

**Disciplinary Panel
American Stock Exchange, LLC**

IN THE MATTER
OF
DEALZA O. WINSTEAD

: Case No. 02-07
:
: Hearing Officer - JN
:
: **Disciplinary Panel Decision**
:
: August 28, 2003

Digest

Respondent submitted a Form U-4 that contained false information and thereby violated Exchange Rules 345(a)(2) and 345(a)(4). For the misconduct, he was suspended for a period of six months following the expiration of his statutory disqualification.

DECISION

I. Introduction

The Exchange issued a Statement of Charges alleging that Respondent submitted a Form U-4 that contained false information and thereby violated Exchange Rules 345(a)(2) and 345(a)(4). Respondent's answer, submitted by counsel, admitted the allegations of liability, while urging a sanction "involving a fine or other[] censure, which does not ban him from employment."

The first hearing, held in March of 2003, was terminated after a panelist discovered a conflict involving a witness whom Enforcement had not previously intended to call. On June 23, 2003, a Disciplinary Panel, consisting of two members of the Exchange's Hearing Board (one of whom replaced the above panelist) and an NASD Hearing Officer, conducted a second hearing.¹ The parties agreed to the admission of the transcript of the testimony of a prior witness who was

¹ See Second Notice of Continued Hearing and Notice of Withdrawal of Hearing Panelist and Appointment of Replacement Panelist (April 23, 2003).

currently unavailable (cited as “I. Tr.”). The remaining record consists of a Stipulation of Facts (JX-1) and three attachments (JX-1a – JX-1c); the Enforcement Department’s exhibits (CX-1 and CX-2); Respondent’s exhibits (RX-1 and RX-2); and the transcript of the June hearing (II. Tr.).

II. Liability

Between October of 1999 and February of 2000, Respondent was a temporary employee on the Exchange floor. In February of 2000, GHA, L.L.C., a member firm, hired him as a clerk on the Floor (JX-1, p. 1). The parties agree that in a Form U-4, submitted on March 15, 2000 in connection with his application for employment with GHA, Respondent answered “No” to questions that asked whether he had ever been charged with or convicted of any felony (Id., at 3; JX-1b). He also answered “No” to questions that asked whether he had ever been charged with or convicted of a misdemeanor involving, inter alia, the “wrongful taking of property” (JX-1 at 4; JX-1b).

The parties agree that in 1997, Winstead “had been convicted for violating New York State Penal Law Section 265.02(4), Criminal Possession of a Weapon in the Third Degree, a class D Felony” and sentenced to six months imprisonment and five years probation (JX-1, p. 2; JX-1a). It is also agreed that Winstead was charged with Petit Larceny, a class A New York misdemeanor, in 1992, and that he was convicted in 1993 (JX-1, p. 4).

The firm discharged the Respondent in December of 2001, after receiving a letter from the Exchange, which stated that he was statutorily disqualified as a result of the felony conviction (JX-1, p. 1; RX-1).

The parties agree that Respondent’s false answers violated Exchange Rules 345(a)(2) and 345 (a)(4), which respectively authorize sanctions for misstatements to the Exchange and for conduct inconsistent with just and equitable principles of trade (JX-1 at 5).

III. Penalty

Because of the felony conviction, Mr. Winstead is subject to a ten-year period of statutory disqualification, pursuant to Sections 3(a)(39)(F) and 15(b)(4) of the Securities Exchange Act of 1934 (JX-1 at 2). Such disqualification expires in September of 2007 (*Id.*, at 3).

As to sanctions for the misconduct, Enforcement and the Respondent differ significantly. Enforcement argues that Respondent should be barred or suspended (terms used interchangeably in this record) from employment by a member firm for at least eighteen months beyond that ten-year period (II. Tr. 123-124), resting on New York Stock Exchange precedent which reflects the imposition of such an add-on.² Respondent urges a brief bar – less than the ten years – which would enable him to seek waiver of the statutory period sometime before it expires (II. Tr. 133, 138).

The instant case presents a mix of circumstances. Some are aggravating, while some support leniency. On balance, the Panel concludes that some add-on period to the disqualification is appropriate, but that such period should be relatively brief.

The argument for a short bar/suspension, which would open the door to a waiver proceeding, is not persuasive. The misconduct was serious on its face. Respondent's nondisclosure of his felony conviction allowed him to remain as a floor clerk for a member firm for well over a year. See NASD Sanction Guidelines (2001), p. 77 (that U-4 violation resulted in

² See Lori A. Sine, 2003 NYSE Disc. Action LEXIS 4 (Jan. 16, 2003); Jesse Ogilvy Forbes, 2003 NYSE Disc. Action LEXIS 2 (Jan. 16, 2003); Justin John Glick, 2002 NYSE Disc. Action LEXIS 240 (Dec. 23, 2002); Christian Brian Chu, 2002 NYSE Disc. Action LEXIS 233 (Dec. 16, 2002); J. Victor Rosales Palacio, 2002 NYSE Disc. Action LEXIS 223 (Dec. 3, 2002); Hiram Adonis Miranda III, 2002 NYSE Disc. Action LEXIS 207 (Nov. 14, 2002); Tamara Nicole Janger, 2002 NYSE Disc. Action LEXIS 193 (Oct. 10, 2002); Ransford Maurice Samuda, 2002 NYSE Disc. Action LEXIS 192 (Oct. 10, 2002); Scott Michael Spellman, 2002 NYSE Disc. Action LEXIS 146 (Aug. 1, 2002); Candace N. Fox, 2002 NYSE Disc. Action LEXIS 143 (July 31, 2002); Ronald James Quill, 2002 NYSE Disc. Action LEXIS 131 (July 10, 2002); Stephen Costello, 2002 NYSE Disc. Action LEXIS 113 (June 12, 2002); Kevin Walter Pyne, 2002 NYSE Disc. Action LEXIS 76 (Apr. 10, 2002); Brian T. Johnston, 2002 NYSE Disc. Action LEXIS 51 (Mar. 12, 2002); Robert Crayne, 1998 NYSE Disc. Action LEXIS 133 (Nov. 18, 1998).

statutorily disqualified person remaining associated with a firm is a principal sanctions consideration).³ Moreover, the concealment involved not only a felony, but also a petit larceny misdemeanor, a significant crime for purposes of employment in the securities industry.

For these reasons, the Panel agrees with Enforcement that some add-on to the ten-year statutory disqualification is appropriate. As a practical matter, a bar/suspension which is equal to (or even less than) that period appears to be no punishment at all – a result which is too lenient in view of the above circumstances. As noted, Enforcement’s position is also supported by the New York Stock Exchange practice, whereby disciplinary panels regularly add some time to the statutory period.

The Panel believes, however, that the add-on should be less than the eighteen months that Enforcement seeks here. Respondent had a low-level floor position; he had no contact with investors and did not handle money. Indeed, the Exchange’s Membership Department allowed Winstead to continue as an employee for six months, while ascertaining whether his weapons conviction involved a felony (II. Tr. 47, 75; CX-2). Moreover, he was a dependable employee. Respondent testified that he experienced no problems on the job, was never late or absent, and had never been criticized for his performance, and a principal of the firm said that he was pleased with Winstead’s work (I. Tr. 29-30, 52; II. Tr. 92-93). Respondent further testified, without contradiction, that his job at the Exchange led to a reduction in the period of probation (II. Tr. 96-97).

³ Though the American Stock Exchange has no sanction guidelines, the Panel may appropriately consider analogous provisions in the NASD Guidelines. David Wong, Exchange Act Rel. No. 45426, 2002 SEC LEXIS 339 at *22 (February 8, 2002).

For these reasons, the Panel concludes that Respondent should be barred from employment by the Exchange or by a member firm for a period of six months following the expiration of his statutory disqualification.

The Disciplinary Panel 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.⁴

IV. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, finds that Respondent Winstead violated Exchange Rules 345(a)(2) and 345(a)(4) by submitting an application for registration to the Exchange that contained false information. For this misconduct, the Panel orders that Respondent be barred from employment by the Exchange or a member firm for a period of six months following the expiration of his statutory disqualification.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: August 28, 2003
Washington, DC

Copies to: Daniel E. Clifton, Esq. (*via overnight and first class mail*)
Eric S. Brown, Esq. (*via electronic and first class mail*)

⁴ Rule 12 exempts from publicity those cases where 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.” Those exemptions do not apply to the facts of this case.

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	
OF	X	STATEMENT OF CHARGES
DEALZA O. WINSTEAD	X	Case Number 02-07
.....	X	November 20, 2002

Charges are hereby preferred pursuant to Exchange Rule 345(d) of the Constitution of the American Stock Exchange LLC (the “Exchange”) against DEALZA O. WINSTEAD (“Winstead”), a former employee of GHA, L.L.C. (“GHA”), a Regular Member organization of the Exchange.

STATEMENT OF FACTS:

- 1.0 In February 2000, Winstead joined GHA as a clerk on the Exchange Floor. Winstead was subsequently terminated from his employment with GHA in December 2001. On information and belief, Winstead has not been employed in the securities industry since his termination from GHA.
- 1.1 During all relevant periods herein, Exchange Rule 345(a)(2) provided that the Exchange may disapprove or suspend or withdraw its approval of the employment of an employee of 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 if the Exchange determines that such employee has been guilty of making any misstatement to the Exchange.

- 1.2 During all relevant periods herein, Exchange Rule 345(a)(4) provided that the Exchange may take the action referred to in paragraph 1.1 against an employee of a member or member organization if the Exchange determines that such employee has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade.
- 2.0 During the relevant period herein, all clerks seeking employment on the Exchange Floor were required to submit fingerprints to the Exchange, which subsequently delivers such fingerprints to the United States Department of Justice (“DOJ”), which compares the fingerprints against criminal databases.
- 2.1 After submitting a request for a fingerprint analysis to DOJ for Winstead, the Exchange received a report from DOJ that revealed that Winstead had been convicted for violating New York State Penal Law Section 265.02(4), Criminal Possession of a Weapon in the Third Degree, a class D Felony, in New York County, New York on September 19, 1997. As a result of this felony conviction, Winstead was sentenced to a six-month term of imprisonment and five years probation.
- 2.2 During all relevant periods herein, Section 3(a)(39)(F) and Section 15(b)(4) of the Securities Exchange Act of 1934 provided that a person is subject to a “statutory disqualification” with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person has been convicted of a felony within ten years of the date of the filing of an application for

- membership or participation in, or to become associated with a member of, such self-regulatory organization.
- 2.3 The conviction referred to in paragraph 2.1 above made Winstead subject to a statutory disqualification until September 2007.
- 2.4 In connection with his employment with GHA, Winstead submitted to the Exchange a “Uniform Application for Securities Industry Registration or Transfer” (“Form U-4”), dated March 15, 2000, in order to become registered with the Exchange. Notwithstanding the fact that, as described in above paragraph 2.1, Winstead had been convicted of a felony on September 19, 1997, Winstead, in completing his March 15, 2000 Form U-4, answered question #23A(1)(a) [“Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any *felony*?”], “No.”
- 2.5 Additionally, notwithstanding Winstead’s arrest in connection with this felony matter on August 27, 1996, Winstead, in completing his March 15, 2000 Form U-4, answered question #23A(1)(b) [“Have you ever been *charged* with any *felony*?”] “No.”
- 2.6 By signing his Form U-4, Winstead swore or affirmed that he had read and understood the items and instructions on the Form U-4 and that his answers were true and complete to the best of his knowledge. Furthermore, by signing a Form U-4, Winstead attested that he understood that he was subject to administrative, civil or criminal penalties if he gave false or misleading answers in completing the Form U-4.

- 2.7 Prior to submitting his signed Form U-4 to the Exchange in March 2000, Winstead had also been charged in both 1992 and 1993 with violating New York State Penal Law Section 155.25, Petit Larceny¹, a class A Misdemeanor, and was subsequently convicted of this charge on each occasion. As a result of these two misdemeanor convictions, Winstead was sentenced to concurrent ninety (90) day terms of imprisonment.
- 2.8 Notwithstanding the fact that, as described in above paragraph 2.7, Winstead had twice been convicted of theft-related misdemeanors, Winstead, in completing his March 15, 2000 Form U-4, answered question #23B(1)(a) [“Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?”] “No.”
- 2.9 Additionally, notwithstanding Winstead’s arrests for each of these misdemeanors, Winstead, in completing his March 15, 2000 Form U-4, answered question #23B(1)(b) [“Have you ever been *charged* with a *misdemeanor* specified in 23B(1)(a)?”] “No.”

¹ According to the New York State Penal Law, a person is guilty of Petit Larceny when he steals property. Section 155.05 of the New York State Penal Law defines larceny: “A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

CHARGES PREFERRED:

3.0 Winstead violated Exchange Rule 345(a)(2) and Exchange Rule 345(a)(4) in that he submitted an application for registration to the Exchange that contained false information as described in paragraphs 2.0 through 2.9.

* * * * *

Winstead 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

By: _____

Glen Barrentine
Vice President