BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

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| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>John Anthony Vedovino<br>Pompton Plains, New Jersey,<br><br>Respondent. | DECISION<br><br>Complaint No. 2015048362402<br><br>Dated: May 15, 2019 |

**Registered representative converted funds and failed to provide to FINRA documents and testimony. Held, findings and sanctions affirmed.**

## Appearances

For the Complainant: Leo F. Orenstein, Esq., John R. Baraniak, Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Albert J. Cifelli, Esq.

## Decision

John Anthony Vedovino appeals a July 5, 2018 Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that Vedovino converted funds, in violation of FINRA Rule 2010, and failed to testify and provide documents to FINRA, in violation of FINRA Rules 8210 and 2010. For his misconduct, the Hearing Panel imposed on Vedovino two separate bars in all capacities.

While the parties stipulated to the majority of the underlying facts, there are two primary issues on appeal. The first issue is whether Vedovino's conversion of funds from an entity affiliated with his member firm qualifies as business-related conduct actionable under FINRA Rule 2010. We find that it does and that Vedovino is liable. The second issue concerns sanctions and, in particular, whether Vedovino's personal and medical issues relating to his drug addiction should be mitigating. We find that the Hearing Panel properly considered these issues and assessed appropriately remedial sanctions in this matter. Accordingly, after an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

I. Facts

A. Background

Vedovino entered the securities industry in 2012. From May 2014 to December 2015, Vedovino associated with FINRA member Wells Fargo Advisors, LLC ("WFA") and was registered as a general securities representative. Vedovino worked as a financial advisor in training. Vedovino is not currently associated with a FINRA member.

B. Vedovino Converted Funds from Wells Fargo Bank

While working at WFA, Vedovino maintained personal Wells Fargo employee or "team member" checking and credit card accounts with WFA's affiliated bank, Wells Fargo Bank. Vedovino opened the accounts in May 2014 when he began working at WFA. The "team member" status afforded Vedovino certain benefits at Wells Fargo Bank, including the waiver of certain fees customarily charged to account holders.[1]

From April 16 to October 16, 2015, while associated with WFA, Vedovino used the debit and credit cards associated with his Wells Fargo Bank accounts to withdraw cash at ATMs and make purchases on 19 occasions. After these transactions, Vedovino called Wells Fargo Bank and falsely reported that he was the victim of fraud because someone had made unauthorized transactions on his account.[2] Based on these false claims, Wells Fargo Bank reimbursed Vedovino for 18 of the 19 transactions, crediting his account with $3,391.98.[3]

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[1] After WFA terminated Vedovino, Wells Fargo Bank converted his team member accounts to typical, non-employee accounts.

[2] Vedovino did not make a separate call for each transaction; rather, sometimes, he claimed multiple transactions were fraudulent in a single phone call. Vedovino estimated he made a total of eight or nine calls to Wells Fargo Bank to make the false claims.

[3] Wells Fargo Bank denied Vedovino's fourth false claim on July 9, 2015, in which he claimed that someone else had withdrawn $300 from his account at an ATM without his permission. After reviewing security camera video, a Wells Fargo Bank employee determined that Vedovino had actually made the withdrawal and denied the claim. Although Wells Fargo Bank discovered in July 2015 that Vedovino had made a false claim for reimbursement, it continued to reimburse him for 15 additional false claims he made through October 2015.

Despite stipulating that he falsely sought reimbursement for 20 transactions, 19 of which were reimbursed by Wells Fargo Bank, Vedovino asserted at the hearing that a December 2014 transaction in the amount of $35.95 was, in fact, fraudulent and thus the reimbursement was proper. We do not consider the December 1, 2014 transaction in our analysis.

C. Wells Fargo Investigation

In the fall of 2015, Well Fargo Bank assigned PM, a Wells Fargo Bank senior investigator with 27 years of investigative experience, to review Vedovino's claims. PM worked in the internal investigations division of the conduct management office in Wells Fargo Bank. Her responsibilities were to investigate misconduct by Wells Fargo team members and its contract employees. PM testified that, in matters involving persons registered with WFA, she partnered with the Special Surveillance Group of WFA.

PM compared ATM security camera videos and photographs of some of Vedovino's suspect transactions with other videos of Vedovino engaging in legitimate transactions. When PM compared the videos, she found that Vedovino wore a specific bracelet in both the legitimate and allegedly unauthorized transactions. Based on her review of the evidence, PM concluded that the transactions that Vedovino claimed to be fraudulent were not and, in fact, were transactions completed by Vedovino.

On November 24, 2015, PM, along with Vedovino's WFA manager, conducted an in-person interview of Vedovino at his branch office. Initially, Vedovino denied that he made the suspect transactions, claiming that the transactions were fraudulent and that a drug-addicted friend who had been stealing from him was responsible. Vedovino's supervisor told Vedovino that it was not possible for this friend to have made the transactions because he died prior to the transactions at issue. When PM confronted Vedovino with photographic evidence, and noted that Vedovino was wearing the same bracelet at the interview as in the photograph from the ATM security cameras, Vedovino confessed that he had used his debit card and credit card on those occasions. According to PM, a pattern repeated throughout the interview in which Vedovino would initially deny he made a specific false claim and, after PM explained the evidence against him, then he would acknowledge his wrongdoing.

PM testified that Vedovino acknowledged wrongdoing for all 19 transactions within 10 minutes. She also testified that Vedovino was "very upset," "emotional," and "apologetic for what he had done." At PM's request, Vedovino handwrote and signed a statement that day admitting that he submitted the false reimbursement claims.[4]

During her investigation, PM partnered with BD, who worked in the WFA Special Surveillance Group, because Vedovino was registered with WFA. WFA's Surveillance and Special Review Group's Project Status Report, which contains multiple daily entries by BD

[4] In his written statement, Vedovino wrote that he "[had] never felt so much remorse in [his] entire life." At the same time, he attempted to justify his misconduct, writing that "[his] best friend . . . stole money from me to fed [sic] his addiction" and "[t]he past [six] months had been extremely tough for [Vedovino]."

summarizing PM's investigation and interview with Vedovino, was entered as an exhibit at the hearing.[5]

WFA terminated Vedovino shortly after his interview with PM and filed a Uniform Termination Notice for Securities Industry Registration (Form U5), explaining that it "examined the validity of fraud claims submitted by Vedovino on ATM and credit card transactions in his personal and credit card accounts" and concluded that Vedovino's claims were "false."

D. Vedovino's Drug Abuse

Vedovino did not disclose during his interview or in his handwritten statement that he had become addicted to drugs in 2014 and, during the months he made the false reimbursement claims, was chronically abusing opioids.[6] Shortly after his termination from WFA, in January 2016, Vedovino entered an outpatient rehabilitation program, which he successfully completed in November 2016. Vedovino lived with his parents while he worked at WFA and throughout his participation in the outpatient rehabilitation program. He later moved to Colorado by himself in January 2017.

E. FINRA's 8210 Requests to Vedovino

The parties stipulated to the following facts. On April 25, 2017, FINRA's Department of Enforcement ("Enforcement") sent a letter to Vedovino's attorney, pursuant to FINRA Rule 8210, requesting that Vedovino provide testimony to FINRA at an on-the-record interview ("OTR") on May 18, 2017, in FINRA's offices in New York. Vedovino's attorney requested a three-week extension via email, which Enforcement granted. On May 25, 2017, Vedovino, through counsel, informed Enforcement that Vedovino would not appear for the OTR on June 6, 2017, or any other time. Vedovino failed to appear at the rescheduled June 6, 2017 OTR. After Vedovino failed to appear, Enforcement made a second request on June 12, 2017 for Vedovino to provide testimony to FINRA on June 21, 2017. Vedovino again failed to appear.

On May 15, 2017, Enforcement sent a letter to Vedovino's attorney, pursuant to FINRA Rule 8210, requesting that Vedovino provide copies of all of his account statements for all checking, savings, and credit card accounts that Vedovino maintained with Wells Fargo Bank for the period October 2014 to December 2015. On May 25, 2017, Vedovino, through counsel, informed Enforcement that Vedovino would not produce any of the requested account

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[5] BD was unavailable the day of PM's interview of Vedovino but would have participated telephonically if he had been available.

[6] In fact, Vedovino testified at the hearing that he was under the influence of opioids during his interview with PM and when he wrote his handwritten statement that same day. According to Vedovino, prior to his interview, he had successfully pitched to a potential client offsite and used drugs on his way back to the office.

statements. Enforcement sent a second letter to Vedovino's attorney on June 12, 2017, reiterating its request and setting a new deadline of June 19, 2017.[7] Vedovino failed to produce the requested account statements by the deadline. He eventually produced to FINRA, in November 2017, his bank account statements for the relevant period, but he never produced any of his credit card statements.[8]

At the hearing, Vedovino contradicted these stipulations. Vedovino testified that he was unaware that his initial OTR had been rescheduled to June 6, 2017, noting that he was in Egypt vacationing with his mother and sister for two and a half weeks in April 2017. He testified that, although he became aware of FINRA's investigation in April or May of 2017, he did not learn about Enforcement's requests for his testimony until around November 2017. Vedovino also testified that, while "[i]t's been kind of a blur," he learned that FINRA was seeking documents from him in approximately May 2017. But he later testified that, "[w]hen [he] was made of aware of [FINRA's] request for accounts statements," he promptly sent the requested checking account statements to Enforcement on November 19, 2017. Vedovino testified that he did not provide his credit card statements because he was unable to "track them down through Wells Fargo."

Despite the inconsistencies as to whether or when Vedovino learned about Enforcement's FINRA Rule 8210 requests, the record is clear, and Vedovino concedes, that he failed to provide the requested testimony, failed to provide the requested credit card statements, and failed to timely produce his checking account statements. Vedovino provided evidence that he completed the outpatient rehabilitation program in November 2016. There is no evidence that he did not maintain his sobriety since that time. Therefore, there is no evidence that Vedovino was abusing or under the influence of drugs during the period that FINRA sought information from Vedovino, from April 2017 to November 2017.

E. FINRA's Notice of Suspension

On June 23, 2017, pursuant to FINRA Rule 9552, FINRA notified Vedovino that he would be suspended on July 17, 2017, for his failure to respond to FINRA's Rule 8210 requests

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[7] The parties stipulated that Vedovino received all four of Enforcement's letters sent to his counsel pursuant to FINRA Rule 8210. The letters were addressed to two different attorneys with the same surname at the same law firm with the same address. Vedovino testified that he spoke to one of the attorneys once or twice in early 2016 after his termination, but that was the only time he spoke to either attorney. Vedovino did not present any testimony from the attorneys to whom the letters were addressed. According to Vedovino, his father was "handling the FINRA investigation" and Vedovino "didn't have a choice . . . [his] father took the reins, and that was it" because Vedovino's father wanted Vedovino to focus on getting sober. Vedovino further testified that, even if he had wanted to appear at the OTR, his father would not have permitted it. Vedovino's father did not testify at the hearing.

[8] Vedovino did not maintain a savings account with Wells Fargo Bank.

for his testimony and documents, but the suspension would not take effect if he took corrective action by complying with the requests or requesting a hearing. The letter also stated that, if Vedovino was suspended, he could request termination of his suspension on the grounds of full compliance with FINRA's requests.

Vedovino's father responded by email on June 26, 2017, and informed FINRA that Vedovino would not be responding to the requests "due to the current financial status of Vedovino's family and because we do not want to negatively interfere with the progress [Vedovino] has made in his rehabilitation."[9]

Because Vedovino failed to take corrective action, he was suspended by FINRA on July 17, 2017. By letter dated September 11, 2017, Vedovino requested termination of his suspension. He wrote, "At the outset, I acknowledge my wrongdoing and accept full responsibility for my actions." He also enclosed materials from health professionals dated in March 2016 documenting his "efforts toward rehabilitation."

## II. Procedural History

On November 7, 2017, Enforcement filed a two-cause complaint alleging that Vedovino converted funds from Wells Fargo Bank and failed to provide testimony and documents to FINRA. After a one-day hearing, in which only Vedovino and a Wells Fargo Bank investigator testified, the Hearing Panel issued its decision on July 5, 2018, finding that Vedovino engaged in the alleged misconduct. For Vedovino's misconduct, the Hearing Panel imposed two separate bars.

Vedovino appealed the decision. Because neither party requested oral argument, we considered this appeal based upon the written record, including the briefs filed by the parties.

## III. Discussion

The Hearing Panel found that Vedovino converted funds that belonged to Wells Fargo Bank, in violation of FINRA Rule 2010, and failed to testify and to comply substantially and promptly with FINRA requests to produce documents, in violation of FINRA Rules 8210 and 2010. After considering the record and the parties' briefs, we affirm the Hearing Panel's findings. In doing so, we reject the arguments and defenses raised by Vedovino in this appeal.

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[9] As noted earlier, Vedovino's father did not testify at the hearing, and Vedovino offered no explanation as to how cooperating with FINRA's requests would have interfered with his recovery program.

A. Vedovino Violated FINRA Rule 2010 by Converting Funds from Wells Fargo Bank

FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[10] The rule is "'designed to enable [FINRA] to regulate the ethical standards of its members' and 'encompass[es] business related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'" *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)). To determine whether conduct violates FINRA Rule 2010, the Commission examines whether the misconduct "reflects on the associated person's capacity 'to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money.'" *Id*. at *10 (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1163 (2002)). Conversion, which is broadly defined as "'an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it,'" is conduct that violates FINRA Rule 2010. *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012) (quoting *FINRA Sanction Guidelines* 38 (2007)).

We agree with the Hearing Panel that Vedovino's conduct fits within the broad range of misconduct proscribed by FINRA Rule 2010. Vedovino admits he converted funds from Wells Fargo Bank. Indeed, his conduct meets each element of the definition of conversion. He intentionally made false claims to Wells Fargo Bank that the subject transactions were fraudulent and unauthorized in order to obtain funds from Wells Fargo Bank that he was not entitled to possess.

Vedovino's conversion of funds from Wells Fargo Bank also was in the conduct of his business, as required for a violation of FINRA Rule 2010. Associated persons may be held liable under FINRA Rule 2010 for any unethical, business-related conduct, regardless of whether it relates to securities or an associated person's customers. *See, e.g.*, *Vail*, 101 F.3d at 39 (affirming findings that a representative violated FINRA Rule 2010's predecessor rule by misappropriating funds from a political club while serving as the club's treasurer and misrepresenting that the club's funds were held in an account at the representative's member firm); *Leonard John Ialeggio*, 52 S.E.C. 1085, 1089 (1996) ("We consistently have held that misconduct not related directly to the securities industry nonetheless may violate [just and equitable principles of trade]."), *aff'd*, No. 98-70854, 1999 U.S. App. LEXIS 10362, at *4-5 (9th Cir. May 20, 1999).

Here, Vedovino converted funds from Wells Fargo Bank through the use of his team member checking and credit card accounts, to which he was entitled solely based on his status as

[10] FINRA Rule 2010 applies to persons associated with a member pursuant to FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

a registered representative with WFA. While admitting that he converted funds from Wells Fargo Bank, Vedovino contends that his conduct did not violate FINRA Rule 2010 because his transactions were "purely personal" and not business-related conduct, and the Hearing Panel erred when it concluded there was a sufficient nexus between his behavior and his commercial endeavors to find he violated FINRA Rule 2010. We disagree. It is undisputed that Vedovino's transactions were for personal consumption purposes only. Nonetheless, we agree with the Hearing Panel that Vedovino's focus is too narrow and that the interconnectedness of his status as an associated person, his team member accounts, and the ethical implications of his misconduct support a finding of liability under FINRA Rule 2010.

First, the record establishes that WFA and Wells Fargo Bank are related entities. PM testified that WFA and Wells Fargo Bank were affiliates and that she, as a Wells Fargo Bank investigator, worked with WFA personnel when investigating misconduct by WFA registered representatives. Vedovino admitted that he opened the Wells Fargo Bank team member accounts when he began working at WFA, and he enjoyed special benefits as a result of his team member status as a WFA registered representative, which he lost when WFA terminated him.

Second, the Hearing Panel found that "[PM], with 27 years of experience as a Wells Fargo investigator testified credibly and persuasively" that WFA's registered representatives, like Vedovino, were required as a condition of their employment to maintain a personal bank account at Wells Fargo Bank. These "[credibility] determinations, based on hearing the witness's testimony and observing demeanor, are entitled to considerable deference."[11] *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *30 n.45 (Mar. 31, 2016), *aff'd sub nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017). There is not substantial evidence in the record to overturn this determination.

In his brief on appeal, Vedovino included a website link to the 2013 Wells Fargo Team Member handbook, which he argues "seem[s]" to support his contention that Wells Fargo team members were not required to maintain any accounts at Wells Fargo Bank. We reject this proposed new evidence. Vedovino did not seek leave to introduce it and, more importantly, did not demonstrate why he failed to introduce it at the hearing below. *See* FINRA Rule 9346(b). In addition, we question the probative value of the document because, among other things, we cannot ascertain its reliability.[12] Finally, we note that Vedovino's misconduct occurred in 2015, and we have no way to ascertain whether the hyperlinked handbook was in effect at that time.

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[11] Vedovino contends the evidence that WFA registered representatives were required to maintain accounts at Wells Fargo Bank is "weak" because it was only supported by PM's testimony that it was her "understanding" that it was a requirement, whereas Vedovino testified to the opposite. It is clear from the Hearing Panel's decision that the Hearing Panel credited PM's testimony over the testimony of Vedovino on this point, and Vedovino has not provided substantial evidence to overcome this credibility determination.

[12] The website host is not related to Wells Fargo but rather a website that allows anyone to self-publish on the site using its document reader.

But even if Vedovino was not required to maintain his accounts at Wells Fargo Bank, as he contends, Vedovino's conversion of the funds would still satisfy FINRA Rule 2010's requirement that the misconduct be in the conduct of his business. Vedovino executed the transactions, which he later claimed were fraudulent, in his team member accounts at Wells Fargo Bank. It was because of his status as a registered person at WFA that he was entitled to his team member accounts, which he used in a scheme to convert funds from Wells Fargo Bank and in which his converted funds were deposited.

We find the Commission's decision in *Ialeggio* particularly illustrative. 52 S.E.C. 1085. In that matter, the respondent was a registered representative of a member firm and was employed by the member firm's parent company. *Id*. at 1085. The Commission found that Ialeggio had violated FINRA Rule 2010's predecessor rule by obtaining reimbursement from the member firm's parent company for expenses he did not incur and by improperly inducing the parent company to pay for personal expenses (e.g., his country club initiation fees). *Id*. at 1088-89. Similarly, Vedovino falsely sought reimbursement from an affiliated entity for personal expenses. On appeal, Vedovino attempts to distinguish *Ialeggio* by arguing that the respondent manipulated "his business expense account so as to have his firm pay for his country club initiation fees contrary to firm policy." But Ialeggio falsely submitted claims for reimbursement to his member firm's parent company in contravention of the parent company's policy, just as Vedovino falsely sought reimbursement from his member firm's affiliate, Wells Fargo Bank. By doing so, Vedovino exploited his status as an associated person by using his team member accounts to engage in his conversion.

Vedovino's conduct—i.e., using a privileged account at his member firm's affiliated bank in a scheme to convert money from that bank—was unethical and "reflects on [his] capacity to comply with the regulatory requirements of the securities business and to fulfill [his] fiduciary duties in handling other people's money." *Grivas*, 2016 SEC LEXIS 1173, at *10 (internal quotations omitted). "[His] actions cast doubt on his commitment to the fiduciary standards demanded of registered persons in the securities industry and thus properly are the subject of [FINRA] disciplinary action." *Ialeggio*, 52 S.E.C. at 1089. We conclude that his conduct violated the high standards of commercial honor and just and equitable principles of trade by which all securities industry participants must abide and constituted a conversion of funds that violated FINRA Rule 2010. We therefore affirm the Hearing Panel's findings of liability.

B. Vedovino Violated FINRA Rules 8210 and 2010 by Failing to Appear for Testimony and Produce Requested Documents

FINRA Rule 8210 requires associated persons to comply fully with FINRA's requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. Failure to comply with FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010. *See North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *13 n.8 (May 8, 2015), *aff'd sub nom. Troszak v. SEC*, 2016 U.S. App. LEXIS 2459 (6th Cir. June 29, 2016). Associated persons "may not ignore [FINRA] inquiries . . . nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct." *CMG Inst.*

*Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009).

Vedovino admitted the facts that underlie the Hearing Panel's findings that he violated FINRA Rule 8210 by failing to appear for testimony and only partially responding untimely to documents requests. These findings also are amply supported by the record. We therefore affirm the Hearing Panel's findings of liability.

## IV. Sanctions

The Hearing Panel imposed on Vedovino two separate bars from associating with any FINRA member in any capacity for his conversion and his FINRA Rule 8210 violations. We affirm these sanctions.

### A. Conversion

The FINRA Sanction Guidelines ("Guidelines") for conversion provide that a bar is the standard sanction regardless of the amount converted.[13] This "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *31-32 (Aug. 22, 2008). By taking monies from Wells Fargo Bank to which he was not entitled, "[Vedovino] exhibited flagrant dishonesty that, without mitigation, renders him ostensibly unfit for employment in the securities industry." *Dep't of Enforcement v. Grivas*, Complaint No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (FINRA NAC July 16, 2015), *aff'd*, 2016 SEC LEXIS 1173.

Numerous aggravating factors exist that further support barring Vedovino for his misconduct. Vedovino's conduct was intentional, inherently deceitful, and for his monetary gain.[14] Over a six-month period, Vedovino made multiple phone calls to Wells Fargo Bank falsely claiming that he was the victim of fraud and that someone else had made the transactions in his account without his permission.[15] Vedovino then impeded FINRA's investigation of his misconduct, by failing to appear for testimony and only partially and untimely responding to FINRA's request for documents.[16]

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13 *FINRA Sanction Guidelines* 36 (April 2017), http://www.finra.org/sites/default/files/2017_April_Sanction_Guidelines.pdf [hereinafter "*Guidelines*"].

14 *See Guidelines*, at 8 (Principal Considerations In Determining Sanctions, Nos. 13, 16).

15 *See id.* at 7-8 (Principal Considerations In Determining Sanctions, No. 8, 9, 17).

16 *See id*. at 8 (Principal Considerations In Determining Sanctions, No. 12).

Vedovino argues that his youth, lack of adverse disciplinary history, and the absence of customer harm militate against a bar.[17] We disagree. "Despite [his] youth and inexperience, the record demonstrates that [Vedovino's] activities involved more than a mere mistake in judgment." *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) (internal quotations omitted), *aff'd*, 416 F. App'x 142 (3d Cir. 2010). Further, well-established precedent provides that the lack of a disciplinary history and absence of customer harm is not mitigating. *See, e.g.*, *Michael E. McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *35 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016); *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *65 n.77 (Nov. 12, 2010), *aff'd*, 449 F. Appx. 886 (11th Cir. 2011).

While we agree with Vedovino that his member firm was not harmed, we note that Wells Fargo Bank was, and remains, harmed.[18] As of the hearing, Vedovino, despite living by and supporting himself, had repaid only $300 of the almost $3,400 that he converted from Wells Fargo Bank, and had not entered into a payment plan to pay back the remaining funds.[19] When asked why he had not made more restitution, Vedovino testified that he "[didn't] have a good answer . . . . Maybe I can try to make that a little bit more of a priority. It wasn't always the biggest priority." Based on these facts, we do not award any mitigation for Vedovino's partial reimbursement, which occurred nearly two years after his termination from WFA and seemingly was prompted by FINRA's regulatory interest and disciplinary charges.[20] *See Mullins*, 2012 SEC LEXIS 464, at *77 (declining to provide mitigation for a respondent's late return of converted sums when it came only after a FINRA investigation).

Vedovino argues that he should be awarded mitigation because he, when confronted, admitted his misconduct and "exhibited genuine remorse." We note the Hearing Panel found Vedovino's expressions of remorse, from the time of his confession to PM through his testimony at the hearing, to be "sincere." But while it is true that Vedovino acknowledged his actions and their serious nature within 10 minutes into his interview with PM, he initially denied any wrongdoing and falsely blamed someone else.[21] Only when confronted with irrefutable, photographic evidence did Vedovino fully confess. Indeed, the evidence shows that Vedovino's wrongdoing presumably would have continued absent Wells Fargo Bank's discovery. *See, e.g.*, *Richard Dale Grafman*, 48 S.E.C. 83, 84 (1985) ("Grafman's admitted misconduct was very

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17 *See id*. at 7 (Principal Considerations In Determining Sanctions, Nos. 1, 11).

18 *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 11).

19 The record does not reflect that Vedovino made any additional reimbursement to Wells Fargo Bank.

20 *See id.* (Principal Considerations In Determining Sanctions, No. 4).

21 *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 2).

serious . . . . and, presumably, would have continued even longer had it not been detected by [his] employer."). Moreover, considering Vedovino's lack of meaningful commitment thus far to making full restitution to Wells Fargo Bank, we consider his attestations of genuine remorse after discovery of his misconduct to be insufficient.[22]

Vedovino seeks mitigation due to his past drug addiction and personal and emotional stress.[23] Vedovino also argues that the NAC should consider that WFA terminated him for the same misconduct, and as a result of his termination, he sought help to overcome his addiction and has maintained his sobriety. We consider Vedovino's argument for mitigation in connection with his underlying misconduct. Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73. We commend Vedovino's effort to regain sobriety, but we nonetheless remain troubled by his underlying misconduct along with some of his behavior since. For example, at the hearing, Vedovino testified that he was not aware that FINRA had suspended him nine months earlier for failing to comply with the Rule 8210 requests, a statement that was blatantly false. Upon further questioning, Vedovino admitted he knew about the suspension when confronted with a letter he wrote to FINRA two months after the suspension was imposed requesting that his suspension be lifted. In light of the serious nature of Vedovino's underlying misconduct, lack of restitution, and false testimony, we conclude that barring Vedovino serves a remedial purpose and protects the investing public. We also order that Vedovino make restitution to Wells Fargo Bank in the amount of $3,391.98, plus interest from the date of the last transaction, offset by any documented payments to Wells Fargo Bank that Vedovino has made.[24]

B. Failure to Appear for Testimony and Incomplete Document Production

The Guidelines provide that a bar is the standard sanction for any individual who did not respond to a FINRA Rule 8210 request in any manner or who provided a partial but incomplete response, unless the individual can demonstrate that the information provided substantially complied with all aspects of the request.[25] "The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens

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22 *See id.*

23 It is undisputed that Vedovino suffered from a serious opioid addiction during the period he submitted the false reimbursement claims to Wells Fargo Bank. Among other things, Vedovino testified that he used the subject cash withdrawals to purchase drugs and that he was under the influence of drugs during his interview with PM and his supervisor.

24 *See Guidelines*, at 4 ("Adjudicators may order restitution when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent's misconduct.")

25 *Id.* at 33.

investors and markets." *PAZ Sec., Inc.*, Exchange Act Release 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009). Vedovino never appeared for testimony during the investigation, despite FINRA's repeated requests and accommodating Vedovino's counsel's request for a postponement. In addition, Vedovino's partial response to the request for documents—five months after the initial deadline—was substantially incomplete because it included only his checking account statements, but none of his credit card statements. Under these facts, absent mitigation, the appropriate remedial sanction is a bar.

In an attempt to excuse his misconduct, Vedovino argues that his "delay and lack of strict compliance" with the requests was not an attempt to conceal his misconduct but rather the result of "his need to focus on his recovery and parents' well-intentioned desire to insulate him from the stress of the investigative process." Vedovino, however, completed his rehabilitation program five months prior to Enforcement's initial Rule 8210 request and he offered no evidence about how the Rule 8210 requests interfered with his recovery program. The parties stipulated that Vedovino received each of the FINRA Rule 8210 requests. Vedovino later gave conflicting testimony about when he learned about FINRA's requests, but at one point he admitted that he became aware of FINRA's investigation in April or May of 2017 and learned that FINRA was seeking documents from him around May 2017. We, like the Hearing Panel, find that Vedovino's focus on recovering from his addiction did not justify ignoring FINRA's requests for testimony and documents.[26] Recovery efforts notwithstanding, it was incumbent on Vedovino to cooperate with FINRA and to provide FINRA with the requested information in a timely manner.

Vedovino acknowledges that he should have complied with FINRA's requests, but he asserts that his untimely and incomplete response did not interfere with the investigation because he had already admitted wrongdoing and FINRA had the requested documents. Associated persons, however, "may not ignore [FINRA] inquiries . . . nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct." *CMG Inst. Trading*, 2009 SEC LEXIS 215, at *21. Moreover, Vedovino's failure to appear for testimony impaired Enforcement's understanding of the facts in this matter, which they were forced to learn for the first time at the hearing.[27] Further, it was only after FINRA instituted expedited proceedings against Vedovino for his failure to comply with the Rule 8210 requests that Vedovino even made a partial production. *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *41 (Apr. 17, 2014) ("FINRA was required to exert significant regulatory pressure in seeking the requested material."). The fact that FINRA was ultimately able to obtain the requested documents from WFA does not mitigate Vedovino's misconduct. *See Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS

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[26] Vedovino also took a two-week international vacation in April 2017.

[27] Enforcement's counsel averred that Enforcement did not learn until the hearing that Vedovino used the cash from the underlying ATM transactions to buy drugs or that his father allegedly shielded him from the specifics of FINRA's requests.

2596, at *13 (Nov. 8, 2007) ("A belief that [FINRA] does not need the requested information provides no excuse for a failure to provide it."), *aff'd*, 316 F. App'x 865 (11th Cir. 2008); *Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *16 (Dec. 11, 2006) (rejecting respondent's argument that he did not need to produce the requested documents because "nearly all, if not all, of the same documents . . . had already been produced by [his firm]") (internal quotations omitted).

When Vedovino registered with a FINRA member, he "consented to abide by [FINRA's] rules, including the requirement to provide information requested by [FINRA] for its investigations." *Toni Valentino*, 57 S.E.C. 330, 338 (2004). In each of the Rule 8210 requests, which Vedovino stipulated he received, FINRA warned him that his failure to comply with the requests could result in disciplinary action and the imposition of sanctions, including a bar from the industry. It was Vedovino's responsibility as a registered person to make reasonable efforts to comply with FINRA's requests.[28] *See Michael David Borth*, 51 S.E.C. 178, 181 (1992) ("A registered representative is responsible for responding directly to the [FINRA's] requests for information."). He failed to do so.

Based on this record, we conclude that aggravating factors predominate. We agree with the Hearing Panel that a bar, which serves a remedial purpose and protects the investing public, is the appropriate sanction for Vedovino's failure to appear for testimony and incomplete document production.

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[28] Vedovino testified that he was living in Colorado at the time of the FINRA Rule 8210 requests. His address in the Central Registration Depository (CRD), however, still reflected his parents' address in New Jersey because, by his own admission, he did not update it as required by FINRA rules. Vedovino stipulated that he received the requests, so we do not consider his domicile relevant to our analysis.

V. Conclusion

Vedovino converted funds from the affiliate bank of his employer firm and failed to provide testimony and documents to FINRA. For his misconduct, we impose two separate bars on Vedovino in all capacities. We also order that Vedovino make restitution to Wells Fargo Bank in the amount of $3,391.98, plus interest from the date of the last transaction at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), offset by any documented payments to Wells Fargo Bank that Vedovino has made. We also affirm the Hearing Panel's order that Vedovino pay $2,885.16 in hearing costs.[29]

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

[29] Pursuant to FINRA Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.