

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

The Department of Enforcement,

Complainant,

vs.

Rooney A. Sahai

Ridgewood, NJ,

Respondent.

DECISION

Complaint No. C9B020032

Dated: August 12, 2004

Respondent appeals Hearing Panel decision finding that he caused signatures to be forged on documents for two customers, engaged in one unauthorized transaction, and failed to respond to NASD requests for information. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: David B. Klafter, Esq., NASD Department of Enforcement.

For the Respondent: Eric S. Hutner, Esq., Eric S. Hutner & Associates

DECISION

I. Introduction

Rooney A. Sahai ("Sahai") appeals a June 23, 2003 Hearing Panel decision pursuant to Procedural Rule 9311. The Hearing Panel found that Sahai caused the signatures of two customers to be forged on documents, engaged in an unauthorized transaction, and failed to respond to information requests, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210. The Hearing Panel, however, dismissed the allegation that Sahai was liable for engaging in outside business activities without proper notice to his member firm. The Hearing Panel determined that a unitary sanction was appropriate for all the violations found, and it barred Sahai in all capacities and assessed costs. After a thorough review of the record, we affirm the findings and modify the sanctions of the Hearing Panel. We conclude that it is necessary to assess a sanction for

each violation found, and we impose a bar in all capacities for the forgery violation and a second bar in all capacities for the failure to respond violation. We also find that a fine of \$5,000 for the unauthorized transaction violation is appropriate, but due to the imposition of the bars, we decline to impose a fine.

II. Background

Sahai first registered with NASD as an investment company and variable contracts representative in 1986. During the time of the alleged misconduct, he was registered with The Key Group, Inc. ("Key Group"). Sahai is not currently registered with any NASD member firm.

III. Facts

This matter involves Sahai's alleged forgery of five documents for the accounts of two customers, MC and SI. In addition, the complaint alleges that Sahai engaged in an unauthorized transaction in the account of customer SI and failed to respond to requests for information from NASD staff. Finally, the complaint alleges that Sahai failed to disclose adequately two outside business activities. The Hearing Panel below dismissed this final charge. Because NASD's Department of Enforcement ("Enforcement") has not appealed this dismissal, we affirm the dismissal without specific discussion.

A. Forgery of Customer MC's Signature

In early 1999, MC, a physician, bought health insurance from Sahai. In December 1999, MC discussed possible securities transactions with Sahai who represented that he was with Key Group. MC had received a stock certificate from a medical association that had recently gone public. Sahai recommended, and MC agreed, that Sahai would liquidate the stock certificate through Bear Stearns, Key Group's clearing firm, and then invest the proceeds in American Skandia Advisors Fund ("American Skandia"). MC gave Sahai the certificate on December 3, 1999 and Sahai liquidated it on December 16, 1999. During the interim, the price of the stock declined. In addition, there was a further delay in moving the proceeds from Bear Stearns to American Skandia. MC's wife called Bear Stearns to inquire about the delay and she was told that Bear Stearns had had to wait for a signed Form W-9 tax form to be submitted before it could liquidate the stock certificate. MC testified that the person to whom his wife spoke at Bear Stearns said that he had sent a Form W-9 to Sahai via facsimile, and that Sahai had informed Bear Stearns that MC was sitting in Sahai's office, that MC would sign the Form W-9, and that Sahai would send the signed Form W-9 back to Bear Stearns. Because MC had never signed a Form W-9, he asked Bear Stearns to send him a copy of the form that it had in its file. MC testified that the signature on the form was not his.

After receiving the forged Form W-9, MC called Sahai's office, spoke with one of Sahai's employees, and requested copies of all documents in Sahai's files pertaining to MC. Among those documents was a handwritten note, purportedly signed by MC, that

stated, "Please invest the entire proceeds in my account at American Skandia" MC testified that he did not write or sign the note, nor did he authorize anyone to sign his name to the note. MC admitted, however, that Sahai had requested MC to sign a blank sheet of paper and had stated that the paper would indicate that MC was giving Sahai permission to transfer the stock to American Skandia.¹ MC testified that by signing the blank sheet, he understood that he was authorizing Sahai to invest the proceeds of the stock certificate in American Skandia.

MC also received from Sahai's office an American Skandia mutual fund application, and he testified that the application did not contain his handwriting, but purported to contain his signature. MC testified that he did not sign the application, nor did he authorize anyone to sign it on his behalf. MC noted that the application contains an extra middle initial in his name, an incorrect mailing address, and an incorrect telephone number. Sahai denied signing MC's signature to the documents or authorizing anyone on his staff to do so.

B. Unauthorized Transaction and Forgery of Customer SI's Signature

In late 1999, SI was working for MC. She was notified that her former employer had retired and wanted to close an IRA account that he had established for SI and other employees. MC recommended that SI speak to Sahai about rolling over her IRA account. In December 1999, SI called Sahai and told him that she wanted "a traditional IRA." Sahai sent SI an American Skandia IRA mutual fund application ("December 1999 Mutual Fund Application") via facsimile. SI partially completed the December 1999 Mutual Fund Application, signed it, and sent it back to Sahai. SI testified that she did not fill out the section on fund selection because she never discussed fund selection with Sahai.

In January 2000, SI received a copy of a letter from American Skandia, which was addressed to Sahai's attention at Key Group. The letter noted that there was no signature on SI's application for an IRA rollover account. A copy of an application was enclosed with the letter, and American Skandia requested that Sahai obtain SI's signature on it. SI testified that she was confused when she received this letter, because she specifically recalled that she had signed the December 1999 Mutual Fund Application that Sahai had sent to her. SI therefore called American Skandia to inquire about the status of her December 1999 Mutual Fund Application. She testified that American Skandia informed her that, instead of opening a mutual fund, she had actually purchased

¹ Sahai testified at the hearing below that the handwriting on the note did not appear to be his. During his previous investigative testimony, however, Sahai admitted that he wrote the words "Please invest the entire proceeds of my account in American Skandia." The Hearing Panel found that the handwriting is Sahai's, and that the wording is consistent with MC's testimony that Sahai intended to write something in the blank space above MC's signature.

the variable annuity.² SI asked for copies of the information and American Skandia sent her copies of two applications that were completed in her name: one was an application for a variable annuity, and one was an application for a mutual fund ("January 2000 Mutual Fund Application"). SI testified that she had never before seen the application for the variable annuity, that none of the handwriting on that application was hers, and that her signature had been forged. Moreover, she stated that both her son's first and last names were spelled incorrectly in the beneficiary section of the variable annuity application. SI also testified that she had never before seen the January 2000 Mutual Fund Application that American Skandia sent her, that her handwriting did not appear on that document, and that the signature on the document was not hers. SI stated that she had not made the fund selection noted on the document, and that she had never discussed such information with Sahai.

In his answer to the complaint, Sahai admitted that he purchased a variable annuity on behalf of SI, but claimed that he did so with her prior knowledge, authorization, and consent. In his testimony at the hearing, however, Sahai stated that he had recommended that SI purchase a mutual fund, not a variable annuity, and that the purchase of the variable annuity was a mistake.

Sahai testified at the hearing that his handwriting appears on the first page of the January 2000 Mutual Fund Application that contains SI's forged signature, but he denied signing SI's signature on that document or authorizing anyone on his staff to do so. Sahai also testified at the hearing that his handwriting did not appear on the variable annuity application, although he had previously testified in his investigative testimony that it was "likely" that the handwriting on the variable annuity application was his. Moreover, Sahai had testified in his investigative testimony that, if any documents had been forged, they would have been "forged by one of his administrative personnel."

The Hearing Panel credited SI's testimony that her signature was forged on the variable annuity application and the January 2000 Mutual Fund Application. It noted that her testimony was voluntary and that she had rescinded the purchase of the variable annuity without any loss of money. The Hearing Panel therefore found that she had no motive to claim falsely that her signatures were forged. The Hearing Panel also found that the forgeries could not have occurred at American Skandia because it had first raised the issue of SI's missing signature. Moreover, the Hearing Panel found that, although there was no direct evidence that Sahai, himself, had forged SI's signatures, the totality of the evidence showed that the forgeries were committed in his office.

C. Failure to Respond to Requests for Information

During the investigation of the forged documents, NASD staff sought to question former members of Sahai's administrative staff to determine if they had forged the

² Following its review of the matter, American Skandia offered, and SI accepted, rescission of the annuity purchase with no loss of principal.

documents or knew who may have forged them. To that end, NASD staff asked Sahai, during his February 15, 2001 investigative testimony, to identify the one full-time employee and the two part-time employees who, he claimed, had been working for him while he was registered with Key Group. Sahai testified that he could not recall their names, but that he would ask his accountant and check payroll records. As a result of that testimony, on the same date, February 15, 2001, NASD staff sent Sahai a written request, pursuant to Procedural Rule 8210, seeking the names and addresses of those former employees. At the request of Sahai's then counsel, the staff extended the response date from March 1 to March 16, 2001. Sahai failed to respond by the deadline to the request for information.

On March 19, 2001, NASD staff sent Sahai a second written request, pursuant to Procedural Rule 8210, again seeking the names and addresses of the former employees who had worked for him while he was registered with Key Group. On March 28, 2001, through counsel, Sahai responded to the request by providing the names of three of his former employees, but not their addresses. In the response, Sahai's counsel stated that the addresses "[had] not yet been located," and that the former employees had been terminated because Sahai "was generally not satisfied" with their performance.

On March 29, 2001, NASD staff sent a third written request to Sahai, pursuant to Procedural Rule 8210, again seeking the addresses of the former employees. The response date for this request was April 9, 2001. On April 3, 2001, Sahai's counsel responded that Sahai would continue to search for additional records, and that if any were found, Sahai would produce them. The response also stated that "[u]ntil that time the response tendered is complete." On April 18, 2001, Sahai's counsel sent an additional response, stating that Sahai "is seeking that his former accountant voluntarily produce that information [the addresses and possibly phone numbers of the employees] from the payroll records."

On April 23, 2001, NASD staff sent Sahai a fourth request, pursuant to Procedural Rule 8210, again seeking the addresses of his former employees. On April 25, 2001, Sahai's counsel provided the last known address for former employee Patrick Haas ("Haas"), but asserted that Sahai was not able to locate addresses for the remaining two former employees, Chris Marra ("Marra") and Deepa Patel ("Patel").³ As to Marra and Patel, counsel stated: "These were temporary employees for whom records were not kept other than in a computer address book program which crashed sometime in 2000."⁴

³ NASD staff was not able to verify the existence of, or locate, Haas. The family name at the address supplied by Sahai's counsel was not Haas, and NASD staff could not find a phone number in the vicinity for a Patrick Haas.

⁴ This was the first time that Sahai had mentioned a computer "crash" that allegedly had destroyed stored employee information.

In an effort to gather enough information to do an independent investigation to determine the employees' addresses, on April 27, 2001, NASD staff sent Sahai a fifth request, pursuant to Procedural Rule 8210, seeking: (1) the source from which Sahai obtained Haas's address; (2) the Social Security numbers for each former employee; (3) payroll records for the former employees or an explanation of how they were paid; and (4) employment applications for the former employees. The response date for this request was May 11, 2001. Sahai failed to provide the requested information or an explanation of why he could not provide it.

On May 14, 2001, NASD staff sent Sahai a sixth and "final" request to produce, by May 24, 2001, the documents and information it had requested originally in the April 27, 2001 request. Sahai failed to provide the requested information or an explanation of why he could not provide the information.

IV. Discussion

After carefully reviewing the complete record in this matter, we affirm the Hearing Panel's findings that Sahai caused the signatures of two of his customers to be forged on documents, engaged in an unauthorized transaction, and failed to respond to NASD requests for information. We also affirm the Hearing Panel's dismissal of the allegation of outside business activities.

A. Forgery

Conduct Rule 2110 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade." Forgery violates this rule, whether it furthers the misappropriation of customer funds or the falsification of records. See Donald M. Bickerstaff, 52 S.E.C. 232 (1995). After carefully reviewing the record in this matter, we affirm the Hearing Panel's finding that Sahai forged, or directed someone to forge, the signatures of MC and SI.

In making its finding of forgery, the Hearing Panel stated that it relied on the credibility of the witnesses who testified and that it found MC and SI's testimony to be reliable. It is well established that credibility findings by an initial fact finder are entitled to considerable weight and deference, since they are "based on hearing the witnesses' testimony and observing their demeanor." Jonathan Garrett Ornstein, 51 S.E.C. 135, 137 (1992). See also, Christopher J. Benz, 52 S.E.C. 1280, 1283 (1997), aff'd, 168 F.3d 478 (3d Cir. 1998) (table format); Frank J. Custable, Jr., 51 S.E.C. 643, 648 (1993) ("Credibility determinations of the decision makers that actually heard the witnesses' testimony are entitled to considerable weight.").

MC and SI each testified that their signatures were forged on five documents. The Hearing Panel found that their testimony was credible and consistent. The Hearing Panel also concluded that the preponderance of the evidence demonstrated that those forgeries occurred in Sahai's office, and were effected either by Sahai, or by one of his employees. Sahai denied that he had forged MC and SI's signatures, or that he had authorized anyone else in his office to do so. Yet the Hearing Panel noted that the record showed numerous reasons to question Sahai's credibility.

Sahai repeatedly asserted in his investigative testimony that he was not responsible for "administrative tasks," and that his temporary office staff performed such duties as the completion of applications or other customer documents. Yet he later admitted that his handwriting appeared on various documents for both MC and SI. Sahai's testimony in this regard was equivocal, however, as he initially testified in his investigative testimony that his handwriting appeared on the document that authorized Sahai to transfer MC's stock sale proceeds to American Skandia,⁵ and then stated in his hearing testimony that the handwriting on that document did not "appear to be [his]." Sahai also admitted at the hearing that his handwriting appeared on the 2000 Mutual Fund Application that SI stated she had never completed. He denied at the hearing, however, that any of his handwriting appeared on the variable annuity application, although he had earlier stated in his investigative testimony that he was "not 100 percent sure," but that it was "likely" that he did write some words on that application.

The record also demonstrates other inconsistencies in Sahai's positions that indicate he lacks credibility. In his answer to the complaint, Sahai claimed that he purchased the variable annuity with SI's prior knowledge, authorization, and consent. In his investigative testimony, however, Sahai stated that he recommended and sold a mutual fund to SI. In pre-hearing submissions and at the hearing, Sahai maintained that the purchase of a variable annuity for SI, instead of a mutual fund, was a mistake and that he did not know how it happened.

Moreover, Sahai offered no credible evidence that anyone else was involved in MC or SI's transactions, or that MC or SI had a motive to falsely assert that their signatures were forged. Sahai was the only registered person in his office, and therefore he was the only individual who received direct compensation from MC and SI's transactions. Although Sahai asserted that his administrative personnel could have been responsible for the forgeries, he did not fully identify those individuals so that NASD staff could investigate further.

⁵ This is the document about which MC testified that he had signed his name on a blank sheet of paper after Sahai told him that he needed the signature to invest in American Skandia

We find Sahai's arguments as to why his customers should not be believed to be unpersuasive. Sahai's counsel elicited testimony from MC about certain of his financial difficulties, and asserted that there was animosity between MC and Sahai because Sahai had allegedly refused to invest more money into MC's IRA account than was lawful. Further, MC and SI testified that Sahai had threatened to retaliate against them if they continued to pursue their complaints against Sahai. The Hearing Panel considered all of these arguments and concluded that, despite any animosity that may have existed between MC, SI and Sahai, a preponderance of evidence showed that Sahai forged the signatures of MC and SI, or that he directed that the forgeries be made. We agree with the Hearing Panel's analysis, and affirm its finding that Sahai violated Conduct Rule 2110 by forging, or causing to be forged, MC and SI's signatures on the five account documents at issue.

B. Unauthorized Transaction

Unauthorized trading is defined as "[c]ausing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon." NASD IM-2310-2((b)(4)(iii)). The Commission repeatedly has held that unauthorized trading in a customer's account is a violation of the requirement of Conduct Rule 2110 to observe just and equitable principles of trade. See Robert Lester Gardner, 52 S.E.C. 343 (1995), aff'd, 89 F.3d 845 (9th Cir. 1996) (table format); Jonathan Garrett Ornstein, 51 S.E.C. 135, 137 (1992).

The evidence here demonstrates that SI authorized Sahai to open an IRA account for her and to purchase mutual funds in that account. She did not wish to purchase a variable annuity, did not authorize Sahai to purchase it for her, and did not acquiesce in, or ratify, the purchase. Yet the record shows that a variable annuity was purchased for SI's account. As we indicated earlier, Sahai changed his position on this transaction several times during the course of the investigation. In his investigative testimony, Sahai was unable to explain why a variable annuity was purchased for SI. Approximately one year later, in his answer to the complaint, Sahai admitted purchasing a variable annuity for SI, and he claimed that he did so with her consent. In his pre-hearing submission, and at the hearing, Sahai asserted that the allegation of an unauthorized trade should be dismissed because: 1) he had no motive to make an unauthorized trade because the commissions for the sales of the mutual fund and the annuity were the same; 2) he made a mistake; and 3) the error was easily discoverable and, once identified, was rectified at no loss to the customer.

Sahai's arguments are not a defense to the allegation of an unauthorized transaction. He offered no evidence, other than his testimony, that the variable annuity purchase was a mistake, and he did not identify any steps that he took to correct this purported mistake. As the Hearing Panel noted, this is not a situation where a mere error occurred in transposing the letters of a stock symbol or in listing the number of shares to be purchased. Rather, the variable annuity application contained SI's forged signature; it misspelled both the first and last names of her son who was her primary beneficiary; and it listed four funds for investment allocations that she had never discussed with Sahai.

Accordingly, we find that Sahai caused the execution of a transaction that was not authorized by SI, in violation of Conduct Rule 2110.

C. Failure to Respond

Procedural Rule 8210 authorizes NASD, 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..." The rule serves as a "key element" in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power. Richard J. Rouse, 51 S.E.C. 581, 584 (1993). When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted. Joseph P. Hannan, 53 S.E.C. 854, 858-859 (1998). A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110. Stephen J. Gluckman, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 13956, at *22 (July 20, 1999). We find that a preponderance of the evidence establishes that Sahai received NASD's requests for information and that he did not fully comply with them.

Sahai maintained that he had not forged the documents in question, but that his administrative staff may have done so. Therefore, the inquiry into the names and whereabouts of Sahai's former employees was a pivotal part of NASD's investigation to determine who committed the alleged forgeries at issue in this matter. Sahai's responses to this inquiry were varied, evasive, and incomplete. In February 2001, in his investigative testimony, Sahai committed to search for the information regarding his former employees. At that time, he did not mention a computerized address book or a computer "crash." Instead, he volunteered to check with his accountant and review payroll records. Two months and four written requests later, in a letter from counsel dated April 25, 2001, Sahai, for the first time, stated that he did not keep employee records, other than in a computer address book program that had "crashed" during the previous year. Sahai also provided the purported name and address for one former employee - Haas - in response to NASD's written requests dated March 19 and April 23, 2001. Yet he failed completely to respond to NASD's requests for information dated April 27 and May 14, 2001 concerning the source for the address provided for Haas,⁶ and Social Security numbers, payroll records, sources of payment, and employment applications for the other two former employees.

Sahai also argues that his office manager, Dawn Iorio ("Iorio"), corroborated his testimony about the computer "crash" in 2000 that prevented him from locating information on the former employees. The record shows, however, that Iorio was not able to identify the precise time frame during which the computer "crash" occurred, and that she thought it might have happened in early 2001.⁷ Moreover, Iorio testified that she

⁶ As we noted earlier, NASD staff was unable to locate Haas at this address.

⁷ NASD staff's first written request to Sahai to produce information was dated February 15, 2001. Thus, it is not clear whether the alleged computer "crash" occurred before or after the beginning of NASD's investigation.

recreated parts of the lost computer data base from paper files that contained client information. She did not know, however, if the paper files contained information about former employees. She also testified that when she began her employment with Sahai, she completed a W-4 tax form and sent it to Sahai's accountant via facsimile. Iorio testified that she had a copy of her W-4 form and that the information from that form had not been loaded into the computer. Iorio also confirmed that most of the information that was maintained in the computer also was maintained in paper files in the office. Accordingly, Sahai is incorrect that Iorio's testimony showed that he was unable to respond to NASD's requests for information.

Sahai also argues that he testified at length during his investigative testimony, and that he responded "to the best of his ability" to the inquiries about his former employees. The record demonstrates, however, that Sahai did not respond at all to NASD's requests on April 27 and May 14, 2001 for him to provide the source of the information about Patrick Haas' address, and the other requested information.⁸ Both the April 27 and the May 14, 2001 NASD requests warned Sahai that he could be subjected to disciplinary action if he failed to respond fully. Nonetheless, Sahai failed to provide any further information to NASD staff in response to the requests and did not provide a written or oral explanation as to why he could not respond. Accordingly, we find that Sahai violated Procedural Rule 8210 by failing to respond to NASD's requests for information.

V. Sanctions

The Hearing Panel imposed a unitary sanction for all of the violations it found in this matter and barred Sahai from association with any member firm in any capacity. We disagree with the Hearing Panel's imposition of a unitary sanction and we hereby modify the sanctions imposed.

SEC case law and NASD practice "suggest that sanctions [should] generally be assessed per cause." See Dep't. of Enforcement v. Respondent Firm 1, Complaint No. C8A990071, 2001 NASD Discip. LEXIS 6, at *30 (NAC Apr. 19, 2001). When a violation is attributable to a common underlying cause, however, a unitary sanction may be proper. See id. at *30-31. In Respondent Firm 1, we imposed a unitary sanction because the allegations of the complaint were attributable to a single cause – a firm's failure to record legal and regulatory liabilities. See id. The findings in Respondent No. 1 included: (1) a violation of the net capital rule; (2) a violation of SEC Rule 17a-3 and Conduct Rule 3110(a) by preparing inaccurate trial balances and net capital computations; and (3) a violation of SEC Rule 17a-5 by filing a FOCUS report that

⁸ Sahai states that he believed he had already provided the requested information. A registered representative has an obligation, however, to respond to an NASD request even if his response is a statement that he believes he has already provided NASD with the information that it had requested. Ashton Noshir Gowadia, 53 S.E.C. 786, 790 (1998).

inaccurately stated the firm's net capital. See id. at *6-7. In sum, all three violations resulted from the firm's inaccurate net capital computation.

To the contrary, the forgery violations, the unauthorized transaction violation, and the failure to respond violations in this case are not attributable to a common underlying cause. Further, each allegation is subject to a different set of considerations under a separate guideline within the NASD Sanction Guidelines ("Guidelines"). We therefore impose sanctions in this matter per cause.

The Guideline for forgery recommends a fine of \$5,000 to \$100,000 and, in cases in which mitigating factors exist, a suspension for up to two years. In egregious cases, the Guideline recommends consideration of a bar. The principal considerations in determining sanctions are: (1) the nature of the documents forged; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority to make a writing on behalf of another.⁹ We find that the forgeries at issue here were egregious. The forgeries consisted of two customers' signatures on five documents that were necessary to effect each of the transactions at issue. Further, there is no question that MC and SI did not authorize Sahai, or anyone in his office, to affix their purported signatures to any documents. Thus, there is no evidence that Sahai had a good-faith, but mistaken, belief that MC or SI had conferred express or implied authority on anyone to affix their signatures to documents on their behalf. Accordingly, we find that a bar in all capacities is appropriate for the forgery violation.

For unauthorized trading violations, the Guideline recommends that the adjudicator should suspend the individual respondent in any and/or all capacities for 10 business days to one year, and in egregious cases, the adjudicator should consider a longer suspension (of up to two years) or a bar. In addition, the Guideline recommends imposing a fine of \$5,000 to \$75,000.¹⁰ In Daniel S. Helen, Complaint No. C3A970031, 1999 NASD Discip. LEXIS 22 (NAC June 15, 1999), the NAC defined three categories of egregious unauthorized trading: (1) "quantitatively egregious" unauthorized trading, which is characterized by a large number of unauthorized transactions; (2) unauthorized trading that is accompanied by aggravating misconduct; and (3) "qualitatively egregious" trading, which is determined by the strength of the evidence that the trades were unauthorized and the evidence relating to the respondent's motives. We find none of those factors present here to merit a finding of an egregious unauthorized transaction. In addition, we note that there is no evidence to indicate that the customers suffered losses, or that Sahai reaped any material gain from the alleged misconduct. Therefore, we impose the minimum \$5,000 fine for this violation, and no suspension.

For failure to respond violations, the Guideline suggests that, "If the individual did not respond in any manner, a bar is standard. Where mitigation exists, or the person

⁹ See NASD Sanction Guidelines (2001 ed.) at 43

¹⁰ See NASD Sanction Guidelines (2001 ed.) at 102

did not respond timely, consider suspending the individual in any or all capacities for up to two years." The Guideline also suggests a fine of \$25,000 to \$50,000 for failure to respond violations, a fine of \$10,000 to \$25,000 for failure to respond completely, and a fine of \$2,500 to \$25,000 for failure to respond timely.¹¹

The record shows that, despite multiple inquiries, Sahai failed to respond to staff requests for documents and information seeking, among other things, basic information regarding the identity of his own former employees. The identity and location of those former employees were of material significance to NASD staff investigating the forgeries, because, rather than accept responsibility for these forgeries, Sahai instead attempted to shift the responsibility for these forgeries to his purported former employees. The incomplete information that Sahai ultimately produced came only after numerous requests from the staff. Sahai supplied the names of Haas, Marra and Patel, and he also gave an address for Haas. He did not, however, provide any response to NASD's April 27 and May 14, 2001 requests for information regarding the source of his knowledge about Haas' address, payroll records for the former employees, or an explanation of how those employees were paid. The information about the source of the address that Sahai supplied for Haas was clearly within Sahai's knowledge, and the record also shows that he did not make a serious effort to provide payroll records for his former employees or to explain how those employees were paid.

Sahai's failure to supply this information was not adequately explained by his references to a computer "crash." In this regard, we look to Principle No. 12 under the Principal Considerations in Determining Sanctions in the NASD Sanction Guidelines. Principle No. 12 inquires as to whether the respondent provided substantial assistance to NASD in its investigation of the underlying misconduct, or whether the respondent attempted to delay NASD's investigation, conceal information, or provide inaccurate or misleading testimony or documentary information. We conclude that Sahai's failure to cooperate with NASD did impede its investigation of the allegations about forgery because Sahai testified that his administrative staff might have been responsible for the forgeries. NASD staff was unable to obtain the necessary information from Sahai about those employees in order to contact them. Accordingly, we find a substantial aggravating circumstance in this case. Sahai failed to respond in any manner to two NASD requests and the circumstances under which he failed to respond were aggravating. We impose the standard sanction of a bar in all capacities for this violation.

¹¹ See NASD Sanction Guidelines (2001 ed.) at 39

VI. Conclusion

We affirm the Hearing Panel's dismissal of the allegations regarding outside business activities. We also affirm the Hearing Panel's findings that Sahai caused the signatures of two customers to be forged on documents, engaged in one unauthorized transaction, and failed to respond to NASD requests for information. For the unauthorized transaction violation, we find that a \$5,000 fine is appropriate. For the failure to respond violation, we impose a bar in all capacities, and for the forgery violation we impose a separate bar in all capacities. Due to the imposition of the bars, we decline to impose the fine. Sahai is also assessed \$3,590.75 in costs for the Hearing Panel proceeding, and \$1,534.30 in costs for this appeal proceeding. The bars will be effective immediately upon the issuance of this decision.¹²

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President
and Corporate Secretary

¹² We also have considered and reject without discussion all other arguments advanced by the parties.

Pursuant to NASD Procedural Rule 8320, 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.