

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: March 2, 2006

**On remand from the Securities and Exchange Commission for reconsideration of sanctions. Held, sanctions affirmed.**

**APPEARANCES**

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

For the Respondent: Pro Se

**DECISION**

**I. Background**

This matter is before us on remand from the Securities and Exchange Commission. In a National Adjudicatory Council (“NAC”) decision dated August 12, 2004, we found that Rooney A. Sahai (“Sahai”) caused the signatures of two customers to be forged on documents, engaged in an unauthorized transaction, and failed to fully and promptly respond to information requests, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210. We imposed a bar in all capacities for the forgery violation and a second bar in all capacities for the failure to respond violation. We also determined that a \$5,000 fine for the unauthorized transaction violation would be appropriate, but we declined to impose the fine due to the imposition of the bars.

Sahai appealed the NAC decision to the Commission. On appeal, the Commission sustained the NAC's findings that Sahai failed to respond timely and fully to NASD's requests for information and that Sahai executed an unauthorized transaction in a customer's account. The Commission also found that there was insufficient evidence to support the NAC's finding that Sahai had forged, or caused to be forged, the signatures of two customers on five documents. The Commission remanded the matter to the NAC to consider appropriate sanctions in light of its opinion. Upon remand, we affirm the bar for Sahai's failure to respond to requests for information and the \$5,000 fine for the unauthorized transaction violation. In light of the bar, however, we decline to impose the fine.

## **II. Procedural History**

NASD's Department of Enforcement ("Enforcement") filed a complaint on April 12, 2002, alleging that Sahai: forged, or caused to be forged, the signatures of two customers on five documents; effected one unauthorized transaction; engaged in outside business activities without prompt written notification to his employer; and failed to respond to Enforcement's requests for information. Sahai filed an answer to the complaint and requested a hearing, which was held on January 16 and 17, 2003. On June 23, 2003, the Hearing Panel issued a decision finding that Sahai had engaged in the misconduct alleged in the complaint except for the alleged outside business activities violation.

Sahai appealed the Hearing Panel decision to the NAC. On August 12, 2004, we issued a decision affirming the findings of the Hearing Panel, but modifying the sanctions.<sup>1</sup> Sahai sought review of this decision before the Commission, and on April 15, 2005, the Commission issued a decision sustaining the findings of liability for the unauthorized transaction and failure to respond violations, but overturning the findings of forgery. The Commission remanded the matter to NASD to consider appropriate sanctions in light of its opinion.

## **III. Facts**

The Commission sustained the findings that Sahai engaged in one unauthorized transaction on behalf of his customer, SI, and that he failed to respond to certain requests for information from Enforcement. The following facts are pertinent to these findings and to the consideration of appropriate sanctions for these violations.

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<sup>1</sup> The Hearing Panel imposed a unitary sanction of a bar in all capacities for all four of the violations it found. We modified the sanctions by imposing a bar for the forgery violations and a separate bar for the failure to respond violation, and determining that a \$5,000 fine for the unauthorized transaction violation was appropriate. Due to the imposition of the bars, however, we declined to impose the fine.

A. Unauthorized Transaction

During the time of the alleged misconduct, Sahai was registered as an investment company products/variable contracts representative with The Key Group, Inc. (“Key Group”). In late 1999, SI was employed as an office manager by another of Sahai’s customers, MC. SI learned that her former employer had retired and that he wanted to close an IRA account that he had established for SI and other employees. She asked MC to recommend a person who could assist her with this transaction, and 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 Advisors Fund (“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.

In January 2000, SI received a copy of a letter from American Skandia, dated January 18, 2000, which was addressed to Sahai’s attention. The letter stated that there was no signature on SI’s application and 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. SI therefore called American Skandia to inquire about the status of her December 1999 Mutual Fund Application. SI testified that American Skandia informed her that she had actually purchased a variable annuity, and not a mutual fund, in her IRA rollover account.<sup>2</sup>

The record shows that Sahai provided varying responses to questions about why he purchased a variable annuity for SI. 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 earlier investigative testimony, Sahai stated that he had purchased a mutual fund for SI. 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” and a “clear error” resulting from a rush to comply with SI’s wish to reinvest the funds before year-end 1999. In response to questioning at the hearing, Sahai was unable to point to any steps that he had taken to correct this alleged mistake.

The Hearing Panel credited SI’s testimony that she had never authorized Sahai to purchase the variable annuity for her. We upheld the Hearing Panel’s credibility determination and found that Sahai had engaged in an unauthorized transaction.

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<sup>2</sup> Following its review of the matter, American Skandia offered to rescind the variable annuity purchase with no loss of principal, and SI accepted the offer.

B. Failure to Respond to Requests for Information

During its investigation of this matter, Enforcement staff conducted an on-the-record interview of Sahai and questioned him about the alleged forgeries of his customers' signatures. Sahai testified that, if any documents had been forged, they would have been "forged by one of his administrative personnel."<sup>3</sup>

Enforcement staff therefore determined that it was necessary to question former employees of Sahai to determine if they had forged the documents, as Sahai had indicated in his on-the-record testimony, or if they knew who might have forged them. To that end, Enforcement 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, Enforcement staff sent Sahai a written request, pursuant to Procedural Rule 8210, seeking the names and addresses of those former employees by March 1, 2001. At the request of Sahai's counsel, Enforcement staff extended the response date from March 1 to March 16, 2001. Sahai failed to respond by the extended deadline to the request for information.

On March 19, 2001, Enforcement staff sent Sahai a second written request, pursuant to Procedural Rule 8210, again seeking, by March 30, 2001, the names and addresses of the former employees who had worked for him while he was registered with Key Group. On March 26, 2001, through counsel, Sahai responded incompletely to the request by providing the names of three of his former employees, Patrick Haas ("Haas"), Deepa Patel ("Patel"), and Chris Marra ("Marra"), 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. Counsel also objected to Enforcement staff's request for documents as "irrelevant and unduly burdensome."

On March 29, 2001, Enforcement staff sent a third written request to Sahai, pursuant to Procedural Rule 8210, stating that Enforcement had received only a partial response from Sahai to its prior requests and again seeking the addresses of the former employees. The March 29 request also informed Sahai that he had an unconditional obligation to respond to NASD's requests and that he could not unilaterally determine what information requested would be material to Enforcement's investigation. 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

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<sup>3</sup> Sahai's counsel also represented during Sahai's investigative testimony that Sahai's office staff may have been responsible for the forged signatures.

found, Sahai would produce them. The response also stated that “[u]ntil that time the response tendered is complete.” The April 3 response did not include the requested addresses of Sahai’s former employees. On April 18, 2001, Sahai’s counsel sent an additional response, stating that Sahai “is seeking that his former accountant voluntarily produce [the addresses and possibly phone numbers of the employees] from the payroll records.” Counsel stated that he would forward to Enforcement staff any information that Sahai obtained from his accountant. Enforcement staff never received any information from Sahai about his accountant or the information requested about the three former employees.

On April 23, 2001, Enforcement 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 Haas in Ridgefield, New Jersey. Counsel for Sahai asserted, however, that Sahai had not been able to locate addresses for the remaining two former employees, Marra and Patel, who “were temporary employees for whom records were not kept other than in a computer address book program which crashed sometime in 2000.”

NASD staff investigator Jack Litsky (“Litsky”) testified at the hearing that he was not able to verify the existence of, or locate, Haas. He stated that the family name at the address supplied by Sahai’s counsel was not Haas, and that Enforcement staff could not find a phone number in the vicinity for a Patrick Haas. Litsky testified that he conducted an Internet search for Patel, but could not locate any address under that name in the geographical area. Litsky also testified that Sahai’s April 25, 2001 response was the first time that Sahai had mentioned a computer “crash” that allegedly had destroyed stored employee information. Litsky stated that he concluded after the fourth Rule 8210 request that Sahai was not going to produce addresses for his former employees. Therefore, in an attempt to get information from Sahai that would permit NASD staff to do independent research to obtain addresses for the former employees, Litsky sent another, more specific letter to Sahai. This fifth request, dated April 27, 2001, and sent pursuant to Procedural Rule 8210, requested that Sahai produce: (1) the source from which Sahai had 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 any of the requested information or an explanation of why he could not provide it.

On May 10, 2001, Enforcement staff sent a written request reiterating its April 23 request for the addresses of his former employees. The May 10 request advised Sahai that, if he failed to respond, he could be subject to disciplinary action, and it enclosed a copy of the relevant provision in the NASD Sanction Guidelines (“Guidelines”) for failure to respond violations. The response date for the May 10 request was May 21, 2001. By letter dated May 10, 2001, Sahai’s counsel informed Enforcement staff that Sahai could not locate the remaining addresses for his former employees. Counsel reiterated Haas’s Ridgefield, New Jersey address and the fact that the computer address

book had crashed. Sahai also did not provide the specific information requested in the April 27 request or an explanation of why he could not provide the information.

On May 14, 2001, Enforcement staff sent Sahai a sixth and “final” request to produce, by May 24, 2001, the documents and information regarding the three former employees that it had requested originally in the April 27, 2001 request.<sup>4</sup> Sahai failed to provide any of the requested information or an explanation of why he could not provide the information.

#### **IV. Discussion**

In our August 12, 2004 decision, we determined that it would be appropriate to fine Sahai \$5,000 for the unauthorized transaction violation, but we declined to impose this fine due to the imposition of the bar. We also barred Sahai for his failure to fully and promptly respond to Enforcement’s requests for information. On remand, we have considered the complete record in this matter, in light of the Commission’s April 15, 2005 decision. We have also considered the briefs filed by the parties on remand. We find that the record supports the determination to impose a minimum sanction of a \$5,000 fine for Sahai’s unauthorized transaction violation. We also find that there are a number of aggravating factors associated with Sahai’s misconduct that support the decision to impose a bar for his failure to respond to Enforcement’s requests for information. We impose these sanctions based solely on Sahai’s unauthorized transaction and failure to respond violations, as instructed by the Commission in its April 15, 2005 decision.

##### **A. Unauthorized Transaction**

For unauthorized trading violations, the Guidelines recommend that the adjudicator should suspend the individual respondent in any 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 Guidelines recommend imposing a fine of \$5,000 to \$75,000.<sup>5</sup> In *Dist. Bus. Conduct Comm. v. Hellen*, Complaint No. C3A970031, 1999 NASD Discip. LEXIS 22, at \*15-18 (NAC June 15, 1999), we 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

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<sup>4</sup> Sahai’s partial response letter dated May 10, 2001, apparently “crossed” in the mail with Enforcement staff’s May 10, 2001 request for information. Accordingly, Enforcement staff sent another “final” letter to Sahai on May 14, 2001 to request information that Sahai still had not provided to Enforcement staff.

<sup>5</sup> See Guidelines (2001 ed.) at 102 (Unauthorized Transactions And Failures To Execute Buy And/Or Sell Orders).

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 customer suffered losses or that Sahai reaped any material gain from the alleged misconduct. After considering the relevant principal considerations and general principles, we find that the minimum \$5,000 fine for this violation, and no suspension, is appropriate in these circumstances.

B. Failure to Respond to Requests for Information

Procedural Rule 8210 imposes an unqualified and unequivocal obligation on members and associated persons to cooperate in NASD investigations. When an associated person fails to cooperate fully and promptly with NASD staff requests for documents and information, he undermines NASD's ability to carry out its regulatory responsibilities. *Toni Valentino*, Exchange Act Rel. No. 49255, 2004 SEC LEXIS 330, at \*14 (Feb. 13, 2004); *Joseph G. Chiulli*, 54 S.E.C. 515, 523-24 (2000).

Here, Sahai repeatedly failed to discharge his unqualified and unequivocal obligation under Procedural Rule 8210. Rather than cooperating with Enforcement, Sahai stymied staff's efforts to investigate the apparent forgeries that had occurred in his office. Sahai knowingly and persistently violated Procedural Rule 8210 and deprived Enforcement staff of information that was critical to its investigation. Sahai's conduct threatens the effectiveness of self-regulatory investigations and demands a sanction commensurate with the seriousness of the violation.

For failure to respond violations, the Guidelines suggest that, "[i]f the individual did not respond in any manner, a bar should be standard. Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years."<sup>6</sup> The Guidelines also suggest a range of monetary sanctions.<sup>7</sup>

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<sup>6</sup> See Guidelines (2001 ed.) at 39 (Failure To Respond Or Failure To Respond Truthfully, Completely Or Timely To Requests Made Pursuant To NASD Procedural Rule 8210).

<sup>7</sup> Like all the sanction ranges set forth in the Guidelines, those applicable to Procedural Rule 8210 violations are neither absolute nor mandatory. Rather, the Guidelines state that, "Adjudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case." See Guidelines (2001 ed.) at 5 (General Principles Applicable To All Sanction Determinations, No. 3); see also *John Montelbano*, Exchange Act Rel. No. 47227, 2003 SEC LEXIS 153, at \*50 (Jan. 22, 2003) (stating "appropriate sanctions depend on the particular facts and circumstances of each case, and cannot be determined by comparison with the action taken in other cases").

Applying the foregoing specific guidelines to this matter compels us to bar Sahai. As to Enforcement's last two Rule 8210 requests, dated April 27, 2001, and May 14, 2001, Sahai failed to respond in any manner. Under the specific guideline for Rule 8210 violations, Sahai should be barred on that basis alone.

In addition to Sahai's failure to respond in any manner to Enforcement's last two Rule 8210 requests, the egregious character of Sahai's conduct with respect to all of Enforcement's requests warrants the imposition of a bar. The Guidelines list two principal considerations for cases involving a failure to respond: (1) the nature of the information requested; and (2) whether the requested information has been provided and, if so, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response.<sup>8</sup> We also look for guidance to the Principal Considerations in Determining Sanctions in the Guidelines. Principal Consideration Number 12 instructs us to inquire 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.<sup>9</sup> We find that these considerations support the imposition of a bar on Sahai.

With regard to the first principal consideration, the requested information about Sahai's former employees was crucial to Enforcement's investigation into Sahai's alleged forgeries of customer names. The identity and location of those former employees were of material significance to Enforcement staff investigating the forgeries because Sahai had raised the possibility that these employees were responsible for the forgeries. Yet the record shows that, despite multiple inquiries, Sahai failed to respond to Enforcement staff requests for documents and information seeking, among other things, basic information regarding the identity of his own former employees.

Secondly, Sahai was dilatory in responding to Enforcement's requests when he did reply, and his persistent failure to comply with requests forced Enforcement staff to repeatedly restate its requests for the same information. The incomplete information that Sahai ultimately produced came only after numerous requests from the staff. Although Sahai had indicated in his investigative testimony that any forgery that may have occurred would have been the fault of his former employees, Sahai claimed that he could not recall their names. When faced with a subsequent Rule 8210 request to provide more information, Sahai supplied the names of Haas, Marra, and Patel, but gave no contact information for them. When pressed by another Rule 8210 request, Sahai provided an address for Haas, but Enforcement staff was unable to locate any such person at that

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<sup>8</sup> See Guidelines at 39.

<sup>9</sup> See Guidelines (2001 ed.) at 10 (Principal Considerations In Determining Sanctions, No. 10).



address. When Enforcement staff again pressed for more information and tailored its questions in an attempt to obtain information to conduct its own search for Sahai's former employees, Sahai stopped responding to staff's requests altogether. He did not provide any response to NASD's April 27 and May 14, 2001 requests for information regarding the source of his knowledge about Haas's 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.

There are no mitigating factors here that warrant a sanction milder than a bar. Sahai suggests that mitigation is present because he appeared for testimony before Enforcement staff and he provided certain information in response to Rule 8210 requests.<sup>10</sup> This is not, however, mitigating. We do not find Sahai's dilatory and incomplete responses to the succession of Rule 8210 requests from Enforcement staff to be mitigating. Nor do we find his compliance with a mandatory request for his testimony to be mitigating. Sahai's selective responses do not mitigate his misconduct as "prompt compliance with some requests for information does not excuse dilatory compliance with other requests." *Robert Fitzpatrick*, Exchange Act Rel. No. 44956, 2001 SEC LEXIS 2185, at \*24-25 (Oct. 19, 2001); *see also Barry C. Wilson*, 52 S.E.C. 1070, 1075 (1996) (rejecting argument that respondent's incomplete responses were mitigating for purposes of sanctions and finding that members and associated persons must cooperate "fully" in providing requested information); *Dep't of Enforcement v. Bello*, Complaint No. CAF000030, 2002 NASD Discip. LEXIS 10, at \*17 (NAC June 3, 2002) (rejecting Hearing Panel's determination that respondent's Rule 8210 violation was mitigated by his belated production of documents following numerous requests and regulatory pressure from Enforcement).

In sum, Sahai engaged in dilatory measures over an approximately four-month period by continuously failing to provide the information about his former employees requested by Enforcement staff. Sahai's failure to cooperate with Enforcement staff

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<sup>10</sup> We also reject Sahai's argument that a bar is excessive for his violations in comparison to allegedly similar cases. Each NAC decision is based on the facts and circumstances of the specific case before it. Sahai's failure to respond violation and the quality of his testimony at the hearing are different from other disciplinary cases. The Commission has firmly established "that the appropriate remedial action depends on the facts and circumstances of each particular case, and cannot be precisely determined by comparison with action taken in other cases." *Pacific On-Line Trading & Secs., Inc.*, Exchange Act Rel. No. 48473, 2003 SEC LEXIS 2164, at \*20 (Sept. 10, 2003); *see Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973). Here, we conclude that, based on the totality of facts, Sahai should not be permitted to work in the securities business. *See Halpert & Co.*, 50 S.E.C. 420, 422 (1990).

substantially impeded its investigation into potentially serious misconduct involving forgeries of customers' signatures. We find that it is necessary to impose a bar in all capacities on Sahai for this serious violation to protect the integrity of NASD's investigative process and its role in protecting the investing public.

**V. Conclusion**

Accordingly, 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. Due to the imposition of the bar, 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 the appeal proceeding before the NAC. The bar will be effective immediately upon the issuance of this decision.<sup>11</sup>

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney, Senior Vice President  
and Corporate Secretary

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<sup>11</sup> We also have considered and reject without discussion all other arguments advanced by the parties.