in paragraphs 2.0 through 3.4.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty on Emcee:

(a) a \$2,500 fine.

AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_

David Rosenstein  
Vice President and Chief Counsel  
NASD Amex Regulation Division

Agreed to this \_\_\_\_\_ day of September, 2004.

\_\_\_\_\_  
Mark D. Cohen  
Managing Member, Emcee Investments LLC

Disciplinary Panel  
American Stock Exchange LLC

.....X	X	
	X	
IN THE MATTER	X	STATEMENT OF CHARGES
OF	X	Case Number 03-71
EMCEE INVESTMENTS LLC	X	May 4, 2004
.....X	X	

Charges are hereby preferred pursuant to Article V, Section 1(b)(6) of the Constitution of the American Stock Exchange LLC (“AMEX” or the “Exchange”) against EMCEE INVESTMENTS LLC (“Emcee” or the “Firm”) (CRD#46469), a Regular Member organization of the Exchange.

**STATEMENT OF FACTS:**

1.0 Emcee has been a Regular Member organization of the Exchange since September 2000. Jurisdiction was retained over Emcee pursuant to a certified letter dated October 29, 2003, receipt of which was acknowledged on November 8, 2003.

1.1 At all relevant times herein, Exchange Rule 31 provided that:

“A member, member organization, approved person or any employee, partner, trustee or director of a member organization or member shall comply with any request by an authorized representative or committee of the Exchange to produce his or its books, papers or records, or to appear and testify as to any matter pertaining to his or its business, within the time specified by the representative or committee of the Exchange making the request.”

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 (hereinafter, collectively referred to as “covered persons”), had reasonably and sufficiently met requirements to develop and implement anti-money laundering programs as prescribed by federal law and Exchange Rules (hereinafter, collectively referred to as the “Exchange’s Anti-Money Laundering Compliance Program”).

- 2.1 In an effort to effect compliance, an Exchange Notice to Members entitled, “Anti-Money Laundering Compliance Programs Required By Federal Law” was published and distributed to all Exchange members, including Floor Members, on March 5, 2003. This notice provided guidance on the minimum standards required for each covered person with regard to the Exchange’s Anti-Money Laundering Compliance Program.
- 2.2 A subsequent Exchange Notice to Members entitled, “Examination of Firms’ Anti-Money Laundering Procedures by the Sales Practice Regulation Department” was published and distributed to all Exchange members, including Floor Members, on April 16, 2003. This notice reminded all covered persons that SPR would begin requesting documentation on or about May 1, 2003 to determine whether covered persons were in compliance with the Exchange’s Anti-Money Laundering Compliance Program.
- 2.3 On May 7, 2003, SPR sent a letter via First Class U.S. Mail to Emcee at the Firm’s CRD address, indicating that an inquiry into its anti-money laundering

- procedures had commenced and requesting that certain documents be provided to SPR no later than May 23, 2003.
- 2.4 No response, either verbal or written, was received from Emcee regarding SPR's May 7, 2003 letter, and the U.S. Post Office did not return SPR's letter.
- 2.5 On June 10, 2003, SPR sent a second letter via First Class U.S. Mail to Emcee at the Firm's CRD address, again indicating that an inquiry into their anti-money laundering procedures had commenced and requesting that certain documents be provided to SPR no later than June 25, 2003. The words "Second Notice," bordered by asterisks, were printed in the top right corner of the letter in large, bold letters.
- 2.6 No response, either verbal or written, was received from Emcee regarding SPR's June 10, 2003 letter, and the U.S. Post Office did not return SPR's letter.
- 2.7 On July 1, 2003, SPR sent a third letter via Certified Mail/Return Receipt Requested to Emcee at the Firm's CRD address, indicating that an inquiry into the their anti-money laundering program had commenced and requesting that certain documents be provided to SPR no later than July 17, 2003. SPR's July 1, 2003 letter stated that "requests for extensions must be made in writing and submitted at least one day prior to the due date to be considered – the granting of extension is not guaranteed and will be done on an exception basis only." Additionally, the letter reminded the non-responding covered persons of their obligations under Exchange Rule 31 and stated "failure to respond to this inquiry may result in disciplinary action." The words "Third & Final Notice," bordered by asterisks, were printed in the top right corner of the letter in large, bold letters. SPR

- received the certified return receipt for its July 1, 2003 letter, signed by “Mark D. Cohen,” but undated. SPR accessed the U.S. Post Office’s “Track and Confirm” webpage for its July 1, 2003 letter and determined that the letter was delivered on July 19, 2003.
- 2.8 No response, either verbal or written, was received from Emcee regarding SPR’s July 1, 2003 letter, and the U.S. Post Office did not return SPR’s letter.
- 2.9 A third Exchange Notice to Members entitled, “Guidance for Preparing Anti-Money Laundering Procedures by the Sales Practice Regulation Department” was published and distributed to all Exchange members, including Floor Members, on July 25, 2003. This notice provided guidance, including sample language, on how to comply with the Exchange’s Anti-Money Laundering Compliance Program.
- 2.10 Despite this third Exchange Notice to Members, Emcee provided no response to SPR’s requests for anti-money laundering program materials.
- 2.11 On October 22, 2003, SPR referred the issue of Emcee’s failure to cooperate with the requests for documentation set forth above in paragraphs 2.0 to 2.10, to the Exchange’s Enforcement Department (“Enforcement”).
- 3.0 On October 29, 2003, Enforcement sent a letter via Certified Mail/Return Receipt Requested to Mark D. Cohen (“Cohen”), Managing Member of Emcee, at Emcee’s CRD listed address, regarding the Firm’s failure to comply with the Exchange’s requests for documentation set forth above in paragraphs 2.0 to 2.10. The certified mail return receipt for the October 29, 2003 letter was returned to Enforcement, indicating receipt by Cohen on or about November 8, 2003.

- 3.1 On November 11, 2003, Enforcement received a voicemail message from Cohen. Enforcement returned Cohen's call on November 11, 2003 but there was no answer and no voice mail message could be left.
- 3.2 On November 17, 2003, Enforcement sent a letter via Hand Delivery to the Exchange Floor, First Class U.S. Mail, and Certified Mail/Return Receipt Requested to Cohen requesting an interview on November 20, 2003. Enforcement received a signed Acknowledgement of Receipt, which had been attached to the hand delivered copy, with Cohen's signature dated November 20, 2003. Enforcement also received the certified mail return receipt with Cohen's signature, dated November 22, 2003.
- 3.3 On November 20, 2003, Cohen presented himself at Enforcement's offices for the requested interview. Cohen stated he was in receipt of at least one (1) of the two (2) letters originally sent by SPR but that he ignored both. He further stated that he had received SPR's certified July 1, 2003 but that he ignored that letter as well.
- 3.4 Enforcement received the requested materials from Emcee pertaining to the Firm's development and implementation of an anti-money laundering program at the November 20, 2003 interview.

**CHARGES PREFERRED:**

4.0 Emcee violated Exchange Rule 31 by delaying and impeding an Exchange examination, as described in paragraphs 2.0 through 3.4.

\* \* \* \* \*

Emcee shall have 20 days from the date of service of this Statement of Charges to answer such Charges in accordance with the provisions of the Exchange Constitution and Rules thereunder. The answer shall specifically indicate which statements, or portions thereof, are admitted and which are denied. Any statement, or portion thereof, not specifically denied shall be deemed admitted.

AMERICAN STOCK EXCHANGE LLC

By: \_\_\_\_\_  
David Rosenstein  
Vice President and Chief Counsel