

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Dante J. DiFrancesco

Croton, NY,

Respondent.

DECISION

Complaint No. 2007009848801

Dated: December 17, 2010

Respondent misused confidential customer information that constituted nonpublic private information under Regulation S-P. Held, findings modified and sanctions affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Robin W. Sardegna, Esq., and Danielle I. Schanz, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Pursuant to NASD Rule 9311, Dante J. DiFrancesco (“DiFrancesco”) appeals a December 1, 2009 Hearing Panel decision. The Hearing Panel found that DiFrancesco violated NASD Rule 2110 by misusing confidential customer information that was the property of his firm. The Hearing Panel also found that DiFrancesco violated NASD Rule 2110 by misusing confidential customer information that constitutes “nonpublic personal information” under Regulation S-P. The Hearing Panel fined DiFrancesco \$10,000 and suspended him in all capacities for 10 business days. We modify the Hearing Panel’s findings and affirm its sanctions.

I. Background

DiFrancesco first became associated with a FINRA member firm in August 1994. In October 2004, DiFrancesco became associated with member firm Banc of America Investment

Services, Inc. (“BAIS” or the “Firm”) as a general securities representative when BAIS acquired the firm that had employed him. He was associated with BAIS until May 25, 2007, and associated with his new firm, National Securities Corp. (“National Securities”), on June 11, 2007. National Securities terminated DiFrancesco on June 21, 2007, after receiving a copy of a letter that BAIS’s attorney sent to DiFrancesco advising him that he had “misappropriated the firm’s confidential customer information” and was “improperly soliciting the firm’s customers to transfer their accounts to [his] new firm.” DiFrancesco associated with another member firm in July 2007 and is currently registered with that firm.

II. Procedural History

On January 7, 2009, FINRA’s Department of Enforcement (“Enforcement”) issued a complaint against DiFrancesco alleging that he misused BAIS confidential customer information, in violation of NASD Rule 2110.¹ The complaint alleged that in May 2007, just prior to terminating his employment with BAIS, and without authorization from the Firm or its customers, DiFrancesco wrongfully downloaded onto a flash drive in excess of 36,000 customer names, “along with their net worth information, account numbers and telephone numbers.” The complaint alleged further that the Firm considered the account numbers and net worth to be the Firm’s confidential and proprietary information and also constituted “nonpublic personal information” under Regulation S-P privacy rules promulgated under Section 504 of the Gramm-Leach-Bliley Act.² The complaint stated that DiFrancesco realized after he left BAIS and reviewed the customer information that he had not only downloaded information about the approximately 200 customer accounts that he handled, but also had downloaded information “for approximately 36,000 additional customer accounts.” On June 6, 2007, DiFrancesco “[n]evertheless . . . forwarded all the customer information he had obtained to a prospective member firm.” After becoming registered with the new member firm on June 11, 2007, DiFrancesco used BAIS customer information to send letters to these customers about his new employment.

¹ We apply the conduct rules that existed at the time of the conduct at issue.

² On November 12, 1999, the Gramm-Leach-Bliley Act was signed into law setting forth privacy requirements for the use of “nonpublic personal information” by banks, securities industry members, insurance companies, and other financial institutions. The Gramm-Leach-Bliley Act required the Securities and Exchange Commission, and other federal regulators, to issue regulations governing the collection, use, and safeguarding of nonpublic personal financial information. On June 22, 2000, the Commission issued Regulation S-P, Exchange Act Rel. No. 42974, 2000 SEC LEXIS 1338 (June 22, 2000). Regulation S-P became mandatory on July 1, 2001. Rule 10(a)(1) of Regulation S-P generally prohibits the disclosure of “nonpublic personal information” about a consumer to a nonaffiliated third party unless a broker-dealer has provided the consumer with proper notice and “a reasonable opportunity . . . to opt out of the disclosure.” 17 C.F.R. § 248.10(a)(1).

DiFrancesco answered the complaint and denied any wrongdoing. After conducting a hearing, the Hearing Panel issued a decision finding that DiFrancesco violated NASD Rule 2110, as alleged in the complaint. DiFrancesco filed a timely appeal.

III. Facts

DiFrancesco became registered with BAIS in October 2004, following the merger of his former firm with BAIS. DiFrancesco testified that he began looking for employment with another member firm in March 2007, after learning from his manager that he had approximately three months to improve his performance by referring a sufficient number of clients to the “banking side” of the company and selling “a certain number of products, and specific products.” DiFrancesco’s search for employment led to discussions with Don Kasht (“Kasht”), the manager of the Elmsford, New York branch office of National Securities, about associating with the firm as an independent contractor. DiFrancesco advised Kasht during the course of those discussions that he intended to bring his list of approximately 200 customers with him from BAIS to National Securities.

Upon associating with BAIS in October 2004, DiFrancesco signed three agreements (a “Confidentiality Agreement,” a “BAIS Series 7 Agreement,” and a “Multiple Employment Agreement”) that put him on notice that confidential customer account information was proprietary to the Firm, that such information could not be reproduced or appropriated for the use of others, and that it could not be disclosed to a third party without prior written permission by an authorized representative of BAIS. Under the Confidentiality Agreement, DiFrancesco represented that he “specifically underst[oo]d and agree[d]” that all confidential customer account information, including names, addresses, and account numbers, was “the sole and exclusive property of [BAIS]”, and that he would “not reproduce or appropriate for [his] own use, or for the use of others, any property of [BAIS].” In addition, in October 2005 and March 2006, DiFrancesco signed documents agreeing to abide by BAIS’s Code of Conduct and Code of Ethics, respectively, both of which included directives relevant to the proper handling of customer information. The Code of Conduct stated that associated persons were “only authorized to access customer information for legitimate business purposes of [BAIS].” Under the Code of Ethics, associated persons were instructed to “honor their position of trust and responsibility with [BAIS] by refraining from making inappropriate use of any proprietary or confidential information [they] may acquire in the course of his/her employment [at BAIS].”

While still employed at BAIS, DiFrancesco decided that he would take his list of customers and information related to those customers with him to National Securities. Consequently, on May 24, 2007, DiFrancesco attempted to email customer information to his home email address since he did not have a “physical” book of his customers to take with him. That same day, DiFrancesco’s manager had a meeting with him during which he advised DiFrancesco that BAIS had intercepted the email and prevented it from being transmitted. According to DiFrancesco, he and his manager agreed during that meeting that it was time for him to leave his employment at BAIS.³ Before leaving BAIS, however, DiFrancesco admittedly

³ DiFrancesco’s manager at BAIS did not testify at the hearing below.

inserted his sales code into the BAIS computer system and downloaded customer information onto a flash drive and placed the flash drive in his pocket so that he could take his “book” of customers with him.⁴ DiFrancesco’s termination from BAIS became effective on May 25, 2007, and is listed in FINRA’s Central Registration Depository (“CRD”®) as “[v]oluntary.”

DiFrancesco testified that he did not realize until after he had left BAIS and transferred the customer data from the flash drive to an Excel spreadsheet that he had mistakenly downloaded information for approximately 36,000 BAIS customers. He testified that there must have been “a glitch in the program” because he inserted his sales code into the BAIS computer system with the intent to download information pertaining only to his “180 to 200 clients.” The data that he downloaded and transferred to the Excel spreadsheet included, among other things, customer account numbers, net worth information, and telephone numbers.

On June 6, 2007, DiFrancesco sent Kasht an email from his home email address that included the Excel spreadsheet with confidential customer information as an attachment. The email stated: “As mentioned I am having trouble exporting the client files from this list. Here it is with 31k names. I will call you to get this stuff out pronto. Thanks.” DiFrancesco stipulated prior to the hearing that the customer list that he sent to Kasht actually included approximately “36,000 customer names.” Kasht testified that, contrary to the suggestion in DiFrancesco’s email, DiFrancesco had not previously advised him that he was having problems exporting his customer information.

DiFrancesco testified that Kasht printed out the spreadsheet, and he and Kasht reviewed it to obtain information about DiFrancesco’s customers in order to send information packets to those customers regarding National Securities. Kasht contradicted that testimony, stating that he “never” printed the email attachment that he received from DiFrancesco, and that DiFrancesco had provided him with a handwritten list of customers so that they could send information packets to those customers. DiFrancesco testified that it was his intent to extract from the data that he sent to Kasht only the information pertinent to his customers, and he subsequently “destroyed” the information related to those BAIS customers whose accounts he did not handle. Although the Hearing Panel decision acknowledged the discrepancy in testimony, it did not credit the testimony of one over the other.

DiFrancesco became associated with National Securities on Monday, June 11, 2007. That same day, he began utilizing the previously downloaded BAIS customer data to send letters that he and Kasht signed to “introduce” National Securities to his customers.⁵ Kasht testified that the letters were part of a welcome package that included a new account application. The

⁴ DiFrancesco admitted that he “used the flash drive because [he] thought the E-mail would basically get . . . blocked,” and that he was “trying to get [his] accounts over” to National Securities.

⁵ DiFrancesco stipulated that he sent the letters “to 100 to 200 of [his] former customers at [BAIS], informing them of his employment with National Securities.”

mailings also included an instruction sheet advising DiFrancesco's customers how to transfer their BAIS accounts to National Securities.

The following Monday, June 18, 2007, Kasht arrived at his office and found on his facsimile machine a copy of a letter from BAIS's attorneys to DiFrancesco that threatened legal action against DiFrancesco for failing to adhere to agreements he had signed regarding the confidential and proprietary nature of BAIS customer information. The letter accused DiFrancesco of misappropriating the Firm's confidential customer information and improperly soliciting the Firm's customers to transfer their accounts to his new firm. The letter also demanded that DiFrancesco "immediately *cease and desist* using [BAIS] confidential and proprietary customer information."⁶ (emphasis added). Kasht testified that National Securities would not have hired DiFrancesco if it had known that he was subject to an employment contract with BAIS that impeded his ability to bring his clients with him upon associating with National Securities. In fact, DiFrancesco had represented in his "Application for Association" with National Securities that he had no employment contract with BAIS. National Securities terminated DiFrancesco on June 21, 2007, three days after receiving a copy of BAIS's cease and desist letter.

DiFrancesco admitted at the hearing that he violated the agreements that he entered into with BAIS, stating that he believed his right to his customers' information overrode BAIS's right to keep the information at BAIS. When asked about whether he told anyone at BAIS that he was taking BAIS customer information with him, he responded, "[a]bsolutely not." He also admitted that he did not ask his clients to provide him with any written documentation to give to BAIS authorizing him to take information related to those customers to his new firm. When asked at the hearing why he did not just write down the names and addresses of his customers before leaving BAIS, DiFrancesco responded that it was "[I]aziness" and because he also needed their account numbers to arrange for the transfer of accounts by the Automated Customer Account Transfer Service ("ACATS").⁷

IV. Discussion

Although the complaint here alleged a single cause of action against DiFrancesco, we recognize two separate but related theories under which DiFrancesco's actions could have violated just and equitable principles of trade. First, DiFrancesco's violation of NASD Rule 2110 could be based on his taking and using customer information that constituted nonpublic personal information under Regulation S-P. Second, DiFrancesco's violation of NASD Rule

⁶ Kasht testified that he reviewed DiFrancesco's email that included the confidential customer information at issue, he did not use any of the information attached to the email and ultimately deleted the email and attachment.

⁷ "ACATS is a system administered by the National Securities Clearing Corporation (NSCC) that automates and standardizes procedures for the transfer of assets in a customer account from one firm to another." *NASD Notice to Members 04-58* (Aug. 2004).

2110 could be based on his breach of his contracts with BAIS by appropriating customer information for his own use. We find that DiFrancesco violated just and equitable principles of trade under the first theory.

NASD Rule 2110 requires “[a] member, in the conduct of his business, [to] observe high standards of commercial honor and just and equitable principles of trade.”⁸ “[T]he SEC has consistently held that [FINRA’s] ‘disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.’” *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (citations omitted). We find that DiFrancesco violated NASD Rule 2110 by taking and using customer information that constituted nonpublic personal information under Regulation S-P.

We first review the privacy requirements under Regulation S-P, which govern the treatment of “nonpublic personal information” about consumers and customers by financial institutions, including broker-dealers.⁹ Under Rule 30 of Regulation S-P, every broker-dealer must adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information, which must be reasonably designed to insure the security and confidentiality of customer records and information. 17 C.F.R. § 248.30. Additionally, Rule 10 of Regulation S-P requires broker-dealers to provide consumers a reasonable opportunity, before disclosing any “nonpublic personal information” to a nonaffiliated third party, to opt out of the disclosure. 17 C.F.R. § 248.10(a)(1). “Nonpublic personal information” includes, among other things, “personally identifiable financial information.” 17 C.F.R. § 248.3(t)(1). “Personally identifiable financial information” includes: (1) information a consumer provides to a broker-dealer to obtain a financial product; (2) information about a consumer resulting from any transaction involving a financial product or service between a broker-dealer and a consumer; or (3) information a broker-dealer otherwise obtains about a consumer in connection with providing a financial product or service to that consumer. 17 C.F.R. § 248.3(u)(1). In September 2000, FINRA advised its members that “[u]nder Regulation S-P, any information given by consumers or customers to broker/dealers to obtain a product or service will generally be considered to be nonpublic financial information.” *NASD Notice to Members 00-66* (Sept. 2000).

⁸ NASD Rule 2110 is applicable to associated persons pursuant to NASD Rule 0115(a), which provides that “[t]hese Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules.”

⁹ Regulation S-P defines “consumer” broadly to mean any individual who obtains a financial product or service from a broker-dealer, among others, that is primarily for personal, family, or household use. 17 C.F.R. § 248.3(g). A “customer” is a consumer who has a continuing relationship with a broker-dealer, among others, in which the broker-dealer provides one or more financial products or services that are primarily for personal, family, or household use. 17 C.F.R. § 248.3(j), (k).

We find that the BAIS account numbers and net worth information of the 36,000 BAIS customers that DiFrancesco downloaded and sent to National Securities (a nonaffiliated third party) constituted “nonpublic personal information” under Regulation S-P.¹⁰ As such, DiFrancesco should not have transmitted the nonpublic personal information unless BAIS had given the customers a reasonable opportunity to opt out of the disclosure, before it was made to National Securities, and they did not opt out. *See* Regulation S-P, Rule 10; 17 C.F.R. § 248.10(a)(1).

We next analyze DiFrancesco’s actions under NASD Rule 2110 to determine whether his conduct was: (1) business-related; and (2) inconsistent with high standards of commercial honor and just and equitable principles of trade. We find in the affirmative on both counts. “[DiFrancesco’s] ‘business’ includes his business relationship with his employer, as well as his commercial relationships with his customers.”¹¹ *See Ialleggio v. SEC*, No. 98-70854, 1999 U.S. App. LEXIS 10362, at *3 (9th Cir. May 20, 1999). DiFrancesco downloaded confidential information that constituted nonpublic personal information under Regulation S-P concerning approximately 36,000 customers from BAIS’s computer system and forwarded it to National Securities for his own use. His actions compromised the privacy of his customers’ nonpublic personal information under Regulation S-P and prevented BAIS from stopping his disclosures of nonpublic personal information to National Securities. Consequently, DiFrancesco’s misconduct involved his business relationship with his employer and his commercial relationship with his customers. It was therefore business-related conduct under NASD Rule 2110.

DiFrancesco’s misconduct also was inconsistent with the high standards of commercial honor and just and equitable principles of trade requirement under NASD Rule 2110. “[D]isciplinary hearings to require compliance with ‘high standards of commercial honor and just and equitable principles of trade’ [under NASD Rule 2110] are ethical proceedings; hence the concern is with ethical implications of [a respondent’s] conduct.” *Timothy L. Burkes*, 51 S.E.C. 356, 360 (1993), *aff’d*, 29 F.3d 630 (9th Cir. 1994). The Commission has recently affirmed that a registered person’s breach of confidentiality is a violation of the ethical principles

¹⁰ When asked at the hearing about the applicability of Regulation S-P, DiFrancesco stated that he “wasn’t selling a list.” Although the definition of nonpublic personal information under Regulation S-P includes certain customer lists, that provision of Regulation S-P is not at issue in this case. *See* 17 C.F.R. §§ 248.3(t), (u).

¹¹ There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when the activity does not involve a security. *See Vail*, 101 F.3d at 39; *Daniel D. Manoff*, 55 S.E.C. 1155, 1161 (2002) (finding respondent subject to discipline under NASD Rule 2110 for engaging in the unauthorized use of customer’s credit card numbers); *James Goetz*, 53 S.E.C. 472, 476-78 (1998) (finding that respondent improperly obtained a monetary donation for his daughter’s private school tuition from his member firm’s matching gifts program by misrepresenting that he had contributed personal funds); *Earnest Cipriani, Jr.*, 51 S.E.C. 1004, 1006 (1994) (affirming discipline for misappropriating funds from insurance – not securities – customer).

expressed in a just and equitable principles of trade rule. *See Thomas W. Heath, III*, Exchange Act Rel. No. 59223 (Jan. 9, 2009) (finding a violation of the New York Stock Exchange's just and equitable principles of trade rule when an investment banker disclosed nonpublic information regarding a corporate acquisition) *aff'd, Heath v. SEC*, 586 F.3d 122, 131 (2d Cir. 2009). We find that DiFrancesco improperly disclosed confidential customer information by taking and forwarding to a nonaffiliated third party "nonpublic personal information" under Regulation S-P, in violation of the ethical standard embodied in NASD Rule 2110.

We reverse, however, that portion of the Hearing Panel's decision that found DiFrancesco liable based on his misuse of customer information that the Firm classified as confidential and proprietary under DiFrancesco's three agreements with BAIS.¹² Instead, we consider the central ethical violation in this case to be DiFrancesco's downloading and transmitting of the nonpublic personal information, which was particularly sensitive.

V. Sanctions

The Hearing Panel fined DiFrancesco \$10,000 and suspended him from associating with any member firm in any capacity for 10 business days for misusing confidential customer information, in violation of NASD Rule 2110. For the following reasons, we sustain the Hearing Panel's sanctions.

The FINRA Sanction Guidelines ("Guidelines") do not contain recommended sanctions for the specific misconduct at issue. We therefore have considered the recommendations included in the Guidelines' Principal Considerations in Determining Sanctions and other relevant factors in setting appropriately remedial sanctions.¹³

We find that DiFrancesco knowingly forwarded confidential data concerning approximately 36,000 BAIS customers to his new employer. The Hearing Panel credited

¹² As noted in *Dep't of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6 (NASD NAC June 2, 2000), "[t]he Commission has recognized that 'it is not the function of the SEC, or of the NASD, in applying [NASD Rule 2110], to decide private contract rights between the parties' and that 'the Rule states a broad ethical principle and the question presented thereunder is whether the member's conduct in question violates standards of fair dealing.'" *Shvarts*, 2000 NASD Discip. LEXIS 6, at *13-14, (quoting, *Samuel B. Franklin & Co.*, 38 S.E.C. 113, 116 (1957)). The Commission has also held that "not . . . every failure to perform a contract violates [NASD Rule 2110]. To come within [NASD Rule 2110] it should appear that the breach was committed without equitable excuse or justification." *Lerner & Co.*, 37 S.E.C. 850, 855 (1957). Although we doubt that DiFrancesco had any valid justification for breaching his contracts with BIAS, we choose not to resolve this point on appeal and we do not find that DiFrancesco violated NASD Rule 2110 under this theory of the case.

¹³ *See FINRA Sanction Guidelines* 6-7 (2007), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> [hereinafter *Guidelines*].

DiFrancesco's claim that he intended to download from BAIS's computer system information pertaining only to his clients, and that there was no evidence he used, intended to use, or expected his new firm to use, data concerning customers who were not his clients. We find no reason to reject the Hearing Panel's credibility determination.¹⁴ Even though DiFrancesco planned to limit the download of information to his 180-200 former clients, he nonetheless intentionally forwarded the Excel spreadsheet with nonpublic personal information relevant to thousands of BAIS customers who were not his clients to his new employer. DiFrancesco's actions prevented BAIS from giving its customers a reasonable opportunity to opt out of the disclosures, as required by Regulation S-P, and resulted in his potential for monetary gain with respect to the BAIS clients who decided to open an account with him at National Securities.¹⁵ DiFrancesco's misconduct also caused National Securities to improperly receive nonpublic personal information about BAIS's customers.

We have also considered that DiFrancesco's use of confidential BAIS customer information violated agreements that he signed with BAIS. Those agreements put him on notice that nonpublic information about BAIS's customers was confidential and the exclusive property of BAIS, and that it could not be reproduced or appropriated for DiFrancesco's own or others' use.

We note that it provides some measure of mitigation that DiFrancesco has been forthcoming in admitting throughout these proceedings that he improperly downloaded confidential customer information and forwarded that information to a third party not affiliated with BAIS. At the same time, DiFrancesco has failed to recognize the importance of Regulation S-P and the potential harm his misconduct could have caused BAIS's customers with respect to the privacy of their nonpublic personal information.

Based on the foregoing considerations, we conclude that the Hearing Panel's sanctions are appropriately remedial.¹⁶ Thus, we affirm the Hearing Panel's sanctions and order that

¹⁴ "[C]redibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference, and can be overturned only where the record contains substantial evidence for doing so." *Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *16 n.11 (NASD NAC Dec. 21, 2004), *aff'd*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005).

¹⁵ The Guidelines instruct us to consider whether the respondent's misconduct "resulted in the potential for monetary or other gain." *Id.* (Principal Considerations in Determining Sanctions No. 17).

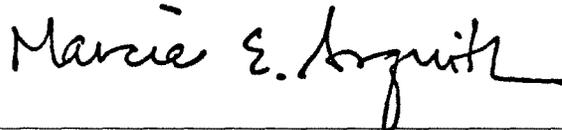
¹⁶ Although we reverse a portion of the Hearing Panel's basis for liability, we consider our more narrow finding of liability to encompass misconduct that is equal in seriousness to what the Hearing Panel found. The factors that we have discussed relevant to sanctions fully support our decision to affirm the Hearing Panel's imposition of a \$10,000 fine and a 10-business-day suspension against DiFrancesco.

DiFrancesco be fined \$10,000 and suspended for 10 business days in all capacities. The sanctions are necessary to remediate DiFrancesco's misconduct and to deter others who might consider shirking their ethical obligations under NASD Rule 2110 in favor of their potential for financial gain.¹⁷

VI. Conclusion

We affirm the Hearing Panel's finding that DiFrancesco violated NASD Rule 2110 because he misused confidential customer information when he downloaded and transmitted nonpublic personal information under Regulation S-P for approximately 36,000 BAIS customers to his new firm. For that misconduct, we fine DiFrancesco \$10,000 and suspend him in all capacities for 10 business days. We also affirm the Hearing Panel's order that DiFrancesco pay \$2,702.77 in hearing costs. In addition, DiFrancesco is assessed \$1,526.75 in appeal costs.¹⁸

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

¹⁷ Enforcement asserts that DiFrancesco's misconduct calls for a 30-day suspension against him. DiFrancesco responded on appeal by questioning Enforcement's motive in seeking a 30-day suspension against him. FINRA disciplinary proceedings are treated as an "exercise of prosecutorial discretion," and, as such, "are given wide latitude." *Schellenbach v. SEC*, 989 F.2d 907, 912 (7th Cir. 1993). Generally, "courts will not inquire into a prosecutor's ill motive unless there is a showing of selective enforcement or an attempt to discriminate by arbitrary classification." *Id.* (citations omitted). Here, there is no evidence of either of these motives. We also have considered DiFrancesco's assertion on appeal that the Hearing Panel's sanctions would put him out of business. In determining appropriately remedial sanctions, however, we do not consider as evidence of mitigation the possible impact a disciplinary action might have on a respondent's career. See *Dep't of Enforcement v. Winters*, Complaint No. E102004083704, 2009 FINRA Discip. LEXIS 5, at *18 (FINRA NAC July 30, 2009) ("The economic hardship that results from a longer suspension and the impact that this matter may have upon Winters's business do not mitigate his misconduct.").

¹⁸ We also have considered and reject without discussion all other arguments advanced by the parties.

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