

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
HBH SPECIALISTS LLC

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:
: Case No. 03-53
: [AMXC07005]
:
: Hearing Officer – RSH
:
: **DECISION**
:
: May 15, 2007
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In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Rules 170(a) and 320, as stipulated, and as a penalty imposed a censure and a \$10,000 fine.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against HBH Specialists LLC (“HBH” or the “Firm”), a Regular Member Organization of the Exchange. The Disciplinary Panel Chair (“Chair”), presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on March 26, 2007, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”), which is attached as Exhibit A. The Exchange and HBH entered into the Stipulation for the purpose of settling this proceeding and concluding all disciplinary actions by the Exchange against HBH based upon or arising out of the facts set forth in the Stipulation.

II. Facts

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

III. Violations

Based upon the stipulated facts, the Chair concludes that HBH:

(1) violated Exchange Rule 170(a) on June 25, 2003 by failing to ensure that a member and registered specialist was performing specialist duties; and

(2) violated Exchange Rule 320 by a) failing to supervise Thomas McNamara, a specialist clerk, and prevent McNamara from performing specialist duties; b) failing to reasonably supervise McNamara so as to prevent him from improperly deleting a customer limited price order off of the specialist book; c) failing to have appropriate supervisory systems and controls in place to effectively deter this type of violative conduct; and d) failing to develop, maintain and enforce written supervisory procedures with respect to the duties and responsibilities of specialist clerks.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose on HBH a censure and a \$10,000 fine.

After considering the stipulated facts and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case, and therefore it will be imposed. The Chair 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.¹

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon HBH Specialists LLC a censure and a \$10,000 fine.

FOR THE DISCIPLINARY PANEL


Rochelle S. Hall, Chair

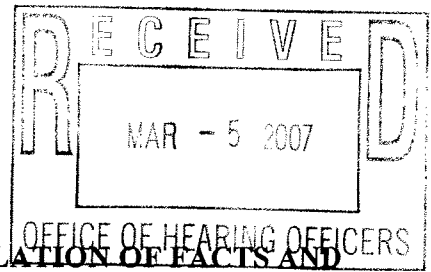
Copies to: HBH Specialists LLC (*via overnight and first class mail*)
William M. Dailey, Esq. (*via facsimile and first class mail*)
Jennifer D. Kim, Esq. (*electronically and via first class mail*)
Arlene Collins-Day (*electronically and via first class mail*)

¹ Rule 12 exempts from publicity those cases in which 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.” That exemption does not apply to the facts of this case.

EXHIBIT A

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
HBH SPECIALISTS, LLC



**STIPULATION OF FACTS AND
CONSENT TO PENALTY**
Case No. 03-53

This proceeding was instituted on behalf of the American Stock Exchange LLC (the "Exchange") against HBH Specialists, LLC ("HBH") (CRD #111559), a Regular Member Organization of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with HBH pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against HBH based upon or arising out of the facts hereinafter stipulated. HBH, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Constitution, Rules and Federal securities laws, and the imposition of the penalties hereinafter provided. HBH understands that this settlement is subject to approval by an Exchange Disciplinary Panel and can be the subject of review by the Amex Adjudicatory Council ("AAC") and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. HBH understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of its disciplinary records and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

- 1.0 During all relevant periods herein, HBH Specialists, LLC (“HBH”) was an Exchange member organization and was registered with the Exchange as a specialist firm.
- 1.1 During all relevant periods herein, ABC was a listed stock eligible for trading through the Intermarket Trading System (“ITS”).¹
- 1.2 During all relevant periods herein, Thomas McNamara (“McNamara”) was employed by HBH as a specialist clerk on the floor of the Exchange.
- 1.3 During all relevant periods herein, McNamara was the specialist clerk assigned to assist the HBH specialist assigned to execute ABC trades on the Exchange.
- 1.4 During all relevant periods herein, specialist clerks were not permitted to execute trades or handle a specialist book.
- 1.5 During all relevant periods herein, Exchange Rule 345(a)(4) required that an employee of an Amex member or member organization not engage in any conduct or proceeding inconsistent with just and equitable principles of trade.
- 1.6 During all relevant periods herein, Exchange Rule 345(a)(6) provided that an employee of an Amex member or member organization adhere to the principles of good business practice in the conduct of his business affairs.

¹ ITS is an electronic communications network which links all U.S. markets, enabling market professionals to interact with their counterparts in other markets whenever the nationwide composite quotation system shows a better price.

1.7 During all relevant periods herein Exchange Rule 170(a) provided that to act as a specialist in any security, an individual must be a member of the Exchange and registered as a specialist in the security by the Exchange.

1.8 During all relevant periods herein, Exchange Rule 320 provided in relevant part:

(b) Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility.

The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations.

(c) The general partners, directors, trustees of each member organization shall provide for appropriate supervisory control and shall designate a general partner, principal executive officer, trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall:

(1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control; and

(2) establish a separate system of follow-up and review to verify that the delegated authority and responsibility is being properly exercised.

A. **June 25, 2003 Trade Date – ABC:**

2.0 On the above-referenced trade date, McNamara, although only designated and approved by the Amex as a specialist clerk, was performing the functions of a specialist in ABC, including executing trades in ABC.

- 2.1 During the relevant period herein, McNamara was not registered as an Amex Interim Member, which would have given him authority to execute trades and conduct business as a specialist.
- 2.2 On the above-referenced trade date, at 12:49:04, the displayed market on the Amex in ABC reflected an offer of 200 shares at 1.00.
- 2.3 At 2:27:42, a PER² order was received in the Amex Display Book ("ADB") to buy 1,000 shares of ABC at a limit price of 1.00.
- 2.4 At 2:27:54, the order was executed against the account of the specialist which decremented the offer of 200 shares at 1.00 down to 100.
- 2.5 At 2:27:58, 200 shares were re-offered at 1.00.
- 2.6 At 2:28:41, the NASDAQ printed 2,600 shares at 1.01 through the displayed offer on the Amex of 200 shares at 1.00.
- 2.7 At 2:29:07, the NASDAQ printed 2,800 shares at 1.04 through the displayed offer on the Amex of 200 shares at 1.00.
- 2.8 At 2:29:12, a PER order (TA# DZ97) was received by the ADB to buy 2,800 shares of ABC with a limit price of 1.00.
- 2.9 At 2:29:42, a trade-through administrative message (X4453) was sent to the NASDAQ.

² The "PER" or Post-Execution Reporting System is the former Amex electronic system for order delivery and execution.

- 2.10 At 2:30:12, a second trade-through administrative message (X4486) was sent to the NASDAQ.
- 2.11 At 2:50, the Amex Service Desk followed up on the initial trade-through complaint lodged by McNamara at 2:29:42.
- 2.12 At approximately 2:30, McNamara called the Intermarket Trading Analysis Department (“ITAD”) of the Exchange to complain about the trade-throughs in ABC and that the party trading-through the Amex market in ABC had just entered a system order on to the ADB.
- 2.13 McNamara then told the ITAD staff that he was going to delete the limit order entered at 2:29:12 (TA# DZ97) off the book. ITAD staff directed McNamara not to delete the order from the ADB and that his trade-through complaint would be pursued with the NASDAQ.
- 2.14 Shortly after the telephone conversation with ITAD staff referenced in above paragraphs 2.12 and 2.13, McNamara, by his own admission, deleted the customer limit order to buy 2,800 shares of ABC at 1.00 received at 2:29:12 (TA# DZ87) from the ADB without permission or consent from any authority.
- 2.15 Despite being specifically instructed by Exchange regulatory staff to not delete the order from the specialist book, McNamara intentionally deleted this limit order (TA# DZ87) in the absence of any supervision, review or approval by an HBH specialist.
- 2.16 During the relevant period herein, McNamara was not being directly supervised by the HBH specialist assigned to ABC stock.

B. HBH Specialists, LLC

- 3.0 During the relevant period herein, HBH failed to ensure that it developed, maintained and enforced reasonable written supervisory policies and procedures regarding the duties and responsibilities of its specialist clerks, including, specifically, that specialist clerks were not authorized to execute trades.
- 3.1 During the relevant period herein, HBH failed to supervise and control the activities of its specialist clerk, McNamara.
- 3.2 Since the time of the matters discussed herein, HBH has made changes to its senior management (including a new CEO and CCO), and has updated and improved its supervisory policies and procedures to address this type of violative conduct, among other things.
- 3.3 The conduct described in paragraphs 3.0 and 3.1 constitutes a violation of Exchange Rule 320.

CONCLUSION

- 4.0 During the relevant period herein, HBH violated Exchange Rule 170(a) in that it failed to ensure that a member and registered specialist was performing specialist duties in ABC on June 25, 2003, as set forth in paragraphs 2.0 through 2.16.
- 4.1 During the relevant period herein, HBH violated Exchange Rule 320 in that it: 1) failed to supervise McNamara, a specialist clerk and prevent McNamara from performing specialist duties; 2) failed to reasonably supervise McNamara so as to prevent McNamara from improperly deleting a customer limited price order off of the specialist book; 3) failed to have appropriate supervisory systems and controls in place to

effectively deter this type of violative conduct; and 4) failed to develop, maintain and enforce written supervisory procedures with respect to the duties and responsibilities of specialist clerks, as set forth in paragraphs 3.0 and 3.1.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts and Violations, a Disciplinary Panel may impose the following penalties:

- (a) a censure; and
- (b) a \$10,000 fine.

HBH hereby acknowledges that it has read carefully this Stipulation and understands all of the provisions contained herein; that it has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to HBH by the Exchange, its staff or representatives to induce HBH to enter into this Stipulation, aside from the prospect of settling this disciplinary proceeding based on the terms and conditions set forth in this Stipulation rather than adjudicating this matter by way of a hearing on a Charge Memorandum as provided by Exchange rules.

Further, HBH hereby agrees that it may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this Stipulation or create the impression that the Stipulation is without factual basis. Nothing in this provision affects HBH's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.

Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation of Facts and Consent to Penalty (including to a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the Amex Constitution and/or Rules), neither Enforcement nor HBH shall offer any argument that is inconsistent with the stipulated facts or the agreed-upon penalty, nor shall either party ask for the imposition of any penalty other than that agreed upon in this Stipulation of Facts and Consent to Penalty.

ON BEHALF OF AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein
Vice President and Chief Counsel
Enforcement Department
NASD Amex Regulation Division

Agreed to this 28 day of Feb, 2007.


HBH Specialists, LLC