

**Disciplinary Panel  
American Stock Exchange, LLC**

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IN THE MATTER  
OF  
LAWRENCE MARK POLATCHEK

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Case No. 00-29  
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Hearing Officer – DMF  
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July 2, 2003  
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**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Article V, Sections 4(h) and (l) of the Exchange Constitution by engaging in indecorous and offensive conduct toward another Floor Member and by subjecting that Floor Member to inappropriate and offensive physical conduct on the Exchange Floor, and violated Article V, Section 4(e) of the Exchange Constitution and Exchange Rule 345(a)(2) by making material misstatements to a representative of the Exchange during a deposition. The Panel imposed the following penalties, as stipulated: a four month suspension in all capacities, a \$100,000 fine and a requirement that Respondent complete at least 20 hours of sexual harassment training.**

**DECISION**

**I. Introduction**

The American Stock Exchange, LLC instituted a formal disciplinary proceeding against Lawrence Mark Polatchek, a Regular Member of the Exchange and Secretary of Heights Partners, Inc., a Regular Member organization of the Exchange, through a Statement of Charges dated August 7, 2002. The Statement of Charges alleged that during the period April through November 2000, Polatchek on a number of occasions directed unwelcome, non-business-like and sexually aggressive and offensive remarks and actions toward Trader X,<sup>1</sup> who worked as a market maker for a different Regular Member organization of the Exchange, in violation of Article V, Sections 4(h) (j) and (l)

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<sup>1</sup> To protect her privacy, Trader X is not otherwise identified in the Statement of Charges, the Stipulation of Facts and Consent to Penalty, or this Decision.

of the Exchange Constitution. The Exchange and Respondent entered into a Stipulation of Facts and Consent to Penalty to resolve those charges, which was considered by a Disciplinary Panel on October 2, 2002. The Panel rejected the Stipulation and Consent on the ground that the proposed penalty was inadequate.

On January 13, 2003, the Exchange withdrew the original Statement of Charges and issued a new Statement. In addition to the charges contained in the original Statement, the new Statement alleged that Polatchek violated Article V, Section 4(e) of the Exchange Constitution and Exchange Rule 345(a)(2) by making misstatements during a deposition conducted by Exchange staff in the course of its investigation.

A new Disciplinary Panel was appointed and the matter was set for a hearing. Prior to the hearing, however, the parties submitted a new Stipulation of Facts and Consent to Penalty (attached) that included substantially greater sanctions than those in the earlier Stipulation and Consent. The Disciplinary Panel held a hearing on June 23, 2003, pursuant to Article V, Section 2 of the Exchange Constitution, to consider the Stipulation and Consent.

## **II. Facts**

Without admitting or denying liability, Polatchek stipulated to the facts set forth in the Stipulation and Consent. The Disciplinary Panel has determined to accept those facts for purposes of this Decision.

During the period April 2000 to the present, Polatchek has been a Regular Member of the Exchange and Secretary of Heights Partners, Inc., a Regular Member organization engaged in two-dollar brokerage business.<sup>2</sup> During all relevant periods,

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<sup>2</sup> Two-dollar brokers are floor brokers who execute orders for any organization. They receive a negotiated commission rate.

Trader X worked as a market maker for a different Regular Member organization, and knew Polatchek from periodically engaging in trades with him in a trading crowd and conversing with him during business hours on the Exchange Floor.

During the period April through November 2000, Polatchek, on a number of occasions, directed unwelcome, non-business-like and sexually suggestive and offensive remarks towards Trader X on the Floor of the Exchange. In addition, during that period Polatchek, on at least two occasions, directed unwelcome and inappropriate physical contact toward Trader X on the Floor of the Exchange. For example, on one trading date in October 2000, Polatchek blew in the ear of Trader X and engaged in inappropriate physical conduct, including placing a pen against the back of her knee and moving it up along her thigh, then placing the pen underneath his nose.

The Exchange investigated Polatchek's conduct toward Trader X, in the course of which representatives of the Exchange took Polatchek's deposition on July 3, 2001. In the deposition, the Exchange focused mainly on Trader X's allegations against Polatchek. At the conclusion of the deposition, Polatchek's counsel asked him a series of questions. In answering those questions Polatchek denied, among other things, that any woman ever complained about his touching them or treating them in an improper way; that any woman had ever complained about his making statements that had any sexual overtones; or that a formal complaint or charge had ever been brought against him in court relating to improper physical conduct or verbal conduct. However, contrary to his sworn testimony, Polatchek had previously been accused of sexual harassment in a lawsuit entitled Bautista v. Heights Partners Inc., Richard Polatchek and Lawrence Polatchek, Civil Action No. 98 Civ 4139 (S.D.N.Y.), filed in June 1998, which alleged that he made

improper statements to a former employee. That matter was settled prior to trial.

The first time Polatchek acknowledged the existence of the lawsuit to the Exchange was when the Exchange questioned him about it in a deposition on October 17, 2002. At that deposition, he testified that, at the time of his prior deposition, he did not recall being named individually in the lawsuit, but rather thought it had been a lawsuit against the firm, Heights Partners, Inc.

Polatchek's misstatements led the staff to incorrectly believe that he had never been previously charged for improper verbal conduct and that he had never before been accused of making statements with sexual overtones. Polatchek's misstatements were material to the Exchange's investigation of his conduct towards Trader X.

### **III. Violations**

Based upon the stipulated facts, the Disciplinary Panel concludes that:

- 1) Polatchek engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, and engaged in conduct subversive of good order and decorum or serious interference with the personal comfort of another person, in violation of Article V, Section 4(l) of the Exchange Constitution, by engaging in indecorous and offensive conduct toward another Floor Member and subjecting that Floor Member to inappropriate and offensive physical contact on the Exchange Floor.
- 2) Polatchek, a member, violated Article V, Section 4(e) of the Exchange Constitution by making material misstatements to a representative of the Exchange in his Deposition.
- 3) Polatchek, an employee of Heights Partners, violated Exchange Rule 345(a)(2) by

making misstatements to the Exchange.

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

The Stipulation proposes that the Disciplinary Panel impose the following penalties upon Polatchek:

- 1) a four month suspension in all capacities;
- 2) a \$100,000 fine; and
- 3) a requirement that Polatchek complete at least 20 hours of sexual harassment counseling, at his own expense prior to having his suspension lifted and his privileges reinstated and that he demonstrate his completion of this requirement before reassociating with a member firm. The counseling must be pre-approved by the Exchange.

At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalties as being appropriate to the facts and circumstances of this case, and cited a number of disciplinary proceedings from other self-regulatory organizations that the parties believed were relevant precedents supporting the proposed penalties. The Panel reviewed the cited precedents, and carefully considered the overall circumstances of this case, as set forth in the Stipulation and Consent, including both Polatchek's actions with respect to Trader X and his misrepresentations concerning the suit brought by the former employee of Heights Partners, which alleged that Polatchek made improper statements towards her. Having done so, the Panel finds that the proposed penalties are appropriate to address Polatchek's violations and to accomplish the Exchange's remedial goals.

The Hearing Panel also finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on

Disciplinary Proceedings. That rule provides, “Whenever an Exchange Disciplinary Panel shall find a person guilty of an offense and such determination has become final and conclusive, the Exchange shall announce publicly the results of such disciplinary proceeding ....” The Panel finds that the exception to this requirement, where “the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors,” is inapplicable here.

## **V. Conclusion**

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties upon Polatchek:

- 1) a four month suspension in all capacities;
- 2) a \$100,000 fine; and
- 3) a requirement that Polatchek complete at least 20 hours of sexual harassment counseling, at his own expense prior to having his suspension lifted and his privileges reinstated and that he demonstrate his completion of this requirement before reassociating with a member firm. The counseling must be pre-approved by the Exchange.

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

FOR THE DISCIPLINARY PANEL

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David M. FitzGerald, Chair

Copies to: Lawrence Mark Polatchek (via overnight delivery and first class mail)  
Catherine L. Redlich, Esq. (via facsimile and first class mail)  
Helen G. Barnhill, Esq. (via electronic mail and first class mail)

**Disciplinary Panel  
American Stock Exchange, LLC**

IN THE MATTER OF	)	
	)	
LAWRENCE MARK POLATCHEK	)	<b>NO. 00-29</b>
	)	
	)	<b>HEARING OFFICER - DMF</b>
	)	

**STIPULATION OF FACTS AND CONSENT TO PENALTY**

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against LAWRENCE MARK POLATCHEK (“Polatchek”) (CRD#2821476), a Regular Member of the Exchange and Secretary of Heights Partners, Inc., a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Polatchek pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Polatchek based upon or arising out of facts hereinafter stipulated. Polatchek, 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 to imposition of the penalties hereinafter provided. Polatchek 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 that may not be appealed by the parties. Polatchek 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 the period April 2000 to the present, Polatchek has been a Regular Member of the Exchange and Secretary of Heights Partners, Inc., a Regular Member organization engaged in two-dollar<sup>1</sup> brokerage business.
- 1.1 During all relevant periods herein, Trader X worked as a market maker for a different Regular Member organization, and knew Polatchek from periodically engaging in trades with him in a trading crowd and conversing with him during business hours on the Exchange Floor.
- 2.0 During all relevant periods herein, Article V, Section 4(e) of the Exchange Constitution provided that if a member or approved person is adjudged in a proceeding under Article V, to have made a misstatement upon a material point to any officer or representative of the Exchange, the member may be suspended or expelled from membership.
- 2.1 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that a member who engages in conduct inconsistent with just and equitable principles of trade may be suspended or expelled from membership unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.
- 2.2 During all relevant periods herein, Article V, Section 4(j) of the Exchange Constitution provided that a member adjudged guilty in a proceeding under this

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<sup>1</sup> Two-dollar brokers are floor brokers who execute orders for any organization. They receive a negotiated commission rate.

Article of any act which may be determined to be detrimental to the interest or welfare of the Exchange may be suspended or expelled from membership.

- 2.3 During all relevant periods herein, Article V, Section 4(1) of the Exchange Constitution provided that a member who engages in conduct subversive of good order and decorum or serious interference with the personal comfort or safety of another person may be suspended from membership for a period not exceeding sixty days or fined.
- 2.4 During all relevant periods herein, Exchange Rule 345(a)(2) provided that if the Exchange determines that any employee of a member or member organization has been guilty of making any misstatement to the Exchange, the Exchange may disapprove or suspend or withdraw its approval of his employment by a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specified capacities; and/or (c) assess a fine against him.

**POLATCHEK'S CONDUCT TOWARD TRADER X**

- 3.0 During the period April through November 2000, Polatchek, on a number of occasions, directed unwelcome, non-business-like and sexually suggestive and offensive remarks towards Trader X on the Floor of the Exchange.
- 3.1 During the period referenced in paragraph 3.0 above, Polatchek, on at least two occasions, directed unwelcome and inappropriate physical contact toward Trader X on the Floor of the Exchange. For example, on one trading date in October 2000, Polatchek blew in the ear of Trader X and engaged in inappropriate physical

conduct, including placing a pen against the back of her knee and moving it up along her thigh, then placing the pen underneath his nose.

### **CONCLUSION AS TO POLATCHEK'S CONDUCT TOWARDS TRADER X**

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

- 4.0 Polatchek engaged in conduct inconsistent with just and equitable principles of trade, in violation of Article V, Section 4(h) of the Exchange Constitution, and engaged in conduct subversive of good order and decorum or serious interference with the personal comfort of another person, in violation of Article V, Section 4(l) of the Exchange Constitution, by engaging in indecorous and offensive conduct toward another Floor Member and subjecting that Floor Member to inappropriate and offensive physical contact on the Exchange Floor, as set forth in paragraphs 3.0 through 3.1.

### **POLATCHEK MADE MATERIAL MISSTATEMENTS TO THE EXCHANGE**

- 5.0 In connection with the Exchange's investigation of Polatchek, representatives of the Exchange conducted a sworn deposition of Polatchek on July 3, 2001. In the deposition, the Exchange focused mainly on Trader X's allegations against Polatchek.
- 5.1 At the conclusion of the deposition, Polatchek's counsel asked Polatchek a series of questions. In answering those questions he denied, among other things, that any woman ever complained about his touching them or treating them in an improper way; that any woman had ever complained about his making statements that had any sexual overtones; or that a formal complaint or charge had ever been

- brought against him in court relating to improper physical conduct or verbal conduct.
- 5.2 However, contrary to his sworn testimony, Polatchek had previously been accused of sexual harassment in a case entitled *Bautista v. Heights Partners Inc., Richard Polatchek and Lawrence Polatchek*, Civil Action No. 98 Civ 4139 (S.D.N.Y.) (“Bautista lawsuit”). The Bautista lawsuit, brought by a former employee of Heights Partners, and filed in June 1998, alleged that Polatchek made improper statements towards the employee. That matter was settled prior to trial.
- 5.3 In his deposition on July 3, 2001, Polatchek made misstatements to the Exchange by denying, among other things, that a charge or complaint had ever been brought against him relating to improper verbal conduct, and by denying that anyone had ever complained that he made a statement with sexual overtones.
- 5.4 The first time Polatchek acknowledged the existence of the Bautista lawsuit to the Exchange was when the Exchange questioned him about it in a deposition on October 17, 2002. At that deposition, he testified that, at the time of his prior deposition, he did not recall being named individually in the Bautista lawsuit, but rather thought it had been a lawsuit against the firm, Heights Partners, Inc.
- 5.5 Polatchek’s misstatements led the staff to incorrectly believe that he had never been previously charged for improper verbal conduct and that he had never before been accused of making statements with sexual overtones.
- 5.6 Polatchek’s misstatements were material to the Exchange’s investigation of his conduct towards Trader X.

**FINDINGS AS TO POLATCHEK'S MISSTATEMENTS TO THE EXCHANGE:**

- 6.0 Polatchek, a member, violated Article V, Section 4(e) of the Exchange Constitution by making material misstatements to a representative of the Exchange in his Deposition as set forth above in paragraph 5.0 to 5.7.
- 6.1 Polatchek, an employee of Heights Partners, violated Exchange Rule 345(a)(2) by making misstatements to the Exchange as set forth above in paragraph 5.0 to 5.7.

**DISCIPLINARY ACTION**

A Disciplinary Panel may impose the following penalty upon Polatchek:

- 1) a four month suspension in all capacities;
- 2) a \$100,000 fine; and
- 3) a requirement that Polatchek complete at least 20 hours of sexual harassment counseling, at his own expense prior to having his suspension lifted and his privileges reinstated and that he demonstrate his completion of this requirement before reassociating with a member firm. The counseling must be pre-approved by the Exchange.

AMERICAN STOCK EXCHANGE LLC

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

Agreed to this \_\_\_\_ day of June, 2003

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Lawrence Mark Polatchek