

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

Thomas R. Delaney II and
Charles W. Yancey

Respondents.

DIVISION OF ENFORCEMENT'S
SUPPLEMENTAL FINDINGS OF
FACT



The Division of Enforcement hereby submits a limited number of supplemental proposed findings of fact. These findings of fact are directly responsive to issues raised in Respondents' post-hearing briefs, and are cited and referred to in the Division's replies to Respondents' post-hearing briefs.

SUPPLEMENTAL FINDINGS OF FACT

323. Delaney claimed that he was unprepared for his first testimony and that, due to the lack of preparation, he did not have a good recollection of the salient events.

- Delaney Testimony

A About a year later, after I had left Penson, I received a phone call from Penson's counsel introducing himself and stating that he was -- had been retained to represent me in my on-the-record testimony, which I had not heard about. I -- I -- I wasn't even aware that there had been an investigation going on at that point.

Q And that -- that lawyer, that was Mr. MacPhail?

A MacPhail, yes.

Q Okay. Did you prepare with Mr. MacPhail before that first set of testimony?

A The evening before.

Q And what did you do?

A There -- there -- there wasn't a lot of information. Mr. MacPhail had a quarter-inch, maybe -- maybe a half-inch binder of some -- some exhibits that we ran through. And I went in the next morning, and -- and we went through testimony.

Q Okay. Did you feel like you had a good recollection of these events at that point?

A No.

Q Why not?

A I had been, you know, at least a year removed at that point from -- if not longer, from some of the events, as I recall, was in my -- being discussed in testimony related to 204T. So it wasn't just 2011. This was back all the way to the 2008 time frame. So here I am in 2012, a year away from Penson, in a broker-dealer that has a completely different model than Penson. So your years changed completely as you're working -- or administering a compliance program between a company like Penson and a company like where I am now.

(Hearing- Day 5, 1200:21-1202:1, Oct. 31, 2014)

324. Delaney gave notice at PFSI in the middle of March, 2011.

- Delaney Testimony

Q. When do you think it is that you gave notice at Penson?

A. Probably right about the middle of March of 2011.

(Hearing- Day 5, 1325:21-1325:24, Oct. 31, 2014)

325. Delaney was responsible for PFSI's WSPs.

- Ex. 200 at p. PFSI2163747

Penson Financial Services' Compliance Department, headed by our Chief Compliance Officer (CCO), is responsible for the issuance and dissemination of all policies, procedures and directives in place to govern the conduct of this firm and its registered employees. Our Compliance Department ensures that all new regulatory requirements are put into place and maintains these Written Supervisory Policies and Procedures (WSPs) in a current manner. The Department is also responsible for disseminating information required for associated personnel to conduct their business in a manner that encompasses all laws, rules, regulations and interpretations.

326. The "House Buy-Ins" section of PFSI's WSPs pertains to buy-ins to cover short sales caused by customer shorts, not fails due to long sales of securities that PFSI had loaned out.

- Wetzig Testimony

Q. Let me have you then jump -- go to Page 388, the next page, "House Buy-Ins."

Yeah, that right there. So it indicates there that a buy-in can be on the borrower loan side, in that first bullet point, doesn't it?

A. That is correct. That means if we're borrowing the securities, somebody can buy us in. And if we're loaning securities, we can buy it from them.

Q. Right. And go to the last bullet point. So when you don't have a counterparty to buy them into, what -- that tells you you're supposed to pass it down to Stock Loan, right?

A. No.

Q. Or I'm sorry. To the buy-ins department, right?

A. That would go to the customer.

Q. Is that not the buy-ins -- is there a different customer buy-ins department from the -- from -- is there multiple buy-in departments at Penson?

A. There's one buy-in department at Penson.

Q. So that must be referring to just the buy-in department headed by Mr. Gover, correct?

A. Correct. Mr. Gover did run the buy-in department. If we received a -- if we were borrowing shares, and we couldn't return those shares, we would get a buy-in. That would go to the customer short sale.

Q. Well.

A. That's what that's referring to.

Q Doesn't it say it could be on the loan side as well? The first --

A If we were loaning a security, we would buy from the broker-dealer that we're loaning into.

Q Okay.

A If we're borrowing a security, we're borrowing to cover a customer short sale; they would pass us the price. At that point, we would give that to the customer that is short. None of this has anything to do with taking proprietary positions.

Q So it doesn't -- doesn't -- the first bullet point doesn't say buy-ins can be on the borrow or loans --

A No, that's exactly what it says.

Q So --

A A buy-in can be if we're -- if we are -- we can get bought in if we're borrowing securities. The reason we're borrowing securities is to cover a customer short sale. At that point, if we get bought in, we're going to pass that price to the customer that's short, just like the other broker-dealer is going to do. If we're loaning the shares to them, they can't return the shares. We're going to give them a price; they're going to give it to their customer. None of this has anything to do with proprietary trading.

Q These are 204 procedures, aren't they?

A They are, that's correct.

Q Okay. So it has -- it -- and the loan side would be when you guys have loaned out a security, right?

A That is correct.

Q Okay. And doesn't that, there, say -- pardon my colloquialism. The buy-ins -- it says buy- -- it has a capitalized term, "Buy-Ins," right? In the first bullet point.

A Yes, it is capitalized.

Q The same in the last bullet point. If Stock Loan does not have a counterparty to pass the Buy-In to" -- and it could be a Buy-In on the borrow or loan side -- "then the Buy-In is forwarded to the customer Buy-In department."

(Hearing- Day 2, 398:9-401:1, Oct. 28, 2014)

327. Holly Hasty did not remember any specific meetings about Rule 204, even meetings she admitted attending.

- Hasty Testimony

Q You don't recall being in any meetings with Mr. Yancey in which Rule 204 compliance was discussed; isn't that right?

A Not specifically, no.

Q Okay. You don't remember, for instance, a March meeting at which Mr. Gover was there, Mr. Delaney was there, Mr. Alaniz was there, all discussing the -- the Rule 204 testing; you don't remember that?

A I don't recall it, no.

Q This is Exhibit 99. And Exhibit 99 indicates that you were at least invited to this meeting with all of these people; isn't that right?

A Yes.
Q Do you have any doubt that you attended that meeting?
A I don't.
Q Your expectation is that you would have attended that meeting?
A Yes, it's likely.

(Hearing- Day 7, 1771:5-1772:3, Nov. 4, 2014)

Q And let me ask you, if you would, to look at Exhibit 85.
And this Exhibit 85 discusses some follow-up testing about Rule 204. And you don't have any recollection of discussing with follow-up testing with anybody; isn't that right?
A I don't.

(Hearing- Day 7, 1772:4-1772:10, Nov. 4, 2014)

Q Okay. And let's look at Exhibit 91. At the time of your investigative testimony in 2012, you didn't remember this document; isn't that right?
A I didn't.
Q All right. And you didn't remember having discussions with anybody about it?
A Not that I recall.

(Hearing- Day 7, 1772:11-1772:17, Nov. 4, 2014)

328. Delaney referred to PFSI's response to FINRA's notification of Stock Loan's violations of Rule 204 as "self-reporting."

- Delaney Testimony

Q And this is what you're calling self-reporting; is that right? Your response to FINRA's notification to you about these CNS fails?
A Yes.

(Hearing- Day 5, 1374:5-1374:8, Oct. 31, 2014)

329. In the supervisory matrices that were sent to Yancey for review by Kim Miller, fewer than 20 employees were listed under Yancey's name.

- Ex. 177

To: Bart McCain [REDACTED] Bill Yancey [REDACTED], Tom Delaney [REDACTED]
Cc: Mike [REDACTED]
From: Kimberly Miller
Sent: Thur 2/26/2009 12:43:02 PM
Importance: Normal
Subject: Supervisory Structure Update
Registered Representative Supervisory Matrix.xls

Bill Yancey		
Bart McCain	Person US	Executives
Thomas Delaney	Person US	Executives - Global COO
John Kenny	Person US	Executives - Operations
Mike Johnson	Person US	Executives - Securities Lending
Doug Throckmorton	Person US	Institutional Client Services
Dan Weingarten	Person US	Marketing
Jack Boyle	Person US	Marketing
Peter Wind	Person US	Marketing
Sean Malloy	Person US	Marketing
Amy McLean	Person US	Relationship Management
James Cott	Person US	Relationship Management
Cass Smith	Person US	Relationship Management
Frank Hess	Person US	Relationship Management
James Scaplen	Person US	Relationship Management
Karen Snow	Person US	Relationship Management
Michael Scaplen	Person US	Relationship Management
Scott Wood	Person US	Relationship Management
Anne Maxey	Person US	Strategic Development

- Ex. 196

To: John [REDACTED]
Cc: Bill [REDACTED]
From: Kimberly Miller
Sent: Wed 5/26/2010 5:49:50 PM
Importance: Normal
Subject: RE: Supervisory Matrix
Registered Representative Supervisory Matrix 5-2010.pdf

Bill Yancey - President/CIO			
Thomas Chao	Person US	Dallas, Texas	Client Services
Cass Smith	Person US	New York, New York	Customer Development
Bart McCain	Person US	Dallas, Texas	Executives - EVP, CVO
Thomas Delaney	Person US	Dallas, Texas	Executives - EVP, COO
John Kenny	Person US	Dallas, Texas	Executives - EVP, COO
Mike Johnson	Person WW	Dallas, Texas	Executives - EVP, Securities Lending
Robert Kirk	Person US	Dallas, Texas	MIS Business Services - VP
Amy McLean	Person US	Dallas, Texas	Relationship Management
James Cott	Person US	Dallas, Texas	Relationship Management
Karen Snow	Person US	Dallas, Texas	Relationship Management
Scott Wood	Person US	Dallas, Texas	Relationship Management - Director
Frank Hess	Person US	Dallas, Texas	Relationships - VP
Dan Weingarten	Person WW	New York, New York	Sales - SVP
Sean Malloy	Person WW	New York, New York	Sales - SVP
Andy Karshan	Person US	Dallas, Texas	SVP, CIO

330. Between the February 2009 supervisory matrix and the January 2010 supervisory matrix, several changes were made.

a. Employees were removed from Yancey's supervision and re-assigned to other executives. For example, Doug Throckmorton was re-assigned from Yancey to John Kenney, Jack Boyle from Yancey to Bart McCain, and Michael Scaplen from Yancey to Dan Weingarten.

- Ex. 177 at 3

Bill Yancey		
Bart McCain	Person US	Executives
Thomas Delaney	Person US	Executives - Global COO
John Kenny	Person US	Executives - Operations
Mike Johnson	Person US	Executives - Securities Lending
Doug Throckmorton	Person US	Institutional Client Services
Dan Weingarten	Person US	Marketing
Jack Boyle	Person US	Marketing
Peter Wind	Person US	Marketing
Sean Malloy	Person US	Marketing
Amy McLean	Person US	Relationship Management
James Cott	Person US	Relationship Management
Cass Smith	Person US	Relationship Management
Frank Hess	Person US	Relationship Management
James Scaplen	Person US	Relationship Management
Caren Snow	Person US	Relationship Management
Michael Scaplen	Person US	Relationship Management
Scott Wood	Person US	Relationship Management
Anne Maxey	Person US	Strategic Development

- Ex. 182 at 3 (McCain), 4 (Kenny & Weingarten)

Bart McCain			
Jay Stenville	Person US	Dallas, Texas	Accounting - Dir. Reg. Reporting
Mary Smith	Person US	Dallas, Texas	Accounting - SVP, CFO
Keller Reid	Person US	Dallas, Texas	Execution Services - VP
Michael Thomas	Person US	Dallas, Texas	Execution Services
Jack Boyle	Person US	Chicago, IL	Execution Services - VP
John Kenny			
John Dixon	Person US	Dallas, Texas	Business Analyst
Brian Hill	Person US	Dallas, Texas	Correspondent Support
Billy Flinnbrook	Person US	Dallas, Texas	Correspondent Support
Doug Throckmorton	Person US	Dallas, Texas	Executives - Online Person Project
Dan Weingarten			
Eben Wile	Person US	New York, New York	Execution Services
Frank Kost	Person US	New York, New York	Sales - VP
Michael Scaplen	Person US	New York, New York	Business Development

b. Employees were added to Pendergraft's supervision.

- Ex. 177 at 5

Phil Pendergraft		
Bill Yancey	Person US	Executives
Daniel Son	Person US	Executives
Richard Anspacher	Person US	Futures

- Ex. 182 at 4

	Phil Pendergraft		
Anna Maxey	Person WW	Dallas, Texas	Strategic Development
Bill Yancey	Person US	Dallas, Texas	Executives, President - CEO
Bryce Engel	Person WW	Dallas, Texas	Executives, EVP
Daniel Son	Person WW	Dallas, Texas	Executives, PWW
Richard Anspecher	Person GHCO	Dallas, Texas	Futures - SVP
Robert McBey	Person WW	Dallas, Texas	Executive - SVP, Operations
Peter Wind	Person WW	Chicago, Illinois	Sales - SVP
Mark Robinson	Person Canada	Montreal Canada	Executives, VP PFSC

c. Johnson's title was updated from head of Securities Lending, but he remained under Yancey with Yancey as his regulatory supervisor.

- Ex. 177 at 3

Employee Name	Company	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person Worldwide	Executives		
	Bill Yancey			
Bart McCain	Person US	Executives	Bill Yancey	Bill Yancey
Thomas Delaney	Person US	Executives - Global COO	Bill Yancey	Bill Yancey
John Kenny	Person US	Executives - Operations	Bill Yancey	Bill Yancey
Mike Johnson	Person US	Executives - Securities Lending	Phil Pendergraft	Bill Yancey

- Ex. 182 at 3

Employee Name	Company	Location	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person WW	Dallas, Texas	Executives		
	Bill Yancey				
Thomas Chao	Person US	Dallas, Texas	Client Services	Steve Zhang	Bill Yancey
Cass Smith	Person US	New York, New York	Customer Development	Urnai Carey	Bill Yancey
Bart McCain	Person US	Dallas, Texas	Executives - EVP, CAO	Bill Yancey	Bill Yancey
Thomas Delaney	Person US	Dallas, Texas	Executives - SVP, COO	Bill Yancey	Bill Yancey
John Kenny	Person US	Dallas, Texas	Executives - SVP, COO	Bill Yancey	Bill Yancey
Mike Johnson	Person WW	Dallas, Texas	Executives - SVP, Securities Lending	Phil Pendergraft	Bill Yancey

331. Between the February 2009 supervisory matrix and the January 2010 supervisory matrix, several employees were moved from Yancey to Pendergraft, but Johnson was not one of them.

a. Anne Maxey moved from strategic development with PFSI to strategic development with PWI and was reassigned, and her Regulatory Supervisor was changed, from Yancey to Pendergraft.

- Ex. 177 at 3

Employee Name	Company	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person Worldwide	Executives		
	Bill Yancey			
Anna Maxey	Person US	Strategic Development	Simon Raphael	Bill Yancey

- Ex. 182 at 4

Anna Mazy	Phil Pendergraft	Person WW	Dallas, Texas	Strategic Development	Simon Raphael	Phil Pendergraft
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b. Peter Wind moved from marketing with PFSI to Senior Vice President of Sales with PWI, and was reassigned, and her Regulatory Supervisor was changed, from Yancey to Pendergraft.

- Ex. 177 at 3

Employee Name	Company	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person WorldWide	Executives		:
	Bill Yancey			
Peter Wind	Person US	Marketing	Phil Pendergraft	Bill Yancey

- Ex. 182 at 4

	Phil Pendergraft				
Peter Wind	Person WW	Chicago, Illinois	Sales - SVP	Phil Pendergraft	Phil Pendergraft

c. Johnson was listed under Yancey, with Yancey as his Regulatory Supervisor, even when he was formally moved from PFSI to PWI.

- Ex. 177 at 3

Employee Name	Company	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person WorldWide	Executives		:
	Bill Yancey			
Mike Johnson	Person US	Executives - Securities Lending	Phil Pendergraft	Bill Yancey

- Ex. 182 at 3

Employee Name	Company	Location	Department	PI Org Chart	Regulatory Supervisor
Phil Pendergraft	Person WW	Dallas, Texas	Executives		
	Bill Yancey				
Mike Johnson	Person WW	Dallas, Texas	Executives - SVP, Securities Lending	Phil Pendergraft	Bill Yancey

332. Dawn Gardner did not know about Johnson's supervision from a regulatory standpoint.

- Gardner Testimony

Q Okay. So it's safe to say that from a regulatory standpoint, whatever the reporting structure was within Penson from a business perspective -- and that's what you were involved with, right?

A From a business/HR perspective, I was involved in.

Q Right.

So from a business/HR perspective, whoever Mr. Johnson reported to on a regulatory basis, you don't really have any knowledge of who was represented to regulators as being Mr. Johnson's supervisor, do you?

A No, ma'am.

(Hearing- Day 4, 1161:13-1161:24, Oct. 30, 2014)

333. Two PWI employees – Sean Malloy and Dan Weingarten – reported to Yancey rather than to anyone at PWI.

- Yancey Testimony

Q Underneath that line, there are two other PWI individuals, Sean Malloy and Dan Weingarten. Do you see them?

A Yes, ma'am.

Q They similarly show PWI employees; is that right?

A Yes, ma'am.

Q And do they report to you?

A At this time.

(Hearing- Day 7, 1852:16-1852:24, Nov. 4, 2014)

334. Eric Alaniz, the compliance official who conducted the December 2009 audit of Buy-Ins' compliance with Rule 204, described the audit findings as a failure rate of 99%. He was later instructed by Delaney to remove this language from the Rule 3012 Summary Report.

- Alaniz Testimony

Q Okay. I think you mentioned on -- on direct that Mr. Delaney suggested a change to this document or maybe to your testing results?

A Yes.

Q And what was that change?

A It was just a percentage change --

Q And what do you mean by --
A -- of the results.
Q -- "a percentage change"?
A I initially had indicated out of 113, 112 failed equally, 99 percent failure rate, whatever that number came out to, and I was asked to take it off.
Q Take off what, the --
A The percentage.

(Hearing- Day 3, 779:8-779:21, Oct. 29, 2014)

335. Eric Alaniz did not recall whether or not he suggested to Delaney that the December 2009 audit results be included in the Rule 3012 Summary Report.

- Alaniz Testimony

Q But you got direction on what to include from Mr. Delaney; is that right?
A Correct.
Q And did you suggest to him that Rule 204 testing should be in that section?
A I don't recall.
Q You don't recall --
A I don't recall telling him.
Q You don't recall having told him that?
A No.

(Hearing- Day 3, 857:22-858:6, Oct. 29, 2014)

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