

**Disciplinary Panel
American Stock Exchange, LLC**

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	:	02-42
	:	
IN THE MATTER	:	Hearing Officer - JN
OF	:	
PHILIP KEITH ADAMS	:	Disciplinary Panel Default Decision
	:	
	:	May 15, 2003

Digest

Former employee of an Exchange Regular Member organization failed to cooperate with an Exchange investigation. For this misconduct, Respondent was censured and permanently barred.

Appearances

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

No appearance for Philip Keith Adams.

DECISION

I. Procedural Background

On January 24 and January 31, 2003, the American Stock Exchange issued a Statement of Charges, alleging that Philip Keith Adams, an employee of a Regular Member of the Exchange, violated Exchange Rule 345(c) by failing to cooperate with an Exchange investigation. Adams did not file an Answer to the Statement of Charges.

On March 3, 2003, the Exchange's Department of Enforcement filed a request for a default decision. Adams did not respond to that request. On April 21, 2003, an Exchange Disciplinary Panel conducted a hearing, at which Philip Keith Adams failed to appear. To

establish an evidentiary basis for the charges and to demonstrate its efforts to serve Adams, Enforcement presented an Affirmation from Justin Kletter, Staff Attorney for the Exchange (cited as “Aff.”) and eleven exhibits (CX-1 through CX-11).

II. Discussion

A. Factual Background

Philip Keith Adams was employed as a registered representative in the San Antonio, Texas branch office of First Union Securities, Inc. (“FUSI”), a Regular Member organization of the Exchange, from December 1999 through September 2000 (Aff., ¶ 1). FUSI terminated Adams’ employment on September 2, 2000, and Adams has since then not been employed in the securities industry (Id., ¶ 2). On May 10, 2002, 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 Adams effected unauthorized, unsuitable and excessive trading in listed stock options transactions in customers’ accounts (CX-1; Aff., ¶ 3).

On June 19, 2002, SPR sent a letter, via certified mail, to Adams’ home address listed in the Central Registration Depository (“CRD address”), which stated that the Exchange was retaining jurisdiction over him in connection with the Form U-5 filing and requested a written explanation from Adams of the allegations (Aff., ¶ 4; CX-2). The letter was returned, marked “Not deliverable as addressed—Unable to Forward” (Aff., ¶ 5; CX-3). On August 19, 2002, SPR sent a second letter, via certified mail, to FUSI (Aff., ¶ 6; CX-2); the Postal Service returned that letter, marked “Refused by Firm, No longer Employed here” (Aff., ¶ 7; CX-4).

Meanwhile, SPR telephoned FUSI’s Vice President of Compliance on July 29, 2002 to ascertain Adams’ last known address (Aff., ¶ 8). The Vice President stated that Adams’ CRD

address was the last known address he was aware of (Id.). Thereafter, SPR contacted directory assistance in San Antonio, Texas for a telephone listing for Adams' CRD address and learned that there was no such listing (Id., ¶ 9). After an unsuccessful internet search, SPR referred Adams' failure to cooperate with its investigation to the Exchange's Enforcement Department on November 15, 2002 (Id.).

On November 27, 2002, Enforcement sent a third and final jurisdiction letter to Adams at his CRD address in San Antonio, Texas (Id., ¶ 10; CX-5). The Postal Service returned the letter, marked "Return to sender—Not deliverable as addressed—Unable to forward" (Aff., ¶ 11; CX-6). Counsel for the complaining customers had no address for Adams other than the address of his former firm (Aff., ¶ 12).

On January 24, 2003 and January 31, 2003, Enforcement sent the Statement of Charges to Adams via certified mail to his CRD address (Aff., ¶ 14; CX-7). The Postal Service returned the mailing marked "Not Deliverable as Addressed—Unable to Forward" (Aff., ¶ 15; CX-8, CX-9). Then on February 27, 2003, Enforcement sent, via certified mail, a Request for a Default Hearing to Adams' CRD address (Aff., ¶ 16; CX-10). The Postal Service returned the mailing marked "Not Deliverable as Addressed—Unable to Forward" (Aff., ¶ 17; CX-11). Adams failed to correspond or communicate with the Exchange in any way regarding the investigation of alleged violations against him (Aff., ¶ 18).

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 which occurred prior to termination. Enforcement received several revised Form U-5's

pertaining to Adams' termination. The most recent such amendment arrived on February 26, 2002, extending the jurisdictional year until February 26, 2003 (Aff., n.1). Enforcement sent its jurisdiction notices on June 19, August 19, and November 27, 2002, within that year, and the Exchange thus has jurisdiction over Respondent Philip Keith Adams.

C. Adams' 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 January 24, 2003 and January 31, 2003, using certified mail, Enforcement sent the Statement of Charges to Respondent at his CRD address (Aff., ¶ 14; CX-7). The Postal Service returned the mailings marked "Not Deliverable as Addressed—Unable to Forward" (Aff., ¶ 15; CX-8, CX-9).

By letter dated February 27, 2003 (sent to Respondent at his CRD address), Enforcement requested a default hearing (CX-10). Despite consulting telephone directory assistance, databases, his former firm, and complaining customers' counsel, it 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. Adams has not answered the Statement of Charges.

D. Liability

Notwithstanding Respondent's default, the Panel required Enforcement to make a sufficient presentation to enable it to find that there was an evidentiary basis for the Statement of Charges. See James M. Russen, Exchange Act Rel. No. 32895, 1993 SEC LEXIS 2339 (September 14, 1993). The Panel finds that Enforcement made the requisite demonstration here.

The record demonstrates that Respondent Adams repeatedly failed to cooperate with staff, which, through various mailings to his CRD address, sought a written explanation of customers' allegations that he effected unauthorized, unsuitable and excessive trading in their accounts. Rule 345(c) requires cooperation with Exchange investigations, and Respondent's repeated failures to respond to Enforcement's inquiries constituted a total lack of cooperation. Respondent violated Rule 345(c), as alleged in the Statement of Charges.

E. Sanctions and Publicity

Though the American Stock Exchange has no sanction guidelines, the Panel may appropriately consider the NASD Sanction Guidelines (David Wong, Exchange Act Release No. 45426, 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). In the instant case, Adams failed to cooperate with the staff's investigation. The Panel believes that a permanent bar is the appropriate sanction for his misconduct.

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

A. Adams violated Rule 345(c) by failing to cooperate with an Exchange investigation.

B. For this misconduct, Adams 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.

C. 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
Chair

Dated: Washington, DC
May 15, 2003

Copies to: Philip Keith Adams (via overnight delivery and first class certified mail/return receipt requested)
Justin M. Kletter, Esq. (via electronic mail and first class mail)

Disciplinary Panel
American Stock Exchange LLC

.....)
IN THE MATTER)
OF)
PHILIP KEITH ADAMS)
.....)

STATEMENT OF CHARGES
Case Number 02-42
January 24, 2003

Charges are hereby preferred pursuant to Exchange Rule 345(c) of the Constitution of the American Stock Exchange LLC (the “Exchange”) against PHILIP KEITH ADAMS (“Adams”)(CRD#2387552), a former employee of First Union Securities, Inc. (“First Union”), a Regular Member organization of the Exchange.

STATEMENT OF FACTS:

1.0 During the period of December 1999 to September 2000, Adams was employed as a Registered Representative (“RR”) at First Union’s San Antonio, Texas branch office. Adams was discharged by First Union on September 2, 2000 for failing to follow the firm’s policy and procedures regarding the use of discretion. On information and belief, Adams has not been employed in the securities industry since his termination by First Union.

1.1 At all relevant times herein, Exchange Rule 345(c) provided that:

“If, during the period of one year immediately following receipt by the Exchange of (a) written notification of termination of a person’s status as an allied member, approved person, or registered or non-registered employee of a member or member organization, or (b) any amendment to such termination notice, the Exchange gives written notice to such person that it is making inquiry into any specified matter or matters occurring prior to termination of such person’s

employment, the Exchange may thereafter require such person to appear and testify submit records, respond to written requests, attend hearings, and accept disciplinary charges or penalties with respect to the matter or matters specified in such notice in every respect in conformance with the Constitution and Rules and practices of the Exchange, in the same manner and to the same extent as such person would have been required to do if such person remained an employee. If such person refuses or fails to comply with any such request of the Exchange, such person agrees that such refusal or failure may, in the discretion of the Exchange, act as a bar to future Exchange approval of such person's employment until such time as the Exchange has completed its investigation into the matter or matters specified in such notice; has determined a penalty, if any, to be imposed against such person and until the penalty, if any, has been carried out."

- 2.0 On May 10, 2002, the Exchange's Sales Practice and Investigations Department ("SPID") initiated an investigation into a Uniform Termination Notice for Securities Industry Registration ("Form U-5") dated October 6, 2000. The Form U-5 alleged that RR Adams effected unauthorized, unsuitable and excessive trading in listed stock options transactions in the account of Public Customer A and the joint account of Public Customers A and B.¹
- 2.1 On June 19, 2002, SPID sent Adams a jurisdiction letter, via certified mail, to his residential address as listed on the Central Registration Depository ("CRD") (San Antonio, Texas), advising him that the Exchange was retaining jurisdiction over him in connection with the Exchange's investigation of matters specified in above paragraph 2.0. SPID's jurisdiction letter also specifically requested that Adams submit to the Exchange a detailed written response to the complaints of Public Customers A and B. On July 21, 2002, SPID's letter was returned to the Exchange marked, "Not deliverable as addressed – unable to forward".

¹ Since October 2000, Adams has been the subject of a number of revised Form U-5 filings, which, pursuant to Rule 345(c), extend the Exchange's jurisdiction over Adams. The most recent U-5 filing for Adams' CRD was received by the Exchange on February 26, 2002. In this latest U-5 filing a former Adams' customer alleges that Adams engaged in unsuitable trading in the customer's account during 1999-2000.

- 2.2 On August 19, 2002, SPID sent Adams a second jurisdiction letter, via certified mail, to Adams business address listed on CRD, again advising him that the Exchange was retaining jurisdiction over him and requesting a detailed written response to the complaints of Public Customers A and B referred to in above paragraph 2.0. On August 30, 2002, this letter was returned to the Exchange, marked “Returned by firm – No Longer Employed Here”.
- 2.3 On July 29, 2002, SPID telephoned the Compliance and Registrations Departments at First Union to inquire as to whether the firm had a forwarding address for Adams following his termination from the firm in September 2000. First Union informed SPID that they had the same residential address for Adams as the residential address that appeared for Adams on CRD.
- 2.4 During the period of September 10, 2002 and September 19, 2002, SPID contacted directory assistance in San Antonio, Texas for a telephone listing for Adams based upon his residential address as it appeared on CRD. Directory assistance stated it had no listing for a Philip Keith Adams at the address in question or at any other location. SPID also performed a search using an internet search engine without success. SPID referred Adams’ failure to cooperate with its investigation to the Exchange’s Enforcement Department (“Enforcement”) on November 15, 2002.
- 2.5 On November 27, 2002, Enforcement sent a third and final jurisdiction letter to Adams at his residential address in San Antonio, Texas. The letter was returned to the Exchange marked “Return to sender – Not deliverable as addressed – Unable to forward”.

- 2.6 On December 12, 2002, Enforcement spoke with an attorney representing Public Customers A and B in connection with civil litigation being contemplated against First Union. At the request of Enforcement staff, the attorney for Public Customers A and B reviewed his files in an attempt to find an address for Adams. Counsel for Public Customers A and B, however, was only able to provide Enforcement with Adams' business address at First Union.
- 2.7 On or about December 17, 2002, Enforcement also performed an electronic search using the ALLFIND Combined Person and Business Locator Files on the Lexis database. For the city of San Antonio, Texas, one name and telephone number matched the search term "Philip Adams". On or about December 18, 2002, Enforcement telephoned the number obtained from Lexis, however, the party that answered the phone indicated that the "Philip Adams" contacted at no time had worked in the securities industry and in fact was currently a member of the armed services.
- 2.8 Adams has failed to correspond or communicate with the Exchange in any way in connection with the Exchange's investigation of the customer complaints referred to in paragraph 2.0.

CHARGES PREFERRED:

- 3.0 Adams violated Exchange Rule 345(c) by failing to cooperate with an Exchange investigation as described in paragraphs 2.0 through 2.8.

* * * * *

Adams 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, LLC

By: _____
Glen Barrentine
Vice President