

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
of
JAY NADELSON

:
:
: Case No. 07-91
: [AMXC07011]
:
: Hearing Officer – DRP
:
: **DECISION**
:
: July 20, 2007
:

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Rule 31 and Article V, Section 4(k) of the Exchange Constitution, as stipulated, and as a penalty imposed a censure.

I. Introduction

The American Stock Exchange, LLC (Exchange) instituted a formal disciplinary proceeding against Jay Nadelson (Nadelson), a member of the Exchange, owner and managing member of Investors' Capital, LLC, a 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 July 9, 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 Nadelson entered into the Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Nadelson based on or arising out of the facts set forth in the Stipulation.

II. Facts

Nadelson, 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 on the stipulated facts, the Chair concludes that Nadelson violated Exchange Rule 31 and Article V, Section 4(k) of the Exchange Constitution by failing to comply in a timely manner with requests made by an authorized representative of the Exchange to produce books, papers or records.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose a censure on Nadelson.

After considering the stipulated facts and the statements of the parties at the hearing, 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.¹ 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.²

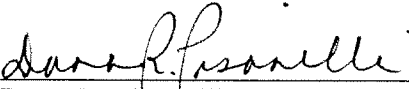
¹ While a violation of this nature might also include a fine and/or suspension, the Chair accepts the proposed penalty of a censure based on the facts and circumstances of this particular case, which include counsel's representation that she originally advised Nadelson that the Exchange was not entitled to the records at issue, as well as Nadelson's ultimate compliance with the document request, which was relatively prompt.

² 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.

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes a censure upon Nadelson.

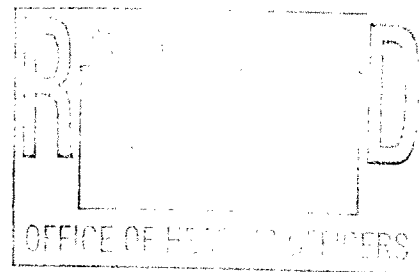
FOR THE DISCIPLINARY PANEL



Dana R. Pisanelli
Panel Chair

Copies to: Nanette Crist, Esq. (*via facsimile and first class mail*)
 David Rosenstein, Esq. (*electronically and via first class mail*)
 Arlene Collins-Day (*electronically and via class mail*)

**Disciplinary Panel
American Stock Exchange LLC**



IN THE MATTER
OF
JAY NADELSON

**STIPULATION OF FACTS
AND CONSENT TO PENALTY**

Case No. 07-91
May 29, 2007

This proceeding was instituted on behalf of the American Stock Exchange LLC (the "Exchange") against JAY NADELSON ("Nadelson") (CRD #1684006), a Regular Member of the Exchange, by service of a Statement of Charges dated May 2, 2007. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into between the Exchange and Nadelson pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Nadelson based upon or arising out of the facts hereinafter stipulated. Nadelson, 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 and Rules, and the imposition of the penalties hereinafter provided. Nadelson 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. Nadelson understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

- 1.0 During all relevant periods herein, Nadelson was a Member of the Exchange and the Owner and Managing Member of Investors' Capital, LLC ("Investors' Capital" or the "Firm") (CRD #44538), an Exchange Member organization.
- 1.1 During all relevant periods herein, the NASD's Amex Regulation Division was an authorized representative of the Exchange.

Failure to Comply with an Exchange Request in a Timely Manner

- 2.0 On March 28, 2007, the Financial Regulation Department ("FRD") of the NASD Amex Regulation Division was in the process of completing its routine Financial Examination of Investors' Capital. This examination also included a review of the Firm's compliance with Anti-Money Laundering ("AML") Rules and Regulations.
- 2.1 In connection with this examination, FRD requested that Nadelson, the Owner and Managing Member of Investors' Capital, provide a completed AML Attestation which was required in connection with the Firm's compliance with Exchange Rule 432. This Attestation was implemented by NASD's Amex Regulation Division in order to ascertain the business lines of the Firm and to obtain more specific information about the conduct of the Firm's business in order to assess its compliance with Exchange Rule 432. Based upon the answers provided by a firm in its Attestation, the NASD's Amex Regulation Division may request additional documentation and information about the scope of the Firm's business.
- 2.2 On March 29, 2007, FRD received the Firm's AML Attestation which was completed and signed by Nadelson. Pursuant to a review of the AML Attestation, FRD Staff observed that the "yes" box was checked next to Statement Number 8 of the AML Attestation, namely that the "firm and/or any of its employees have a financial interest

in, or signature or other authority over, a bank, securities or other financial account in a foreign country.” At the bottom of the AML Attestation, Nadelson signed and attested that the above statement was true and accurate.

- 2.3 On several occasions, FRD Staff requested that Nadelson provide supporting documentation with respect to the affirmative answer to Statement Number 8 of the AML Attestation, *inter alia*, account statements, opening account paperwork, as well as the country where the foreign account was located and the Firm’s procedures for filing FBARs no later than April 9, 2007. Additional attempts were made by FRD and Enforcement Staffs after April 9, 2007 to secure the requested documentation from Nadelson.
- 2.4 FRD Staff requested the information set forth in paragraph 2.3 above as part of its routine scheduled examination of Exchange Member firms. Specifically, the account statements and other information regarding this foreign account were requested in order to determine whether Nadelson and/or the Firm was required to file a Foreign Bank and Financial Account Report (“FBAR”), as required by the BSA (31 CFR §103.27). Specifically, FRD Staff needed to determine whether the Firm’s and/or its employees’ accounts aggregated over \$10,000 at any time during the calendar year. If the aggregate value of the Firm’s or its employees’ interests in a foreign account was \$10,000 or over, the person with the interest in such account would be required to file an FBAR by June 30th of the succeeding year, in accordance with the BSA (31 CFR §103.27). As the Firm’s designated examining authority, the Exchange required the requested information regarding the foreign account to assess compliance by the Firm with its obligations under BSA per Exchange Rule 432.

- 2.5 On April 13, 2007, FRD Staff received a letter from Nadelson that was dated April 7, 2007. In this letter, Nadelson stated his view that the Staff was not entitled to further information regarding the foreign account referenced in the AML Attestation because the account was “a personal bank account used by one of the employees for the payment of vacation expenses.” Nadelson’s correspondence did not include any of the supporting account documentation previously requested by FRD Staff.
- 2.6 On May 2, 2007, Enforcement Staff issued a Statement of Charges (“Charges”) to Nadelson in connection with this matter. Nadelson acknowledged receipt of the Charges on May 2, 2007.
- 2.7 On May 16, 2007, Nadelson provided a bank account summary of his foreign bank account, which is domiciled in Nova Scotia, Canada, to the Enforcement Staff, via facsimile.

CONCLUSION

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

- 3.0 Nadelson violated Exchange Rule 31 and Article V, Section 4(k) of the Exchange Constitution in that he failed to comply with requests by an authorized representative or committee of the Exchange to produce his books, papers or records in a timely manner, as set forth in paragraphs 2.0 through 2.7.

DISCIPLINARY ACTION:

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

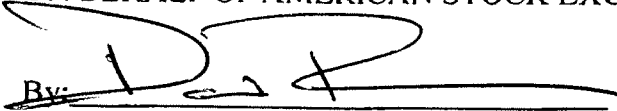
- (a) a censure.

Nadelson hereby acknowledges that he has carefully read this Stipulation and understands all of the provisions contained herein; that he has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to Nadelson by the Exchange, its staff or representatives to induce Nadelson 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 (07-91) as provided by Exchange rules.

Further, Nadelson hereby agrees that he 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 Nadelson'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.

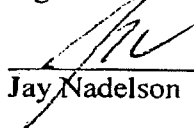
Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation of Facts and Consent to Penalty (including to a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the Amex Constitution and/or Rules), neither Enforcement nor Nadelson 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
Senior Vice-President and Chief Counsel
Enforcement Department
NASD Amex Regulation Division

Agreed to this 1 day of JUNE, 2007.


Jay Nadelson