

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
MARK E. STRINGER, JR.

Case No. 03-15
Hearing Officer – JN

**DISCIPLINARY PANEL
DEFAULT DECISION**

May 5, 2004

Digest

Former employee of an Exchange Regular Member organization failed to cooperate with an Exchange investigation, and failed to maintain current contact information in the Central Registration Depository. For this misconduct, Respondent was censured and permanently barred.

Appearances

Zandra M. Cheung, Esq., Staff Attorney, American Stock Exchange, LLC, New York, NY, for the Department of Enforcement.

No appearance for Mark E. Stringer, Jr.

DECISION

I. Procedural Background

On December 3, 2003, the American Stock Exchange issued a Statement of Charges, alleging that Mark E. Stringer, Jr., a former employee of a Regular Member organization of the Exchange, violated Exchange Rule 345(c) by failing to cooperate with an Exchange investigation and Rule 17a-3(12) under the Securities Exchange Act of 1934 (“Exchange Act”) for failing to maintain a current address in the Central Registration Depository (“CRD”). Stringer did not file an Answer to the Statement of Charges.

On February 5, 2004, the Exchange's Department of Enforcement sent Stringer a copy of its request for a default hearing. Stringer did not respond to that request. On February 19, 2004, an Exchange Disciplinary Panel conducted a hearing, at which Mark E. Stringer, Jr. failed to appear. To establish an evidentiary basis for the charges and to demonstrate its efforts to serve Stringer, Enforcement presented a Statement of Affirmation from Zandra Cheung, Staff Attorney for the Exchange (cited as "Aff.") and eighteen exhibits (CX-1 through CX-18).

II. Discussion

A. Factual Background

Mark E. Stringer, Jr. was employed as a registered representative in the Los Angeles (Century City), California branch office of Salomon Smith Barney, Inc. ("SSB"), a Regular Member organization of the Exchange, from June 1997 through March 2000 (Aff., ¶ 1). SSB terminated Stringer's employment on March 6, 2000, and since then, he has not been employed in the securities industry (Id. ¶ 2). On May 30, 2000, after receiving a Uniform Termination Notice for Securities Industry Registration ("Form U-5"), the Exchange's Sales Practice Regulation Department ("SPR") initiated an investigation into whether Stringer effected unsuitable and unauthorized options trading in a customer's account (Id. ¶¶ 3, 4).

On June 5, 2000, SPR sent a letter via certified mail to Stringer's home address as listed in the CRD, stating that the Exchange was retaining jurisdiction over him in connection with the matters reflected in the Form U-5 and requesting a written explanation from Stringer of the allegations (Aff., ¶ 5; CX-1). The certified mail receipt was signed, though illegibly, and had a delivery date of June 10, 2000 (Aff., ¶ 5; CX-1). On July 12, 2000, SPR telephoned Stringer, using the last known residential phone number on file with SSB (Aff., ¶ 7). SPR left a message on an answering machine at that number, but the call was not returned (Id. ¶¶ 7, 8). On August 4, 2000, SPR sent another copy of the June 5 letter via certified mail to Stringer at his

CRD address (Id. ¶ 9; CX-2). The signature on the receipt card, dated August 7, 2000, is not legible, but the printed name appears to be “Mark,” and the first letter of the last name appears to start with “S” (Aff., ¶ 10; CX-3). On February 1 and June 5, 2001 SPR placed additional telephone calls to Stringer at the number provided by SSB, and again left unreturned messages on the answering machine (Aff., ¶¶ 11, 12).

On February 19, 2002, SPR sent Stringer another request for a response via certified mail to the CRD address (Aff., ¶ 13; CX-4). The certified mail receipt again showed an illegible signature (Aff., ¶ 14; CX-5). On March 11, 2002, SPR sent the request via Federal Express to the CRD address (Aff., ¶ 15; CX-6). Stringer did not respond to the letter (Id.). After leaving a final, unreturned answering machine message on December 18, 2002, SPR referred Stringer’s failure to cooperate with its investigation to the Exchange’s Enforcement Department on March 20, 2003 (Aff., ¶¶ 16, 17).

On March 25, 2003, Enforcement conducted an Internet search for Stringer’s current contact information, and found three additional addresses and telephone numbers (Aff., ¶ 18). Enforcement left unreturned answering machine messages at all three numbers that day (Id.). On March 27, 2003, Enforcement sent a letter to Stringer at his CRD address, requesting that he appear on April 15, 2003 for an on-the-record interview (“OTR”) (Aff., ¶ 19; CX-7).

The Postal Service returned the letter, indicating that the forwarding time had expired and listing an alternate address: 27315 Jefferson Ave., Temecula, CA 92590-5670 (Aff., ¶ 20; CX-8). Subsequently, Enforcement tried to obtain a phone number for Stringer at this address, but directory assistance had no record of him (Aff., ¶ 21). An Internet search was also unsuccessful (Id.). On July 10, 2003, Enforcement sent a letter by first class and certified mail to the Temecula address, advising Stringer that he should appear for an OTR scheduled for July 24,

2003 (Id. ¶ 22; CX-9). The Postal Service returned the certified mailing, stamped “FW Order Expired” (Aff., ¶¶ 23, 24; CX-10). The Service did not return the first class mailings (Aff., ¶ 24). Stringer did not appear for the OTR (Aff., ¶ 25).

On December 3, 2003, Enforcement sent the Statement of Charges to Stringer via first class and certified mail to his CRD address and to the Temecula address (Aff., ¶ 26; CX-11). All of those mailings, except the first class mailing sent to the Temecula address, were returned as undeliverable (Aff., ¶¶ 27-30; CX-12; CX-13; CX-14).

On January 5, 2004, Enforcement filed a Request for a Default Hearing and sent copies via first class and certified mail to Stringer’s CRD address and to the Temecula address (Aff., ¶ 31; CX-15). All of the mailings sent to Stringer, except the first class mailing sent to the Temecula address, were returned as undeliverable (Aff., ¶¶ 32-35; CX-16; CX-17; CX-18). Stringer failed to correspond or communicate with the Exchange in any way regarding the investigation of the alleged violations.

B. Jurisdiction

Under Exchange Rule 345(c), the Exchange may retain jurisdiction over a formerly registered employee if, within one year of receipt of a notice of termination or of an amendment of such notice, it gives written notice to such person that it is investigating any specified matter that occurred prior to termination. On March 20, 2000, SPR received an amended Form U-5 pertaining to Stringer’s termination, and it sent such jurisdictional notices on June 5 and August 4, 2000, within one year. The Exchange thus has jurisdiction over Respondent.

C. Stringer’s Default

Under Exchange Rule 345(d), Enforcement may properly serve a Statement of Charges on a member’s employee “by mailing it to [such employee] at his office address or place of residence.” On December 3, 2003, Enforcement sent the Statement of Charges by certified mail

to Respondent at his residential address, as reported in the CRD, and to an alternate address given by the Postal Service as a forwarding address. Respondent did not answer the Statement of Charges.

By letter dated January 5, 2004, Enforcement sent copies of the Statement of Charges to his CRD address and the alternate address via certified and first class mail. The Postal Service returned three of these mailings as undeliverable, but did not return the first class mailing sent to the alternate address (CX-15; CX-16; CX-17; CX-18; Aff., ¶ 31-35). Stringer did not respond to Enforcement's request for a default hearing. Despite using telephone directory assistance and the Internet, the staff could discover no further residential address. This service at Respondent's "place of residence" complies with Rule 345(d) and constitutes valid constructive notice of this proceeding. Stringer has not answered the Statement of Charges and thus a default decision will be entered against him.

D. Liability

Enforcement made a sufficient presentation to enable the Panel to find that there was an evidentiary basis for the Statement of Charges. See James M. Russen, Exchange Act Release No. 32,895, 1993 SEC LEXIS 2339 (Sept. 14, 1993). The record demonstrates that Respondent Stringer repeatedly failed to cooperate with staff, which, through various mailings to his CRD address and an alternate address and numerous phone calls, sought a written response to a customer's allegations. Rule 345(c) requires cooperation with Exchange investigations, and Respondent violated that mandate.

Furthermore, Respondent violated Exchange Act Rule 17a-3(12) because he failed to maintain a current record of his address.¹ The accuracy of such information is crucial to the

¹ This Rule pertains to registered employees pursuant to Article V, Section 4(i) of the Exchange Constitution and Exchange Rule 345(a)(1).

Exchange's ability to conduct its investigations and to communicate effectively with its members and registered representatives.

E. Sanctions and Publicity

In the instant case, Stringer failed to cooperate with the staff's investigation. Though the American Stock Exchange has no sanction guidelines, the Panel may appropriately consider the NASD Sanction Guidelines (David Wong, Exchange Act Release No. 45,426, 2002 SEC LEXIS 339, at *22 (Feb. 8, 2002)), which recommend a bar as the standard sanction for outright failures to respond to staff inquiries (NASD Sanction Guidelines (2001 ed.) p. 39). The Panel believes that a censure and permanent bar are the appropriate sanctions for his misconduct.

For recordkeeping transgressions, in violation of Rule 17a-3, the Sanction Guidelines recommend a suspension for up to 30 days, or in egregious cases, a bar. In light of the censure and bar for failing to cooperate with the staff, additional sanctions for Stringer's failure to maintain accurate contact information would be redundant and would fail to serve a further remedial purpose. Cf. Jeffrey B. Hodde, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

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

Stringer violated Rule 345(c) by failing to cooperate with an Exchange investigation. Stringer also violated Exchange Act Rule 17a-3(12) by failing to maintain a current address in the CRD.

For this misconduct, Stringer shall be censured and permanently barred from functioning as a regular member, regular options principal, holding associated or allied membership, holding the status of approved person or limited permit holder, and from employment or association in any capacity with an Exchange Member or Member 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: Mark E. Stringer, Jr. (*via overnight and first class mail*)
Zandra M. Cheung, Esq. (*via electronic mail, facsimile and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)