BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Mission Securities Corporation San Diego, CA, and Craig M. Biddick San Diego, CA, Respondents.	DECISION Complaint No. 2006003738501 February 24, 2010

Held, respondents converted customer securities. The expulsion and bar imposed upon respondents for this misconduct are affirmed. Respondents are further ordered to disgorge ill-gotten gains to 13 customers.

Appearances

For the Complainant: Cynthia A. Kittle, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: John P. Cione, Esq.

Decision

Pursuant to NASD Rule 9311(a), Mission Securities Corporation ("Mission" or "the Firm") and Craig M. Biddick appeal a December 18, 2008 Hearing Panel decision.[1] The Hearing Panel expelled Mission and barred Biddick in all capacities for converting and misusing customer securities, in violation of NASD Rules 2330 and 2110. The Hearing Panel also found that Biddick caused Mission—on a single day in 2006—to conduct its securities business with insufficient net capital, in violation of Section 15(c) of the Securities Exchange Act of 1934, Exchange Act Rule 15c3-1, and NASD Rule 2110. In light of the expulsion and bar imposed upon Mission and Biddick for converting customer securities, the Hearing Panel did not impose additional sanctions for respondents' net capital violation. Finally, the Hearing Panel declined to determine whether Mission, acting through Biddick, violated California law, and therefore NASD Rules 3010(b)(2) ("FINRA's Taping Rule") and 2110, by failing to inform customers and potential customers that Mission was recording their telephone calls.

After a complete review of the record, we affirm the Hearing Panel's findings that respondents converted and misused customer securities. We affirm the expulsion and bar for this misconduct, and further order that Mission and Biddick disgorge $38,946.06 in ill-gotten gains stemming from their misconduct and pay such proceeds, plus interest, to 13 Mission customers.

I. Factual and Procedural History

A. Respondents' Background

Biddick entered the securities industry in July 1993. Biddick registered as a financial and operations principal ("FINOP") in September 1993, as a general securities representative in March 1994, and as a general securities principal in June 1998. During all relevant time periods, Biddick served as Mission's president, chief executive officer, chief compliance officer, and chief financial officer, and was registered with Mission as a FINOP, general securities representative, and general securities principal.[2] Mission became registered with FINRA in 1998.

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[1] Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because the complaint in this case was filed before December 15, 2008, the procedural rules that apply are those that existed on December 14, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

[2] From July 1993 until July 2001, Biddick was also associated with a member firm owned by his brother, Centex Securities Incorporated ("Centex Securities").

On October 9, 2008, Biddick terminated his registrations with Mission, and Mission filed a Uniform Request for Withdrawal from Broker-Dealer Registration.[3] Biddick is currently registered with another FINRA member firm as a general securities representative and a FINOP.

B. Conversion of Customer Securities

1. Background of Customers' Accounts and Securities

In 2002, FINRA expelled Centex Securities from FINRA membership. At that time, a number of customer accounts held at Centex Securities were transferred to Mission, including approximately 30 to 40 customer accounts holding shares of Chartwell International, Inc. ("Chartwell"). Chartwell was a thinly traded stock that traded on the OTC Bulletin Board®. Prior to a one-for-10 reverse stock split in June 2005, Chartwell shares traded for $.37 per share. Subsequent to the reverse split, and from the end of June 2005 through March 2006, Chartwell shares traded at prices ranging from $2.25 to $5 per share, although often on little volume.

2. Biddick Requests the Transfer of Chartwell Shares to Mission's Account

By early 2005, 18 customers held Chartwell shares in their accounts at Mission. Biddick testified that for several years Mission's clearing firm charged a $5 quarterly safekeeping fee for each account that held Chartwell, which the Firm paid.[4] Biddick further testified that in an effort to reduce these alleged quarterly fees, and based upon his personal assessment that the Chartwell shares were worthless and had been worthless for several years, Biddick made a business decision to transfer the Chartwell shares to an account owned by Mission. Consequently, on February 8, 2005, Biddick sent a facsimile to Mission's clearing firm—North American Clearing, Inc. ("North American")—and requested the following:

> Per our conversations, please journal all positions and balances to Mission Securities Segregated Account [] for the following accounts. In the future should the client contact us and request the balances in their [sic] account, Mission will immediately comply with their [sic] wishes relying on the paper trail we have established. This practice will comply with the SRO rules in place currently.

North American did not respond to this initial request, and Biddick resent the request on April 29, 2005. North American did not respond to Biddick's second written request, and did

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[3] Pursuant to Article IV, Section 5 of FINRA's By-Laws, Mission's withdrawal does not take effect while a FINRA complaint is pending unless FINRA, in its discretion, allows the resignation to become effective. As of the date of this decision, Mission's withdrawal from FINRA membership has not become effective.

[4] Biddick testified that the charges in question were assessed by the Depository Trust Company, and that Mission's clearing firm then passed the charges along to Mission. As discussed herein, the record does not support Biddick's contention that for several years Mission was charged a quarterly safekeeping fee for each account holding Chartwell stock.

not respond to Biddick's third written request sent on July 20, 2005. Biddick also contacted North American by telephone on numerous occasions to request the transfer of Chartwell stock to a Mission account.[5]

3. Chartwell Shares Are Transferred to Mission's Account

On September 30, 2005, North American finally complied with Biddick's numerous requests to transfer customers' Chartwell shares. North American transferred 21,061 shares of Chartwell held in the accounts of 18 Mission customers to a Mission proprietary account.[6] It is undisputed that neither Biddick nor any other Mission employee sought or obtained authorization from any of the 18 customers to transfer their Chartwell shares to Mission's account. It is also undisputed that respondents did not provide customers with any prior notice that their Chartwell shares would be transferred from their accounts.

Subsequent to the transfers, the customers' account statements from North American for the quarter ending September 30, 2005, indicated that the stock had been delivered to an unspecified recipient and that the stock was "worthless." In addition, Mission's September 30, 2005 account statement from North American indicated that it had received 21,061 Chartwell shares and that the shares were worthless. The "Securities Positions" portion of Mission's account statement, however, valued the Chartwell stock at $5 per share for a total of $105,305. This valuation appears to reflect Chartwell stock's closing price on September 27, 2005 (based upon a single trade of 100 shares).

4. Customers Contact Mission After Transfer of Chartwell Stock

Upon receipt and review of the September 30, 2005 account statements, two customers contacted Mission and questioned the transfer of their Chartwell stock or the designation of the shares as "worthless" on their accounts. Customer KN had several conversations with Biddick concerning his Chartwell shares. KN testified that he had been following Chartwell stock and could not understand why it had been designated as "worthless" when it had been trading at prices ranging from $3.50 to $4 per share. Biddick eventually returned KN's 930 Chartwell shares on December 16, 2005. Similarly, customer JK contacted Mission several months after

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[5] Although Biddick's written request to North American did not specify that only the Chartwell shares in each of the 18 customer accounts should be transferred to Mission's account, Biddick testified that he spoke to a North American representative prior to sending the faxes and it was understood that the request was limited to the customers' Chartwell shares. North American did not transfer any other shares held in the customer accounts to Mission's account.

[6] North American, as instructed by Biddick, transferred the customers' Chartwell shares to Mission's "Segregated Account." Respondents' designation of the account as a segregated account, however, had no significance in this case. The account was a proprietary account of the Firm.

his Chartwell shares had been transferred, and Biddick returned JK's 1,200 Chartwell shares in January 2006. In total, Biddick returned 4,087 Chartwell shares to five customers.[7]

Several days after returning KN's shares, and in response to KN's complaints filed with FINRA and the Commission regarding his Chartwell shares, Biddick wrote to KN. Biddick stated:

> As I explained to you on the telephone [on] October 13th and again on October 18, 2005, your Chartwell stock has very little or no value. When a stock such as Chartwell trades 100 shares a month or less, it is viewed by many in the securities industry as worthless. I had thought I had made this clear to you. . . . In my humble and professional opinion, the stock has little or no volume and is difficult at best to sell.

5. Respondents Liquidate Chartwell Shares

Despite Biddick's statements that Chartwell had little or no value, Biddick began selling the Chartwell shares transferred from customers' accounts to Mission's account on December 19, 2005. Indeed, on the same day Biddick wrote to KN and informed him that his shares were of "very little or no value," Mission sold 500 Chartwell shares at $3.50 per share.[8] Biddick testified that he began selling the Chartwell shares "on a lark." Between December 19, 2005, and March 3, 2006, Biddick sold a total of 12,500 Chartwell shares (in 25 separate sale transactions of 500 shares each) from Mission's account for total net proceeds of $38,946.06. Respondents sold the Chartwell shares at prices ranging from $2.25 to $4 per share, and they stopped selling Chartwell shares because a FINRA staff member instructed them to do so during a routine examination of the Firm in March 2006. Biddick transferred the proceeds from his sales of Chartwell stock to Mission's operating account and used a portion of the proceeds to pay the Firm's general business expenses. Other than the 4,087 Chartwell shares returned to five of the 18 customers, respondents have neither returned the remaining 16,974 Chartwell shares nor distributed the proceeds of the shares sold to the 13 remaining customers.

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[7] Respondents returned customer GD's Chartwell shares after he requested that his Mission account be transferred to another broker shortly after the conversion. Customer WK testified that the Chartwell shares reappeared in his account in January 2006, and customer KE's shares were returned after discussions with Biddick in April 2007.

[8] During a telephone conversation with customer JK in January 2006, a Mission representative informed JK that Chartwell had little trading volume and was worthless. Moreover, and in addition to Mission's ongoing sales of the customers' Chartwell stock, Biddick did not value the Chartwell shares (listed as assets of the Firm) as worthless on Mission's December 2005 net capital computation.

C. Respondents' Alleged Net Capital Violation

Biddick, as Mission's FINOP, prepared the Firm's February 2006 net capital computation. In preparing the net capital computation, Biddick assumed that Mission's required net capital was $5,000, as set forth in its membership agreement with FINRA and pursuant to Exchange Act Rule 15c3-1(a)(2)(vi). Biddick calculated Mission's net capital to be $176,538.69 as of February 28, 2006.

During a routine examination of the Firm in March 2006, FINRA staff reviewed Mission's February 2006 net capital computation. FINRA staff determined that Biddick made two errors. First, staff determined that Mission's net capital requirement had increased from $5,000 to $100,000 because Mission, by virtue of its numerous sales of Chartwell stock from its proprietary account, was acting as a "dealer" in February 2006.[9] Second, staff determined that Biddick incorrectly calculated Mission's net capital. Staff concluded that Mission's net capital as of February 28, 2006, was $94,372, which was less than the Firm's required minimum net capital of $100,000. Staff attributed the difference between Biddick's calculation and its own calculation primarily to the valuation of two stocks held in the Firm's account. Biddick valued the shares that Mission held in APAC Telecommunication and Panther Entertainment at the value listed by North American in the Firm's account statement, less a 15 percent haircut (for a total of $68,904.61).[10] Staff, however, concluded that Biddick should have applied a 100 percent discount to Mission's holdings in these stocks because there was no ready market for either stock.[11] Staff testified that it researched both stocks and determined that there was no volume and were no bona fide bids for either stock. Staff's application of a 100 percent discount to Mission's holdings of APAC Telecommunication and Panther Entertainment resulted in Mission's net capital being less than the $100,000 required by Exchange Act Rule 15c3-1(a)(2)(iii).

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[9] Pursuant to Exchange Act Rule 15c3-1(a)(2)(iii)(B), "[a]ny broker or dealer that effects more than 10 transactions in any one calendar year for its own investment account[]" is a "dealer." Dealers must maintain a minimum net capital of $100,000. *See* Exchange Act Rule 15c3-1(a)(2)(iii).

[10] "The term 'haircut' refers to the formulas used in the valuation of securities for the purpose of calculating a broker/dealer's net capital. The haircut varies according to the class of a security, its market risk, and its time to maturity." *Dist. Bus. Conduct Comm. v. Pecaro*, Complaint No. C8A960029, 1998 NASD Discip. LEXIS 5, at *4 n.5 (NASD NBCC Jan. 7, 1998). Biddick applied a 15 percent haircut to Mission's shares of APAC Telecommunication and Panther Entertainment, pursuant to Exchange Act Rule 15c3-1(c)(2)(vi)(J).

[11] Exchange Act Rule 15c3-1(c)(2)(vii) requires that broker-dealers deduct 100 percent of the carrying value when there is no ready market for securities.

D. Procedural History

In connection with FINRA's routine examination of Mission in March 2006, FINRA staff discovered that the value of securities held by Mission increased significantly between June 2005 and September 2005. When questioned about the increase, Biddick explained that one of the Firm's stock holdings had "hit." Staff discovered that the increase was attributable to the Firm's acquisition of 21,061 Chartwell shares. Biddick then informed FINRA staff that the shares had been journaled from customer accounts to Mission's account for tax purposes. FINRA's investigation commenced shortly thereafter, and on February 4, 2008, Enforcement filed a five-cause complaint against Biddick and Mission. The complaint alleged that: (1) respondents violated NASD Rules 2330 and 2110 by converting and misusing securities in the accounts of 18 customers; (2) Biddick caused Mission to violate Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and NASD Rule 2110 by permitting Mission to engage in a securities business while failing to satisfy its minimum net capital on February 28, 2006; and (3) respondents violated NASD Rules 3010(b)(2) and 2110 by failing to provide notice, pursuant to California law, to customers and potential customers that Mission was recording their telephone calls.

The Hearing Panel conducted a hearing on October 6-7, 2008. On December 18, 2008, the Hearing Panel issued its decision. The Hearing Panel found that respondents converted and misused customer securities, and expelled Mission and barred Biddick for this misconduct. The Hearing Panel also found that Biddick caused Mission to operate with insufficient net capital, but did not impose any additional sanctions for this misconduct. Finally, and in light of the expulsion and bar, the Hearing Panel declined to determine whether respondents' failure to alert customers and potential customers that their telephone calls were being recorded by Mission violated FINRA's Taping Rule or NASD Rule 2110.[12]

Respondents' appeal followed.

II. Discussion

A. Respondents Converted and Misused Customer Securities

The Hearing Panel found that respondents transferred—without any prior customer authorization or notification—Chartwell shares held in 18 customer accounts to Mission's account, sold a portion of these shares, and used some of the proceeds for Mission's operating expenses. The Hearing Panel held that "[a] clearer prima facie case of misuse and conversion is difficult to imagine." We agree.

NASD Rule 2330(a) provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." "Conversion is the wrongful exercise of dominion over the personal property of another." *Dep't of Enforcement v. Paratore*,

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[12] Because the Hearing Panel declined to make any findings with respect to the alleged Taping Rule violations in the complaint, and Enforcement did not appeal the matter, we decline to review respondents' alleged Taping Rule violations.

Complaint No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (FINRA NAC Mar. 7, 2008). Improper use rises to the level of conversion "when the associated person intends permanently to deprive the customer of the use" of his funds or securities. *See Dist. Bus. Conduct Comm. v. Arnold*, Complaint No. C05960034, 1997 NASD Discip. LEXIS 79, at *10 n.8 (NASD NBCC Feb. 25, 1997); *Dep't of Enforcement v. Kendzierski*, Complaint No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (NASD NAC Nov. 12, 1999) (holding that "'[i]mproper use' rises to the level of conversion where a registered representative deposits a customer's check into his own account instead of into his customer's account, without authorization, and fails to repay the customer").[13]

It is undisputed that Mission, acting by and through Biddick, intentionally caused the transfer of 21,061 Chartwell shares from 18 customer accounts to Mission's account without obtaining the customers' authorization or notifying customers that respondents were transferring the shares. Further, there is no dispute that several months after transferring the Chartwell shares, respondents began liquidating a portion of the transferred shares. Respondents liquidated 12,500 Chartwell shares in 25 separate transactions for total net proceeds of $38,946.06, transferred the proceeds to Mission's operating account, and treated the proceeds as their own by using a portion of them to pay for Mission's operating expenses.

Respondents make several arguments to support their claim that the transfer of customers' Chartwell shares to Mission's proprietary account did not violate Rules 2330 and 2110. First, respondents argue that because the Chartwell shares were worthless, their actions did not constitute conversion. We disagree. As an initial matter, respondents have not cited to any FINRA or Commission rule permitting them to unilaterally determine that the customers' Chartwell shares were worthless and then cause the shares to be transferred to Mission's own account without any prior customer authorization or notification.

Moreover, the record shows that Chartwell shares were not worthless. Although the shares were thinly traded, in the days just prior and subsequent to the transfers, Chartwell traded at prices ranging from $3.50 to $5 per share.[14] The stock traded in a similar range during the three months prior to the September 30, 2005 transfers. In addition, the customers' account

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[13] A violation of another FINRA rule is also a violation of NASD Rule 2110's requirement that all FINRA members, in conducting their business, "observe high standards of commercial honor and just and equitable principles of trade." *See Joseph Abbondante*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23, at *36 (Jan. 6, 2006) (holding that a violation of a FINRA rule also violates NASD Rule 2110). NASD Rule 0115 provides that FINRA's rules apply to all members and persons associated with a member and that such persons have the same duties and obligations as a member under the rules.

[14] *Cf.* NASD Rule 11530(b) (establishing procedures for the delivery of over-the-counter securities between FINRA members "where a public announcement or publication of general circulation discloses that the securities have been deemed worthless" and defining worthless securities as "those instruments which have no known market value").

statements listed Chartwell shares at $4 per share as of June 30, 2005, $4 per share as of August 31, 2005, and $4.25 per share as of October 31, 2005, and the "Securities Position" portion of Mission's September 30, 2005 account statement listed Chartwell shares at $5 per share. Biddick also sold Chartwell shares from December 2005 through early March 2006, at prices ranging from $2.25 to $4.50 per share, for total net proceeds of $38,946.06. In contrast, the only evidence that Chartwell shares had no value was the "worthless" designations on the customers' September 30, 2005 account statements and one section of Mission's September 30, 2005 account statement (which contradicted the "Securities Position" section of the same account statement). Biddick, however, did not rely and could not have relied upon these designations on the account statements in determining that the shares were worthless. In fact, Biddick received Mission's September 30, 2005 account statement well after he determined that the shares were worthless, which occurred prior to his initial request to North American in February 2005.[15] We therefore reject respondents' claim that the Chartwell shares were worthless.

Second, respondents argue that they transferred the customers' Chartwell shares to a single Firm account to greatly reduce quarterly safekeeping charges incurred by Mission since 2002. Respondents' purported justification for transferring the shares lacks merit. The record demonstrates that safekeeping fees of $5 per account were imposed on the 18 customer accounts for only the quarter ending June 30, 2005.[16] Regardless, respondents' argument that they were entitled to liquidate the customers' Chartwell shares to pay the fees and retain the proceeds in excess of the fees is incorrect. Respondents point to no authority or evidence that permitted them to effectively seize all of the 18 customers' Chartwell shares to satisfy safekeeping fees, without any prior notice to customers. Further, on the date the Chartwell shares were transferred, 12 of the 18 customer accounts had equity of at least $5, and eight of the 18 accounts had cash balances exceeding $5. Biddick admitted that he did not need to seize the stock of customers with cash balances of $5 or more to pay the safekeeping fees, but explained that he "wasn't

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[15] Although respondents initially argued that Chartwell shares had no value when Biddick first requested that North American transfer the shares on February 8, 2005, on appeal respondents argued that the Chartwell shares had a total value of only $582 in February 2005. Regardless, Biddick made repeated requests that North American transfer the Chartwell shares in the months after February 2005, when Chartwell stock traded on the OTC Bulletin Board and had value. Moreover, even if the record supported Biddick's initial claim that the shares had no value when he originally determined that the stock was worthless, Biddick could have discovered that his assessment was erroneous by simply reviewing readily available price and volume information for Chartwell stock.

[16] The record indicates that the customers were charged a $5 quarterly safekeeping fee for shares identified by CUSIP number 161399993 in June 2005, whereas the CUSIP number for the Chartwell stock at issue appeared to be 161399209. Because the issuer identification (i.e., the first six digits of the CUSIP number) of both CUSIP numbers are identical, and based upon Enforcement's proffer that this safekeeping charge may have been associated with Chartwell, we give respondents the benefit of the doubt and find that safekeeping charges were assessed for the customers' Chartwell shares for the quarter ending on June 30, 2005.

going to sit and do this on a quarterly basis. I mean, let's just make the decision and get it done." Respondents made no efforts to distinguish between those customer accounts holding sufficient cash or other assets to pay the $5 safekeeping fee, but instead simply made a wholesale transfer of all the customers' Chartwell shares to Mission's own account without any prior notice to customers.

Third, respondents argue that the 18 customers had abandoned their accounts, and thus again argue that this justified respondents' transfer of the Chartwell shares to Mission's account, subsequent liquidation of the Chartwell shares, and retention of the proceeds for use by the Firm. Respondents are mistaken, both factually and legally. Two of the customers contacted Mission to question the transfers shortly after they occurred. Further, customer WK testified that Biddick called him prior to the transfer of Chartwell shares from his account and informed him that he would be assessed a charge because his account had insufficient trading activity. WK responded by depositing $20 in his account in August 2005. Another customer (JR) similarly deposited $5 into his Mission account in August 2005.

The record further demonstrates that respondents made little if any effort to determine whether the accounts of the other customers had in fact been abandoned. The Commission has stated that:

> Before a brokerage account can be considered abandoned or unclaimed, the firm must make a diligent effort to try to locate the account owner. If the firm is unable to do so, and the account has remained inactive for the period of time specified by state law, the firm must report the account to the state where the account is held. The state then claims the account through a process called "escheatment," whereby the state becomes the owner of the account.[17]

Respondents did not make a diligent effort to attempt to locate the owners of the customer accounts holding Chartwell. Indeed, it appears that respondents could have contacted almost all of the customers simply by sending correspondence to the addresses on their account statements.[18] Although many of the 18 customer accounts had little or no activity from the second quarter of 2005 through the first quarter of 2006, respondents did not present any evidence that the accounts were inactive for the requisite period of time specified by state law.

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[17] *See Accounts—Abandoned or Unclaimed*, available at http://www.sec.gov/answers/escheat.htm [hereinafter *SEC Guidance*].

[18] Biddick testified that when he sent correspondence to the 18 customers, it generally would not be returned to him as undeliverable. Biddick stated that this "demonstrates to me that these people don't read their mail and they don't care. . . . So it was – these are abandoned accounts, as far as I'm concerned. These stayed on the books for years. The clients didn't contact me. I couldn't contact them. I could send them letters. They wouldn't come back, as that one demonstrates." Biddick later testified that some mail sent by North American to the 18 customers would be returned, but that he threw away this returned mail after he received it from North American.

We further reject respondents' attempt to shift blame to FINRA for allegedly failing to investigate whether the customer accounts were abandoned. *See Donner Corp. Int'l*, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334, at *64 (Feb. 20, 2007) (holding that "a broker-dealer cannot shift its responsibility for compliance with applicable requirements to the NASD").

Moreover, even if the 18 customers had abandoned their accounts (they did not), respondents were required to follow state escheat statutes. These statutes require the holder of abandoned property to take a number of specific steps to comply (such as notifying the state where the account is held or the state in which the customers lived, notifying the customers in question, and delivering the stock to state authorities).[19] Respondents admittedly did not attempt to follow any state's escheatment process prior to transferring the Chartwell shares to Mission's account. Instead, respondents transferred the Chartwell shares to the Firm's own account, liquidated a portion of the shares, and retained the proceeds for Mission's use and benefit. Respondents' misconduct circumvented the very purpose of state escheatment laws and constituted conversion in violation of NASD Rules 2330 and 2110. *See Bank of Am. v. Cory*, 164 Cal. App. 3d 66, 74 (Cal. Ct. App. 1985) (stating that the purpose of unclaimed property laws is to protect unknown property owners by locating them and restoring their property to them, and to give the state, rather than the holders of the unclaimed property, the benefits of holding the property).

Fourth, respondents argue that they did not intend to permanently deprive the customers of their Chartwell shares and thus did not convert the shares. Respondents base this argument on their return of Chartwell stock to those customers who asked that it be returned and respondents' alleged willingness to return the shares to the remaining customers several years after they were transferred to Mission's account and well after FINRA began its investigation into this matter. As an initial matter, we note that respondents' argument does not address the fact that, at a minimum, they misused customer funds in violation of NASD Rules 2330 and 2110. Moreover, respondents' return of Chartwell stock in response to customer requests and respondents' alleged willingness to return shares to remaining customers well after discovery of their misconduct does not alter our conclusion that respondents converted customers' Chartwell shares, in violation of Rules 2330 and 2110. *See Dist. Bus. Conduct Comm. v. Davis*, Complaint No. C8A970040, 1998 NASD Discip. LEXIS 45, at *6 (NASD NAC Oct. 22, 1998) (rejecting respondent's claim that he did not intend to permanently deprive customer of his funds based upon respondent's attempt to repay customer within two weeks of conversion after customer complained, and holding that these attempts do "not change the fact that he converted the check"); *Joel Eugene*

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[19] *See* Ariz. Rev. Stat. § 44-300, *et seq.* (2008); Cal. Code Civ. Pro. § 1510, *et seq.*; Colo. Rev. Stat. § 38-13-101, *et seq.* (2008); 765 Ill. Comp. Stat. § 1025, *et seq.* (2009); Kan. Stat. Ann. § 58-3934, *et seq.* (2007); Ky. Rev. Stat. Ann. § 393, *et seq.* (2009); N.Y. C.L.S. Aband. Prop. § 101, *et seq.* (2009); Okla. Stat. Tit. 60 § 651, *et seq.* (2008); *see also SEC Guidance.*

Shaw, 51 S.E.C. 1224 (1994) (affirming finding that representative converted funds despite representative's repayment of funds to customers after discovery of misconduct).[20]

Finally, respondents argue that because testifying customers had no complaints against them when questioned at the hearing, respondents did not convert the Chartwell shares. We disagree. Our focus is not on whether respondents' customers had general complaints against respondents, but on whether respondents converted and misused customer securities. *See Maximo Justo Guevara*, 54 S.E.C. 655, 664 (2000) (holding that FINRA's "power to enforce its rules is independent of a customer's decision not to complain"), *pet. for review denied*, 47 F. App'x 198 (3d Cir. 2000). Moreover, several customers did in fact complain and questioned why their Chartwell shares had been transferred. Customer KN questioned the transfer and filed a complaint with FINRA and the Commission in 2005. Several other customers contacted Mission after receiving their September 2005 quarterly account statements to question the transfers. Similarly, the fact that several of the 18 customers may currently maintain an account with Biddick's current member firm does not excuse respondents' misconduct. *Cf. Dep't of Enforcement v. Kaweske*, Complaint No. C07040042, 2007 NASD Discip. LEXIS 5, at *37 (NASD NAC Feb. 12, 2007) (holding that customers' continued trading in their accounts at respondent's firm subsequent to alleged misconduct does not render their testimony concerning such misconduct incredible). Finally, we reject respondents' attempt to shift blame to FINRA for allegedly failing to investigate purported price manipulation of Chartwell stock. *See Donner Corp.*, 2007 SEC LEXIS 334, at *64. Consequently, we find that respondents converted and misused customer securities, in violation of NASD Rule 2330 and 2110.

B. Net Capital Deficiency

The Hearing Panel found that Biddick caused Mission to operate with insufficient net capital on February 28, 2006, in violation of Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and NASD Rule 2110. In light of our findings that respondents converted and misused customer securities in violation of Rules 2330 and 2110, we need not decide whether Biddick caused Mission to be in violation of its net capital requirement on a single day in 2006.

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[20] In addition, the language in the facsimile to North American directing the transfer of the customers' Chartwell shares does not support respondents' argument that they did not intend to permanently deprive customers of their securities. The Hearing Panel asked Biddick what specific "SRO rules" Biddick was referring to in his facsimile, and Biddick did not specify which rules, if any, he was referring to. Instead, Biddick answered generally that he understood that clearing firms seize customers' worthless securities all the time, and because he believed that there was no difference between Mission and a clearing firm, respondents were thus entitled to transfer the stock to Mission's account. We reject Biddick's rationalization for the conversion of customers' Chartwell stock. Further, although the facsimile references a "paper trail," the fact that respondents could trace movement of the securities from the customers' accounts to Mission's account and the subsequent liquidation of the shares does not alter our conclusion that respondents converted customer securities.

C. Procedural Arguments

Respondents argue that they were denied a fair hearing before the Hearing Panel and raise a myriad of arguments to support their claim. Section 15A(b)(8) of the Exchange Act provides that FINRA disciplinary proceedings must be conducted in accordance with fair procedures. *See Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009) (holding that FINRA must provide fair procedures for its disciplinary actions), *appeal pending*, 09-1550 (3d Cir. Feb. 24, 2009). Section 15A(h)(1) of the Exchange Act requires that FINRA, in a disciplinary proceeding, "bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record." Fairness is determined by examining the entirety of the record. *See Mark H. Love*, Exchange Act Rel. No. 49248, 2004 SEC LEXIS 318, at *16 (Feb. 13, 2004). We find that the proceedings before the Hearing Panel were fair and conducted in accordance with FINRA rules. We further find that respondents had ample notice of the charges and an opportunity to defend themselves against these charges.

We also reject respondents' specific procedural arguments.[21] First, we reject respondents' argument that the Hearing Officer improperly excluded the testimony of a North American representative (John Busacca) and certain documentation from Mission's current clearing firm. Respondents failed to timely file pre-hearing submissions pursuant to the Hearing Officer's scheduling order, and the Hearing Officer precluded respondents from offering any evidence or witnesses not identified by Enforcement. At the hearing, respondents sought to call Busacca to testify and to introduce documentation from the Firm's then-current clearing firm, and the Hearing Officer considered and denied respondents' request. Respondents argue that this evidence was necessary to verify that Mission was assessed safekeeping fees totaling $6,500 in connection with Chartwell, to explain how Mission would have been "entitled to have the debits it paid on behalf of clients that were charged by the clearing firms credited back," generally to explain how clearing firms determine that a stock is worthless and seize worthless securities, and to describe Mission's current clearing firm's alleged refusal in 2008 to journal Chartwell shares remaining in Mission's account back to Mission customers and its alleged seizure of certain other stock held by Mission.

The Hearing Officer properly excluded this testimony and evidence. Pursuant to Rule 9280, the Hearing Officer had the authority to exclude from evidence witnesses or exhibits that respondents, without substantial justification, failed to disclose pursuant to the Hearing Officer's scheduling order and Rules 9242 and 9261. *See Dep't of Enforcement v. Epstein*, Complaint No. C9B040098, 2007 FINRA Discip. LEXIS 18, at *89-90 (FINRA NAC Dec. 20, 2007), *aff'd*, 2009 SEC LEXIS 217. Respondents have not demonstrated substantial justification for their

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[21] Respondents raise several procedural arguments regarding evidence related solely to the Taping Rule allegations. We make no findings with respect to respondents' alleged violation of the Taping Rule and thus decline to address these procedural arguments.

failure to comply with the Hearing Officer's scheduling order.[22] Further, pursuant to Rule 9261(c), respondents have not demonstrated that the proposed testimony and evidence were relevant to whether respondents caused the transfer of customers' Chartwell shares to a Mission account without customer authorization or notification, subsequently liquidated those shares, and retained $38,946.06 in proceeds and utilized a portion of these funds to pay Mission's operating expenses. In addition, Biddick testified that he personally determined that the Chartwell shares were worthless, and North American did not seize Chartwell shares or notify respondents that it might seize the shares.[23]

Respondents further argue that the Hearing Officer was prejudiced against them, as demonstrated by the following: (1) the Hearing Panel decision incorrectly states that Biddick's brother became associated with Mission in 2001 (when in fact his association with Mission ended several years earlier); (2) the Hearing Officer ruled frequently in favor of Enforcement on procedural matters during the hearing; (3) the Hearing Officer cut off witnesses' testimony once it became unfavorable to Enforcement's case; (4) the Hearing Officer denied respondents' request for a more definitive statement and a motion to compel mediation in this case; and (5) the Hearing Officer failed to disclose that he served as the Hearing Officer in John Busacca's separate and independent disciplinary proceeding.

"[U]nsubstantiated assertions of bias are an insufficient basis to invalidate NASD proceedings." *Dist. Bus. Conduct Comm. v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *39 n.16 (NASD NAC Jan. 28, 1999), *aff'd*, 54 S.E.C. 655 (2000), *pet. for review denied*, 47 F. App'x 198 (3d Cir. 2000). Further, adverse procedural and substantive rulings, without more, do not amount to bias. *See Epstein*, 2009 SEC LEXIS 217, at *62. "[B]ias by a hearing officer is disqualifying only when it stems from an extrajudicial source and

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[22] On appeal, respondents' counsel admits that he filed respondents' exhibit and witness lists several weeks after the deadline set by the Hearing Officer, and blamed the late filing on his absence from the office on business. Counsel further argues that the late filing was not respondents' fault. Neither respondents nor their counsel specifically raised this argument before the Hearing Panel. Particularly in this instance—where the Hearing Officer was evaluating the appropriateness of allowing respondents to file exhibits after the opposing party had done so—we deem this argument waived. *See Mayer A. Amsel*, 52 S.E.C. 761, 767 (1996) (holding that arguments are waived where raised for the first time on appeal). Regardless, respondents are "held accountable for the acts and omissions of their chosen counsel." *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 397 (1993).

[23] On appeal, respondents again sought to introduce certain of this evidence pursuant to NASD Rule 9346. The Subcommittee empanelled to hear this matter denied respondents' motion because respondents failed to satisfy the substantive requirements of Rule 9346(b), which governs motions to adduce additional evidence on appeal. The Subcommittee also denied the motion because respondents filed it more than three months after the deadline set forth in Rule 9346. We find that the Subcommittee properly denied respondents' request to adduce additional evidence.

results in a decision on the merits based on matters other than those gleaned from participation in a case." *Id.* Rule 9233(b) provides that a hearing officer may be disqualified "based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned[.]"

We find no support for respondents' arguments that the Hearing Officer was prejudiced against them. First, we find immaterial the decision's reference to the date of Biddick's brother association with Mission. *See Dep't of Enforcement v. Erenstein*, Complaint No. C9B040080, 2006 NASD Discip. LEXIS 31, at *10 (NASD NAC Dec. 18, 2006) (holding that the NAC's de novo review of Hearing Panel's decision "cures any drafting deficiencies or errors that may exist in the Hearing Panel decision"), *aff'd*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS 2596, (Nov. 8, 2007), *aff'd*, 2008 U.S. App. LEXIS 19746 (11th Cir. Sep. 16, 2008). Second, the fact that the Hearing Officer ruled more often in Enforcement's favor regarding procedural matters during the hearing, even if true, is insufficient to demonstrate bias or prejudice, and nothing in the record suggests that the Hearing Officer cut off witness testimony to prevent testimony negative to Enforcement's case from being presented. Further, the Hearing Officer is charged with regulating the course of the proceeding. *See* Rule 9235(a)(2); *Dep't of Enforcement v. Sathianathan*, Complaint No. C9B030076, 2006 NASD Discip. LEXIS 3, at *56-57 (NASD NAC Feb. 21, 2006) (rejecting argument that hearing officer improperly interrupted testimony and finding that respondent had multiple opportunities to present his case), *aff'd*, Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572 (Nov. 8, 2006), *aff'd,* 304 F. App'x 883 (D.C. Cir. 2008).

Third, the Hearing Officer properly rejected respondents' motion for a more definitive statement and motion to compel mediation. Rule 9212(a) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." The complaint satisfied Rule 9212. *See Dist. Bus. Conduct Comm. v. Euripides*, Complaint No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NASD NBCC Jul. 28, 1997) (holding that "[a] complaint is alleged in reasonable detail when it provides a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense."). Moreover, at the pre-trial conference and in the scheduling order, the Hearing Officer ordered Enforcement to advise respondents of the specific provisions of legislative history and guidance to member firms concerning the Taping Rule, as well as relevant provisions of California law and case law regarding Enforcement's allegations concerning the Taping Rule. In addition, FINRA's rules do not authorize the Hearing Officer to compel parties to mediate disciplinary matters.

We also reject respondents' contention (raised for the first time on appeal) that the Hearing Officer was biased and should have recused himself from this proceeding because he served as the hearing officer in Busacca's disciplinary proceeding. *See Amsel*, 52 S.E.C. at 767. Respondents suggest that the fact that the Hearing Officer presided over both cases is, by itself, a disqualifying conflict of interest. We disagree. Moreover, the record contains no evidence that the Hearing Officer's participation in Busacca's pending disciplinary matter had any bearing on his decision to exclude Busacca's testimony. Rather, respondents failed to show substantial justification for their late filing of proposed witness and exhibit lists, and further failed to show that Busacca's proposed testimony was relevant. Respondents point to nothing in the record, other than the mere fact that the Hearing Officer refused to permit Busacca's testimony, to

demonstrate any bias or prejudice on behalf of the Hearing Officer resulting from his involvement as an adjudicator in both cases. *See Epstein*, 2009 SEC LEXIS 217, at *62. Unsupported allegations of bias do not constitute a good faith belief that a conflict of interest or bias exists, nor do the circumstances suggest that the Hearing Officer's fairness might reasonably be questioned. *See* Rule 9233(b); *cf. Dep't of Enforcement v. Fiero*, Complaint No. CAF980002, 2002 NASD Discip. LEXIS 16, at *95 (NASD NAC Oct. 28, 2002) (finding that Hearing Officer properly refused to disqualify member of Hearing Panel because he previously had served on a hearing panel in a prior FINRA disciplinary proceeding against co-respondents, and holding that the record was "devoid of any evidence that the Hearing Panel member had any preconceived ideas regarding Fiero"). Consequently, we reject respondents' claim that the Hearing Officer was biased.

Finally, respondents argue that the Hearing Panel worked in concert with Enforcement to prove respondents' misconduct, the Hearing Panel's decision is the culmination of years of harassment by FINRA against respondents, and Enforcement prosecuted respondents to silence Biddick because he was an outspoken FINRA critic. The record is devoid of evidence supporting respondents' claims. Moreover, even assuming that the record demonstrated that Enforcement had improper motives in investigating and filing a complaint against respondents (it does not), "[a]bsent a showing of selective enforcement, the motives behind [Enforcement's decision to initiate an investigation and commence disciplinary proceedings] are irrelevant." *Epstein*, 2007 FINRA Discip. LEXIS 18, at *78; *Frank J. Custable, Jr.*, 51 S.E.C. 855, 862 n.22 (1993) (concluding that bias on the part of a FINRA staff member does not mean the FINRA decision is biased). Respondents have not demonstrated that FINRA has engaged in selective prosecution. *See Terrance Yoshikawa*, Exchange Act Rel. No. 53731, 2006 SEC LEXIS 948, at *28-29 (Apr. 26, 2006) (holding that respondents must demonstrate that they were singled out for enforcement while others similarly situated were not and that such prosecution was motivated by arbitrary or unjust considerations (e.g., race, religion, or the desire to prevent the exercise of a constitutionally protected right)). Consequently, we reject respondents' argument.

III. Sanctions

The Hearing Panel expelled Mission and barred Biddick in all capacities for converting and misusing customer securities, in violation of NASD Rules 2330 and 2110. In light of the expulsion and bar, the Hearing Panel did not impose any additional sanctions for Mission's net capital violations. We affirm the expulsion and bar imposed upon Mission and Biddick, respectively, for converting customer securities. We further order that Mission and Biddick disgorge $38,946.06 in ill-gotten gains stemming from their misconduct, and return these proceeds (plus interest as set forth herein) in the amounts and to the 13 customers identified on Exhibit A attached to this decision.

FINRA's Sanction Guidelines for conversion state that a bar is standard, regardless of the amount converted.[24] Conversion "is extremely serious and patently antithetical to the 'high

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[24] *See FINRA Sanction Guidelines* 38 (2007), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*]. The Guidelines also

[Footnote continued on next page]

standards of commercial honor and just and equitable principles of trade' that the NASD seeks to promote." *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976). In determining appropriate sanctions, we also have considered the General Principles and Principal Considerations in Determining Sanctions applicable to all violations.

We find that expelling Mission and barring Biddick in all capacities are the only effective remedial sanctions.[25] Respondents intentionally caused—without any prior notice to or authorization from customers—the transfer of 21,061 Chartwell shares held by 18 customers, began liquidating the shares several months later, and then used at least a portion of the proceeds for the Firm's operating expenses.[26] Although the conversion occurred on a single day, Biddick for months actively and repeatedly sought North American's assistance in transferring the shares to Mission's proprietary account, and subsequent to the conversion respondents liquidated the shares over several months and retained the proceeds for the Firm's use.[27] Respondents only stopped selling Chartwell shares from Mission's account when FINRA instructed them to do so, and they continue to argue that FINRA "had no right" to order them to stop selling the customers' Chartwell shares.

Additional aggravating factors exist. Biddick attempted to mislead customer KN by falsely informing him that his Chartwell shares were of "very little or no value." Biddick made this misstatement to KN on the same day that he began selling the Chartwell shares for $3.50 per share.[28] Further, with respect to Mission, an unidentified Firm representative similarly informed

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recommend considering a bar for improper use, and where the improper use results from respondent's misunderstanding of his customer's intended use of the securities, or other mitigation exists, consider suspending respondent for a period of six months to two years.

[25] Biddick is the sole owner, president, chief executive officer, chief compliance officer, and chief financial officer of Mission, and had control of the Firm during all relevant time periods. Under these circumstances, it is appropriate and necessary to sanction both Biddick and Mission for this misconduct. *See Dep't of Enforcement v. Perpetual Sec., Inc.*, Complaint No. C9B040059, 2006 NASD Discip. LEXIS 18 (NASD NAC Aug. 16, 2006) (finding firm and its president engaged in misconduct), *aff'd in relevant part*, Exchange Act Rel. No. 56613, 2007 SEC LEXIS 2353 (Oct. 4, 2007); *see also Armstrong, Jones & Co. v. SEC*, 421 F.2d 359, 362 (6th Cir. 1970) (holding that a broker-dealer may be sanctioned for the willful violations of its employees).

[26] *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 13, 17, and 18).

[27] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

[28] *Id.* (Principal Considerations in Determining Sanctions, No. 10). Further, we reject respondents' suggestion that their misconduct is less serious because Biddick believed that the Chartwell shares were allegedly worth only $582 in February 2005 (i.e., when he made the initial

[Footnote continued on next page]

customer JK that his shares were worthless in mid-January 2006, just several days after respondents sold additional Chartwell shares converted from the customer accounts for $3.50 per share.

Biddick also provided FINRA staff with shifting explanations for the appearance of the Chartwell shares in Mission's account, first stating that one of the Firm's stocks had "hit," then stating that the shares were transferred from customer accounts for tax purposes, and then informing FINRA that the customer accounts had been abandoned. Biddick also stated falsely to FINRA in September 2006 that he did not realize that Chartwell had any value until March 2006 (despite his sales of Chartwell since December 2005) and that even then he did not believe "the data was valid."[29] Biddick further falsely informed FINRA that he valued the Firm's Chartwell position at zero on the Firm's books and records. Moreover, Biddick's statement that Mission had no contact with any Chartwell customers for several years prior to the transfers is contradicted by the testimony of WK.

Finally, respondents continue to repeatedly and falsely assert that no customer was harmed by their misconduct.[30] Respondents' misconduct was an "egregious abuse of [customers'] trust and confidence." *See Dist. Bus. Conduct Comm. v. Davis*, Complaint No. C8A970040, 1998 NASD Discip. LEXIS 45, at *5 (NASD NAC Oct. 22, 1998). Based upon all of the foregoing, we find that respondents pose a danger to the investing public and expelling Mission and barring Biddick in all capacities is necessary to deter them and others similarly situated from engaging in similar misconduct.

We also find that disgorgement of respondents' ill-gotten gains stemming from their conversion, to be paid to the 13 Mission customers whose Chartwell stock was never returned, is appropriate under the circumstances. Disgorgement of ill-gotten gains may be appropriate where a respondent obtained a financial benefit from his misconduct.[31] "The purpose of disgorgement

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[cont'd]

request to North American that the customers' Chartwell shares be converted). The Guidelines recommend a bar regardless of the dollar amount of the securities converted. *Id.* at 38.

[29] Respondents' written response to FINRA's inquiries stated incorrectly that Biddick did not realize the stock had any value until "March 2005." A FINRA examiner provided uncontested testimony that this was a typographical error and that the date should have read "March 2006" because the Chartwell shares were not transferred into Mission's account until September 30, 2005.

[30] *Id.* (Principal Considerations in Determining Sanctions, Nos. 2 and 11). We also do not consider mitigating respondents' return of 4,087 Chartwell shares to five of the 18 customers. Similarly, we give no credit to respondents' alleged willingness to return shares to customers several years after discovery of their misconduct.

[31] *Id.* (General Principles Applicable to All Sanction Determinations, No. 5); *see also Dep't of Mkt. Regulation v. Ko Sec., Inc.*, Complaint No. CMS000142, Discip. LEXIS 21, at *11

[Footnote continued on next page]

is to deprive a person of 'ill-gotten gains' and prevent unjust enrichment." *Levitov*, 2000 NASD Discip. LEXIS 12, at *29-30 (internal citations omitted). Respondents profited from their conversion of customer securities and earned net proceeds of $38,946.06 on their sales of converted Chartwell stock. We order that respondents disgorge this amount, and return these funds to 13 Mission customers, with interest. *See David Joseph Dambro*, 51 S.E.C. 513, 518 (1993) (stating that "we have encouraged the NASD to use its remedial powers to return to investors funds lost in cases where, as here, a professional has acquired a benefit by failing to meet his obligations"); *see also Michael David Sweeney*, 50 S.E.C. 761, 769 (1991) (endorsing FINRA's policy of ordering that respondent disgorge ill-gotten gains to customers that have suffered losses due to respondent's misconduct and holding that "the failure to collect prejudgment interest defeats the purpose of ordering disgorgement and provides a strong financial incentive for respondents to seek delay in resolution of proceedings").[32]

IV. Conclusion

We affirm the Hearing Panel's finding that respondents violated NASD Rules 2330 and 2110 by converting and misusing customer securities. Accordingly, we: (a) expel Mission; (b) bar Biddick in all capacities;[33] (c) order that Mission and Biddick pay, jointly and severally, $38,946.06 in the amounts and to the customers identified on Exhibit A attached to this decision,

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(NASD NAC Dec. 20, 2004); *Dep't of Enforcement v. Levitov*, Complaint No. CAF970011, 2000 NASD Discip. LEXIS 12, at *29-30 (NASD NAC Jun. 28, 2000).

[32] Although Enforcement requested restitution in the amount of $5 per Chartwell share held by each of the 13 customers, the Hearing Panel made no determination regarding restitution. We find that under the circumstances, disgorgement of the proceeds to customers as set forth herein is appropriate.

[33] The expulsion and bar are effective as of the date of this decision.

plus interest at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), from September 30, 2005, until paid; and (d) order that respondents pay, jointly and severally, hearing costs of $2,078.60.[34]

On behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

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[34] In the event that any of the 13 customers identified on Exhibit A cannot be located, unpaid amounts should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of the customer's last known address. Satisfactory proof of payment of the amounts set forth herein, or of reasonable and documented efforts undertaken to effect such payments, shall be provided to staff of FINRA's Department of Enforcement, District 2, no later than 90 days after the date when this decision becomes final.

We also have considered and reject without discussion all other arguments of the parties.

Exhibit A
Complaint No. 2006003738501

Customer Initials	Shares Converted	Amount to be Paid
DC & SC	3,680	$8,443.59
DS	105	$240.92
MD	30	$68.83
DM	700	$1,606.12
GP & SP	1,200	$2,753.34
RB	5,325	$12,217.97
BT	600	$1,376.67
JR	160	$367.11
RK	34	$78.01
SH	70	$160.61
LM	570	$1,307.84
ZM	2,500	$5,736.13
EN	2,000	$4,588.90
TOTAL	16,974	$38,946.06