

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 48927 / December 16, 2003

Admin. Proc. File No. 3-11062

In the Matter of

CALVIN DAVID FOX
P.O. Box 7900
Jupiter, FL 33468

For Review of Disciplinary Action Taken by the
NEW YORK STOCK EXCHANGE, INC.

ORDER DENYING MOTION FOR RECONSIDERATION

I.

On October 31, 2003, we issued an opinion remanding to the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") the Exchange's disciplinary proceeding against Calvin David Fox. ^{1/} The NYSE had found that Fox had violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade by making a misstatement to his NYSE member firm employer about the status of his license to practice law in Florida and by sending an altered version of an official Florida court order to his employer in support of the misstatement.

^{1/} Calvin David Fox, Exchange Act Rel. No. 48731 (Oct. 31, 2003), __ SEC Docket __ (the "October 31 opinion").

In remanding the proceeding to the NYSE, we stated that, after considering the entire record presented to us, we could not complete our review function in the matter without clarification and further explanation of the basis of the NYSE's finding that Fox's conduct was inconsistent with just and equitable principles of trade. Specifically, we noted that the NYSE's decision did not clearly state that it found that Fox had acted in bad faith or unethically. ^{1/} Our opinion instructs the NYSE to consider expressly whether Fox acted in bad faith or unethically and, if it found that Fox did so, to provide the specific basis upon which it made such a determination.

II.

We consider Fox's motion to reconsider under Rule 470 of the Commission's Rules of Practice. ^{1/} Rule 470 permits us to reconsider our decisions in exceptional cases. ^{1/} The remedy is intended to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence. ^{1/}

Fox's motion provides no basis for our reconsideration of the October 31 opinion. It relies primarily on a recitation of facts that were part of the record originally presented to us. It demonstrates no errors of law that require correction.

Fox urges us to reverse the Exchange based on his construction of the record. As we made clear, we were unable to conclude our review on the record presented. We directed the NYSE to provide further clarification and explanation of its decision. We find that Fox's motion does not present the

^{2/} In order to sustain a charge that conduct was inconsistent with just and equitable principles of trade, a self-regulatory organization need not find that the respondent acted with scienter, but must find that the respondent acted in bad faith or unethically. Robert E. Kauffman, 51 S.E.C. 838, 839-40 (1993), aff'd, 40 F.3d 1240 (3d Cir. 1994)(Table); Robert J. Jautz, 48 S.E.C. 702, 704 (1987).

^{3/} 17 C.F.R. §201.470.

^{4/} The comment to Rule 470 states that "[a] motion for reconsideration is intended to be an exceptional remedy."

^{5/} KPMG Peat Marwick LLP, Order Denying Request for Reconsideration, Exchange Act Rel. No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, 1352-53 n.7 (specifying that efficiency and fairness concerns embodied in federal court practice of rejecting motions for reconsideration unless correction of manifest errors of law or fact or presentation of newly discovered evidence is sought "likewise inform our review of motions for reconsideration under Rule 470").

exceptional circumstances required for us to reconsider our conclusion. 1/

6/ In the event Fox objects to the findings of the Exchange on remand, he may apply for review of that decision.

Our October 31 opinion simply remands the matter to the NYSE for further explanation of its decision. It does not make a final judgment on the merits. Therefore, we do not agree with Fox's contention that the NYSE could successfully raise either a res judicata or law of the case defense, based on our October 31 opinion, in any future review of the Exchange's decision on remand.

Accordingly, IT IS ORDERED that the motion for reconsideration filed by Calvin David Fox be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary