BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of The Department of Enforcement, Complainant, vs. Vincent J. Puma Marlboro, New Jersey, Respondent.	DECISION Complaint No. C10000122 Dated: August 11, 2003

Hearing Panel found that respondent effected one unauthorized transaction and that Enforcement failed to prove by a preponderance of the evidence that respondent effected nine other unauthorized transactions. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., of the Department of Enforcement.

For the Respondent Vincent J. Puma: David A. Schrader, Esq. and Bruce Schoenberg, Esq., of Schrader & Schoenberg, LLP

Opinion

I. Introduction

Vincent Puma ("Puma") appealed this matter pursuant to NASD Procedural Rule 9311(a). NASD's Department of Enforcement ("Enforcement") cross-appealed pursuant to NASD Procedural Rule 9311(d). Under review is a Hearing Panel decision on remand, dated December 20, 2002 ("Remand Decision"), in which the Hearing Panel made the same findings and imposed the same sanctions as in its initial decision, issued October 22, 2001 ("Initial Decision"). The Hearing Panel found: (1) that Puma effected one unauthorized transaction; and (2) that Enforcement failed to prove by a preponderance of the evidence that Puma effected nine other alleged unauthorized transactions. The Hearing Panel ordered that Puma be fined $10,000 and suspended for 10 business days, and that Puma be assessed total hearing costs of $6,436. We affirm the Hearing Panel's findings and sanctions and assessment of costs. We also assess additional costs associated with the second appeal hearing.

II. Background and Procedural History

Puma first entered the securities industry in 1993 in an unregistered capacity. In August 1994, Puma became associated in an unregistered capacity with Josephthal Lyon & Ross Inc. ("Josephthal" or "the Firm"). Later that year, in November 1994, Puma became registered with Josephthal as a general securities representative. Puma left Josephthal on a voluntary basis in September 1995 and began working for another member firm that same month. Puma has since been associated with three other member firms and he currently is working in the securities industry. The alleged misconduct occurred while Puma was registered as a general securities representative with Josephthal.

Enforcement commenced an investigation of Puma's activities after receiving customer complaints that Puma had effected unauthorized transactions in their accounts. On July 17, 2000, Enforcement filed a complaint alleging that Puma had effected 10 unauthorized transactions, involving eight customer accounts, in violation of NASD Conduct Rule 2110.

A hearing was held before a Hearing Panel over a three-day period in February 2001. As stated in its Initial Decision, the Hearing Panel found that Puma had effected one unauthorized transaction in the joint account of customers RR and MR. The Hearing Panel further found that Enforcement failed to prove by a preponderance of the evidence that Puma had effected nine other unauthorized transactions alleged in the complaint.

Puma appealed the Hearing Panel's finding of violation and the sanctions. Enforcement cross-appealed the Hearing Panel's findings that Enforcement had failed to prove the nine other unauthorized transactions allegations by a preponderance of the evidence. Enforcement also appealed the sanctions arguing that they should be increased if, on appeal, the NAC found Puma liable for the other unauthorized transactions alleged in the complaint. Prior to the appeal hearing, Enforcement amended its cross-appeal to include only the four transactions that Puma claimed the customers had authorized -- two transactions in the account of customer JJ, and one each in the joint accounts of customers ER and JR, and MS and DS.[1]

We held an appeal hearing in this matter on July 9, 2002. After a *de novo* review of the record, we issued a Remand Order dated October 21, 2002 ("Remand Order"). As noted in our Remand Order, we remanded the matter for further proceedings because we were unable to apply an appellate standard of review to the Hearing Panel's findings that Puma did not effect unauthorized transactions in the accounts of customers JJ, ER and JR, and MS and DS. We concluded that the Hearing Panel had credited customer RR's telephone testimony over Puma's testimony and had implicitly credited Puma's testimony over the hearsay statements of customers JJ, ER and JR, and MS and DS, who did not testify at the hearing. We noted that the Hearing Panel had failed in its Initial Decision to explain adequately and to provide support for its

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[1] Therefore, the five unauthorized transactions that Puma argued he effected on behalf of his supervisors were not at issue on appeal.

differing credibility determinations regarding Puma's testimony, and had failed to analyze the hearsay evidence from customers JJ, ER and JR, and MS and DS that appeared to contradict the Hearing Panel's implicit determination to credit Puma's testimony.[2] Accordingly, our Remand Order instructed the Hearing Panel to discuss explicitly its credibility findings and the reliability of the hearsay evidence, and to make complete findings and impose sanctions, if applicable.[3]

In its Remand Decision, the Hearing Panel made specific credibility determinations and assessed the reliability of the hearsay evidence, in accordance with the instructions in our Remand Order. The Hearing Panel found customer RR's testimony that the trade at issue was unauthorized to be more credible than Puma's testimony that RR had authorized the trade at issue. Thus, the Hearing Panel found that Puma had effected one unauthorized transaction in the joint account of customers RR and MR, as alleged. With respect to Puma's testimony regarding the trades in the accounts of customers JJ, ER and JR, and MS and DS, who did not testify at hearing, the Hearing Panel concluded that Puma's statements were more credible than the hearsay statements provided by the customers. Accordingly, the Hearing Panel dismissed the allegations with respect to those trades.

As noted, Puma appealed the Hearing Panel's finding of violation and sanctions, and Enforcement cross-appealed the Hearing Panel's dismissal of the four other alleged unauthorized transactions and the sanctions. We held an appeal hearing on May 15, 2003.

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[2] As explained in our Remand Order, an additional ground for our remand was the fact that a replacement Hearing Officer had not participated in the decisional process, as required under NASD's then-current rules. The replacement Hearing Officer had simply edited the Hearing Panel's decision that the original Hearing Officer had written prior to leaving the Office of Hearing Officers. We noted in our Remand Order that we were remanding the matter to the Office of Hearing Officers to permit the replacement Hearing Officer to discharge his duties on remand consistent with new NASD Procedural Rule 9231(e). On remand, the replacement Hearing Officer stated that he discharged his duties under NASD Procedural Rule 9231(e)(1) by exercising his discretion to provide legal advice to the Hearing Panel and to prepare the Remand Decision on behalf of the Hearing Panel, but not to participate in the resolution of the issues raised by our Remand Order. Thus, the determinations in the Hearing Panel's Remand Decision are those of the remaining panelists who participated in the initial hearing in this matter. The replacement Hearing Panelist and the two other panelists determined that it was not necessary to conduct a rehearing on remand.

[3] We instructed the Hearing Panel to discuss: (1) its general impression of Puma's demeanor and candor; (2) any specific examples in which it found Puma not to be credible and the relationship of those credibility findings to the credibility determinations that it makes regarding other aspects of Puma's testimony; and (3) its findings with respect to the reliability of the hearsay evidence, including a complete analysis of the factors that are used to assess the reliability of such evidence.

III. Discussion

After an independent review of the record, we affirm the Hearing Panel's findings that Puma effected one unauthorized transaction in the joint account of RR and MR. We therefore find that Puma violated NASD Conduct Rule 2110, as alleged in the complaint. We also affirm the Hearing Panel's findings that Enforcement failed to prove by a preponderance of the evidence that Puma effected four other unauthorized transactions in the accounts of customers JJ, ER and JR, and MS and DS, and its decision therefore to dismiss those allegations.[4]

We have analyzed separately the trade at issue in the joint account of customers RR and MR and the trades at issue in the accounts of customers JJ, ER and JR, and MS and DS.

A. The Trade in the Joint Account of Customers RR and MR

The complaint alleged that Puma purchased 1,000 units of Victormaxx Technologies, Inc. ("Victormaxx") for the joint account of RR and MR on August 10, 1995, without their prior knowledge or consent. RR testified that Puma handled his account at Josephthal and that he previously had authorized Puma to purchase shares of Infrasonics, Inc. ("Infrasonics") for his account.

RR testified that Puma called him to ask whether he would be interested in purchasing units in an initial public offering ("IPO") for Victormaxx. RR told Puma that he would consider purchasing the IPO units if he could sell them on the same day as the purchase. RR further advised Puma that he was not interested in purchasing the IPO units at the time that Puma contacted him because they had not yet been priced. RR did, however, ask Puma to contact him when the Victormaxx units were priced so that he could decide whether to purchase any of the offered units. RR testified that Puma never called him back about the price of the Victormaxx IPO units.

RR testified that although he had not authorized the purchase of Victormaxx shares, he nevertheless received a confirmation showing that on August 10, 1995 a purchase of 1,000 units of Victormaxx had been placed in his account at a net price of $6,250. According to RR, when RR called Puma to question him about why the units had been purchased without RR's authorization, Puma advised RR that he would "take [RR] out [of the trade] with a small profit" on the same day that RR called. RR testified that he followed Puma's suggestion to sell his shares in Infrasonics to pay for the Victormaxx purchase and that he also agreed to send Puma a check in the amount of $1,530 to cover the balance of the Victormaxx purchase price. RR further testified that he agreed to pay for the unauthorized purchase based on Puma's representation that he was going to sell the Victormaxx shares for a small profit on the day that RR had called Puma to complain about the trade.

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[4] We also affirm the Hearing Panel's dismissal of the five other alleged unauthorized transactions that were not at issue on appeal.

RR testified that when he did not receive a timely confirmation from Josephthal that the Victormaxx shares had been sold, he placed three or four calls to Puma, which Puma did not return. RR eventually learned that the Victormaxx units had been sold in two separate transactions. According to RR's complaint letter, the units were sold "long after" the agreed-upon date for the sale. The documentary evidence shows that the units were purchased on August 10, 1995 and were sold in separate transactions on August 25, 1995, for net proceeds of $920.25, and on August 28, 1995, for net proceeds of $4,491.50, respectively. These sales resulted in a net loss to customers RR and MR of approximately $838.

Puma testified that when he spoke to RR initially about the Victormaxx IPO, RR authorized him to purchase the Victormaxx units for his account. Puma testified that after RR received the confirmation of the purchase, RR called him, not to complain that the trade was unauthorized, but to find out how much he owed for the transaction. Puma also claimed that it was likely that RR was confused about the Victormaxx transaction because the Firm had mistakenly purchased 1,000 units of Victormaxx for RR's account, in addition to the 1,000 units of Victormaxx at issue in this matter. The Firm subsequently cancelled the additional 1,000-unit purchase.

The Hearing Panel stated in its Remand Decision that it found RR's testimony somewhat more credible than Puma's testimony. The Hearing Panel also stated that it reiterated the findings and conclusions in its Remand Decision that it had included in its Initial Decision. In its Initial Decision, the Hearing Panel determined that, after observing the demeanor of both RR and Puma, it found RR's testimony more credible than Puma's testimony. The Hearing Panel also credited RR's testimony that he had accepted the purchase at issue based on Puma's promise that the Victormaxx shares would be sold immediately for a small profit. With respect to Puma's testimony, the Hearing Panel concluded in its Initial Decision that Puma's assertion that RR had called him after the Victormaxx purchase transaction merely to determine how much RR owed for the purchase, was not credible.[5]

We affirm the Hearing Panel's findings of credibility. It is well settled that the credibility findings of the initial decision-maker are entitled to considerable weight and deference, since they are "based on hearing the witnesses' testimony and observing their demeanor." Jonathan Garrett Ornstein, 51 SEC 135, 137 (1992).

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[5] The Hearing Panel observed that, "[a]s an experienced investor, RR was familiar with the process of paying for purchases based on the amounts stated in the confirmations he received" and that it was "more probable that, as RR testified, he called Puma to complain that the transaction was unauthorized."

We thus affirm the Hearing Panel's finding that Puma effected one unauthorized transaction in the joint account of RR and MR, as alleged in the complaint, in violation of NASD Conduct Rule 2110.[6]

B. The Trades in the Accounts of Customers JJ, ER and JR, and MS and DS

Customers JJ, ER and JR, and MS and DS did not testify at the hearing.[7] Instead, they submitted complaint letters to Josephthal shortly after the trades at issue occurred, in which they alleged that Puma had effected transactions in their accounts without their authorization. The customers repeated their complaints in signed declarations. Puma responded to the customer complaints by writing separate response letters to Josephthal with respect to each of the complaints. In his letters to Josephthal, and later in his testimony, Puma asserted that the customers had authorized each of the trades in question.

Customer JJ stated in a complaint letter to Josephthal dated September 8, 1995 that Puma effected two unauthorized transactions in JJ's account on August 4, 1995 -- a sale of 800 shares of Infrasonics for net proceeds of $4,191.50, and a purchase of 3,500 shares of Biotechnology General Corp. ("Biotechnology General") for $3,902.25. Although JJ attempted to contact Puma when JJ received notice of the transactions approximately one week after they were effected, Puma did not contact JJ for another week thereafter. According to JJ's complaint letter, when Puma finally contacted JJ, Puma told JJ that his account would be "restored to its original form

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[6] It is well settled that unauthorized trading in a customer's account is a violation of the requirement under Conduct Rule 2110 that members observe just and equitable principles of trade. See Robert Lester Gardner, 52 S.E.C. 343, 344 (1995), aff'd, 89 F.3d 845 (9th Cir.) (table format); Department of Enforcement v. Baxter, Complaint No. C07990016, 2000 NASD Discip. LEXIS 3, *15 (NAC Apr. 19, 2000). Conduct Rule 2110 is applicable to Puma under Rule 115(a), which provides that "[t]hese Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules. "We reject Puma's argument on appeal that he is not liable for the unauthorized transaction because Enforcement failed to prove that he acted fraudulently. The complaint did not charge Puma with fraud. Nor is proof of fraud an element of an unauthorized transaction allegation under NASD Conduct Rule 2110. See, e.g., Baxter, 2000 NASD Discip. LEXIS at *15; cf. Department of Enforcement v. Ryan, Complaint No. CAF010013, 2003 NASD Discip. LEXIS 2 (NAC Apr. 25, 2003) (finding that Ryan effected unauthorized transactions in violation of NASD Conduct Rule 2110, as alleged, and finding that Ryan engaged in fraud with respect to those unauthorized transactions in violation of NASD Conduct Rule 2120 and Section 10(b) of the Securities Exchange Act of 1934, and SEC Rule 10b-5, as alleged separately in the complaint).

[7] An NASD examiner testified that he tried repeatedly to contact the customers to request that they make themselves available for the hearing, but they did not respond.

(800 shares of Infrasonics)" because the transaction was "a mistake." In a September 19, 1995 letter to Josephthal that responded to JJ's complaint letter, Puma stated that although JJ had confirmed the trades at issue, he later decided that he wanted to hold the Infrasonics stock in place of the Biotechnology General stock. At the hearing in the proceedings below, Puma reasserted the statement that he made in his response letter to Josephthal that he had placed the orders in question only after speaking to and receiving authorization from JJ.

Customers ER and JR sent Josephthal a complaint letter dated September 11, 1995, in which they stated that they had not authorized Puma to purchase 2,000 shares of Genemedicene, Inc. ("Genemedicene") on August 31, 1995. In the complaint letter, they requested that the trade be cancelled. Puma sent Josephthal a letter dated September 19, 1995, stating that he had spoken to ER, and that ER "most certainly" had authorized the trade. Puma testified that he solicited ER to purchase the Genemedicene shares at issue based on a buy recommendation that the Firm had issued. At the hearing, Puma confirmed the statement that he made in his September 19, 1995 letter, in which he asserted that customer ER had authorized the trade.

Customers MS and DS sent Josephthal a complaint letter dated September 10, 1995, in which they stated that on August 31, 1995 Puma was the individual who handled their account when 2,000 shares of Genemedicene were purchased without their authorization. In a letter to Josephthal dated September 19, 1995, Puma stated that "[o]n the date the trade was executed, I spoke to [MS]" and he "confirmed the buy of 2000 shares of Genemedicine." Puma also testified at the hearing that MS had approved the purchase.

The Hearing Panel stated in its Remand Decision that, having "had an opportunity to observe Puma over an extended period, the Panel found him to be generally a credible witness." With respect to Puma's testimony that customers JJ, ER and JR, and MS and DS had authorized the trades in question, the Hearing Panel found that Puma was "forthright" and "candid." The Hearing Panel further found that Puma's testimony was "consistent with his contemporaneous written responses to the customers' complaints."

In determining how much weight to give the hearsay statements, the Hearing Panel considered the factors used to assess the reliability of hearsay evidence, including the possible bias of the declarant; whether direct testimony is contradictory; the type of hearsay at issue; whether the declarant was available to testify; and whether the hearsay is corroborated. See Kevin Lee Otto, Exchange Act Rel. No. 43296, 2000 SEC LEXIS 1932 (Sept. 15, 2000), aff'd Otto v. SEC, 253 F.2d 960 (7th Cir. 2001), cert denied, 534 U.S. 1021 (2001). In weighing the evidence, the Hearing Panel found that Puma's in-person testimony was more convincing than the customers' hearsay evidence,[8] and that Enforcement, therefore, had failed to prove its case by a preponderance of the evidence.

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[8] In considering the factors used to assess the reliability of the hearsay evidence, the Hearing Panel determined that the customers' hearsay statements were not corroborated; that the customers had a possible bias against Puma because they were "unhappy" with the trades in their accounts; that the customers' statements were contradicted by Puma's direct testimony and his

[Footnote continued on next page…]

Credibility determinations by the initial fact finder can be overcome only where the record contains "substantial evidence" for doing so, which is not the case here. See Anthony Tricarico, 51 S.E.C. 457, 460 (1993). In its Remand Decision, the Hearing Panel made specific credibility findings regarding Puma's testimony and demeanor and found him to be a credible witness. After analyzing the reliability of the hearsay statements and weighing that evidence against Puma's live testimony, the Hearing Panel concluded that "the balance tipped in favor" of Puma. The Hearing Panel found that because the customers did not appear at the hearing, "the parties and Panel were unable to probe for the sorts of details, missing from the customers' complaints and declarations, that might have convinced the Panel that the trades in question were, in fact, unauthorized."

After a *de novo* review of the record, we conclude that the record lacks "substantial evidence" to overcome the Hearing Panel's credibility determinations. We thus affirm the Hearing Panel's credibility findings. Hence, we find that Enforcement failed to prove by a preponderance of the evidence that Puma effected unauthorized transactions in the accounts of JJ, ER and JR, and MS and DS. We also find that Enforcement failed to prove by a preponderance of the evidence that Puma had effected five other unauthorized transactions that were not at issue on appeal. Accordingly, we affirm the Hearing Panel's decision to dismiss these allegations.

Although we affirm the Hearing Panel's credibility findings with respect to Puma's testimony regarding the transactions that occurred in the accounts of JJ, ER and JR, and MS and DS, we nonetheless do not adopt its conclusions with respect to certain factors that are analyzed to assess the reliability of the hearsay evidence.

As to the Hearing Panel's assessment of the type of hearsay at issue, we find that its characterization of the complaint letters as "brief" and the declarations as "conclusory" fails to reflect accurately the quality of the information included in those documents. Although two of the three complaint letters were brief in length, they contained relevant and concise information about the trades at issue, including statements by the customers that they had not authorized the trades. In addition, the third complaint letter, which was not brief in length, provided a substantial amount of detail regarding the two transactions that the customer allegedly had not authorized. With respect to the customers' declarations, we find no basis for the Hearing Panel's

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contemporaneous responses to the customers' complaints; that the complaint letters were "brief" and the declarations "conclusory"; and that the customers were not truly unavailable. The Hearing Panel also considered, however, that the hearsay evidence was entitled to some weight based on the following factors: that the complaint letters were signed and were contemporaneous; that the trades all occurred in a single month; that it is not unusual for customers not to cooperate after the passage of several years from the time of the event; and that there is typically little evidence to corroborate complaints of unauthorized trading.

description of them as "conclusory." Each of the declarations included only relevant facts regarding the alleged unauthorized transactions in the customers' accounts and did not contain any legal conclusions. We therefore disagree with the implication by the Hearing Panel that the customers' complaint letters and declarations were somehow qualitatively defective.

We also disagree with the Hearing Panel's conclusion that the customers were "unwilling to cooperate with NASD" because they did not testify at the hearing in this matter. The customers cooperated with NASD by signing declarations approximately nine months after they submitted their initial complaints, at which time they reaffirmed the statements that they made in their complaint letters, even though Josephthal had restored two of the three customer accounts at issue to their original status. Thus, although customers JJ, ER and JR, and MS and DS did not respond to NASD staff requests to make themselves available for the hearing, the evidence demonstrates that they did cooperate with NASD in its initial investigation of the customers' complaints. See District Bus. Conduct Comm. v. Otto, Complaint No. C8A970015, 1999 NASD Discip. LEXIS 21 at *21 (NAC June 28, 1999) (finding that customer's failure to participate in hearing did not undermine the probative value of the documentary evidence she provided), aff'd Kevin Lee Otto, Exchange Act Rel. No. 43296, 2000 SEC LEXIS 1932 (Sept. 15, 2000), aff'd Otto v. SEC, 253 F.2d 960 (7th Cir. 2001), cert. denied, 534 U.S. 1021 (2001).

Despite our reluctance to adopt the Hearing Panel's conclusions as to certain factors used to assess the reliability of the hearsay evidence, we do not agree with Enforcement's argument on appeal that the hearsay evidence constitutes "substantial evidence" to overcome the credibility determinations made by the Hearing Panel at the initial hearing. The Hearing Panel had the ability to assess Puma's candor and demeanor over the course of a three-day hearing and to weigh that evidence against the reliability of the hearsay evidence and it concluded that, with respect to the transactions that occurred in the accounts of customers JJ, ER and JR, and MS and DS, Puma's testimony was more credible than the customers' hearsay statements.

Unlike the facts in Valicenti Advisory Services, Inc., 53 S.E.C. 1033 (1998), aff'd, Valicenti Advisory Services v. SEC, 198 F.3d 62 (2d Cir. 1999), cert. denied, 530 U.S. 1276 (2000), in which the SEC found substantial evidence to overcome the Administrative Law Judge's ("ALJ's") credibility determination, the hearsay evidence here does not rise to the level of "substantial evidence" for purposes of overcoming the Hearing Panel's credibility determinations. See Tricarico, 51 S.E.C. at 460. In Valicenti, the SEC found that, contrary to the ALJ's determination that Valicenti had acted in "good faith," there was substantial evidence in the record to demonstrate that Valicenti had distorted the truth about his past performance in order to attract new clients. Id. at 1039-40.

We therefore find Enforcement's argument that the hearsay evidence constitutes substantial evidence to overcome the Hearing Panel's Remand Decision to be unsupported by the record.

IV. Sanctions

We affirm the Hearing Panel's imposition of the following sanctions: a $10,000 fine and a 10-business day suspension in all capacities. We also affirm the Hearing Panel's assessment of hearing costs in the amount of $6,436. In arriving at appropriate sanctions, we have consulted the NASD Sanction Guideline ("Guidelines") for unauthorized transactions[9] and the principal considerations in determining sanctions listed in the Guidelines.[10]

In determining to affirm the sanctions imposed by the Hearing Panel, we have considered that Puma's violative conduct involved one unauthorized transaction. We nevertheless consider this violation to be serious. For the reasons set forth below, we find that the sanctions imposed are fully warranted by Puma's misconduct.

Puma succeeded in lulling customer RR into accepting the unauthorized purchase of 1,000 units of Victormaxx stock[11] by: (1) advising RR that Puma would sell the Victormax units immediately at a small profit; and (2) suggesting to RR that he should sell his shares in another stock to pay for the purchase and that he also should send a check in the amount of $1,530 for the difference, in order to cover fully the purchase price of the Victormaxx units. RR testified that he followed Puma's advice and paid for the unauthorized purchase based on his understanding that Puma would sell the Victormaxx units that day and, consequently, RR would be reimbursed for the purchase. The record demonstrates that Puma failed to sell the Victormaxx units in a timely manner, and that the units were sold later at a loss to RR.

We also have considered that Puma did not reasonably attempt to pay restitution or otherwise remedy his misconduct,[12] and that Puma has not acknowledged any remorse with respect to his misconduct.

Additionally, we find no evidence for the Hearing Panel's finding that Puma effected the Victormaxx purchase based on a misunderstanding between RR and himself as to Puma's authority to effect the trade at issue. Likewise, we find no support in the record for Puma's

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9 See Guidelines (2001 ed.) at 102 (Unauthorized Transactions).

10 See Guidelines (2001 ed.) at 9-10 (Principal Considerations in Determining Sanctions).

11 Principal Consideration No. 10 of the Guidelines instructs us to consider whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer. See Guidelines (2001 ed.) at 9 (Principal Considerations In Determining Sanctions -- General Principle No. 10).

12 See Guidelines (2001 ed.) at 9 (Principal Considerations In Determining Sanctions -- General Principle No. 4).

argument on appeal that he made a "good faith" mistake[13] as to his authority to effect the trade in RR's account.[14] Thus, we do not adopt the Hearing Panel's finding that Puma effected the violative trade as a result of a miscommunication between customer RR and himself. Because we find no basis in the record to conclude that Puma effected the transaction at issue as a result of a mistake as to his authority, we reject Puma's claim that there is evidence to mitigate the sanctions in this matter.

Accordingly, we fine Puma $10,000 and suspend him for 10 business days from association with any member in any capacity.[15] We also order Puma to pay total costs of $7,607.71, consisting of $6,436.00 in costs for the proceedings below, $1,000 in appeal costs for the second appeal, and $171.71 in transcript costs for the second appeal hearing.[16]

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

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[13] The Guidelines instruct us to consider whether the respondent misunderstood his authority or the terms of the customer's orders. See Guidelines (2001 ed.) at 102 (Unauthorized Transactions).

[14] We also question why Puma did not agree to give the customer the benefit of the doubt and cancel the trade if he believed that the trade was the result of a misunderstanding between him and RR as to his authority to effect the transaction.

[15] We note that this sanction is consistent with the applicable Guidelines.

[16] We also have considered and reject without discussion all other arguments advanced by Puma and Enforcement.

Pursuant to NASD Procedural 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.