

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 97-11

February 13, 1997

FRANK MONTE

FORMER SALES MANAGER

* * *

Violated Rule 342(a) by failing to adequately supervise and control sales practice activities and violated Rule 405(2) by failing to supervise accounts serviced by registered representatives under his supervision -- Consent to censure and \$40,000 fine reduced to censure and \$20,000 fine.

Appearances:

For the Division of Enforcement
Regina C. Mysliwicz, Esq.
Susan Light, Esq.
Cynthia Kitay, Esq.
Margaret M. Tolan, Esq.
Joy A. Weber, Esq.

For the Respondent
Saul S. Cohen, Esq.
Lionel E. Pashkoff, Esq.

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An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Frank Monte, a former Sales Manager with D.H. Blair & Co., Inc. Without admitting or denying guilt, Monte consents to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 342(a) in that he failed to adequately supervise and control sales practice activities of registered representatives under his supervision who were the subject of numerous sales practice complaints alleging sales practice violations.
- II. Violated Exchange Rule 405(2) in that he failed to supervise diligently accounts serviced by registered representatives under his supervision.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Monte stipulate to the following:

Background and Jurisdiction

1. Frank Monte ("Monte") was born on [REDACTED]. He was employed by the Firm from December 1984 to December 1994.

2. In connection with investigations into possible sales practice violations by registered representatives with, or formerly employed with D.H. Blair & Co., Inc. (“D.H. Blair” or the “Firm”) and other issues, the Exchange also investigated the supervisory activities of Monte while he was employed at D.H. Blair from October 1991 through December 1994. Monte was registered as a supervisor in March 1992.
3. Monte, represented by counsel, testified before the Exchange on matters referred to herein.
4. Monte was employed from October 1991 through December 1994 as Sales Manager of D.H. Blair and reported directly to the Firm’s President. As Sales Manager, Monte’s responsibilities included the supervision of all registered representatives and trainees who worked on the same sales floor as himself.
5. D.H. Blair (See EHPD 97-9) is the subject of an Exchange disciplinary action pertaining to its failure to develop and implement systems for the supervision of its registered representatives and failure to supervise.
6. Richard A. Maio (“Maio”) was employed from January 1991 through December 1994 as President and Chief Operating Officer (“COO”) of D.H. Blair and had the responsibility for overall supervision of retail sales activities and trading. Maio (See EHPD 97-10) is the subject of an Exchange disciplinary action pertaining to his supervision of registered representatives while he was employed at D.H. Blair.
7. AB became employed at D.H. Blair in November 1990 as a registered representative and continues to be employed at the firm in that capacity.
8. CD was employed at D.H. Blair from February 1990 through June 1994 as a registered representative.
9. Beginning in or about November 1990 through June 1994, AB and CD each maintained an individual production designation in addition to working together as partners under a joint production designation.
10. AB and CD are each the subject of an Exchange disciplinary action pertaining to their handling of certain customer accounts that they serviced while employed at D.H. Blair.

Failure to Adequately Supervise

11. During the period October 1991 - December 1994, Monte failed to reasonably supervise the sales practice activities of registered representatives subject to his supervision to prevent and detect sales practice violations as set forth below.
 - a. Maio delegated the duties of the daily supervision of registered representatives at D.H. Blair to Monte, the Administrative Manager, and the Compliance

Department. Monte was also responsible for the training of registered representatives.

- b. Monte failed to reasonably discharge the daily supervisory responsibilities delegated to him in that he was aware that he should conduct regular supervisory reviews of all registered representatives subject to his supervision to review their customer accounts yet failed to do so with regards to AB and CD.
- c. Monte received monthly reports on customer complaints from the Compliance Department. As a result of these reports, Monte knew or should have known, that there were at least 14 customer complaints concerning accounts serviced under the AB/CD joint production designation and a combined total of at least 39 customer complaints against AB and/or CD, both jointly and individually, by the time that CD left D.H. Blair in June 1994. The complaints state that AB and CD engaged in sales practice violations against their customers including, among other things, unauthorized trading, failure to follow instructions, high pressure sales tactics, misrepresentation and opening accounts without the knowledge or authorization of the individual.
- d. Monte, however, failed to follow up on his knowledge of the customer complaints alleging sales practice violations against AB and CD and failed to either conduct appropriate supervisory review of AB and/or CD or subject them to special supervision.
- e. As part of his supervisory duties, Monte was obligated to monitor the sales activities of the registered representatives under his supervision, including the use of high pressure sales tactics in telephone conversations with actual or potential customers of D.H. Blair. Despite the large number of customer complaints referred to above, Monte never contacted a customer and failed to devise and implement a reasonable monitoring system for high volume, high pressure salesmen.
- f. Beginning in July 1991, the Exchange's Member Firm Regulation Division's Sales Practice Review Unit conducted an examination of D.H. Blair (the "Examination"). The Examination Report detailed the customer complaint record of AB and CD and noted that AB and CD engaged in free-riding, liquidating securities in customer accounts to pay for other securities after trade date, as well as unsuitable and unauthorized trading. The Examination Report concluded that D.H. Blair's supervision of AB and CD had been inadequate.
- g. On or before February 5, 1992, the Firm distributed the Examination Report to all Firm management personnel, including Monte, and reminded them that they were to be alert to any indication of abuse as disclosed in the Examination Report.
- h. Monte, however, failed to follow up on the allegations of sales practice violations

against AB and CD contained in the Examination Report and failed to either conduct appropriate supervisory review of AB and/or CD or to subject them to special supervision.

- i. Although in late 1993 Monte recommended to Maio that AB and CD be terminated because of their business practices, the Firm determined not to do so. Monte, however, failed to follow up on his concern that AB and CD were possibly conducting business in a manner that violated Exchange rules and failed to either conduct appropriate supervisory review of AB and/or CD or to subject them to special supervision either before or after recommending their termination to Maio.
- j. Based upon the above information, Monte knew or should have known that further supervisory review and/or action was needed to detect and prevent possible violations of Exchange rules and securities laws by CD and AB but Monte failed to take appropriate action.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Monte guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, reduced the penalty consented to by Mr. Monte of a censure and a fine of \$40,000 to a censure and a fine of \$20,000. The Hearing Panel felt that such a reduction was warranted because Mr. Monte had attempted to terminate AB and CD. His attempt was rebuffed by senior management. Because of Monte's attempt, the Hearing Panel believed the \$20,000 fine more closely accorded with the precedents.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer