BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Paul Douglas Paratore Webster, NY, Respondent.	DECISION Complaint No. 2005002570601 Dated: March 7, 2008

Respondent converted a customer's funds; respondent used converted funds to settle the complaints of four other customers. Held, findings modified, in part, sanctions affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq. and Jonathan M. Prytherch, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Paul Douglas Paratore ("Paratore") appeals this matter under NASD Rule 9311. In a decision dated April 20, 2007, the Hearing Panel found that Paratore converted $3,804.24 in insurance premium payments that he received from one customer by diverting those payments to certain other customers. The Hearing Panel also found that Paratore diverted a portion of those payments to settle four customer complaints without the knowledge or authorization of his firm. For each violation, the Hearing Panel barred Paratore.

After a review of the entire record in this matter, including each party's written submission, we affirm the Hearing Panel's finding that Paratore converted a customer's funds, although we modify the Hearing Panel's finding regarding the amount that Paratore converted. We also affirm the Hearing Panel's finding that Paratore used the funds converted from one customer to settle four customer complaints. For each violation, we impose a separate bar.

I. Background

Paratore entered the securities industry in 1991 as an investment company and variable contracts products limited representative with Financial Industry Regulatory Authority member firms MetLife Securities, Inc. and Metropolitan Life Insurance Company (collectively "MetLife" or the "Firm").[1] On September 13, 2005, MetLife filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Paratore's behalf, stating that Paratore had been terminated for admitting to "diverting funds from one customer to apply to the contracts of other unrelated customers." On December 6, 2005, Paratore became associated with another FINRA member firm. Paratore was subsequently terminated by that firm on April 23, 2007, three days after the Hearing Panel issued its decision barring Paratore from associating with a member firm in any capacity. Paratore is not currently associated with a member firm.

II. Procedural History

The Department of Enforcement ("Enforcement") filed a two-cause complaint against Paratore on October 10, 2006. Cause one alleged that, from approximately April 2002 through June 2005—the relevant period—Paratore converted premium payments that customer ADL[2] made on its employees' life insurance policies. Paratore converted ADL's premium payments to pay insurance premiums and charges on annuities of certain other customers who were not employed by ADL. Cause two of the complaint alleged that Paratore settled the complaints of at least four customers (customers AS, EE, DF, and DR) by paying premiums and charges on their insurance policies and annuities, respectively, with the funds he converted from ADL.

Because Paratore waived a hearing in his answer to the complaint, the Hearing Officer held an initial pre-hearing conference with the parties on December 19, 2006, to ensure that Paratore was aware of his procedural rights, including his right to present testimony at a hearing. During the pre-hearing conference, Paratore reaffirmed his desire to go forward with the proceedings without a hearing. Consequently, the Hearing Officer advised the parties that the Hearing Panel would consider the matter on the basis of the evidence in the record and the parties' written submissions.

On December 20, 2006, the Hearing Officer issued an order that directed the parties to file written submissions "in [p]lace of [a] [h]earing." The order advised the parties that the matter would be decided on the written record, in accordance with NASD Rule 9267. In accordance with the Hearing Officer's order, Enforcement filed a "Memorandum of Points and Authorities," accompanied by exhibits, and Paratore filed a letter in which he admitted

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[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.

[2] ADL was engaged in the business of manufacturing dental appliances.

"misdirect[ing]" ADL premium payments to "other unrelated policies" and acknowledged that what he did "was wrong."

The Hearing Panel received the parties' submissions and issued a decision on April 20, 2007, finding that Paratore converted customer ADL's funds by diverting ADL insurance premium payments to certain other customers, and that he used some of those funds to settle at least four customer complaints without the Firm's permission. The Hearing Panel imposed separate bars against Paratore with respect to each violation. Paratore appealed the Hearing Panel's decision to the National Adjudicatory Council ("NAC") and waived oral argument on appeal. We have therefore decided this matter on appeal based on the written record and the parties' briefs.

III. Facts

On September 21, 2005, a FINRA Enforcement investigator sent MetLife a letter requesting the results of any internal reviews conducted by MetLife in connection with the allegation in a MetLife NASD Rule 3070 notice that Paratore had "diverted funds from one customer in order to pay for annuity contracts of another customer."[3] On October 10, 2005, MetLife provided Enforcement with a copy of its "Internal Investigation Report," dated September 30, 2005 ("MetLife Report"), summarizing the Firm's investigatory findings concerning Paratore.

The MetLife Report stated that, from March 2002 to June 2005, Paratore misapplied ADL premium checks in the amount of $3,906.74 to the policies of 24 of his other customers. The MetLife Report also stated that Paratore was "terminated for his actions on August 15, 2005 and has made restitution." The record shows that Paratore made restitution to ADL through MetLife in the amount of $3,864.73, by check dated July 26, 2005, made payable to MetLife. MetLife issued a check to SA, the owner of ADL, on August 2, 2005, in the amount of $3,864.73. MetLife arrived at the $3,864.73 restitution figure by subtracting $42.01—the amount that MetLife determined would be refunded to ADL by two MetLife customers—from $3,906.74, the total ADL premium payments that MetLife calculated Paratore had diverted to customers not employed by ADL.

Paratore admitted in his February 7, 2006 on-the-record interview with Enforcement that, from April 2002 through June 2005, he improperly directed ADL premium payments, typically amounting to approximately $160, to the policies of customers who were not associated with

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[3] NASD Rule 3070 requires member firms to report to FINRA firm disciplinary actions involving persons associated with the member.

ADL. Paratore testified that he personally picked up the premium checks from ADL's office each month,[4] and that he subsequently submitted the checks and a deposit slip, known as a MetLife "Form 342," to MetLife for processing. During the period at issue, Paratore designated on the relevant Forms 342 the customer policies to which each ADL premium payment, or a portion thereof, was to be allocated and the amount of the allocation. Paratore asserted that the MetLife employee who processed the paperwork did not question the premium allocations because she "wouldn't know who was or was not an [ADL] employee." Paratore also acknowledged that the documents were not reviewed by his supervisor. Paratore testified that he engaged in this practice in an attempt to keep his customers "happy." In a letter to the MetLife auditor who prepared the MetLife Report, Paratore stated that he used ADL premium payments to reimburse some of his other customers for annuity withdrawal charges and to pay premiums on certain customers' life insurance policies to prevent the policies from lapsing.[5] Paratore also conceded that he did not have permission from anyone at MetLife to divert ADL premium payments to his customers who were not associated with ADL.

Paratore stated in his on-the-record interview that he knew that if he fell behind on the premium payments for ADL employee policies by "two or three months," the insurance company would not cancel the policies providing he made a monthly payment in the current month, even if the payment failed to cover the cost of the premiums owed for the previous month or couple of months. Paratore stated that, consequently, he would "just collect the next month's premium[s]" from ADL and apply those premium payments to the ADL employee policies for which he had not been making monthly payments to prevent the policies from lapsing.

In addition, Paratore admitted that he used ADL premium payments to settle complaints from customers AS, EE, DF, and DR. Paratore also admitted that he settled the complaints by paying the premiums and charges on their insurance policies and annuity contracts, respectively, with funds he converted from ADL during the relevant period.

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[4] MetLife indicated in a letter to Enforcement that MetLife brokers collected premium checks from their customers in person or by mail.

[5] Paratore explained that he diverted ADL funds to the policies of some of his other customers who were not happy about either their annuity withdrawal charges or insurance premium payments. Although Paratore testified that customer AS was not happy about the withdrawal charge relating to her annuity contract, he was not asked during the hearing about the specific circumstances that led the other customers to whom he diverted ADL funds to be dissatisfied, nor did he volunteer such information. Moreover, there is no evidence in the record to explain why certain customers were not paying their monthly insurance policy premiums.

IV. Discussion

We find that Paratore converted ADL premium payments by using those funds to pay premiums on insurance policies and withdrawal charges on annuity contracts for certain other customers who were not ADL employees. We also find that Paratore settled the complaints of customers AS, EE, DF, and DR without his Firm's knowledge or authorization. Paratore's conversion of customer funds and settlement of customer complaints violate NASD Rule 2110 ("Rule 2110"), which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.[6]

A. Conversion

Conversion is the wrongful exercise of dominion over the personal property of another. *See* Restatement (Second) of Torts § 222A(1) (1965); *see also Shulman v. Voyou, L.L.C.*, 251 F. Supp. 2d 166, 170 (D.D.C. 2003) (defining conversion as "any unlawful exercise of ownership, dominion, or control, over the personal property of another in denial or repudiation of that person's rights thereto") (citation omitted). Checks may be subject to conversion. *See* 18 Am. Jur. 2d Conversion § 11 (2006); Restatement (Second) of Torts § 242 (1965). Taking funds from one customer account and applying those funds to another, unrelated, customer's account constitutes conversion, and is a violation of the requirement to observe high standards of commercial honor and just and equitable principles of trade under Rule 2110. *See Dist. Bus. Conduct Comm. v. Klein*, Complaint No. C02940041, 1995 NASD Discip. LEXIS 229 (NASD NAC June 20, 1995) (finding that Klein converted $17,000 by wiring that amount from the account of one set of customers to the account of another customer), *aff'd*, 52 S.E.C. 535, 536 (1995). Here, there is no dispute that Paratore converted ADL checks by using the funds from those checks to pay insurance policy premiums and annuity charges for customers who had no relation to ADL.

Paratore admitted in his answer to the complaint that on approximately 26 occasions from April 2002 through June 2005, he converted approximately $3,804.24 in ADL's premium payments by diverting ADL insurance premium payments to approximately 22 of his other customers who had no affiliation with ADL.[7] For the following reasons, we find that Paratore

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[6] 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 FINRA's rules.

[7] The complaint alleged that Paratore converted approximately $3,804.24 in ADL insurance premium payments. To arrive at the $3,804.24 conversion figure, Enforcement subtracted $102.50 from the $3,906.74 amount that MetLife determined Paratore had converted because Paratore had allocated $102.50 to the policy of customer WO, who was actually employed by ADL. The allocation to customer WO's policy was therefore a legitimate allocation of ADL's funds to an employee's insurance policy and should not have been included in MetLife's $3,906.74 conversion figure.

converted ADL funds in the approximate amount of $3,772.71, rather than $3,804.24, the amount that the complaint alleged that Paratore converted. Enforcement requested that the Hearing Panel reduce the $3,804.24 conversion figure alleged in the complaint by $31.53, which is the amount that Paratore allocated to customer CM's policy because staff was unable to determine with any degree of certainty whether or not CM was employed by ADL. Paratore asserted in his on-the-record interview that CM was employed by ADL; however, when Enforcement staff contacted ADL to confirm that fact, ADL informed Enforcement that it was unsure about CM's employment status, leaving open the possibility that CM had been an employee of ADL during the relevant period. In the event that CM was an employee of ADL, the $31.53 allocated to his policy would have been a legitimate allocation of ADL funds. Given these facts, we agree with Enforcement's recommendation to subtract $31.53 from the conversion amount alleged in the complaint.[8] On that basis, we find that Paratore converted approximately $3,772.71 in ADL insurance premium payments in violation of Rule 2110.

B. Settling Customer Complaints Without Firm's Knowledge

Settling a customer complaint without the knowledge of the registered representative's employer is conduct that is inconsistent with just and equitable principles of trade under Rule 2110. *See Dist. Bus. Conduct Comm. v. DiAngelo*, Complaint No. C10960003, 1996 NASD Discip. LEXIS 34, at *5-6 (NASD NBCC Oct. 16, 1996). Paratore does not dispute that, without his Firm's knowledge or authorization, he settled the complaints of customers AS, EE, DF, and DR by reimbursing them for annuity surrender charges or by paying their premiums so that their insurance policies would not be cancelled.

We thus affirm the Hearing Panel's finding that Paratore settled the complaints of customers AS, EE, DF, and DR without his Firm's knowledge, in violation of Rule 2110.

V. Sanctions

The Hearing Panel imposed separate bars against Paratore for his conversion and settling of customer complaints. For the reasons set forth below, we find that Paratore's misconduct constitutes a serious departure from the ethical principles prescribed by Rule 2110, and that the Hearing Panel's imposition of separate bars is therefore warranted.[9]

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[8] The Hearing Panel's decision did not discuss Enforcement's recommendation to subtract $31.53 from the $3,804.24 amount alleged in the complaint that Paratore converted.

[9] Paratore argues, as he did in the proceedings below, that purported settlement negotiations with Enforcement are relevant for purposes of determining appropriate sanctions. Paratore is mistaken for a number of reasons. We affirm the Hearing Officer's decision to grant Enforcement's motion to strike as inadmissible the portion of Paratore's written hearing submission that referred to purported settlement discussions between the parties and afford Paratore's statements on appeal about alleged settlement negotiations no weight.

Settlement negotiations and materials generally are not relevant to a FINRA disciplinary proceeding. *See* NASD Rule 9216(a)(4) (stating that a rejected Acceptance Waiver and Consent

[Footnote continued on next page]

A. Conversion

The FINRA Sanction Guidelines ("Guidelines") for conversion state that a bar is "standard," regardless of the amount of funds converted.[10] In determining appropriate sanctions, we also have considered that Paratore engaged in a pattern of misconduct[11] over a period of approximately three years,[12] and that he was involved in approximately 26 separate acts of conversion.[13] We are particularly troubled by the lengthy period over which Paratore engaged in these violative actions, and the fact that there is no indication that his misconduct would have ceased had MetLife not uncovered it.

[cont'd]
"may not be introduced into evidence in connection with the determination of the issues set forth in any complaint"); NASD Rule 9270(h) (stating that rejected offers and proposed orders of acceptance do not constitute a part of the record "in any proceeding against the [r]espondent making the offer"); NASD Rule 9270(j) (stating that rejected offers of settlement "may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint"). We rejected a respondent's request to compel consideration of his settlement offer in *Dep't of Enforcement v. Cipriano*, Complaint No. C07050029, 2007 NASD Discip. LEXIS 23, at *6 (NASD NAC July 26, 2007), finding that "such relief is not available . . . [under] NASD's rules." And we stated in *Dist. Bus. Conduct Comm. v. Stout*, Complaint No. C02940038, 1995 NASD Discip. LEXIS 223, at *23 (NASD NBCC Sept. 7, 1995) that under "NASD's Code of Procedure, settlement negotiations are irrelevant."

Moreover, the NAC, which performs a de novo review of the record on appeal, has an independent obligation to determine sanctions based on the evidence in the record, not on how far alleged settlement negotiations have proceeded prior to the issuance of the complaint. *See, e.g.*, *Dist. Bus. Conduct Comm. v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *39 n.16 (NASD NAC Jan. 28, 1999) (stating that the NAC's de novo review is independent from the proceedings below and is intended to insulate the proceedings from procedural unfairness), *aff'd*, *Maximo Justo Guevara*, 54 S.E.C. 655 (2000); NASD Rule 9346(a) (Evidence in National Adjudicatory Council Proceeding).

[10] *FINRA Sanction Guidelines* 38 (2007), http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf [hereinafter *Guidelines*].

[11] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 8).

[12] *See id.* (Principal Considerations in Determining Sanctions, No. 9).

[13] *See id.* (Principal Considerations in Determining Sanctions, No. 8).

In addition, the evidence demonstrates that Paratore systematically concealed his misconduct from customer ADL and MetLife.[14] Paratore admitted that he "short[ed]" ADL's account every month, and that he juggled ADL's premium payments by at times misdirecting ADL's premium payments to the policies of his customers who were not ADL employees and, at other times, properly allocating ADL premium payments to policies of ADL employees to bring them "to date" so that the policies would remain in effect. Although ADL employees occasionally received letters advising them that payments were late or that the policies were about to be canceled, Paratore gave SA and his ADL employees "a story . . . and somehow he [Paratore] always took care of it so that no further written notices would come," according to SA's declaration. Paratore also was able to conceal his misconduct from MetLife because he knew that the MetLife employee responsible for processing the paperwork that included the premium payment allocations was uninformed about whether the customers to whom Paratore allocated the funds were ADL employees and because his supervisor did not review the allocation documents.

We also find that Paratore's intentional conversion of ADL's premium payments was an "egregious abuse of his customer's trust and confidence." *See Dist. Bus. Conduct Comm. v. Davis*, Complaint No. C8A970040, 1998 NASD Discip. LEXIS 45, at *5 (NASD NAC Oct. 22, 1998). Under the Guidelines, we assess whether Paratore's actions resulted from an "intentional act, recklessness or negligence."[15] Paratore's methodical juggling of ADL premium payment allocations between ADL policyholders and approximately 22 of his other customers over a sustained period (three years) demonstrates, unequivocally, that his actions were intentional. Such misconduct is therefore "extremely serious and patently antithetical to the high standards of commercial honor and just and equitable principles of trade that the NASD seeks to promote." *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226-27 (1994) (*quoting Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)) (internal quotations omitted).

Although Paratore has stated that he is "sorry" for his actions and that he used "poor judgment," he still does not appear to appreciate the severity of his misconduct as evidenced by his arguments on appeal that attempt to downplay the fact that he betrayed the trust of his customer, ADL. For instance, Paratore claims that he converted ADL's funds only to fix "billing issues," that he "never touched or took any of the funds" for himself, and that he was just trying to help his other customers. Paratore's arguments fail to address the relevant issue, however, which is that he deceived SA, ADL's owner, into believing that Paratore was handling ADL's

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[14] 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, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated." *Id.* (Principal Considerations in Determining Sanctions, No. 10).

[15] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

premium payments in an appropriate manner. Moreover, Paratore's effort to convince us that he did not benefit from his actions is unpersuasive. Paratore undoubtedly benefited by using ADL funds to placate customers who otherwise might have moved their accounts to another representative. Furthermore, Paratore's actions jeopardized the insurance coverage of those ADL employees for whom he failed to make regular monthly premium payments. If those policies had been canceled as a result of Paratore's failure to pay the monthly premiums, the effect on the individual policyholders could have been very serious. We also find that Paratore's admission of wrongdoing and apology are outweighed by the substantial aggravating factors we have identified relevant to Paratore's conversion violation.[16]

Paratore also asserts that we should give him credit for paying restitution to ADL. We note, however, that Paratore did not make restitution until after MetLife detected his misconduct.[17] Under these circumstances, Paratore's restitution payment does not mitigate the severity of his conversion violations for purposes of determining an appropriate sanction.

Taking into account the factors discussed above and recognizing that the conversion of customer funds "strikes at the heart" of Rule 2110,[18] we find that the imposition of a bar against Paratore is necessary: (1) given the serious violations of trust that he committed against customer ADL; (2) to protect the investing public from Paratore, who stopped converting funds only because he was caught; and (3) to deter others from similarly taking advantage of customers. As the Commission has stated, conversion is an abuse of "the trust that is the cornerstone of the relationship between a securities professional and his customer." *Joseph H. O'Brien*, 51 S.E.C. 1112, 1117 (1994).

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[16] *See, e.g.*, *Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *21 (NASD NAC Dec. 21, 2004) (concluding that although Mizenko stated in his letter to the firm that he was "sorry" for his actions, such contrition did not outweigh the substantial aggravating factors relevant to the forgery violation), *aff'd*, *Mark F. Mizenko*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005).

[17] In accordance with the Guidelines, we consider whether the respondent "voluntarily and reasonably attempted" to pay restitution or otherwise remedy the misconduct "prior to detection and intervention." *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 4).

[18] *Dep't of Enforcement v. Foran*, Complaint No. C8A990017, 2000 NASD Discip. LEXIS 8, at *23 (NASD NAC Sept. 1, 2000).

B. Settling Customer Complaints Away from the Firm

The Guideline for settling customer complaints away from a firm recommends that the respondent be suspended in any or all capacities for up to two years and, in egregious cases, barred.[19] The Guideline also suggests imposing a monetary sanction in the range of $2,500 to $50,000. We agree with the Hearing Panel that Paratore's actions constitute egregious conduct. Paratore deceived his Firm by settling four customer complaints by converting and misdirecting ADL premium payments to those four other customers' policies.[20]

We previously have stated that "settling a customer loss or complaint without the knowledge or authorization of the employer firm is a serious offense." *DiAngelo*, 1996 NASD Discip. LEXIS 34, at *5-6. Indeed, "to discharge their supervisory obligations adequately, member firms must be aware of all business-related contact and communications between their registered representatives and customers, particularly with respect to customer complaints." *Id.* at *6. Moreover, the Guidelines instruct us to determine whether the respondent's misconduct was "the result of an intentional act, recklessness or negligence" and whether the respondent attempted to conceal his misconduct from his firm. *See Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 10 and 13). Paratore's intentional concealment of customer complaints interfered with MetLife's ability to discharge its supervisory obligations adequately with respect to Paratore.

For these reasons, we find that Paratore's misconduct was egregious, and that a bar is warranted under the Guidelines. We also find that Paratore's statement that he is "sorry" for his "wrongful" conduct does not mitigate the egregious nature of his actions. *See Mizenko*, 2004 NASD Discip. LEXIS 20, at *21. The settling of customer complaints without the knowledge or authorization of an associated person's member firm is the type of clandestine activity that harms customers whose interests are not properly served; it also harms member firms by preventing them from properly supervising their brokers. A bar is therefore necessary to prevent Paratore from being in a position to again harm securities customers and FINRA member firms. A bar also will serve as a reminder to others in the industry that settling customer complaints without the member firm's knowledge or authorization is the type of unethical conduct that cannot be tolerated in the securities industry.

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[19] *Guidelines*, at 36.

[20] The Guidelines ask us to consider whether the respondent provided the employer with verbal notice of the settlement and the employer acquiesced, or whether the respondent deceived his employer. *Id.* There is no dispute that Paratore failed to advise MetLife that he settled the complaints of four customers without the Firm's authorization or knowledge.

C. Paratore's Arguments in Support of a Suspension

Paratore contends that the Hearing Panel's imposition of respective bars for each of his violations was "overly harsh" because he has "never done anything wrong before." Paratore further asserts that a period of suspension would have been a more appropriate sanction for his misconduct. We reject Paratore's arguments for a number of reasons. Contrary to Paratore's statement implying that he has a clean disciplinary record, we note that he has a disciplinary history in the form of a Letter of Caution ("LOC"). On September 24, 2004, FINRA issued an LOC advising Paratore: (1) that he had violated NASD Rule 2110 by falsely signing his name to an insurance application as a witness when, in fact, he had not witnessed the owner's signature; and (2) that the September 24, 2004 LOC would be "taken into consideration in determining any future matter should violations occur." Further, the Guidelines instruct us to "always consider a respondent's disciplinary history in determining sanctions,"[21] and to consider imposing more severe sanctions when past misconduct evidences disregard for investor protection or commercial integrity, as Paratore's past misconduct does.[22] In light of these considerations, we conclude that Paratore's past disciplinary history constitutes additional support for our decision to bar him for each cause of action.[23] We reject Paratore's suggestion that a period of suspension would be a proper sanction for his actions. Given the serious nature of Paratore's violations and the aggravating factors we discussed above, we conclude that the imposition of a bar for each violation is essential and consistent with the recommended sanctions and considerations in the Guidelines.[24]

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[21] *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2).

[22] *Id.*

[23] While the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating. *See Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (determining the lack of disciplinary history is not mitigating and representative "was required to comply with the NASD's high standards of conduct at all times").

[24] The Guidelines permit us to refrain from imposing a fine when a bar is imposed, and we have determined not to impose a fine in this matter. *See Guidelines*, at 10. If Paratore had not previously paid restitution to ADL, we would have ordered restitution related to the conversion violation. *Id.*

VI. Conclusion

We affirm the Hearing Panel's finding that Paratore converted ADL insurance premium payments over a three-year period by allocating those payments to the policies of approximately 22 of his other customers who were not associated with ADL, in violation of Rule 2110. We also affirm the Hearing Panel's finding that Paratore used converted funds to settle the complaints of four customers without his Firm's knowledge or authorization, in violation of Rule 2110. Finally, we affirm the Hearing Panel's decision to impose a bar against Paratore for converting ADL funds and to impose a separate bar against Paratore for using converted funds to settle four customer complaints without the knowledge or authorization of his Firm. The bars imposed in this decision are effective immediately upon issuance of the decision.[25]

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith, Senior Vice President
and Corporate Secretary

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