

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 91-168
LOWELL J. MILKEN
FORMER NON-REGISTERED EMPLOYEE

September 13, 1991

* * *

Violated Exchange Rule 477 in that he failed and refused to appear and give testimony -- Consent to bar until he appears and testifies.

Appearances:

For the Division of Enforcement
Robert A. Marchman, Esq.
Neil M. Berson, Esq.

For the Respondent
Mahlon M. Frankhauser

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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 Lowell J. Milken, a former non-registered employee with Drexel Burnham Lambert Incorporated (the "Firm"). Without admitting or denying guilt, Mr. Milken consents to a finding by the Exchange Hearing Panel that he violated Exchange Rule 477 in that he failed and refused to appear and give testimony pursuant to Exchange request.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Milken stipulate to certain facts, the substance of which follows:

1. Milken is forty-two years old.
2. Milken became employed in December 1978 as a non-registered employee of the Firm, a then registered broker dealer and member organization of the Exchange. He remained employed by the Firm in a non-registered capacity until June 15, 1989 when his resignation was requested by the Firm pursuant to its settlement of a civil injunctive action commenced by the Securities and Exchange Commission ("SEC"). A copy of the Firm's Consent and Undertaking in connection with the entry of a Final Judgment of Permanent Injunction and Other Relief against it was annexed to the Stipulation.
3. During the period of his employment by the Firm, Milken worked with the Firm's High Yield and Convertible Bond Department ("HYBD") located in Beverly Hills, California.

4. Milken is not currently employed in the securities industry and has been barred from such employment by the SEC pursuant to an Administrative Order, dated March 11, 1991, a copy of which was annexed to the Stipulation. A copy of the Final Judgment of Permanent Injunction entered against Milken on April 24, 1990 was also annexed to the Stipulation. Both the SEC Administrative Order and the Permanent Injunction were entered against Milken by consent and without admission or denial of the allegations asserted against him.

Failure to Cooperate

5. The Exchange asserted its jurisdiction over Milken by letter dated February 26, 1990, sent by certified mail, return receipt requested, and by first class mail, to Milken's last known residence address, in which the Division notified Milken of the commencement of an investigation regarding the activities of the Firm and certain of its officers and employees, including Milken.
6. Thereafter, by letter dated February 11, 1991, sent by certified mail, return receipt requested, and by first class mail, to Milken's last known residence address, the Division requested that Milken appear at its offices in New York City at 9:30 a.m. on March 5 and 6, 1991 to give his on-the-record testimony in connection with the Division's investigation of supervision by officers and employees of Drexel as pertained to the subject matter of the civil and criminal actions brought by the SEC and U.S. Attorney, respectively.
7. In subsequent communications with an attorney, who stated that he represented Milken and acknowledged that Milken had received the Division's aforesaid letters of February 26, 1990 and February 11, 1991, the Division was advised that Milken would not appear and testify as had been requested.
8. To date, Milken has not appeared and testified pursuant to the Exchange's request.

DECISION

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

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Milken of a bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization until he complies with the Exchange's request to appear and testify.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer