BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of	DECISION
The Department of Enforcement,	Complaint No. CAF000033
Complainant,	Dated: March 21, 2002
vs.	
Dennis Sturm Coral Springs, Florida,	
Respondent.	

Respondent failed to respond to NASD Regulation requests for documents. Held; findings of violation affirmed and sanctions affirmed.

Dennis Sturm ("Sturm") appealed the June 27, 2001 decision of an NASD Regulation, Inc. Hearing Panel pursuant to Procedural Rule 9311. After a review of the entire record in this matter, we find that Sturm failed to produce requested documents in violation of NASD Conduct Rule 2110 and Procedural Rule 8210. We order that Sturm be barred from associating with any member in any capacity and assessed costs.

I. Background

Sturm entered the securities industry in July 1988. He was associated with J. Alexander Securities, Inc. ("J. Alexander Securities") from April 1995 through May 1999 as a general securities representative, general securities principal, and options principal. Sturm is not currently associated with a member firm.

II. Facts

NASD Regulation staff initiated an investigation to determine whether Sturm, J. Alexander Securities, and others had engaged in stock manipulation, registration violations, and payment for market making violations, in contravention of NASD rules and federal securities laws. As part of that investigation, on March 1, 2000 staff sent a written request to

Sturm for copies of personal bank records, copies of tax filings for 1997 and 1998, and copies of all passports used in 1997 and 1999.[1] The letter noted that the request for documents was made pursuant to Procedural Rule 8210 and that failure to respond to the request could constitute grounds for disciplinary action.

Staff sent the March 1, 2000 request by first-class mail and overnight delivery to Coral Springs, Florida , Sturm's address as reflected in the Central Registration Depository ("CRD"), and to Pompano, Florida ("Pompano address"), a more recent address that Staff had located for Sturm.[2] The letters sent by first-class mail to the CRD and Pompano addresses were not returned. The letter sent by overnight delivery to Sturm's CRD address was returned with a notation that he had moved. The letter sent by overnight delivery to Sturm's Pompano address was returned with a notation that Sturm had refused to accept service.

On June 7, 2000, staff sent another written request for documents to Sturm at the Pompano address.[3] On June 8, 2000, Sturm responded to the request by advising staff that he needed time to consult with counsel. Staff advised Sturm by letter dated June 15, 2000 that it was extending the deadline for his response from June 15 to June 30, 2000. By letter dated June 29, 2000, Sturm's attorney advised staff that Sturm would not produce the requested documents. The attorney asserted that Sturm's refusal to provide the documents was based on Sturm's federal and state constitutional right to privacy and his right against self-incrimination.

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[1] Tom Park ("Park"), the NASD investigator who issued the Rule 8210 request, testified that the purpose of the document request was to determine whether Sturm had received any cash payments or securities for arranging mergers between public shell companies and private companies, and if any proceeds from the sale of shares in public shell companies or the post-merger companies were delivered to Sturm. Park testified that he issued the Rule 8210 request for Sturm's bank accounts and tax records in an effort to "follow the money." Park also testified that Sturm's passport could have shown whether he had been in the Cayman Islands at or around the time that certain offshore accounts were opened.

[2] During Sturm's February 19, 1999 on-the-record interview, staff learned that the Coral Springs, Florida address listed in CRD as Sturm's residential address was out-of-date when Sturm testified that his home address was Parkland, Florida ("Parkland address"). After the February 19, 1999 on-the-record interview, but prior to issuing the Rule 8210 request, NASD investigator Park searched an address database in an effort to obtain Sturm's most recent address. The database listed both the Parkland address and the Pompano address. Park testified that he decided to use the Pompano address because it appeared to be more recent.

[3] Staff sent the June 7 letter to Sturm by first-class and overnight mail.

III. Discussion

A. Jurisdiction

Sturm argues on appeal that NASD Regulation had no jurisdiction to request that he produce copies of documents because, in March and June 2000, he was no longer in the industry. The NASD By-Laws provide, however, that an individual whose association with a member has been terminated and who is no longer associated with any member continues to be subject to the filing of a complaint based upon the "person's failure, while subject to the NASD's jurisdiction . . ., to provide information requested by the NASD." The complaint in such a case must be filed within two years after the effective date that a respondent's registration is terminated. Art. 5, Sec. 4(a), NASD By-Laws.

It is undisputed that Sturm was associated with J. Alexander Securities until his termination on May 28, 1999. The Department of Enforcement ("Enforcement") complied with the jurisdictional requirements set forth in the NASD By-Laws because it filed the complaint and sent the Rule 8210 requests for documents within the requisite two years of Sturm's May 28, 1999 termination date.[4]

Sturm also argues on appeal that NASD Regulation lacked jurisdiction to request his joint 1998 tax return because he created it after he left the securities industry. The requirement to comply with Rule 8210(a) requests for documents is applicable to members, persons associated with members, and persons subject to NASD Regulation's jurisdiction. As noted above, NASD Regulation retained jurisdiction over Sturm for a period of two years after his association with J. Alexander Securities was terminated on May 28, 1999. Staff issued the request for the joint tax return on March 1 and June 7, 2000, well within the two-year period of retained jurisdiction. Thus, it is irrelevant whether the requested tax return was created after Sturm left the industry on May 28, 1999.

Accordingly, we affirm the Hearing Panel's finding that NASD Regulation had jurisdiction when Enforcement requested that Sturm produce certain documents and when Enforcement filed the complaint in this matter. We also conclude that NASD Regulation had jurisdiction to request the production of Sturm's 1998 joint tax return.

B. Rule 8210 Violation

The Hearing Panel found that Sturm failed to respond to Enforcement's requests for documents, and therefore violated Conduct Rule 2110 and Procedural Rule 8210. We affirm the Hearing Panel's findings.

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[4] Enforcement filed the complaint on July 24, 2000, and sent Rule 8210 requests to Sturm on March 1 and June 7, 2000.

Procedural Rule 8210 authorizes NASD Regulation, in the course of its investigations, to require members to provide information orally, in writing, or electronically "with respect to any matter involved in [an] investigation." As the Securities and Exchange Commission ("Commission") has emphasized, because NASD Regulation lacks subpoena power over its members, a failure to provide information fully and promptly undermines the NASD's ability to carry out its regulatory mandate. Brian L. Gibbons, 52 S.E.C. 791, 794 (1996), aff'd 112 F.3d 516 (9th Cir. 1997) (table).

Rule 8210(d) provides that if staff has actual knowledge that a CRD address is out of date or inaccurate, it must send a copy of the request for information to the last known residential address of the person as reflected in CRD and any other more current address of the person. Staff mailed the first request for documents on March 1, 2000 to Sturm's CRD address and to the Pompano address, which staff knew was a more accurate address, thereby fulfilling the constructive notice requirements of Rule 8210(d). Department of Enforcement v. Rondez, Complaint. No. C01990002, 2000 NASD Discip. LEXIS 4 (NAC Apr. 10, 2000). Although Sturm refused to accept service of the March 1 letter, he acknowledged receipt of the second request (dated June 7, 2000) that was delivered to the Pompano address when he advised staff that he needed time to consult with counsel. Accordingly, we find that service to the CRD and Pompano addresses was valid and that Sturm had actual and constructive notice of the requests for documents and chose not to provide the requested documents.[5] Id.

Sturm argues on appeal that he relied on advice of counsel in not responding to the requests for documents. It is well settled, however, that "[r]eliance on counsel is immaterial to an associated person's obligation to supply requested information to the NASD." Michael Markowski, 51 S.E.C. 553, 557 (1993), aff'd, 34 F.3d 99 (2d Cir. 1994). As an individual registered with the NASD, Sturm agreed "to abide by its [rules], which are unequivocal with respect to the obligation to cooperate with the NASD." Brian L. Gibbons, 52 S.E.C. at 794 n. 12 (quoting Michael David Borth, 51 S.E.C. 178, 180 (1992)); Markowski, 51 S.E.C. at 557.

Sturm also argues that certain documents were not relevant to Enforcement's investigation of his conduct and that, therefore, he was not obligated to produce those

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[5] The June 7 letter advised Sturm that Enforcement was seeking the information and documents it originally had sought in its March 1 letter. The March 1 letter, which was included with the June 7 letter as an enclosure, requested that Sturm produce the following documents: (1) checkbook(s), check register(s), canceled checks, and monthly account statements, for the period from January 1, 1997 through December 31, 1999, for all accounts that had checking and/or wiring privileges belonging to, directed or controlled by Sturm at banks or other financial institutions; (2) copies of Sturm's tax filings for 1997 and 1998; and (3) copies of all passports used in 1997 and 1999. Thus, Sturm's argument that the June 7 letter did not incorporate the March 1 request for documents is unavailing.

documents.[6] Sturm's argument is unpersuasive in light of the well-established policy that persons subject to NASD jurisdiction cannot take it upon themselves to determine whether information requested is material to an NASD investigation of their conduct. See Michael David Borth, supra; Brian L. Gibbons, supra. Further, the NASD's rules do not permit those subject to NASD's jurisdiction to "second guess" the NASD's requests for information. Joseph Patrick Hannan, 53 S.E.C. 854 (1998).

We find that Sturm failed to respond to NASD Regulation's requests for documents and that this failure contravened high standards of commercial conduct and just and equitable principles of trade, in violation of Conduct Rule 2110 and Procedural Rule 8210.[7]

C. Sturm's Constitutional and Procedural Arguments

On appeal, Sturm asserts that the Hearing Panel and the Hearing Officer erred in ruling against his constitutional claims of privacy and due process. He also argues that several facets of his hearing were unfair. We address Sturm's constitutional arguments first, followed by his arguments about the fairness of the proceedings.

1. Constitutional Claims

Sturm argues that Enforcement's request for documents violated his right to privacy under the U.S. and Florida Constitutions. Sturm's constitutional claims are without merit. For Sturm to assert his constitutional claims, he must make a showing that NASD Regulation is a state actor. See Desidirio v. NASD, Inc., 191 F.3d 198, 206 (2d Cir. 1999).[8] Numerous courts have held that the NASD is not a state actor. Id. at 206; First Jersey Secs., Inc. v. Bergen, 605 F.2d 690, 698, 699 n. 5 (3d Cir. 1979), cert. denied sub nom., First Jersey Secs., Inc. v. Biunno, 444 U.S. 1074 (1980); United States v. Shvarts, 90 F. Supp.2d 219, 222 (E.D.N.Y. 2000) (finding that "[i]t is beyond cavil that the NASD is not a government agency; it is a private, not-for-profit corporation").[9]

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[6] Sturm does not identify the requested documents that he claims did not pertain to NASD Regulation's investigation of his conduct.

[7] It is well-settled Commission policy that a violation of another Commission or NASD rule constitutes a violation of Conduct Rule 2110. Stephen J. Gluckman, Exchange Act Rel. No. 41628 (July 20, 1999).

[8] Similarly, the right of privacy under the Florida Constitution is applicable only in cases where there has been some type of "government" action. Sturm has failed to show that NASD Regulation is a state actor under the Florida Constitution. See Fla. Const. Art. I, Sec. 23.

[9] Sturm's reliance on Intercontinental Industries v. American Stock Exchange, 452 F.2d 935 (5th Cir. 1971) is misplaced. Sturm incorrectly claims that the court in Intercontinental Industries found that the American Stock Exchange had denied appellant's constitutional due

[Footnote continued on next page]

Citing D.L. Cromwell Investments, Inc., 132 F. Supp.2d 248 (S.D.N.Y. 2001), aff'd, 2002 U.S. App. LEXIS 1689 (2d Cir. 2002), Sturm contends that NASD Regulation became a government agent when it created the Criminal Prosecution Assistance Group ("CPAG") to provide assistance and advice to federal and state law enforcement authorities investigating securities matters. In this case, however, there is no evidence of a criminal investigation or of any involvement by CPAG in the NASD Regulation investigation. We reject Sturm's contention in this regard because it has no legal or factual basis.

Moreover, Sturm's reading of D.L. Cromwell is incorrect. The court specifically rejected the argument that NASD Regulation was a government agent based on the activities of the CPAG staff. Id. at 253. Instead, the court found that "even if the individual plaintiffs are being compelled to give evidence against themselves by the threat of NASD sanctions, [NASD] Regulation's actions raise no Fifth Amendment issue unless it fairly may be said that its actions are fairly attributable to the government." Id. at 252 (citation omitted). Here, NASD Regulation's actions have no connection with the government, thus Sturm had no basis for his refusal to produce the requested documents. Id.[10]

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process rights. In fact, the court declined to reach that issue based on its determination that due process had been accorded in the case. Id. at 941-43.

Sturm also cites Intercontinental Industries for the proposition that he had a Fifth Amendment right against self-incrimination with respect to Enforcement's request for documents. Although the court in Intercontinental Industries discussed the issue of due process rights in dictum, it did not address the right to invoke the Fifth Amendment. The Fifth Amendment to the U.S. Constitution protects individuals only against violations by the government. Lugar v. Edmondson Oil Co., 457 U.S. 922, 936-37 (1982). The courts and the Commission have determined that self-regulatory organizations are not government actors with respect to the Fifth Amendment. Jones v. SEC, 115 F.3d 1173, 1183 (4th Cir. 1997) (Double Jeopardy Clause of Fifth Amendment claim is rejected because NASD is a private corporation and not a governmental agency); Daniel Turov, 51 S.E.C. 235, 238 (1992) (Fifth, Sixth, and Seventh Amendment claims are not applicable to New York Stock Exchange, which is not a government agency). Consequently, Sturm had no Fifth Amendment right to refuse to produce documents to Enforcement.

[10] Sturm argues that in Department of Enforcement v. Levitov, Complaint No. CAF980025, 1999 Discip. LEXIS 30 (NAC Nov. 1, 1999), we found that Enforcement issued a Rule 8210 request on behalf of a criminal authority. Sturm's argument is incorrect. In Levitov we concluded that Enforcement's requests for respondents' testimony were made in furtherance of a legitimate NASD Regulation investigation, pursuant to Rule 8210.

2. Fairness of Proceedings Below

Congress has provided certain procedural safeguards for NASD Regulation disciplinary proceedings. The Securities Exchange Act of 1934 ("Exchange Act") provides that the Commission must be satisfied that NASD rules provide a "fair procedure" for disciplinary hearings. Exchange Act §15A(b)(8). See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. NASD, 616 F.2d 1363 (5th Cir. 1980); Sundra Escott-Russell, Exchange Act Rel. No. 43363 (Sept. 27, 2000). NASD Regulation is required to "bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record." Exchange Act §15A(h)(1). After a careful examination of the entire record, we find that Sturm was afforded a fair hearing.[11]

As discussed in detail below, Sturm contends that several rulings were unfair. Sturm argued to the Hearing Panel that he did not need to produce his 1998 joint tax return based on the "husband-wife privilege." The Hearing Panel rejected this claim. Sturm testified at the hearing and was cross-examined by Enforcement. Sturm's counsel objected to the scope of the cross-examination, but the Hearing Officer overruled this objection. In addition, the Hearing Officer restricted Sturm's counsel's cross-examination of Park. During the hearing, after Sturm's counsel learned that Park had prepared two internal memoranda in connection with this matter, he requested discovery of these memoranda. The Hearing Officer denied this request. Finally, the Hearing Officer ruled on the admissibility of the exhibits after the witnesses had testified.

Sturm also contends on appeal that the Uniform Application for Securities Registration ("Form U-4") that he had to sign in order to become associated with J. Alexander Securities is a contract of adhesion.

a. Sturm's Adhesion Contract Claim

Sturm wrongly claims that the Form U-4 that he signed when he became associated with J. Alexander Securities constitutes an "adhesion contract," and therefore, that NASD Regulation owes him a higher duty than that owed to signatories of other commercial contracts. Federal courts have consistently rejected the claim that the Form U-4 is a contract of adhesion. See, e.g., Porzig v. Dresdner Kleinwort Benson North America LLC , 1999 U.S. Dist. LEXIS 11067 (S.D.N.Y. 1999) (finding that plaintiff failed to allege or substantiate that his employer exerted any undue influence or coercion on him to sign the Form U-4); Seus v. John Nuveen & Co., 146 F.3d 175, 182 (3d Cir. 1998) (finding that "the terms of the Form U-4 that [the plaintiff] signed were not oppressive, unconscionable, or unreasonably favorable to either the NASD or [the

[11] Sturm's attorney argued for the first time at the appeal hearing that NASD's Procedural Rules were unfair because the rules do not confer on respondents certain discovery rights or the power to subpoena witnesses. Because Sturm did not argue these points below or in his brief, he has waived them. Moreover, the Commission has rejected these arguments. See James Elderidge Cartwright, 50 S.E.C. 1174 (1992).

defendant]"); cf. Koveleskie v. SBC Capital Markets, Inc., 167 F.3d 361 (7th Cir. 1999) (rejecting argument that the Form U-4 was an unconscionable contract)).

Accordingly, we conclude that the Form U-4 that Sturm signed was not a contract of adhesion.

b. Spousal Communication Privilege

Sturm claims the spousal communication privilege as to his 1998 joint tax return that Enforcement requested as part of its Rule 8210 request for documents. Assuming, arguendo, that "communications" between spouses are confidential,[12] the privilege does not apply when the information was or would be disclosed to third parties or to the public.[13] Courts have consistently held that tax returns are non-confidential and, therefore, not within the spousal communication privilege. See Fowler v. United States, 352 F.2d 100 (8th Cir. 1965). Thus, we reject Sturm's attempt to invoke the spousal communication privilege.

c. Testimony

We also reject Sturm's contention that the Hearing Officer erred in ruling on objections during Sturm's and Park's testimony. Sturm contends that he agreed to testify solely for the purpose of mitigation of sanctions, and that he was "sandbagged" because Enforcement cross-examined him on other topics. Our review of the hearing transcript shows that the questions to which Sturm's counsel objected at the hearing did not exceed the scope of Sturm's direct testimony. We find that the Hearing Officer acted within the wide latitude given to her under the Procedural Rules and did not commit an abuse of discretion.

Additionally, the record does not support Sturm's contention that he was "sandbagged" with respect to his decision to testify for purposes of mitigation. The Hearing Officer told Sturm's counsel during the final pre-hearing conference that the Hearing Officers were "fairly liberal about cross-examination."

Sturm asserts that during his counsel's cross-examination of Park, Enforcement's counsel "testified" by giving "speeches" that suggested answers to Park rather than making objections. Sturm's brief, however, fails to cite to the portions of the record that would support his argument,

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[12] See Pereira v. United States, 347 U.S. 1 (1954); Blau v. United States, 340 U.S. 332, 333 (1951).

[13] See United States v. Witness Before the Grand Jury, 791 F.2d 234 (2d Cir. 1986) (citing Wolfle v. United States, 291 U.S. 7, 14 (1934) (husband's letter to wife not "confidential" because it had been dictated to a stenographer)); G-Fours, Inc. v. Miele, 496 F.2d 809, 813 (2d Cir. 1974) (business-related communications between husband and wife not subject to the spousal privilege).

as required by Procedural Rule 9347(a). Thus, we reject Sturm's argument. Moreover, our review of the hearing transcript shows that Sturm's counsel objected only once on the basis that Enforcement's counsel was making speeches, and that such objection was made during Enforcement's cross-examination of Sturm, not during Sturm's counsel's cross-examination of Park.

Sturm also claims that the Hearing Officer restricted his questioning of Park regarding the scope of the investigation. We conclude that the Hearing Officer properly restricted Sturm's questioning of Park pursuant to Procedural Rule 9263(a), which requires the admission of "relevant" evidence. See Kirk A. Knapp, 51 S.E.C. 115 (1992) (respondents are not entitled to elicit testimony that does not bear on the relevant issues). Thus, we find no error in the Hearing Officer's rulings that restricted Sturm's questioning of Park to issues relevant to Sturm's failure to respond.

In sum, Sturm has failed to establish that the Hearing Officer erred in her rulings regarding Sturm's and Park's testimony.

d. Discovery

Sturm argues that the Hearing Panel erred when it denied him discovery of two internal memoranda that Park had prepared. We reject this argument.

Procedural Rule 9253(a) governs the production of witness statements. As applied to this case, the rule requires Enforcement, upon request, to produce Park's memoranda if Park made a contemporaneous written statement during a routine examination that contains the substance of Sturm's oral statements and those statements relate directly to Park's testimony. Here, the record does not show that Park's memoranda should have been produced because, among other reasons, Park's testimony did not relate to any oral statements made by Sturm during a routine examination. Instead, Park's testimony concerned how he served the Rule 8210 requests and whether Sturm produced the requested documents. We therefore conclude that Sturm was not denied discovery to which he was entitled under the Code of Procedure.[14]

[14] During pre-hearing proceedings, Sturm filed four separate motions in which he argued that he was entitled to discovery of all documents relating to NASD Regulation's investigation of Sturm's activities. Procedural Rule 9251(a) requires Enforcement to produce documents that are "in connection with the investigation that led to the institution of proceedings." The Hearing Officer denied each motion, ruling that the documents relating to the underlying investigation were not relevant to the allegation that Sturm failed to produce the requested documents and that, therefore, they were not within the scope of Procedural Rule 9251(a). We uphold the Hearing Officer's ruling as proper.

On appeal, Sturm filed a motion to adduce additional evidence with respect to a purported draft settlement document that was prepared by Enforcement. The Subcommittee of

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e. Admissibility of Exhibits

Sturm claims that the Hearing Officer's decision to rule on the admissibility of exhibits after all witnesses had testified was prejudicial. Sturm, however, fails to provide any support for this claim. Procedural Rule 9235(a) gives Hearing Officers wide latitude to control the conduct of proceedings, including regulating the course of hearings and resolving any and all procedural and evidentiary matters. In addition, the Procedural Rules do not preclude Hearing Officers from deciding on the admissibility of evidence after all witnesses have testified.

Sturm also claims that his counsel was not allowed to question Park about the exhibits that Enforcement proffered during the course of the hearing. The record establishes, however, that Sturm's counsel cross-examined Park extensively about the documents during the hearing. Sturm's brief fails to cite a single instance in which he was denied the opportunity to question Enforcement's witness with respect to the documents at issue. Furthermore, Sturm's counsel had the opportunity to object to the admission of certain evidence in accordance with Procedural Rule 9263(b).

Sturm also argues that the Hearing Officer's evidentiary rulings did not comply with the Federal Rules of Evidence. Procedural Rule 9145 provides, however, that the rules of evidence are not applicable to NASD disciplinary proceedings. Additionally, Sturm has failed to show that the Hearing Officer abused her discretion in resolving the evidentiary matters during the proceedings below.

Sturm implies that the Hearing Officer admitted hearsay evidence in the proceedings below, but he does not specify which, if any, evidence constitutes hearsay. Without specifying alleged errors, Sturm's argument fails. In any event, hearsay is admissible and may under appropriate circumstances constitute the sole basis for findings of fact. Kevin Lee Otto, Exchange Act Rel. No. 43296 (Sept. 15, 2000), aff'd Otto v. SEC, 253 F.3d 960 (7th Cir. 2001), cert. denied, 2001 U.S. LEXIS 10378 (2001).

We find that the Hearing Officer's evidentiary rulings were proper.

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the National Adjudicatory Council that reviewed this matter on appeal denied the motion because Sturm did not show good cause for failing to introduce the purported settlement during the proceedings below and because his motion was untimely. See Procedural Rule 9346(b). The Subcommittee further determined that there was no evidence that the purported offer was a valid offer of settlement or a contested offer. See Procedural Rule 9270(c) & (f). We affirm the Subcommittee's decision to deny Sturm's motion to adduce additional evidence.

IV. Sanctions

After considering Sturm's arguments in mitigation, as discussed below, we hereby affirm the bar imposed by the Hearing Panel.

Sturm argues on appeal that his reliance on counsel should be considered in mitigation. The NASD Sanction Guidelines ("Guidelines") list as a principal consideration whether the respondent has demonstrated reasonable reliance on competent legal advice.[15] Sturm has not demonstrated that his attorney advised him that refusing to produce the documents would comply with NASD rules and applicable law. Sturm did not testify on this issue, and he did not otherwise establish the substance of the advice sought or rendered. The letter that Sturm's attorney sent to staff setting forth Sturm's putative reasons for refusing to comply with the request does not establish the purported legal advice on which Sturm claims to have reasonably relied. Therefore, Sturm has not established a basis for his reliance on counsel claim.

Based on Sturm's adamant and unreasonable refusals to respond to NASD Regulation's requests and the lack of any mitigating factors, we find that a bar is justified.[16] Under the relevant Guideline, the nature of the information requested is listed as a principal consideration in assessing sanctions.[17] Sturm's failure to produce the requested documents interfered with NASD's investigation of a possible stock manipulation, registration violations, and payment for market making violations, thereby undermining the Association's ability to carry out its self-

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[15] See Guidelines, Principal Consideration No. 7, at 9 (2001 ed.); see also Department of Enforcement v. Fergus, Complaint No. C8A990025, 2001 NASD Discip. LEXIS 3 (NAC May 17, 2001).

[16] The recommended sanction is consistent with the applicable NASD Sanction Guidelines ("Guidelines") (2001 ed.) at 39 (Failure to Respond to Requests Made Pursuant to NASD Procedural Rule 8210). The Guideline provides that a bar should be standard if the individual did not respond in any manner.

We reject the following of Sturm's arguments for mitigation of sanctions as inconsistent with our decisions or the Guidelines: (1) that he departed from the securities industry due to health problems; (2) that he has no disciplinary record; (3) that he has cooperated with regulators in other instances; (4) that he experienced "high-handed" treatment by NASD Regulation staff; (5) that his military service and religious beliefs should be taken into account; (6) that certain information in his tax records is private; (7) that the documents sought purportedly were not relevant to the underlying investigation; and (8) that he was subjected to intrusive questioning by staff at his on-the-record interview. See Stephen Russell Boadt, 51 S.E.C. 683, 685-86 (1993); Department of Enforcement v. Balbirer, No. C07980011, 1999 LEXIS NASD Discip. 29, at *10 (Oct. 18, 1999); Charles R. Stedman, 51 S.E.C. 1228, 1232 (1994).

[17] See Guidelines (2001 ed.) at 39.

regulatory functions. Department of Enforcement v. Chlowitz, Complaint No. C02980025, 1999 NASD Discip. LEXIS 31 (NAC Nov. 4, 1999). By refusing to provide the requested documents, Sturm impermissibly substituted his judgment for that of NASD Regulation. Id.; Joseph Patrick Hannan, supra.

Accordingly, we impose a bar in all capacities. We also assess costs against Sturm in the amount of $2,393 for the proceedings below, $1,000 for the appeal proceedings, and $210 for the transcript on appeal, for a total of $3,603 in costs. The bar shall be effective upon service of this decision.[18]

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

[18] We have also considered and reject without discussion all other arguments advanced by Sturm.