

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

Department of Enforcement,

Complainant,

vs.

Charles J. Cuzzo, Jr.

Verona, NJ,

Respondent.

DECISION

Complaint No. C9B050011

Dated: February 27, 2007

Registered representative inserted false dates on firm documents and included a false statement on a firm document. Held, findings of violations and sanctions modified.

Appearances

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

For the Respondent: Kevin Conway, Esq., Conway & Conway

Opinion

The National Adjudicatory Council (“NAC”) Review Subcommittee called this matter to review the sanctions imposed in a November 29, 2005 Hearing Panel decision. The Hearing Panel found that Charles J. Cuzzo, Jr. (“Cuzzo”) participated in a scheme to circumvent Regulation No. 60 (“Regulation 60”), 11 NYCRR § 51 (2006), a New York state insurance law relevant to annuity replacement. The Hearing Panel found that Cuzzo had falsified dates and information on Regulation 60 forms, in violation of NASD Conduct Rule 2110 and NASD IM-2310-2, and that he had forged a customer’s initials in three places on a Regulation 60 form, in violation of NASD Conduct Rule 2110. We affirm the Hearing Panel’s finding that Cuzzo falsified firm records by inserting false dates on Regulation 60 forms. We find that Cuzzo’s signing of a customer’s initials onto the document constitutes a false statement and, therefore, a falsification of firm records, in violation of Conduct Rule 2110. We find that Cuzzo’s

placement of the customer's initials on a Regulation 60 form also violated IM-2310-2's requirement to deal fairly with the public, as alleged in the complaint.

The Hearing Panel imposed the following sanctions against Cuzzo: a \$5,000 fine and a one-year suspension from association in any capacity with any member firm. After a thorough review of the record, including the oral and written arguments presented by the parties in this proceeding, we affirm the sanctions imposed by the Hearing Panel and add the requirement that Cuzzo requalify by examination as a general securities representative before re-entering the industry.

I. Background

In September 1998, while still in college, Cuzzo began working in the securities industry as a broker's assistant with an NASD member firm. He graduated from college in October 1999, and continued working at the firm until January 2000, when he became associated with former NASD member firm Prudential Investment Management Services, LLC ("PIMS" or the "Firm"). Cuzzo was employed as a clerk on PIMS's "wholesale desk" in PIMS's Newark, New Jersey office. In that capacity he provided clerical support to the sales personnel. In July 2000, Cuzzo became registered as a general securities representative while still associated with PIMS. In August 2000, Cuzzo began working half of the day on the wholesale desk and the other half of the day on the "annuity sales desk," answering telephone calls and completing annuity replacement paperwork. In January 2001, Cuzzo was assigned to work on PIMS's annuity sales desk full time.

PIMS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Cuzzo's registration with the Firm on December 13, 2002. The Form U5 stated that Cuzzo was permitted to resign following the Firm's investigation of employee adherence to procedures for annuity replacements under Regulation 60. Cuzzo is not presently working in the securities industry.

II. Facts

A. Regulation 60

Regulation 60 was implemented by the New York State Insurance Department on November 10, 1998, to regulate the "acts and practices" of licensees, including insurers, agents, and brokers, with respect to the replacement of life insurance policies and annuity contracts and to protect the public interest by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts. 11 NYCRR § 51.1(a) (2006). The minimum standards of conduct as set forth in Regulation 60 are satisfied "by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his or her own best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations . . . ; and by precluding unfair methods of competition and unfair practices." 11 NYCRR § 51.1(b) (2006).

Regulation 60 requires documentation that an agent has had two separate meetings with a customer before the agent completes a replacement annuity sale. The first meeting is documented by having the customer sign two forms (“Phase I”). The first form advises the customer that a replacement under Regulation 60 has occurred or is likely to occur if the customer answers, “Yes,” to any of the questions on the form. One such question asks the customer whether the existing coverage has been or is likely to be “lapsed, surrendered, partially surrendered, forfeited, assigned to the insurer replacing the life insurance policy or annuity contract, or otherwise terminated” as a result of the customer’s purchase of a new annuity contract. The second form authorizes the insurer selling the replacement annuity to collect information about the customer’s existing annuity from the insurer of the existing annuity contract. Prior to the second meeting with the customer, the agent is required to obtain information about the existing annuity from the insurer of the existing annuity contract and to prepare a “Disclosure Statement” that includes a side-by-side comparison of the death benefits and surrender values of any existing and proposed replacement annuities.

In the second meeting with the customer the agent is required to give the customer a document entitled, “Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” (“Notice Document”) and a Disclosure Statement (“Phase II”). The Notice Document advises customers that the Disclosure Statement includes a comparison of the existing and proposed annuity contracts that sets forth the advantages and disadvantages of the transaction, and that they should carefully study the Disclosure Statement until they understand fully the effect of the proposed transaction.

The Notice Document also includes a number of warnings relevant to a customer’s decision to replace an existing annuity contract. For example, it states that: (1) “[a]s a general rule, it is often not advantageous to drop or change existing coverage in favor of new coverage, whether issued by the same or a different insurance company”; (2) customers may be able to effect the desired changes more advantageously with the company or agent from whom they bought the existing life insurance policies or annuity contracts; and (3) “[a]n existing life insurance policy or annuity contract often has more favorable provisions than a new life insurance policy or annuity contract in areas such as loan interest rate, settlement options, disability benefits and tax treatment.” Moreover, the Notice Document informs customers that they have a right, within 60 days from the date of delivery of a new annuity contract, to return the new annuity contract to the insurer and receive an unconditional full refund, and that they “may” have the right to reinstate or restore any annuity contracts that were surrendered.

The second meeting is documented by having the customer sign the Notice Document and the Disclosure Statement. The customer’s signature acknowledges that he or she has received and read the documents.

B. PIMS's Violations of Regulation 60

In mid-2002, Prudential Insurance Company of America ("Prudential Insurance"), PIMS, and Prudential Securities, Inc. ("PSI") (n/k/a Prudential Equity Group, Inc.)¹ commenced an investigation of the matter at issue following the discovery by a PIMS employee that PIMS's Regulation 60 paperwork included erroneous dates, "Wite-Out," and different colored inks. PIMS subsequently reported the detection of these irregularities to NASD and other regulators.

On January 29, 2004, PIMS and PSI entered into a Letter of Acceptance, Waiver and Consent ("AWC") with NASD's Department of Enforcement ("Enforcement"), in which PIMS and PSI agreed to pay a fine of \$2 million and to make remediation payments of at least \$9.5 million to affected customers related to violations of Regulation 60. PIMS and PSI agreed to findings that, during the period from November 1998 through June 2002, they: (1) effected annuity replacement sales in contravention of Regulation 60; (2) failed to supervise adequately the activities of their associated persons relating to annuity replacement sales under Regulation 60 and to prepare and maintain accurate records of annuity replacement sales subject to Regulation 60; and (3) prepared incorrect annuity performance illustrations and in some cases used those illustrations in the sale of annuities.

The AWC included the following findings of fact that are relevant to this case. PIMS maintained an annuity sales desk that employed so-called "wholesalers" who provided operational support and promoted the sale by PSI's registered representatives of proprietary annuity contracts issued by Prudential Insurance. Instead of meeting with customers on two separate occasions, as mandated by Regulation 60, PIMS and PSI employees routinely compressed the two-step process into one step by having customers sign but not date the Phase I and II documents during one meeting. Subsequently, PIMS employees, and in some cases PSI employees, would insert dates in order to create an appearance that the required two-meeting procedure had been followed and that there had been an appropriate interval between the two steps during which information had been obtained from the insurer that issued the existing annuity contract to develop the required side-by-side comparison for inclusion in the customer Disclosure Statement.

C. Cuozzo's Role in Processing Regulation 60 Applications

Jack Litsky ("Litsky"), a Special Investigator with Enforcement, testified that NASD commenced an investigation after PIMS reported to NASD irregularities it had discovered with respect to Regulation 60 paperwork prepared by PIMS employees. Litsky testified that he conducted an on-the-record interview of Cuozzo after evidence from NASD's investigation showed that Cuozzo, who was an internal wholesaler, likely was involved in the alteration of Regulation 60 documents. Cuozzo testified in his on-

¹ PIMS and PSI were wholly-owned affiliates of Prudential Insurance during the relevant period and both were NASD member firms.

the-record interview that he began completing Regulation 60 documents in January 2001, while employed on the annuity sales desk. Cuzzo stated that Karen McGlynn (“McGlynn”),² another internal wholesaler who worked on the annuity desk, and Karim Amiry (“Amiry”),³ the annuity desk manager, instructed him to transfer client information from the client statements to the Regulation 60 documents and to send the documents to the financial advisors to obtain customers’ signatures on the relevant Regulation 60 forms. Cuzzo testified that the financial advisors would return the Regulation 60 documents to him for completion after they obtained the customers’ signatures.

Cuzzo and McGlynn admitted inserting dates onto Regulation 60 forms that they received back from the financial advisors after the financial advisors had met with the customers. McGlynn testified that she added dates to Regulation 60 forms at the request of the financial advisors. Cuzzo testified that he began inserting dates onto Regulation 60 forms sometime around November 2001, at the request of JZ, who was an external wholesaler Cuzzo began working with in October 2001. Cuzzo stated that JZ advised him that he needed Cuzzo to insert dates onto the Regulation 60 forms because of past problems with brokers “losing paperwork.” Cuzzo stated that he dated the Phase I documents that the customers had signed with the date on which the financial advisor would call him to discuss a particular customer annuity replacement application. Cuzzo testified that he would then send the Phase I documents to the PIMS Fort Washington, Pennsylvania (“Fort Washington”) office for processing. Cuzzo would insert the dates onto the Phase II Regulation 60 documents after receiving an email from the Fort Washington office “alerting [him] and the financial advisor that the second set of paperwork would have to go in at that time” When Cuzzo was asked during his on-the-record interview about his understanding of the basis for inserting dates onto the Regulation 60 documents, he stated that, “[f]rom what [JZ] told me, it would make it easier for the brokers.”

Cuzzo and McGlynn testified that their supervisor – Amiry – was aware that they were inserting dates onto Regulation 60 documents because they had discussed the

² McGlynn entered into an AWC with NASD on May 13, 2004, in which she consented to the imposition of a bar from association with any NASD member in any capacity based on findings that she participated in a process to circumvent Regulation 60, including dating and altering dates on Regulation 60 documents to give the impression that financial advisors had met with customers on two occasions, when, in fact, only one meeting had occurred.

³ NASD accepted an AWC from Amiry on August 2, 2004, in which Amiry consented to sanctions of a bar from association with any member firm in a principal and supervisory capacity and a fine of \$5,000. The sanctions were based on findings that Amiry, as the manager of the annuity sales desk, “failed to adequately and properly supervise the sales desk personnel to assure compliance with New York State Insurance Regulation 60 and applicable NASD rules.”

matter with him on separate occasions. Cuozzo testified that he advised Amiry that JZ had instructed him to fill in dates on the Regulation 60 forms after he received the documents back from JZ and before he forwarded the paperwork to the Fort Washington Office for processing. When Cuozzo was questioned at the hearing about Amiry's response, Cuozzo stated that Amiry told him "to do what [JZ] told me to do" McGlynn testified that she told Amiry that employees on the sales desk were inserting dates onto the Regulation 60 documents, and that Amiry told her that he would try to change the process.⁴ Amiry denied in his on-the-record interview having any definitive knowledge that his staff was inserting dates onto the Regulation 60 forms. Amiry nevertheless testified that, because PSI and the financial advisors had been complaining that the Regulation 60 paperwork was too complicated, "we started having Charles [Cuozzo], trying [sic] to make it easy for [the financial advisors] You know, the paperwork is partially filled out for them" Further, in an email dated October 4, 2000, Amiry advised the annuities sales force, including Cuozzo and McGlynn, that "[the annuity sales desk] will supply [the financial advisors] with all of the proper [Regulation 60] paperwork completed with as much info as possible. All the FA [Financial Advisor] will basically have to do is get the signatures"

Cuozzo and McGlynn both testified that they did not understand until they were interviewed by PIMS investigators that their insertion of dates onto Regulation 60 documents that customers had signed previously constituted a violation of Regulation 60. Cuozzo and McGlynn also testified that they received no formal training regarding the purpose of, or the processing procedures under, Regulation 60, and there is nothing in the record to indicate otherwise.

D. Cuozzo Inserted Customer JS's Initials on a Regulation 60 Application

Cuozzo was questioned during his on-the-record interview about whether the handwritten initials "JS" that appeared on Part D of the Disclosure Statement for customer JS were in Cuozzo's own handwriting. After Enforcement staff showed Cuozzo a copy of the document, he asserted that he had filled in responses to the questions on the document based on information that financial advisor Peter Green ("Green") had provided to him for that purpose.⁵ With respect to the handwritten initials,

⁴ McGlynn testified that there was no question that Amiry knew that annuity desk employees were filling in dates on the Regulation 60 documents.

⁵ Cuozzo included responses to items on Part D of the Disclosure Document. He listed on the form the following reason for recommending the new annuity contract: "[s]tep up death benefit and more investment choices." Cuozzo also listed "no step up death benefit and poor performance," as reasons that the existing annuity contract could not meet the applicant's objectives. In response to instructions on the form to list the advantages of continuing the existing contract, Cuozzo stated on the form that "there would be no charge to the client." The fourth and fifth items included information about the surrender charges.

“JS,” that appeared at the end of the responses to items one, two, and three, however, Cuozzo claimed that the initials did not look like his handwriting.

Towards the end of Cuozzo’s on-the-record interview, Litsky asked Cuozzo to provide Enforcement with 10 handwriting exemplars of the initials “JS.” Cuozzo complied. Afterward, Cuozzo’s attorney told Litsky that, upon reflection, Cuozzo had determined that the initials “JS” that appeared on Part D of the Disclosure Statement were in his handwriting. Cuozzo then testified that although Green, who was the financial advisor on the transaction, wanted the paperwork to be processed, the Fort Washington office “would not let it go through” because items one, two and three had not been completed. When asked why Cuozzo inserted JS’s initials on Part D, Cuozzo responded, “[b]ecause [the Fort Washington office] needed clarification that the client viewed [the responses]” and “[b]ecause [Green] instructed me to.”

Litsky testified that he interviewed financial advisor Green during Enforcement’s investigation and obtained a declaration from him. Green stated in the declaration that the responses to items one, two, and three included on Part D of the Disclosure Statement of JS’s annuity replacement application were not the ones that he had written. Green further stated in his declaration that he had not given Cuozzo or anyone else authority to change his responses or to sign customer JS’s initials.⁶ Litsky testified that approximately two months after he obtained Green’s declaration, Green passed away.

At the Hearing Panel hearing, Enforcement staff asked Cuozzo to comment on the fact that Green denied in his written declaration having given Cuozzo authority to sign JS’s initials. Cuozzo testified that Green was “irate” that customer JS’s application had not been processed because Green would not receive his commission until it had been processed successfully. Cuozzo testified that when he alerted Amiry to the situation, Amiry advised him “to have [Green] . . . go back to the client, [and] get the authorization.” Cuozzo testified that Green then “got the authorization” from JS and instructed Cuozzo to insert JS’s initials onto the document at issue.

E. Cuozzo Signed Financial Advisor LH’s Name to Customer SL’s Annuity Replacement Application

Cuozzo testified that financial advisor LH authorized him to fill in responses on Part D of the Disclosure Statement included in customer SL’s annuity replacement application and to sign LH’s name to the document.⁷ Cuozzo stated that LH instructed him to do so because she was anxious to have the paperwork processed in time to enable her to receive a commission for that month.

⁶ Green’s declaration was signed and it stated that it was true and correct “under penalty of perjury.”

⁷ The responses that Cuozzo included were similar to those that he included on Part D of the Disclosure Document for JS’s Regulation 60 application. *See supra* note 5.

LH denied in an unsworn declaration and in her hearing testimony that she gave Cuozzo or anyone else authority to sign her name on the document. LH also stated that the answers that appeared in items one, two, and three of Part D of the Disclosure Statement for customer SL were not the answers that she originally included on the document. LH testified that although she might have discussed with Cuozzo blanks on the form, she denied having advised Cuozzo that he had her permission to date, sign, or change information on customer SL's annuity replacement form.

III. Complaint and Hearing Panel Decision

Enforcement filed a complaint against Cuozzo on February 9, 2005, alleging that Cuozzo participated in a process to circumvent Regulation 60 that violated NASD Conduct Rule 2110 and IM-2310-2.⁸ The complaint alleged that Cuozzo: (1) falsified dates between November 2001 and January 2002 on approximately 26 Regulation 60 forms pertaining to annuity replacements involving customer RV; (2) dated and/or altered dates on Regulation 60 forms on at least 50 occasions between January 2001 and June 2002; (3) signed the initials of customer JS in three places on a Regulation 60 form in April 2002, without JS's knowledge or consent, after the Firm requested verification that JS had viewed the answers on the form; and (4) signed financial advisor LH's name and inserted answers to various questions on customer SL's annuity replacement form on February 21, 2002, without LH's knowledge or consent. The complaint alleged that these activities violated NASD Conduct Rule 2110 and IM-2310-2.

The Hearing Panel found that the evidence supported the allegation that Cuozzo falsely dated Regulation 60 forms on at least 50 occasions, in violation of Rule 2110 and IM-2310-2. The Hearing Panel concluded that although Cuozzo might not have known he was violating Regulation 60, he knew or should have known that entering dates and other information caused the forms to be inaccurate.⁹ The Hearing Panel also found that Cuozzo forged customer JS's initials on Part D of the Disclosure Statement for JS's annuity replacement application, in violation of NASD Conduct Rule 2110. The Hearing Panel found that although financial advisor Green had given Cuozzo permission to sign JS's initials, Cuozzo had not spoken to JS himself and knew that JS had not seen the responses Cuozzo had included in Part D of the Disclosure Statement. JS's initials were supposed to signify that JS had viewed the responses.

⁸ NASD Conduct Rule 2110 sets forth an ethical standard that requires members to "observe high standards of commercial honor and just and equitable principles of trade." NASD IM-2310-2 requires that members deal fairly with their customers. NASD Rule 115 provides that NASD rules apply to all members and persons associated with a member and that such persons have the same duties and obligations as a member under the rules.

⁹ The Hearing Panel did not address the allegation that Cuozzo also falsely dated 26 Regulation 60 forms involving customer RV. See *infra* note 11 for our findings with respect to that allegation.

The Hearing Panel found Cuozzo not liable with respect to the allegation that, without LH's knowledge or consent, Cuozzo included responses and LH's signature on Part D of the Disclosure Statement contained in customer SL's annuity replacement application. The Hearing Panel credited Cuozzo's assertion that LH had given him permission to sign her name and respond to questions included on Part D of the Disclosure Statement.

IV. Discussion

Cuozzo does not dispute the Hearing Panel's findings that he falsely dated Regulation 60 forms and placed JS's initials on a Regulation 60 form. We have reviewed the applicable legal principles and the evidence relevant to the allegations in the complaint and find that the evidence supports the Hearing Panel's finding that JS entered false dates on Regulation 60 Forms. We modify the Hearing Panel's finding that Cuozzo forged JS's initials on a Regulation 60 form. We find instead that Cuozzo's placement of JS's initials on the document constituted a false statement and, therefore, a falsification of records.

A. Cuozzo Entered False Dates on Regulation 60 Forms

We previously have ruled that inserting false information on annuity applications is a violation of NASD Conduct Rule 2110. *Dep't of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *6 (NAC Dec. 18, 2000) (*citing Dist. Bus. Conduct Comm. v. Bozzi*, Complaint No. C10970003, 1999 NASD Discip. LEXIS 5 (NAC Jan. 13, 1999)). In addition, NASD IM-2310-2 requires that "[s]ales efforts . . . be undertaken only on a basis that can be judged as being within the ethical standards of the Association's Rules, with particular emphasis on the requirement to deal fairly with the public," and advises members that, "fraudulent activities, such as forgery, non-disclosure or misstatement of material facts, manipulations and various deceptions, have been found in violation of Association Rules." IM 2310-2(b)(4)(B).

Cuozzo entered into a stipulation agreement with Enforcement prior to the hearing in which he admitted that, while employed on PIMS's annuity sales desk, he "dated and/or altered dates on Regulation 60 forms on at least 50 occasions." Cuozzo admitted during his on-the-record interview in this matter that he was aware while he was inserting dates onto Regulation 60 forms that there were supposed to be "two phases" and two different dates to correspond to the two phases associated with the Regulation 60 application process. He stated that he did not question his role in placing dates on the applications, however, "because that's what I was being told [to do]."

Cuozzo testified that, although he knew that there were two phases to the Regulation 60 process, it was not until the PIMS investigators interviewed him in August 2002, that he learned that the financial advisors were required to hold two separate meetings with customers who were seeking to replace their annuity contracts, and that the financial advisors, rather than the annuity desk employees, were responsible for

completing the Regulation 60 forms.¹⁰ Given Cuozzo's stipulation and admissions in his on-the-record interview and at the hearing that he included false dates on Regulation 60 forms, it is irrelevant for purposes of determining Cuozzo's liability whether or not he knew that the financial advisors were supposed to hold two separate meetings with the annuity replacement customers. Cuozzo's insertion of false dates on Regulation 60 forms created the appearance that the required two meetings had occurred and that the customers had received the side-by-side comparison of the existing annuity and the proposed replacement annuity. Thus, we find that Cuozzo knowingly entered false dates on at least 50 Regulation 60 documents. Cuozzo's conduct is inconsistent with the high ethical requirements of Conduct Rule 2110 and the principles set forth in IM 2310-2.¹¹

B. Cuozzo Made a False Statement on a Firm Document by Signing JS's Initials

The complaint alleged that Cuozzo signed the initials of customer JS in three places on a Regulation No. 60 form, knowing that JS had not provided or was otherwise unaware of the answers to various questions on Part D of JS's Disclosure Statement. Cuozzo testified that he signed the initials of customer JS on Part D of the Disclosure Statement at Green's direction. Green claimed in his written declaration that someone had changed the answers on the document at issue and that he did not give Cuozzo or anyone else authority to place JS's initials on the document or to change the answers Green had included on the document.

In weighing the evidence, the Hearing Panel found that Cuozzo's in-person testimony was more credible than Green's written declaration.¹² While we accept Cuozzo's testimony as true, we also look to the underlying reason that JS's initials were

¹⁰ Although the Firm's written policies and procedures pertaining to the processing of Regulation 60 documents required financial advisors to have two separate meetings with the customers, Cuozzo and McGlynn testified that they never received a copy of these policies and procedures.

¹¹ The Hearing Panel did not address in its decision the allegation that Cuozzo falsified dates on 26 Regulation 60 forms pertaining to customer RV. We find that there is insufficient evidence to prove this allegation by a preponderance of the evidence.

¹² Hearsay statements such as Green's declaration are admissible in NASD proceedings, but must be evaluated for their probative value and reliability. *See Kevin Lee Otto*, 54 S.E.C. 847, 854 (2000), *aff'd*, *Otto v. SEC*, 253 F.3d 960, 966 (7th Cir. 2001). Although the Hearing Panel's decision did not specifically characterize Green's declaration as hearsay, its analysis shows that, in fact, it assessed the reliability of Green's hearsay statement after considering his possible bias as a witness. The Hearing Panel determined that Cuozzo, who testified live and was cross-examined, was more credible on the points of contention than Green's written declaration.

required on Part D of the Disclosure Document (i.e., to demonstrate that JS had seen and approved of the answers). We find that JS had not seen the answers and that Cuozzo knew this, but nonetheless inserted JS's initials on the document to create the impression of JS's approval.

Cuozzo knew that the Fort Washington office required JS's initials on the document as proof that JS had viewed the answers that Cuozzo had added. Cuozzo admitted at the hearing that he knew when he signed customer JS's initials that JS had not in fact viewed the answers. Cuozzo understood that inserting JS's initials onto the document created the false impression that JS read, understood, and approved of the answers. We find that Cuozzo's actions directly thwarted the reason that the Fort Washington office required the initials in the first place.

Based on these facts, Cuozzo's insertion of JS's initials onto Part D of JS's Disclosure Document constituted a false statement. The NAC finds that making a false statement that resulted in the falsification of Part D of JS's Disclosure Document violates NASD Conduct Rule 2110. *See, e.g., Prout*, 2000 NASD Discip. LEXIS 18, at *6. Our finding of a Rule 2110 violation is based on the same facts as found by the Hearing Panel, but we consider the crux of the violation to be Cuozzo's false statement, which resulted in a falsification of records. Our ruling in this regard is consistent with the complaint, which characterized the violation as falsification of records and forgery.¹³ Although the Hearing Panel found Cuozzo's insertion of JS's initials onto the Disclosure Statement to be forgery, we do not reach this issue. We also find that Cuozzo had proper notice of the allegations because, in accordance with the requirements of NASD Procedural Rule 9212(a), the complaint "specified in reasonable detail the conduct alleged to constitute the violative activity and the rule [that Cuozzo] is alleged . . . to have violated."

The Hearing Panel did not explain why it did not address the allegation included in the complaint that Cuozzo's misconduct also constituted a violation of IM-2310-2. Under IM-2310-2, registered representatives have a "fundamental responsibility for fair dealing" with the public. Cuozzo's insertion of JS's initials on a document that falsely represented that JS had viewed the responses therein contravened this basic requirement. Thus, we find that Cuozzo also violated IM-2310-2.

¹³ While the record is clear that Cuozzo could benefit from his actions through a firm bonus, the record is less clear concerning the amount by which Cuozzo actually benefited or that such bonus served as a motivating factor for his actions. In short, it is not entirely clear from the record why Cuozzo entered JS's initials on the document, other than he was instructed to do so. What is clear, however, is that Cuozzo's actions falsely portrayed to the Fort Washington office that JS had reviewed the Part D answers when Cuozzo knew that not to be the case.

C. The Allegations That Cuzzo Signed LH's Name and Inserted Responses on a Regulation 60 Form Without LH's Permission Are Dismissed

After observing Cuzzo's and LH's demeanors and weighing other relevant considerations, the Hearing Panel found Cuzzo's assertion that LH gave him permission to sign LH's name and fill in responses on Part D of the Disclosure Statement for customer SL's annuity application more credible than LH's denial. The Hearing Panel considered that LH was aware that 13 managers, including her supervisor, had been suspended and eventually terminated for their involvement in circumventing Regulation 60, and that many financial advisors had been suspended. On that basis, the Hearing Panel concluded that LH knew she could jeopardize her career if she admitted giving Cuzzo permission to complete customer SL's annuity replacement form. The Hearing Panel found that, in contrast, Cuzzo had little incentive to alter the form without LH's direction. We find nothing in the record that would cause us to depart from the Hearing Panel's credibility finding. *See Anthony Tricarico*, 51 S.E.C. 457, 460 (1993) (concluding that there was not substantial evidence for overturning the Hearing Panel's credibility finding).

We find that Enforcement did not prove by a preponderance of the evidence that Cuzzo forged LH's signature and entered information onto customer SL's annuity replacement form without LH's permission and therefore dismiss this allegation.

* * * * *

In sum, we find that Cuzzo falsified Firm records by falsifying dates on at least 50 Regulation 60 annuity replacement forms and inserting a false statement on customer JS's Regulation 60 annuity replacement form, in violation of NASD Conduct Rule 2110 and IM-2310-2. We dismiss the allegation that Cuzzo forged financial advisor LH's signature and entered information on a customer's annuity replacement form without LH's permission.

V. Sanctions

The NASD Sanction Guidelines ("Guidelines") for forgery or falsification of records recommend a fine of \$5,000 to \$100,000 and a suspension for up to two years in cases where mitigating factors exist, and a bar in egregious cases.¹⁴ In determining appropriate sanctions, we also are guided by the "General Principles Applicable to All Sanction Determinations" and the "Principal Considerations in Determining Sanctions" included in the Guidelines.¹⁵

¹⁴ NASD Sanction Guidelines 39 (2006) (Forgery and/or Falsification of Records), http://www.nasd.com/web/groups/enforcement/documents/enforcement_nasdw_011038.pdf [hereinafter *Guidelines*].

¹⁵ *Id.* at 1-7.

Based on its findings that Cuozzo entered false dates onto Regulation 60 forms and forged the initials of customer JS, the Hearing Panel fined Cuozzo \$5,000 and suspended him for one year from association with any member firm in any capacity. The Hearing Panel concluded that, although Cuozzo's conduct was a serious breach of NASD's rules, there were mitigating factors that militated against a finding that Cuozzo's misconduct was egregious. Enforcement asserts that on the basis of the Hearing Panel's credibility determinations and findings of fact the Hearing Panel's sanctions are appropriate and substantial enough to deter Cuozzo and others from similar misconduct. Cuozzo contends that there are mitigating factors that warrant a reduction of the sanctions imposed by the Hearing Panel or, alternatively, that the sanctions not be increased.

We have weighed the seriousness of Cuozzo's misconduct against the mitigating factors and other circumstances identified below and determine that it is appropriate to affirm the Hearing Panel's sanctions of a \$5,000 fine and a one-year suspension. In addition, we order that Cuozzo requalify by examination as a general securities representative before re-entering the industry. In light of his misconduct, Cuozzo would benefit from focusing on the rules and regulations that govern the securities industry. We also concur in the Hearing Panel's determination to impose one set of sanctions for the violations because the complaint alleged the misconduct as one cause of action that arose from one single systemic problem.¹⁶

A. Cuozzo's False Dating of and Insertion of JS's Initials on Regulation 60 Forms

The Hearing Panel concluded that Cuozzo's falsification of Firm records did not rise to the level of egregious misconduct because mitigating factors existed. The Hearing Panel found the following facts to be evidence of mitigation: (1) Cuozzo did not attempt to conceal from PIMS's investigators that he dated Regulation 60 forms and added or altered information on the forms; (2) Cuozzo was a recent college graduate with no experience in the securities industry; (3) Cuozzo had inadequate training on the purpose and operation of Regulation 60; and (4) Cuozzo reasonably expected that PIMS's procedures would comply with NASD rules and did not recognize that the process he had been taught for entering dates was improper. While we agree that mitigating factors exist, we find that Cuozzo's misconduct was serious and deserving of significant sanctions.

We find that, without question, Cuozzo's insertion of false dates onto Regulation 60 forms constituted a serious breach of the ethical standards inherent in NASD Conduct Rule 2110 and IM 2310-2. Cuozzo might not have been aware that Regulation 60 required financial advisors to have two meetings with customers and that by inserting

¹⁶ The Guidelines state that the range of monetary sanctions may be applied "in the aggregate" for similar types of violations rather than with respect to each individual violation. *Id.* at 4 (General Principles Applicable to All Sanction Determinations, No. 4).

contrived dates onto Regulation 60 documents, he violated Regulation 60. Nonetheless, as a registered person he should have known that inserting false dates onto customer notification and disclosure documents was inherently improper. Cuozzo's false dating of Regulation 60 documents made it appear as if customers actually had met with their financial advisors when in fact they had not. At the second meeting, customers were supposed to receive important disclosures about potential disadvantages associated with the replacement annuity contracts. Cuozzo's actions also falsely suggested that customers had received a Notice Statement setting forth possible disadvantages of annuity replacements and a Disclosure Statement containing a side-by-side comparison of the death benefits and surrender values between the existing annuity and the proposed replacement annuity. Consequently, customers seeking to replace their annuities did not receive the benefit of the full disclosure required under Regulation 60, and PIMS's ability to police its staff on Regulation 60 compliance was severely undermined. Indeed, the side-by-side comparison that customers did not receive is arguably one of the most significant customer safeguards under Regulation 60.¹⁷ Cuozzo's violation helped to conceal the underlying Regulation 60 violation and potentially injured Firm customers by depriving them of information that they needed to make informed investment decisions.¹⁸

We similarly find that Cuozzo's insertion of JS's signature on Regulation 60 Disclosure Documents was a significant breach of the industry's ethical standards. Cuozzo knew that, by inserting JS's initials onto Disclosure Documents, he was implying to PIMS that JS had seen the answers on the documents. Cuozzo also knew that JS had not seen the documents. By assisting JS's financial advisor (Green) in this deceit, Cuozzo deprived JS of information that would have helped him to make an informed decision about annuity replacement. Cuozzo's understanding that JS had given Green permission to insert his initials onto the document is of no moment because Cuozzo knew that JS had not viewed the documents and he nonetheless inserted JS's initials to suggest falsely that JS had in fact seen them.

We also find that Cuozzo engaged in a pattern of misconduct over an extended period of time.¹⁹ We find that Cuozzo's insertion of false dates on at least 50 Regulation 60 forms constitutes a pattern of misconduct, and we have considered that Cuozzo engaged in the misconduct over an approximate six-month period, from November 2001 (the month in which external wholesaler JZ instructed Cuozzo to start inserting dates on Regulation 60 documents) through April 2002.

¹⁷ The Guideline for forgery and falsification of records instructs adjudicators to consider the nature of the document falsified. *Id.* at 39.

¹⁸ *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 10, 11).

¹⁹ *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

Additionally, we find that Cuozzo's misconduct resulted in the potential for his monetary or other gain.²⁰ Cuozzo admitted that, during the relevant period, he received bonuses totaling approximately \$5,000 for his annuity replacement work, in addition to his base salary of \$45,000.

Like the Hearing Panel, we also find several factors that militate against a finding that Cuozzo's misconduct was egregious.²¹ We find that Cuozzo: (1) did not attempt to conceal his false dating of documents from PIMS investigators; (2) expressly acknowledged that his conduct may have harmed Firm customers; (3) accepted responsibility for his misconduct; and (4) expressed remorse and offered sincere apologies for his actions throughout these proceedings.

Although we do not find that Cuozzo's misconduct was egregious, we find that Cuozzo breached his duty as an associated person to act ethically and in a manner that comports with high standards of commercial honor and just and equitable principles of trade. We also find that Cuozzo failed to use sound judgment by knowingly placing false dates on Regulation 60 documents and inserting JS's initials onto a Regulation 60 form. Cuozzo, however, appears to understand fully that his role in the circumvention of Regulation 60 requirements had a potentially adverse effect on Firm customers. Based on the foregoing, we find that the sanctions imposed by the Hearing Panel are appropriately remedial.

B. Cuozzo's Arguments in Mitigation of Sanctions

On appeal, Cuozzo asserts a number of arguments that he claims warrant reduction of the one-year suspension and \$5,000 fine imposed by the Hearing Panel. We address each in turn.

Cuozzo claims that he was "a naïve, fairly recent college graduate and entry level member of the PIMS sales desk support staff" who received inadequate training regarding the proper procedures for completing Regulation 60 forms. At the time of Cuozzo's misconduct, he was associated with PIMS as a general securities representative. "[N]either a respondent's claimed ignorance of the securities laws, nor a respondent's attempt to shift responsibility for a failure to comply with the securities laws to incompetent supervision, will serve to lessen the sanction imposed." *Dep't of Enforcement v. Grafenauer*, Complaint No. C8A030068, 2005 NASD Discip. LEXIS 29, *15 (May 17, 2005). Furthermore, youth and inexperience do not shield registered

²⁰ *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

²¹ A number of the factors we have identified as evidence of mitigation were not identified by the Hearing Panel. Furthermore, we consider any factors in mitigation listed by the Hearing Panel that we have excluded to not be evidence of mitigation.

representatives from liability²² and we do not consider such factors as evidence of mitigation. We also reject Cuozzo's assertion that widespread Firm noncompliance with the requirements of Regulation 60 should mitigate the sanction imposed. *See Charles E. Kautz*, 52 S.E.C. 730, 733, 736 (1996) (holding that assertions that the falsification of documents was accepted or approved by the firm did not call for mitigation of sanctions).

Cuozzo also argues that we should weigh the fact that he has no prior disciplinary history in determining appropriate sanctions. While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating. *See, e.g., Dep't of Enforcement v. Fergus*, Complaint No. C8A990025, 2001 NASD Discip. LEXIS 3, at *58-59 (NAC May 17, 2001) (holding that the absence of disciplinary history is not considered part of "relevant disciplinary history" under the Guidelines for purposes of reducing sanctions); *Dep't of Enforcement v. Balbirer*, Complaint No. C07980011, 1999 NASD Discip. LEXIS 29, at *10-11 (NAC Oct. 18, 1999) ("We are not compelled to reward a respondent because he has acted in the manner in which he agreed (and was required) to act when entering this industry"). A respondent should not be rewarded because he may have previously acted appropriately as a registered person. Indeed, the courts and the Commission have consistently rejected arguments that a lack of a disciplinary record is a factor mitigating the sanction of a bar in an NASD disciplinary proceeding. *See Rooms v. S.E.C.*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (holding that "lack of a disciplinary history is not a mitigating factor"); *Daniel D. Manoff*, 55 S.E.C. 1155, 1165-66 & n.15 (2002) (lack of disciplinary record does not mitigate sanction of a bar) (citing *Henry E. Vail*, 52 S.E.C. 339, 342 (1995)).

Additionally, Cuozzo contends that the sanctions in this matter should not be increased because the NAC has imposed lesser sanctions in other cases involving similar violations. The Commission has firmly established, however, "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 & Sec., Inc.*, Exchange Act Rel. No. 48473, 2003 SEC LEXIS 2164, at *20 (Sept. 10, 2003); *see also Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973) ("The employment of a sanction within the authority of an administrative agency is thus not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases."). The cases upon which Cuozzo relies are inapposite to our assessment of sanctions in this matter.

* * * * *

We concur with the Hearing Panel's conclusion that, although Cuozzo's conduct was a serious breach of NASD rules deserving of significant sanctions, his conduct was not egregious and mitigating circumstances warrant sanctions of less than a bar. For the reasons discussed above, we affirm the Hearing Panel's imposition of a \$5,000 fine and a

²² *See, e.g., SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992) ("Youth or inexperience does not excuse a registered representative's duty to his clients.").

one-year suspension from association with any member firm in any capacity.²³ We find that these sanctions are tailored to respond sufficiently to the misconduct at issue, and that they will impress upon Cuozzo and others in the industry that falsification of firm documents constitutes unethical behavior that will not be tolerated, regardless of the culture of the respondent's firm.²⁴

VI. Conclusion

We find that Cuozzo falsified dates on at least 50 Regulation 60 forms, in violation of NASD Conduct Rule 2110 and IM-2310-2. We also find that Cuozzo made a false statement on a Regulation 60 form that resulted in the falsification of a Firm document, in violation of NASD Conduct Rule 2110 and IM-2310-2. For these violations, we order that Cuozzo be fined \$5,000 and suspended for one year from association with any NASD member firm in any capacity. We also order that Cuozzo requalify by examination as a general securities representative before re-entering the industry. We impose costs from the proceedings below of \$2,623.60.²⁵

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Vice President and Deputy Corporate Secretary

²³ We note that this sanction is consistent with the applicable Guidelines.

²⁴ In determining the appropriate level of sanctions, we have considered that disciplinary sanctions are supposed to be "remedial in nature and . . . designed to deter future misconduct and to improve overall business standards in the securities industry." *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1). The sanctions we impose satisfy this important principle.

²⁵ We also have considered and reject without discussion all other arguments advanced by the parties.

Pursuant to NASD Procedural Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.