

**Disciplinary Panel  
American Stock Exchange LLC**

---

IN THE MATTER  
OF  
LEE & SON TRADING

---

:  
:  
Case No. 03-72  
:  
Hearing Officer – JN  
:  
:  
**Disciplinary Panel Default Decision**  
:  
September 22, 2004  
:

**Digest**

**A former Member of the American Stock Exchange failed to cooperate with an Exchange investigation, in violation of Exchange Rule 31. For this misconduct, the Respondent was permanently barred.**

**Appearances**

Eric S. Brown, Assistant Chief Counsel, NASD Amex Regulation Division, New York, NY for the Enforcement Department.

No appearance for Lee & Son Trading.

**DECISION**

**I. Procedural Background**

On April 14, 2004, the American Stock Exchange issued a Statement of Charges alleging that Lee & Son Trading, a former Exchange member, violated Rule 31 by failing to cooperate with the Exchange's examination and investigation of the development of anti-money laundering programs required by federal law and Exchange Rules. Exchange Rule 31 requires that members comply with staff requests for information; failures to do so constitute violations of that Rule. Respondent did not file an Answer to the Statement of Charges.

On May 7, 2004, the Exchange's Department of Enforcement filed a request for a default hearing and decision. On August 26, 2004, an Exchange Disciplinary Panel conducted a hearing, at which Lee & Son trading failed to appear. For purposes of establishing an evidentiary basis for the charges<sup>1</sup> and demonstrating its efforts to serve Respondent, Enforcement provided a Statement of Affirmation ("Aff.") and submitted twenty documents (CX-1 through CX-20) in support of its case.

## **II. Discussion**

### **A. Factual Background**

Between October of 2002 and October of 2003, Respondent Lee & Son Trading was a Regular Member organization of the Exchange (Aff., par. 1). In May of 2003, the Exchange's Sales Practice Regulation Department launched an examination program to ensure that member organizations (among others) had complied with certain aspects of the Anti-Money Laundering programs required by federal law (Id. at pars. 4, 5).

On May 7, 2003, the Department sent a letter by first class mail to the firm's CRD address requesting that it supply certain documents by May 23, 2003 (CX-7). The Postal Service did not return that letter, and the Exchange received no response (Aff., par. 8). On June 10, 2003, the Department sent a second letter via first class mail to the firm's CRD address; this letter repeated the May request and asked that the documents be produced by June 25, 2003 (CX-8). The Postal Service did not return that letter; nor did the Exchange receive any response to it (Aff., par. 10).

On July 1, 2003, the Department sent another request letter to the firm at its CRD address. This request, sent by certified mail, asked that the documents be submitted by July 17, 2003 (CX-9). This letter specifically reminded Respondent that "failure to respond to this

---

<sup>1</sup> See, e.g., James M. Russen, Exchange Act Release No. 32,895, 1993 SEC LEXIS 2339 (Sept. 14, 1993).

request may result in disciplinary action” under Rule 31 (Id.). The Exchange received the certified return receipt, signed “Lee & Son Trading,” but did not receive any response to the request (Aff., par. 12; CX-10).

On October 28, 2003, the Enforcement Department (to which the matter had been referred) sent certified letters to the Respondent’s partners at the CRD address, advising the firm that it was being investigated for failure to cooperate and enclosing copies of the prior requests (CX-12). That letter was returned in December of 2003, marked “unclaimed” (Aff., par. 17).

On January 12, 2004, after unsuccessful attempts to reach the firm via telephone calls to one of the partners at a number provided in the CRD database, Enforcement sent a letter via first class and certified mail retaining jurisdiction over the firm (CX-1 through CX-3). It sent that letter to a Lexington Avenue address provided by one of the partners during an earlier deposition on another matter, and the certified mail receipt for it bore that partner’s signature (Aff., pars. 3, 22; CX-3). The Exchange received no response to this letter (Aff, par. 23).

On April 14, 2004, Enforcement sent the Statement of Charges to the firm at the Lexington Avenue address (Aff., par. 24). The Postal Service returned the first class and certified mailings, marked respectively “Returned to Sender, Attempted, Not Known” and “Returned to Sender, Moved, Not Forwardable” (Aff., par. 24; CX-17, CX-18). On May 5, 2004, Enforcement filed its Request for a Default Hearing and sent it via certified mail to the Lexington Avenue address. The Postal Service returned that mailing, marked “Returned to Sender, Moved, Not Forwardable” (Aff., par. 25; CX-20).

As of August 23, 2004, the firm had never communicated with the Exchange in any way in connection with the Anti-Money Laundering examination and investigation, and, as noted, it did not appear at the August 26, 2004 hearing.

## B. Jurisdiction

Under Article V, Section 6 of the Exchange Constitution, the Exchange may retain jurisdiction over a former member, covering conduct that occurred prior to membership termination, if, within one year of termination, it gives written notice to that former member that it is inquiring into any specified matter or matters occurring prior to termination. The firm terminated its Exchange membership on or about October 21, 2003 (Statement of Charges, par. 1.0; CX-1). On January 12, 2004, well within a year of that termination, Enforcement sent Lee & Son Trading a letter retaining jurisdiction in connection with its investigation of the firm's compliance with Anti-Money Laundering requirements (CX-1 – CX-3). The Exchange thus has jurisdiction over the Respondent.

## C. The Firm's Default

Under Article V, Section 1(b)(6) of the Exchange Constitution, Enforcement may properly serve a Statement of Charges on a member "by mailing it to such member ... at his ... office address or place of residence." On April 14, 2004, Enforcement sent the Statement of Charges via certified mail, to the Lexington Avenue office address, which the firm's partner supplied during his deposition (Aff., par. 24; CX-15), and where that partner had earlier signed for mail addressed to the firm (Aff., par. 22). Enforcement's mailing of the Statement of Charges to Lee & Son Trading at the office address furnished by the partner constitutes proper service under Article V, Section 1(b)(6) of the Exchange Constitution.

## D. Liability

The record shows that Respondent failed to comply with the Exchange's several requests. It did so despite a partner's signature reflecting receipt of the July 1, 2003 request and of the January 2004 letter asserting jurisdiction for failures to respond (Aff., pars. 11, 22). These

failures occurred over a one-year period, during which the Exchange made several requests for documents pertaining to compliance with Anti-Money Laundering requirements. The Panel concludes that these failures constituted violations of Exchange Rule 31.

E. Sanctions and Publicity

Enforcement recommends a permanent bar and the Hearing Panel agrees. Though the American Stock Exchange has no sanctions guidelines, the Panel may appropriately consider the NASD Sanction Guidelines, (see, e.g., David Wong, Exchange Act Release No. 45,426, 2002 SEC LEXIS 339, at \*22 (Feb. 8, 2002)). For firms that fail to respond to NASD staff requests for information, those Guidelines recommend expulsion in egregious case (2004 ed., at p. 37). Respondent firm ignored numerous requests, made over a period of several months. Moreover, the firm knew of the requests. It signed a mailing receipt for one of them, and its managing partner signed a receipt for Enforcement's January 8, 2004 letter, setting set out the failures to respond and asserting jurisdiction (Aff., pars. 11, 22; CX-1, CX-3, CX-10). The requests concerned significant regulatory responsibilities: compliance with Anti-Money Laundering requirements. In these circumstances, the Panel finds that the instant case involves egregious misconduct and imposes a permanent bar.

Rule 12 of the Exchange Rules on Disciplinary Proceedings provides that "[w]henever" a Panel finds a person guilty of an offense and such determination becomes final, "the Exchange shall announce publicly the results of such disciplinary proceeding...." The Rule further provides that it shall be inapplicable if the Panel finds that "the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors."

The Disciplinary Panel finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in the Rule.

### **III. Conclusion**

Lee & Son Trading violated Exchange Rule 31 by failing to cooperate and respond to Exchange Staff requests for information. For this misconduct, Lee & Son Trading is permanently barred from Exchange membership in any capacity, including operation as a Limited Trading Permit holder, and barred from association in any capacity with an Exchange member or organization.

The Panel also unanimously determined that the results of this proceeding shall be made public and included in the Exchange's Weekly Bulletin.

FOR THE DISCIPLINARY PANEL

---

Jerome Nelson  
Disciplinary Panel Chair

Copies to: Mr. Seung Hee Lee (*via overnight delivery and first class mail*)  
Eric S. Brown, Esq. (*electronically and via first class mail*)  
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel  
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STATEMENT OF CHARGES
OF	X	Case Number 03-72
LEE & SON TRADING	X	April 14, 2004
.....	X	

Charges are hereby preferred pursuant to the American Stock Exchange LLC (“AMEX” or the “Exchange”) Constitution, Section V, Article 6, against Lee & Son Trading (“Lee & Son” or the “Firm”) (CRD#120949), a former Regular Member organization of the Exchange.

**STATEMENT OF FACTS:**

1.0 During the period between October 2002 and October 2003, Lee & Son was a Regular Member organization of the Exchange. Lee & Son voluntarily terminated its membership with the Exchange on or about October 21, 2003. Jurisdiction was retained over Lee & Son pursuant to a certified letter dated January 12, 2004, receipt of which was acknowledged on January 13, 2004.

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 Lee & Son at the Firm's CRD address, indicating that an inquiry into their 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 Lee & Son 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 Lee & Son 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 Lee & Son 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 Lee & Son 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 “Lee & Son Trading” on July 7, 2003.
- 2.8 No response, either verbal or written, was received from Lee & Son 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, Lee & Son provided no response to SPR’s requests for anti-money laundering program materials.
- 2.11 On October 22, 2003, SPR referred the issue of Lee & Son’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 28, 2003, Enforcement sent a letter via Certified Mail/Return Receipt Requested to Seung Hee Lee and Sang Wook Lee, both partners of Lee & Son, at Lee & Son’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.
- 3.1 On December 2, 2003 and December 12, 2003, the October 28, 2003 letters to Seung Hee Lee and Sang Wook Lee, respectively, were returned to Enforcement as unclaimed.

- 3.2 On December 17, 2003, Enforcement left a voice mail message for Seung Hee Lee at the telephone number provided in the CRD database.
- 3.3 At no time did Enforcement receive a return call by Seung Hee Lee or Lee & Son with respect to Enforcement's December 17, 2003 telephone call.
- 3.4 On January 2, 2004, Enforcement left another telephone message for Seung Hee Lee at the telephone number provided in the CRD database.
- 3.5 At no time did Enforcement receive a return call by Seung Hee Lee or Lee & Son with respect to Enforcement's January 2, 2004 call.
- 3.6 As stated above in Paragraph 1.0, on January 12, 2004, Enforcement sent a letter via First Class U.S. Mail and Certified Mail/Return Receipt Requested retaining jurisdiction over Lee & Son. The certified mail return receipt was returned to the Exchange, indicating receipt by Seung Hee Lee on January 13, 2004.
- 3.7 Enforcement received no response from either Seung Hee Lee or the Firm regarding the January 12, 2004 letter.
- 3.8 To the date of the charges herewith, neither Seung Hee Lee nor the Firm has communicated with the Exchange in any way in connection with the Exchange's requests for documents relating to their anti-money laundering procedures.

**CHARGES PREFERRED:**

4.0 Lee & Son violated Exchange Rule 31 by failing to cooperate with the Exchange's examination and with the ensuing Enforcement investigation, as described in paragraphs 2.0 through 3.8.

\* \* \* \* \*

Lee & Son 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