BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Bryan L. Claggett Benton, AR, Respondent.	DECISION Complaint No. 2005000631501 Dated: September 28, 2007

Respondent forged two firm documents, falsified a customer document, and failed to disclose in writing to his member firm his financial interest in a brokerage account held at another member firm. Held, findings modified and sanctions affirmed.

Appearances

For the Complainant: Leo Orenstein, Esq., and Joel Beck, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Bryan L. Claggett ("Claggett") appeals the Hearing Panel's September 12, 2006 decision in this matter under NASD Rule 9311. The Hearing Panel found that Claggett forged two account transfer documents and provided a customer with a document that contained false information regarding the account's holdings. The Hearing Panel also found that Claggett failed to disclose in writing to the firm with which he was employed his authority over an account at another FINRA member firm.[1] For this misconduct, the Hearing Panel barred Claggett. We

[1] As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD.

affirm the Hearing Panel's forgery and document falsification findings of violations and modify the Hearing Panel's failure to disclose finding of violation. We affirm the Hearing Panel's sanctions.

I. Background

Claggett entered the securities industry in 1975 when he associated with a FINRA member firm as a general securities representative. Claggett was employed at the firm in that capacity from November 1975 through November 1977. He subsequently was registered as a general securities principal and general securities representative with three other FINRA member firms, from November 1977 through June 1987.

During the relevant period (approximately June 1997 through December 2004), Claggett was associated with the following FINRA member firms as a general securities principal and general securities representative: Robert Thomas Securities, Inc. ("Robert Thomas Securities"), from June 1987 to June 1992; Birchtree Financial Services, Inc. ("Birchtree Financial"), from July 1992 to January 1999; American Investment Services, Inc. ("American Investment"), from December 1998 to July 2002; SAL Financial Services, Inc. ("SAL Financial"), from May 2002 to February 2003; and First Midwest Securities, Inc. ("First Midwest Securities"), from May 2003 to March 2005. Claggett became associated with another FINRA member firm in April 2005, and was terminated by that firm in September 2006 after issuance of the Hearing Panel's decision in this matter. Claggett is not currently associated with a FINRA member firm.

II. Factual and Procedural History

FINRA's Department of Enforcement ("Enforcement") began an investigation of Claggett after Claggett's aunt, HC, filed a civil lawsuit against him in mid-2003 alleging that Claggett converted funds in a brokerage account held by the William W. Claggett Partnership ("Partnership"), for which Claggett served as the general securities representative ("Partnership Account"). The Circuit Court of Garland County, Arkansas issued an order on April 6, 2005, granting HC's motion for summary judgment. The court found that Claggett converted HC's funds in the amount of $56,080.98 for his own personal use and benefit, and that he employed a scheme to defraud HC. The court ordered Claggett to pay HC $56,080.98 in damages. The court also ordered Claggett to pay HC $25,000 in punitive damages, plus pre-judgment and post-judgment interest, and all costs, attorney fees, and expenses incurred in collecting the judgment. The Partnership was created by Claggett's father in the 1980s to convey assets that Claggett's father and HC inherited from Claggett's grandfather. Claggett continued to serve as the general securities representative on the Partnership Account after his father died in 1987. The Partnership was owned by Claggett's father and aunt prior to the death of Claggett's father. Thereafter, the Partnership was owned by Claggett's mother and his aunt.

On January 6, 2006, Enforcement filed a two-cause complaint against Claggett. The first cause alleged that Claggett forged the signature of his deceased father on an account transfer form, dated August 1992, to effect the transfer of the Partnership Account from Robert Thomas Securities to Birchtree Financial. The complaint alleged that Claggett again forged the signature of his deceased father on a transfer form in April 1999 in order to transfer the Partnership

Account from Birchtree Financial to American Investment. The complaint further alleged that Claggett forged the name of his father on both documents so that he could remain the broker on the account. Additionally, the first cause alleged that, in or about December 2000, Claggett created and delivered a document to HC purporting to be a Form 1099 federal tax form for the Partnership Account that falsely showed the Partnership holding a position in a money market account of approximately $22,000 in order to deceive HC about the positions and balances in the account. The complaint alleged that Claggett's forgeries and falsification of a document violated NASD Rule 2110.

The second cause alleged that Claggett violated NASD Rules 3050 and 2110 by exercising authority over the Partnership Account at another firm from at least May 2003 through December 2004, including making withdrawals, and failing to disclose to First Midwest his authority over that Partnership Account.

In his answer to the complaint, Claggett denied forging his father's signature. Claggett claimed that while he was alive his father had given him authority to act on behalf of the Partnership. Claggett further contended that such "authority continued after [his father's] death with [his mother] being the managing partner," and that he "received verbal authority from [HC] on the day of William W. Claggett's burial" to "continue as manager" of the Partnership. Claggett claimed that he did not forge his father's name because he signed the documents at issue "as manager" of the Partnership, and with permission of the partners. With respect to the allegation that Claggett falsified a Form 1099, Claggett denied that he prepared the document for tax purposes, stating that he used the form "to arrive at a buyout figure for [HC's] partnership interest[.]"

Claggett further denied the allegation that he failed to disclose to First Midwest his authority over the Partnership Account at another firm. In support, Claggett claimed that when he left SAL Financial in February 2003 to become associated with First Midwest an individual named RM became the broker of record at SAL Financial for the Partnership Account.

On April 20, 2006, Enforcement filed a motion for summary disposition under NASD Rule 9264. On May 2, 2006, Claggett filed a one-page response that did not challenge Enforcement's motion, other than to request a hearing. On May 24, 2006, the Hearing Officer issued an order advising the parties that a Hearing Panel would hold a hearing on the motion for summary disposition on June 12, 2006.

On June 12, 2006, oral argument on Enforcement's motion for summary disposition was held before a Hearing Panel. Enforcement argued that the evidence it submitted in support of its motion for summary disposition demonstrated that there was no material issue in dispute with respect to the allegations in the complaint against Claggett. The evidence consisted of documentary evidence and a transcript of Claggett's sworn testimony that he gave in a deposition in HC's civil suit against him ("Deposition"). Claggett's attorney at the time argued that an evidentiary hearing was necessary to determine whether Claggett had authority to act on behalf of the Partnership.

On September 12, 2006, the Hearing Panel issued a decision stating that, after reviewing the pleadings, including the motion for summary disposition and the supporting declarations and exhibits, and considering the oral arguments by the parties, it found that there was no genuine issue as to the material facts. Accordingly, the Hearing Panel granted Enforcement's motion for summary disposition.

III. Discussion

A. Summary Disposition

We find that the Hearing Panel properly granted Enforcement's motion for summary disposition. A hearing panel may grant a summary disposition motion "if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law." *See* NASD Rule 9264(e). Because Enforcement was the party that requested summary judgment, it bore the burden of demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).[2] As the nonmoving party, Claggett had to show that there were specific facts that would create a triable issue. *See Matshushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

We agree that Enforcement carried its burden by establishing the absence of a genuine issue as to any material fact. Claggett did not satisfy his burden of demonstrating that there was a genuine issue as to any material fact; instead, he put forward "mere conclusory allegations," which are "not competent summary [disposition] evidence" and are therefore insufficient to defeat a motion for summary disposition. *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir. 1992). As the Supreme Court has stated, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Accordingly, Enforcement was entitled to summary disposition as a matter of law under NASD Rule 9264(e).[3]

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[2] In cases involving motions for summary disposition, we look to Federal Rule of Civil Procedure 56 for guidance. *See, e.g., Dep't of Enforcement v. U.S. Rica Fin., Inc.*, Complaint No. C01000003, 2003 NASD Discip. LEXIS 24, at *12 & n.3 (NASD NAC Sept. 9, 2003) (stating that federal law provides significant guidance in cases involving motions for summary disposition).

[3] We reject Claggett's contention that he was unfairly deprived of an evidentiary hearing. The point of a motion for summary disposition is to avoid an evidentiary hearing. In so far as Claggett might have misunderstood the purpose of the oral argument on Enforcement's motion for summary disposition, he should have consulted his attorney.

B. Cause One – Forgery and Falsifying a Purported Tax Document

1. Claggett Forged Two Account Transfer Documents

The Commission consistently has held that signing another person's name to documents, without authority, constitutes forgery, and that forgery is inconsistent with just and equitable principles of trade under NASD Rule 2110.[4] *See Mark F. Mizenko*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655, at *11-12 (Oct. 13, 2005) (finding forgery when a respondent signed a firm director's name, without authority, on a corporate resolution that guaranteed car loans and leases); *Eliezer Gurfel*, 54 S.E.C. 56, 62 (1999) (holding that Gurfel forged or caused forgery of commission checks and deposited them into his account for his own benefit, in violation of NASD Rule 2110).

We find that Claggett forged his deceased father's name on the 1992 and 1999 account transfer documents, in violation of NASD Rule 2110. Claggett admitted in his Deposition that he forged his father's signature on the 1992 account transfer document so that he "could continue being the broker of record on the account" when he became associated with Birchtree Financial, and that he forged his father's signature on the 1999 document so that he could "continue to get the monthly statements."[5] Claggett further acknowledged that when he forged his father's signature in 1992, his father had been deceased for five years, and that when he did so again in 1999, his father had been deceased for almost 12 years. Claggett confirmed in his Deposition that he was not aware of any document by the partners of the Partnership that gave him authority to sign or bind the Partnership in any way. Claggett benefited from the forgeries because his continued authority over the Partnership Account permitted him to withdraw funds repeatedly from the account to use for his personal and business expenses. In fact, Claggett admitted in the Deposition that he continued to withdraw funds from the Partnership Account even subsequent to the filing of HC's conversion lawsuit against him.

Claggett belatedly attempts to raise a triable issue by asserting in his brief on appeal that he made a "mistake . . . in [his] Oral Deposition" when he admitted that he forged his deceased

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[4] NASD Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." Under NASD Rule 0115, associated persons have the same duties and obligations as FINRA members under NASD's rules.

[5] Although Claggett's attorney stated at oral argument on the motion for summary disposition that he could not "explain away" the forgery, he contended that a hearing on the merits was nonetheless necessary because Claggett reasonably believed he had authority over the Partnership. The Hearing Panel gave this argument no weight, stating that Claggett failed to submit credible evidence in support of the argument. We agree. "Mere conclusory allegations are not competent summary judgment evidence, and they are therefore insufficient to defeat" the motion for summary disposition. *Topalian*, 954 F.2d at 1131.

father's signature. Claggett contends that his father granted authority to him to sign documents on behalf of the Partnership. Claggett, however, does not offer any written evidence that his father, while still alive, had bestowed authority on him to act on behalf of the Partnership or to sign his father's name to Partnership documents. Even if Claggett's father had given him a written power of attorney to sign documents on his behalf, which the evidence failed to show, the death of his father would have terminated that authority. "Generally, the death of the principal operates as an instantaneous and absolute revocation of the agent's authority or power, unless the agency is one coupled with an interest." 3 Am. Jur. 2d *Agency* § 52 (2006). Claggett provided no evidence that his father conferred upon him a power of attorney coupled with an interest. *See* 3 Am. Jur. 2d *Agency* § 63 (2006) ("A power is coupled with an interest where, as a part of the arrangement with the principal, the agent receives title to all or a part of the subject matter of the agency."). Accordingly, Claggett failed to establish a triable issue of fact as to his authority to sign his long-deceased father's name on the documents at issue.

Claggett argues that his authority to sign documents on behalf of the Partnership continued after his father's death because his mother also gave him authority to sign documents on behalf of the Partnership.[6] Even if Claggett could prove that his mother granted him authority to act on behalf of, and to sign documents for, the Partnership, Claggett's authority would have been to sign his mother's name, not his father's. By signing his father's name to the documents at issue, Claggett falsely represented to FINRA member firms that his deceased father had signed the documents and approved the transfer of the Partnership Account.[7]

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[6] Claggett attached two documents to his opening brief on appeal that were not included in the record: (1) an affidavit from his mother stating that Claggett had authority to act, and sign documents, on behalf of the Partnership; and (2) a promissory note with the notation "Paid in Full." Although Claggett was unable to demonstrate good cause for failing to file a motion to adduce additional evidence timely, we evaluated these documents and found them not material.

Assuming that his mother had purportedly given Claggett authority to act on behalf of the Partnership, including the authority to sign documents for the Partnership, such authority would not permit Claggett to sign the name of his father. We also find the promissory note to be immaterial because there is no logical nexus between that document and Claggett's unauthorized signing of his father's name to the documents at issue.

[7] Claggett claims that HC also gave him authority over the Partnership Account at his father's funeral when, according to Claggett, she told him to "take care of the Partnership." The Hearing Panel concluded, however, that Claggett's reference to this purported conversation was insufficient to establish a triable issue of fact without a sworn statement from HC and was insufficient to refute Enforcement's allegation that Claggett forged account transfer documents—an allegation to which Claggett freely admitted in his Deposition. Even if HC had provided a sworn statement asserting that she advised Claggett to "take care of the Partnership," such evidence would be insufficient to refute the forgery allegations against Claggett because it does not address the forgery issue. Not only is there no evidence that Claggett's father gave him authority to sign his name on behalf of the Partnership, the death of Claggett's father would have terminated any such authority. *See* 3 Am. Jur. 2d *Agency* §§ 52, 63 (2006).

Claggett defended his signing of his father's name on the account transfer documents by asserting that his actions benefited the Partnership Account because he was able to remain the "broker of record" and to monitor and make deposits to the Partnership Account. Claggett's argument has no merit because it fails to address the gravamen of the allegation, which is that he lacked authority to sign his father's name to the account transfer documents. Furthermore, the evidence demonstrates that it was Claggett, rather than the Partnership, that benefited from the forged account transfer. Claggett admitted at his Deposition that his authority over the Partnership Account allowed him to periodically withdraw funds to cover his personal and business expenses and that he depleted the funds in the Partnership Account.[8]

Claggett also claims that by signing the name "William W. Claggett," he was signing the Partnership's name, rather than his father's name and that, consequently, he did not forge his father's name. This argument fails because it is utterly contrary to the evidence. Nowhere on the documents at issue did Claggett include the word "Partnership" or otherwise indicate that he had signed the documents in any official capacity on behalf of the Partnership. *See, e.g.*, *Dep't of Enforcement v. Bendetsen*, Complaint No. C01020025, 2004 NASD Discip. LEXIS 13, at *17 (NASD NAC Aug. 9, 2004) (finding that signing a customer's name on a margin agreement violated NASD Rule 2110, and noting that Bendetsen had no written authorization to sign the agreement and had placed no notation on the margin agreement to indicate he had signed on the customer's behalf). Likewise, Claggett's argument that he was permitted to sign his father's name on the account transfer documents because he considered himself to be the "manager" of the Partnership Account is equally unavailing. Claggett did not sign his own name to the account documents at issue, nor did he indicate on the documents that he was signing the documents as "manager" of the Partnership.

We find that Claggett committed forgery by signing his father's name, without authorization, on two account transfer documents, in violation of NASD Rule 2110. The forgery of those documents benefited Claggett by allowing him to maintain authority over the Partnership Account and to withdraw funds from the account for his own personal and business uses.

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[8] In his Deposition, Claggett stated that the Partnership Account was established in 1985 with a deposit of $76,000. Claggett testified that, in total, he withdrew $41,994.55 of Partnership Account funds in approximately nine separate withdrawals during the period from 2003 to 2004. There is no evidence that Claggett ever repaid to the Partnership Account the funds that he withdrew.

2. Claggett Prepared a False Document that He Provided to a Customer

The complaint alleges that Claggett created a false Form 1099 to intentionally deceive HC as to the positions and balances in the Partnership Account. The Commission consistently has ruled that the transmission of false documents to customers is conduct inconsistent with just and equitable principles of trade.[9] On facts similar to those before us, the Commission upheld a decision by the New York Stock Exchange, Inc., finding that the respondent's provision of a false Form 1099 to a customer regarding activity in the customer's account was inconsistent with just and equitable principles of trade. *See Cathy Jean Krause Kirkpatrick*, 53 S.E.C. 918, 919, 926-27 (1998).

We find that the evidence supports the allegation that Claggett prepared and provided HC with a false Form 1099 that showed the Partnership as owning money market shares when, in fact, it owned none. The false Form 1099 purports to show that from January through December 2000, the Partnership Account held a $22,827.58 position in a money market account—called "Heritage Tax-Free Municipal Money Market." Claggett admitted in his Deposition that the Partnership Account, in fact, held no such money market position, and that he sent the false Form 1099 to HC and his mother to advise them that he owed $22,827.58 to the Partnership Account based on funds he supposedly "borrowed" from the account. In his brief on appeal, however, Claggett contradicts that explanation and asserts that he created the Form 1099 "for a proposal to buy [HC's] interest in the William W. Claggett [P]artnership." We find these arguments to be without merit because: (1) the arguments are inconsistent and contradictory; and (2) Claggett admitted that the Form 1099 indicated that the Partnership held shares in a money market account, when it did not.

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[9] *See Joseph Abbondante*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23, at *49 (Jan. 6, 2006), *aff'd*, *Abbondante v. SEC*, No. 06-0558, 2006 U.S. App. LEXIS 30982 (2d Cir. Dec. 12, 2006) (upholding FINRA's finding that Abbondante's issuance of false account statements to customers was inconsistent with just and equitable principles of trade under Conduct Rule 2110) (table case); *Ramiro Jose Sugranes*, 52 S.E.C. 156, 157 (1995) (sustaining FINRA's finding that falsifying a letter representing that a certificate of deposit was backed by a letter of credit and falsifying bank wires were inconsistent with just and equitable principles of trade).

We therefore affirm the Hearing Panel's finding that Claggett created, and provided to HC, a purported tax form that contained false information regarding the Partnership Account holdings, in violation of NASD Rule 2110.[10]

C. Claggett Failed to Disclose the Partnership Account to First Midwest Securities

The second cause of the complaint alleges that Claggett violated NASD Rule 3050 by exercising authority over an account held at another firm, including making withdrawals, and failing to disclose that authority in writing to First Midwest Securities, the firm with which he was associated, and that "[s]uch acts, practices and conduct violate NASD Rules 3050 and 2110." We find that the record establishes that Claggett violated NASD Rule 3050 and 2110 as alleged in the complaint.

NASD Rule 3050(c) requires an associated person to notify his employer firm in writing, "promptly after becoming so associated," of any securities accounts held at another member firm. NASD Rule 3050(e) states that this notice requirement is applicable to any account over which an associated person has a financial interest or with respect to which an associated person has discretionary authority.

Claggett was not an owner of the Partnership and therefore had no legitimate financial interest in the Partnership Account, which was held at another member firm. Claggett's lack of a legitimate financial interest in the Partnership Account, however, does not shield him from liability under NASD Rule 3050 because his withdrawals of the partnership's funds were for his personal benefit. Claggett admitted in the Deposition that his withdrawals from the Partnership Account led to the eventual depletion of funds in the account and that he used the funds for his own personal expenses.

We find that Claggett had a de facto financial interest with respect to the Partnership Account for purposes of NASD Rule 3050(e).[11] Consequently, Claggett was required to notify

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[10] Although Claggett admitted in his Deposition that he provided the Form 1099 to HC and his mother, the complaint does not allege that he provided the form to his mother to deceive her about the status of the account.

[11] Claggett argued in the Deposition that the Partnership Account was a non-discretionary account. Because we find that Claggett had a financial interest in the account for purposes of NASD Rule 3050(e), it is not necessary to reach the issue of whether Claggett exercised discretionary authority over the Partnership Account. The Hearing Panel found that Claggett exercised discretionary authority over the Partnership Account and therefore violated NASD Rule 3050. That finding is modified, however, by our finding that we need not determine whether Claggett exercised discretionary authority because we find that he had a financial interest in the Partnership Account as evidenced by the withdrawals that he made from the Partnership Account.

First Midwest Securities in writing "promptly after becoming . . . associated" with the firm regarding his financial interest in the Partnership Account. *See* NASD Rule 3050(c). Claggett, however, failed to comply with this notice requirement.[12]

First Midwest Securities advised FINRA staff by letter dated March 11, 2005, that it had no record of Claggett disclosing the Partnership Account to it. The record demonstrates that Claggett failed to disclose the Partnership Account in writing to First Midwest Securities despite the requirement in the First Midwest Securities' "Broker Compliance Questionnaire" ("Compliance Questionnaire"), dated May 21, 2003, to "list any investment accounts maintained for your benefit or the benefit of family members," and that "FMSI [First Midwest Securities] must receive duplicate statements on these accounts." Claggett argued in his answer that he left the question "unanswered" because he "understood it to mean my family accounts held at First Midwest [Securities] with me as the broker of record." Claggett's contention that the language on the Compliance Questionnaire referred to accounts held at First Midwest Securities is untenable. The very language itself—"FMSI must receive duplicate statements on these accounts [for family members]"— is clear enough to indicate to Claggett that he was required to send "duplicate statements" to First Midwest Securities of account statements prepared by another member firm with respect to accounts for the benefit of his "family members."[13] To interpret First Midwest Securities' instruction in the manner that Claggett urges is disingenuous and is contrary to the plain meaning of the language used. Further, in so far as Claggett is arguing that he was unaware of the NASD Rule 3050 requirement that he notify his employer firm in writing of accounts at another firm in which he had a financial interest, the Commission has previously found that ignorance of FINRA rules does not excuse an associated person from compliance with such rules. *See, e.g.*, *Gilbert M. Hair*, 51 S.E.C. 374, 378 (1993).

Claggett's failure to disclose in writing his financial interest in the Partnership Account to First Midwest Securities violated NASD Rules 3050 and 2110.

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[12] There also is no support in the record for Claggett's contention that he was not required to disclose the Partnership Account to his employing firm because an individual named RM was allegedly the broker of record for the Partnership Account.

[13] Claggett also answered, "No," to question 21, on the May 21, 2003 Compliance Questionnaire, which asked the following question: "Do you have any investment accounts of your own or of your family that are not marked for duplicate statement delivery to the Compliance Department." The following year, on his March 7, 2004 Compliance Questionnaire, Claggett again answered, "No," to the same question and wrote, "None," in response to the instruction to list any investment accounts and have duplicate statements sent to First Midwest Securities.

IV. Procedural Issues

Claggett argues that there were procedural irregularities in the Hearing Panel proceedings. As set forth below, we find no support for Claggett's assertions.

Claggett argues that the proof necessary in this proceeding is proof beyond a "reasonable doubt." Claggett is incorrect. A preponderance of the evidence is the appropriate standard for self-regulatory organization disciplinary actions. *Seaton v. SEC*, 670 F.2d 309, 311 (D.C. Cir. 1982). We find that Enforcement satisfied its burden of proof by a preponderance of the evidence.

Claggett contends that oral argument by telephone on Enforcement's motion for summary disposition was unfair. We disagree. Claggett did not raise this issue during the oral argument. Moreover, there is no requirement under NASD's Rules of Procedure that oral arguments to decide a matter of law such as a motion for summary disposition be held in person, instead of by telephone. We therefore find that the telephone hearing on Enforcement's motion for summary disposition was proper and fair.

Additionally, to the extent Claggett raises a due process argument, the Commission has determined that the Due Process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution do not apply to FINRA proceedings. *See E. Magnus Oppenheim & Co.*, Exchange Act Rel. No. 51479, 2005 SEC LEXIS 764, at *10 n.15 (Apr. 6, 2005); *Herbert Garrett Frey*, 53 S.E.C. 146, 153 n.17 (1977) (stating that FINRA is not a government actor for purposes of the Fifth and Fourteenth Amendments). Moreover, we find that the Hearing Panel proceeding was conducted in accordance with FINRA's procedures, and that those procedures were "in accordance with the 'fair procedure[s]' contemplated by Exchange Act Section 15A(b)(8)." *Howard Brett Berger*, Exchange Act Rel. No. 55706, 2007 SEC LEXIS 895 (May 4, 2007).

Claggett also argues on appeal that the Hearing Officer in this matter did not give him advice about how to introduce evidence or witnesses in a telephone hearing. We find no merit in Claggett's argument. On May 24, 2006, the Hearing Officer issued an "Order Scheduling Oral Argument on Enforcement's Motion for Summary Judgment" ("Order"), noting that Claggett had filed a one-page response to Enforcement's motion for summary disposition, and advising the parties that "oral argument" on the motion would be held on June 12, 2006 via teleconference. Neither Claggett nor counsel who represented him throughout the oral argument requested leave to introduce evidence in opposition to summary judgment.[14] We find that the

[14] Claggett's argument that FINRA impermissibly disclosed information about these proceedings into the "public domain" when its mail room allegedly lost a copy of his brief is fanciful and unpersuasive. As a preliminary matter, there is no evidence that FINRA lost the copy of the brief that Claggett allegedly sent to Enforcement. Furthermore, Claggett provided no proof, such as a certificate of receipt from the mail courier service, showing that he sent a copy of his brief to Enforcement. Claggett has shown no causal connection between his brief and the loss of his securities and insurance licenses. Moreover, the Hearing Panel's findings against Claggett, as well as the fact that Claggett had appealed to the NAC, were published in NASD's

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Hearing Officer discharged her duties in this matter in accordance with FINRA's rules. *See* NASD Rule 9235(3).

V. Sanctions

The Hearing Panel barred Claggett for forging two account transfer documents and sending a false Form 1099 to customer HC, based on its finding that Claggett's conduct was egregious. We affirm the Hearing Panel's decision to impose a bar against Claggett for the forgery and falsification of record violations alleged in cause one of the complaint.

A. Forgery and Falsification of Record Violations

The FINRA Sanction Guidelines ("Guidelines") for Forgery and/or Falsification of Records recommend a fine of $5,000 to $100,000 and the imposition of a bar in "egregious cases." In cases where mitigating factors exist, the Guidelines recommend a suspension in any or all capacities for up to two years.[15] The forgery/falsification of records Guideline includes two principal considerations: (1) the nature of the documents forged or falsified; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority. We find that Claggett's conduct of signing his long-deceased father's name to important firm documents was egregious, and that the imposition of a bar therefore is warranted.

With respect to Claggett's forgery violation, we first consider the nature of the documents that Claggett forged and find that the forged account transfer documents undeniably were important documents. The documents on which Birchtree Financial and American Investment relied to relocate the Partnership Account to their firms falsely represented that William W. Claggett had approved the transfer of the Partnership Account. With respect to the second consideration—whether the respondent had a good-faith, but mistaken, belief of express or implied authority—we find no evidence that Claggett signed the documents with a good-faith but mistaken belief about his authority to do so. Claggett admittedly signed his long-deceased father's signature on two account transfer documents in order to maintain his authority over the account when he became associated with Birchtree Financial in 1992 and American Investment in 1999. Indeed, Claggett's forgeries served to conceal from FINRA member firms with which he was associated that Claggett's father had been dead for many years. Claggett therefore had no

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Notice to Members Disciplinary Actions in December 2006, at which time the information became available to the public and other regulators. *Dep't of Enforcement v. Bryan L. Claggett*, NASD No. 2005000631501 (NASD Hearing Panel decision September 12, 2006), summarized in NASD NTM Disciplinary Actions, pgs. 11-12 (December 2006), http://www.finra.org/RulesRegulation/NoticestoMembers/2006NoticestoMembers/P018088.

[15] *FINRA Sanction Guidelines* 39 (2006), http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf [hereinafter *Guidelines*].

authority to sign his father's name to firm documents that effected the transfer of the Partnership Account to the member firms with which he became associated.

We next review the facts relevant to our assessment of sanctions for Claggett's provision of a false Form 1099 to HC. The first principal consideration—the nature of the document falsified—is applicable to our discussion. Claggett admittedly prepared a false Form 1099 that included information about a so-called "Heritage Tax-Free Municipal Money Market," in which the Partnership allegedly invested from January through December 2000. In fact, there was no such investment during that time frame, as Claggett admitted in his Deposition. Moreover, there is no evidence to suggest that the Partnership ever invested in a money market account by that name.

The magnitude of Claggett's deception is evident in the level of detail that he included in the alleged tax form regarding the sham investment. The purported tax form is entitled "Raymond James & Associates, Inc. 2000 Form 1099 Summary Section" and appeared to be an official IRS form[16] generated by a FINRA member on behalf of the "Claggett Partnership." It noted that the Partnership held 22,149.23 "Total Shares" in the "Heritage Tax-Free Municipal Money Market." In addition, it listed alleged credit interest that was earned each month in the year 2000, and stated that the total credit interest income equaled $678.35 for the year.

The evidence establishes that Claggett prepared a false federal tax form with fabricated information about the Partnership's investments that was designed to conceal from customer HC the actual state of the account, which over time Claggett drew down to a zero balance.[17] We find aggravating that Claggett presented patently inconsistent stories in these proceedings about the nature of the information in the Form 1099 in an effort to obscure the truth about his role in withdrawing Partnership Account funds. Claggett stated in his Deposition that he produced the Form 1099 to disclose to the partners the amount he owed to the Partnership. In his brief on appeal, however, he changed his explanation by stating that the Form 1099 was intended as "a proposal to buy [HC's] interest in the [Partnership]."

Claggett's forgery of two account transfer documents and his preparation and transmittal of a false Form 1099 to customer HC were acts of deception that show Claggett's failure to follow the standards demanded of registered persons in the securities industry. *See Leonard John Ialeggio*, 52 S.E.C. 1085, 1089 (1996), *aff'd*, 185 F.3d 867 (9th Cir. 1999) (table format). We therefore agree with the Hearing Panel's determination that Claggett's forgery violations and his provision of a false tax form to a customer violation each independently warrant a bar, and

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[16] The false Form 1099 included a section designated "2000 Dividends and Distribution" that included the following alleged official document description: "(OMB No. 1545-0110) Copy B for Recipient."

[17] The Guidelines advise us to consider "[w]hether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer," among others. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions No. 10).

find that no lesser sanction would suffice to adequately protect investors under the circumstances. Accordingly, we impose a bar against Claggett for forging his father's name on two account transfer documents and for providing a false tax form to HC. Barring Claggett will protect the investing public from potential harm and serve to deter those in the industry who might engage in a similar succession of deceitful acts.[18]

B. Failure to Comply with Requirement to Give Written Notice

For failing to provide the requisite written notice to his Firm about the Partnership Account, as required under NASD Rule 3050, the Guidelines recommend a fine ranging from $1,000 to $25,000 and, in egregious cases, a suspension for up to two years or a bar against an individual respondent.[19] Based on the factors discussed below, we find Claggett's failure to give First Midwest Securities written notice of the Partnership Account to be egregious and deserving of a one-year suspension from association with any member firm in all capacities and a $10,000 fine.

Claggett's lack of written notice to First Midwest Securities regarding his financial interest in the Partnership Account held at another member firm permitted him to evade oversight by First Midwest Securities while he proceeded to treat the Partnership Account as his own and deplete the funds in the account through a series of withdrawals. We consider Claggett's continued withdrawal of funds from the Partnership Account even after HC filed a lawsuit against him alleging that he converted the funds in the account to be an aggravating factor. Additionally, Claggett's concealment of the Partnership Account from First Midwest Securities potentially exposed the firm to liability.

Thus, although we find a $10,000 fine and a one-year suspension to be an appropriate sanction for Claggett's failure to disclose to his firm his financial interest in the Partnership Account held at another firm, we decline to impose the sanction because Claggett is barred for the findings of violation in cause one.

VI. Conclusion

We affirm the Hearing Panel's findings that Claggett forged two account transfer documents and prepared and provided to customer HC a false Form 1099, in violation of NASD

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[18] The Guidelines state that, in seeking to "remediate misconduct and to protect the investing public," adjudicators should "design sanctions to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices." *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1). We also consider as an aggravating factor Claggett's statement on appeal that he has no remorse over his actions relevant to this matter.

[19] *See Guidelines*, at 17 ("Transactions for or by Associated Persons—Failure to Comply with Rule Requirements").

Rule 2110. We modify the Hearing Panel's finding that Claggett exercised discretionary authority over the Partnership Account for purposes of NASD Rule 3050 and find, instead, that Claggett had a financial interest in the account. Accordingly, we find that Claggett violated NASD Rules 3050 and 2110 by failing to notify his firm in writing of his financial interest in the Partnership Account. For Claggett's violations involving forgery and falsification of a document, we affirm the Hearing Panel's imposition of a bar against Claggett. With respect to Claggett's failure to notify First Midwest Securities in writing about the Partnership Account, we find that a $10,000 fine and a one-year suspension are appropriate sanctions, but we do not impose those sanctions given the bar imposed against Claggett. We also impose costs of $1,355, consisting of appeal costs of $1,000 and appeal transcript costs of $355. The bar against Claggett is effective upon issuance of this decision.[20]

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

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