

**Disciplinary Panel
American Stock Exchange, LLC**

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	:	Case No. 02-31
	:	
IN THE MATTER	:	Hearing Officer – JN
OF	:	
LANCE CRAIG REESE	:	Disciplinary Panel Default Decision
	:	
	:	February 6, 2003

Digest

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

Appearances

Zandra Cheung, Esq., Staff Attorney, and David E. Rosenstein, Esq., Chief Counsel, American Stock Exchange, LLC, New York, NY, for the Department of Enforcement.

No appearance for Lance Craig Reese.

DECISION

I. Procedural Background

On September 12, 2002, the American Stock Exchange issued a Statement of Charges, alleging that Lance Craig Reese, a former employee of Muriel Siebert & Co., Inc., a Regular Member organization of the Exchange, failed to cooperate with an Exchange investigation.

Reese did not file an answer to the Statement of Charges.

On October 28, 2002, the Exchange's Department of Enforcement filed a request for a default decision. Mr. Reese did not respond to that request. On December 4, 2002, an Exchange

Disciplinary Panel conducted a hearing at which Respondent failed to appear. To establish an evidentiary basis for the charges and to demonstrate its efforts to serve Reese, Enforcement presented an Affirmation from Zandra Cheung, Staff Attorney for the Exchange (cited as “Aff.”) and nine exhibits (CX-1 through CX-9).

II. Discussion

A. Factual Background

On March 5, 2001, the Exchange’s Sales Practice Regulation Department (“SPR”) initiated an investigation into a registered representative whom Reese supervised at Muriel Siebert (Aff., p. 1). On March 9, 2001, via certified mail addressed to the firm, SPR sent Reese a letter which (1) stated that the Exchange was retaining jurisdiction over him while investigating charges that the supervisee misappropriated customer funds and (2) requested a written statement from Reese detailing his supervisory activities concerning the account in question (Aff., pp. 1-2; CX-1a). The certified mail receipt showed that the firm received the letter, and on March 15, 2001, Reese submitted a written response to it (Aff., p. 2; CX-1b; CX-2).

On February 15, 2002, after learning that Muriel Siebert no longer employed him, SPR sent Reese a letter via certified mail addressed to his residence, as reflected in the CRD (“the CRD address”). This letter again advised Reese that the Exchange was retaining jurisdiction over him and requested his appearance for an on-the-record interview concerning the investigation (Aff., p. 2; CX-3). The Postal Service returned this mailing, marked unclaimed (Aff., p. 2; CX-3a).

On February 27, 2002, SPR sent a letter to Reese at the CRD address via Airborne Express. This letter attached the prior letter and again requested an interview (Aff., 2; CX-4).

Airborne Express confirmed delivery of the letter to Reese's residential address on March 1, 2002 (Aff., p. 2).

On March 5 and 6, 2002, SPR telephoned Reese, using a number provided in his March 15, 2001 response, and left voicemail messages requesting that he contact SPR to schedule the interview (Aff., p. 3). On March 13, 2002, SPR telephoned Reese at that number and spoke to him (Id.). On March 15 and 16, 2002, SPR again telephoned Reese at that number and left several messages requesting that he contact the staff to schedule the interview; Respondent did not return any of those messages (Id.).

On April 1, 2002, SPR sent letters to Respondent at his CRD address, using Airborne Express and first class mail. This letter enclosed all previous correspondence sent to him (Aff., p. 3; CX-5). The Postal Service returned the first class mailing, marked "Return to Sender/Unable to Forward" (Aff., p. 3; CX-5a). The record does not reflect the outcome of the Airborne delivery.

On July 31, 2002, using certified mail, Enforcement sent a letter to Respondent at his CRD address, again advising that the Exchange was retaining jurisdiction over him in connection with the investigation. This letter also stated that Enforcement had scheduled his interview for August 13, 2002 at 10:00 a.m. at the Exchange's office (Aff., pp. 3-4; CX-6). The Postal Service returned the certified mail receipt, signed for by "Lance Reese" (Aff., p. 4; CX-6a). Respondent failed to appear for the August 13, 2002 OTR interview (Aff., p. 4).

B. Jurisdiction

Under Exchange Rule 345(c), the Exchange may retain jurisdiction over a formerly registered employee if, within one year of termination, it gives written notice to such person that it is investigating any specified matter which occurred prior to termination. Reese's employment

with Muriel Siebert terminated on February 8, 2002 (Aff., p. 1). As stated, Enforcement sent such notices on February 15, February 27, April 1, and July 31 of 2002. The Exchange has jurisdiction over Respondent Lance Craig Reese.

C. Reese's Default

Article V, Section 1(b)(6) of the Exchange Constitution provides that Enforcement may properly serve a Statement of Charges on a member “by mailing it to such member ... at his ... office address or place of residence.” On September 12, 2002, using certified and first class mail, Enforcement sent the Statement of Charges to Respondent at his CRD address (Aff., p. 4; CX-7). The Postal Service returned the certified mailings marked “Return to Sender – FOE” and the first class mail envelope was stamped “No Such Number” (Aff., p. 4; CX-7a; CX-7b).

On October 1, 2002, Enforcement again served the Statement of Charges via certified mail sent to Respondent at his CRD address (Aff., p. 4). On October 21, 2002, the Postal Service returned that mailing, marked “Not Deliverable As Addressed Unable to Forward – FOE” (Aff., p. 4; CX-8).

Reese has not answered the Statement of Charges. Other than his March 15, 2001 response to a request for a written statement, Reese has “failed to correspond or communicate with the Exchange in any way” concerning the alleged violations (Aff., p. 5).

Enforcement properly served Respondent by mailing the Statement of Charges to the CRD address, which is his last known residence and which, according to the Postal Service, “was in fact a valid mailing address” (Aff., p. 4). The correctness of that address is further shown by other circumstances. On March 15, 2001, Reese responded to a request for information which Enforcement sent there (Aff., p. 2; CX-2). Moreover, on August 12, 2002, only two months

before Enforcement first served the Statement of Charges, “Lance Reese” signed for mailings to that address (Aff., p. 4; CX-6a).

These mailings constituted proper service at Respondent’s “place of residence,” pursuant to Article V, Section 1(b)(6) of the Exchange Constitution. Accordingly, the Panel finds that Respondent had valid constructive notice of this proceeding.

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 Reese repeatedly refused to cooperate with staff, which was seeking to interview him in connection with an investigation involving his supervision of a Muriel Siebert registered representative who was charged with misuse of customer funds. Though Reese responded to a request for a written response (Aff., p. 2; CX-2), he did not respond to any of the several written and telephonic requests to contact the staff to schedule the requested interview (Aff., pp. 2-4). Moreover, on August 12, 2002, “Lance Reese” signed for the staff’s July 31 request which, inter alia, established a date for the interview and advised him that a failure to attend would lead to disciplinary action (Aff., pp. 3-4; CX-6; CX-6a). Reese thus had actual notice that Enforcement was attempting to secure his cooperation, and he chose to ignore the matter (Aff., p. 4; CX-6a). Rule 345(c) requires cooperation with Exchange investigations, and Respondent’s conduct violated that Rule.

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, Reese repeatedly refused 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]henver” 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. Reese violated Rule 345(c) by failing to cooperate with an Exchange investigation.

B. For this misconduct, Reese shall be 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
February 6, 2003

Copies to: Lance Craig Reese (via overnight delivery and first class mail)
Zandra Cheung, Esq. (via electronic mail and first class mail)
David E. Rosenstein, Esq. (via electronic mail and first class mail)

Disciplinary Panel
American Stock Exchange LLC

.....	x	
	x	
IN THE MATTER	x	
OF	x	STATEMENT OF CHARGES
LANCE CRAIG REESE	x	Case Number 02-31
.....	x	September 10, 2002

Charges are hereby preferred pursuant to Exchange Rule 345(c) of the Constitution of the American Stock Exchange LLC (the “Exchange”) against LANCE CRAIG REESE (“Reese”) (CRD #2134791), a former employee of Muriel Siebert & Co., Inc. (“Muriel Siebert”), a Regular Member organization of the Exchange.

STATEMENT OF FACTS:

1.0 During the period from November 1996 to February 2002, Reese was employed at Muriel Siebert’s Palm Beach, Florida office, serving as Branch Office Manager (“BOM”) for the period of January 2000 to February 2002. Reese voluntarily terminated his employment with Muriel Siebert on February 8, 2002. On information and belief, Reese has not been employed in the securities industry since his termination from Muriel Siebert.

1.1 At all relevant periods 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 would have been required to do if such person had remained an employee.

Failure to Cooperate:

- 2.0 On March 5, 2001, the Exchange's Sales Practice Regulation Department ("SPR") initiated an investigation into a registered representative at Muriel Siebert, whom Reese supervised. On March 9, 2001, SPR sent Reese a letter, by certified mail to Muriel Siebert's business address (in Boca Raton, Florida) as reflected in Exchange records and Central Registration Depository ("CRD") records, advising him that, the Exchange was retaining jurisdiction over him in connection with an investigation involving Reese's alleged failure to supervise a registered representative who allegedly misappropriated funds from a customer's account. The letter also requested a written statement from Reese detailing his supervision activities relating to the account. According to the certified mail receipts received by SPR, the certified letter was received on March 15, 2001. Thereafter, Reese submitted a written response, dated March 15, 2002, to the Exchange's request.
- 2.1 On February 11, 2002, SPR learned that Muriel Siebert no longer employed Reese. On February 15, 2002, SPR sent Reese a letter by certified mail to his residential address (in Pompano Beach, Florida), as reflected in the CRD database, retaining jurisdiction over Reese and requesting Reese's appearance at an on the record interview concerning the investigation referred to in above

- paragraph 2.0. SPR's letter sent to Reese's Pompano Beach residential address was returned to SPR unclaimed.
- 2.2 On February 27, 2002, SPR sent another letter to Reese by Airborne Express to Reese's residential address, attaching the February 15, 2002 letter. SPR again requested an on the record interview with Reese in connection with its ongoing investigation. SPR contacted Airborne Express and confirmed that the letter was delivered to Reese's residential address on March 1, 2002.
- 2.3 On March 5, 2002 and March 6, 2002, SPR telephoned Reese using a residential telephone number provided by Reese in his March 15, 2001 response, noted in paragraph 2.0 above.¹ SPR left voicemail messages asking Reese to contact SPR.
- 2.4 On March 13, 2002, SPR telephoned Reese at his residential telephone number referred to in paragraph 2.3 and spoke to Reese. SPR informed Reese that SPR was requesting an on the record interview with him. Reese advised SPR that he would cooperate and would call back SPR with a convenient date and time to proceed with his investigative testimony. Reese, however, failed to return SPR's March 13, 2002 telephone call.
- 2.5 Between March 15, 2002 and March 16, 2002, SPR telephoned Reese at the number referred to in paragraphs 2.3 and 2.4 above and left several voice messages requesting that he contact SPR staff to schedule his investigative testimony. Reese, however, failed to return any of the messages left for him by SPR.

¹ This residential telephone number for Reese was also given to SPR by Muriel Siebert and appears as Reese's listed residential telephone number on the CRD database.

- 2.6 On April 1, 2002, SPR sent Reese letters by both Airborne Express and first class mail to Reese's residential address, enclosing all previous correspondence sent to him. SPR again retained jurisdiction over Reese pursuant to Exchange Rule 345(c) and requested his appearance at an on the record interview, providing various dates from which Reese could choose. SPR also advised Reese that his failure to respond could result in the initiation of disciplinary action against him. SPR confirmed that Airborne Express left the overnight letter at the doorstep of Reese's home. The letter sent to Reese by first class mail was returned to the Exchange and the envelope was stamped "Return to Sender/Unable to Forward."
- 2.7 On July 31, 2002, the Exchange's Enforcement Department ("Enforcement") sent Reese a letter by certified mail to his residential address, advising Reese that pursuant to Exchange Rule 345(c), the Exchange was again retaining jurisdiction over him in connection with an Exchange investigation of Reese's supervision of a registered representative.² Enforcement also advised Reese that staff had scheduled an on the record interview of Reese for August 13, 2002 at 10:00 a.m. at the offices of the Exchange. Reese was advised that a failure to appear could result in the initiation of charges against Reese for failing to cooperate with an Exchange investigation. The certified letter, dated July 31, 2002 was sent to Reese's residential address. According to the certified mail receipt received by Enforcement, the certified letter was received on August 12, 2002 and was signed for in the name of "Lance Reese".

² Independent of efforts by SPR, Enforcement conducted a search of directories and internet address sites for Reese's residential address. All resources listed Pompano Beach, Florida as Reese's residence. A check of CRD also revealed that Pompano Beach was still listed as Reese's residential address. There was no indication that Reese had another residential address other than the Pompano Beach address that the Exchange had on file.

2.8 Reese failed to appear for his scheduled August 13, 20002 interview, and to the date of charges herewith, Reese has failed to correspond or communicate with the Exchange in any way in connection with the investigation of alleged violations referred to in paragraph 2.0.

CHARGES PREFERRED:

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

* * * * *

Reese 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