

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of  
Department of Enforcement,  
Complainant,

vs.

Chad A. McCartney  
Atlanta, GA,

Respondent.

DECISION

Complaint No. 2010023719601

Dated: December 10, 2012

**Registered representative falsified an expense report and supporting documentation to obtain a \$500 reimbursement to which he was not entitled. Held, findings affirmed and sanctions modified.**

**Appearances**

For the Complainant: Thomas M. Huber, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Richard A. Levan, Esq.

**Decision**

Pursuant to FINRA Rule 9311, Chad A. McCartney (“McCartney”) appeals a FINRA Hearing Panel’s September 15, 2011 decision barring McCartney for falsifying an expense report and supporting documentation to obtain a \$500 reimbursement to which he was not entitled. The Hearing Panel found that McCartney’s misconduct violated NASD Rule 2110.<sup>1</sup> After a thorough review of the record, we affirm the Hearing Panel’s findings and modify the sanctions imposed.

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<sup>1</sup> The conduct rules that apply in this case are those that existed when the conduct at issue occurred in 2006.

I. Background

McCartney entered the securities industry in September 2000 as an investment company products/variable contracts representative associated with Hartford Life Distributors, LLC, formerly Planco Financial Services, LLC (“Hartford Life”). McCartney voluntarily left Hartford Life in December 2009 and joined another member firm as an investment company products/variable contracts representative. In February 2011, he voluntarily terminated his association with his member firm. He is not currently associated with a FINRA member firm. The conduct that is the subject matter of this action occurred in April 2006, during McCartney’s association with Hartford Life.

II. Procedural History

In December 2010, FINRA’s Department of Enforcement (“Enforcement”) filed a two-cause complaint. Cause one alleged that McCartney violated NASD Rule 2110 by submitting a false expense report and fabricated supporting documentation to Hartford Life that resulted in a \$500 reimbursement payment to McCartney to which he was not entitled. Cause two alleged that McCartney violated NASD Rule 2110 by creating and submitting falsified supporting documentation (a falsified copy of his own \$500 check, a fabricated hotel bill, and a forged verification letter from a registered representative with another firm) to support the false expense report referenced in cause one. FINRA discovered McCartney’s reimbursement request in the course of investigating other fabricated reimbursement requests at Hartford Life several years after McCartney left the firm.

In a September 2011 decision, the Hearing Panel found that McCartney violated NASD Rule 2110 as alleged and barred McCartney from associating with any member firm in any capacity. This appeal followed.

III. Facts

McCartney does not dispute the underlying facts and admitted the allegations of the complaint in his amended answer. The pertinent facts are as follows.

McCartney joined Hartford Life in 2000 as a “wholesaler” of variable annuity products issued by Hartford Life or its affiliates.<sup>2</sup> As a wholesaler, McCartney conducted seminar presentations for registered representatives at broker-dealers not affiliated with Hartford Life to encourage the representatives to sell Hartford Life variable annuities.

McCartney was an independent contractor with Hartford Life. He earned commissions based on sales that resulted from his presentations and did not receive any salary or other remuneration from Hartford Life. Hartford Life did not provide McCartney with an expense

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<sup>2</sup> A “wholesaler” markets products to other broker-dealers in an effort to persuade those broker-dealers to sell the products to their retail clients. Typically, wholesalers such as McCartney do not engage in retail sales of offerings, although they may occasionally make presentations to other broker-dealers’ clients.

account to cover the costs associated with these seminars. Rather, McCartney personally paid for all expenses associated with the seminars. Hartford Life reimbursed McCartney for documented expenses, generally up to \$500 per seminar. To receive reimbursement, Hartford Life required that McCartney produce actual receipts for all expenses, including receipts from seminar venues, and letters from broker-dealers whose representatives attended the seminars verifying McCartney's presentation ("verification letters").

During 2006, RM was a financial advisor at member firm WS, one of McCartney's highest producing clients, and McCartney had known RM since 2000. RM solicited McCartney to donate money to his son's private school. McCartney agreed to the donation and, on April 4, 2006, wrote a check drawn on his personal account to the school for \$500. The school deposited the check into its donation account at WS on April 12, 2006.

During this time, Hartford Life's reimbursement policy had been the subject of discussion and criticism at the wholesalers' division meeting. During the meeting, SL, another wholesaler at Hartford Life, told McCartney and others that he had been submitting false expense reports to circumvent Hartford Life's strict reimbursement policy. He advised them that he used an invoice template bearing the logo for Embassy Suites Hotels, and he provided them with an electronic copy of the Embassy Suites template and WS letterhead.

McCartney thereafter used the Embassy Suites template to fabricate an invoice to obtain reimbursement of his \$500 donation. McCartney created a false invoice addressed to RM, dated April 3, 2006, which listed an April 3, 2006 room rental, food, and tax charge of \$725.87. To accompany the false invoice, McCartney created a letter on WS letterhead that SL provided purportedly verifying that on April 3, McCartney held a seminar for 27 people at a cost to McCartney of \$500. McCartney forged RM's signature on the letter. McCartney also altered his personal check payable to the school. McCartney changed the payee to WS and deleted the school's account number. McCartney submitted a copy of the altered check and the other falsified documents to an expense processor at Hartford Life, who then prepared an expense report and submitted it to the firm on McCartney's behalf.<sup>3</sup>

McCartney received a \$500 reimbursement from Hartford Life. McCartney testified that he realizes that his actions were wrong and violated FINRA rules. He acknowledged that he deserves a sanction for his actions. He stated that he did not feel that he could refuse RM's request for a donation because RM was such a good customer to him and Hartford Life. He also stated that, at the time, he was overcome with business expenses, and he made a "stupid" mistake when he sought to obtain reimbursement for the school donation. McCartney stated that he deeply regrets his actions and has not repeated them.

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<sup>3</sup> Initially, McCartney submitted just the falsified hotel invoice and verification letter to the expense processor, but the reimbursement request was rejected for insufficient documentation. In response, McCartney altered the check that he had given to the school to change the payee name to WS and submitted it as proof that he paid for a seminar.

#### IV. Discussion

The Hearing Panel found that McCartney violated NASD Rule 2110 by submitting a false expense report and accompanying falsified documentation to Hartford Life, resulting in a \$500 payment to McCartney to which he was not entitled. We affirm these findings.

NASD Rule 2110 is an ethical rule.<sup>4</sup> It requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. In the absence of the violation of another securities law or rule, conduct may violate Rule 2110 if it is unethical or committed in bad faith. *See Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at \*65 (Dec. 10, 2009). FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security. *See John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761, at \*14-15 (May 26, 2010) (finding that registered representative who submitted false expense reimbursement requests and accompanying documentation violated Rule 2110), *appeal filed*, No. 10-1195 (D.C. Cir. July 23, 2010); *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (finding that registered representative who used a co-worker's credit card without authorization violated Rule 2110); *James A. Goetz*, 53 S.E.C. 472, 475 (1998) (finding that registered person's misuse of member firm's matching gift program to obtain private school tuition credit violated Rule 2110); *Keith Perkins*, 54 S.E.C. 989, 993 (2000) (finding that registered person's submission of false reimbursement requests for seminar expenses that he did not incur violated Rule 2110), *aff'd*, 31 F. App'x 562 (Mar. 11, 2002). The test to determine whether conduct violates Rule 2110 is whether the misconduct "reflects on the associated person's ability to comply with the regulatory requirements of the securities business." *Manoff*, 55 S.E.C. at 1162.

McCartney does not dispute that he intentionally prepared and submitted to Hartford Life a false expense report and, to support the false report, a fabricated receipt, a fabricated verification letter, and a falsified check, for which he received monetary reimbursement of \$500 to which he was not entitled. We find that McCartney acted unethically and his conduct reflects negatively on his ability to comply with regulatory requirements. McCartney thus violated Rule 2110, as alleged in causes one and two.

#### V. Sanctions

The Hearing Panel barred McCartney in all capacities. We modify that sanction.

Our review of the sanctions imposed by the Hearing Panel is de novo, and we must assign our own weight to the relevant, and often countervailing, factors in each case. *Dep't of Enforcement v. Leopold*, Complaint No. 2007011489301, 2012 FINRA Discip. LEXIS 2, at \*17 (FINRA NAC Feb. 24, 2012). We do not concur with the Hearing Panel's conclusion that several aggravating and no mitigating factors exist and, for the reasons outlined below, we find

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<sup>4</sup> Effective December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110. The language of the rule remains unchanged. *See SR-FINRA-2008-028*, Exchange Act Rel. No. 58643, 2008 SEC LEXIS 2279 (Sept. 25, 2008).

that McCartney's violation of Rule 2110 was serious, but not egregious. "The relevancy and characterization of [an aggravating or mitigating] factor depends on the facts and circumstances of a case and the type of violation."<sup>5</sup> Balancing the factors present in this case, we find that lesser sanctions would be appropriately remedial.<sup>6</sup> We therefore eliminate the bar and impose a six-month suspension in all capacities and \$5,000 fine.<sup>7</sup>

We first turn to the Guidelines applicable to conversion or the improper use of funds, which recommend a fine of \$2,500 to \$50,000 for the improper use of funds.<sup>8</sup> The Guidelines also recommend a bar for all cases involving conversion.<sup>9</sup> For cases involving improper use of

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<sup>5</sup> *FINRA Sanction Guidelines*, at 6 (2012), <http://www/finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> (hereafter "Guidelines").

<sup>6</sup> We are guided by our recent action in *Dep't of Enforcement v. Leopold*, which is a similar case. In *Leopold*, we upheld the Hearing Panel's findings that Leopold fabricated in excess of 20 hotel invoices and broker-dealer verification letters under similar circumstances as McCartney. The *Leopold* Hearing Panel barred Leopold. On appeal, we reduced Leopold's bar to a \$25,000 fine and a one-year suspension. We found that Leopold demonstrated remorse, recognized the significance of his misconduct, accepted responsibility for his actions, acknowledged that a serious sanction was in order, and vowed that similar misconduct would not recur. We also noted that Leopold admitted his misconduct from the outset to his firm's investigators and to FINRA's examiners, and that his testimony was consistent throughout the course of the proceeding. In *Leopold*, we balanced these factors with the absence of aggravating factors, such as harm to customers and significant loss to the firm, and determined that Leopold's misconduct was serious, but not so egregious as to warrant a bar. In light of the *Leopold* decision and to "promote consistency in the imposition of remedial sanctions," we reach a similar conclusion here. *Leopold*, 2012 FINRA Discip. LEXIS 2, at \*17.

<sup>7</sup> The complaint contains two causes of action, both of which allege a Rule 2110 violation based on a single course of action (McCartney's falsification of a hotel receipt, verification letter, and check and his signing the name of another person to obtain a \$500 reimbursement). Because the misconduct alleged in causes one and two is identical, we have determined to impose a single sanction for both causes of action. *See Guidelines*, at 4.

<sup>8</sup> *Guidelines*, at 36.

<sup>9</sup> The complaint alleged that McCartney violated NASD Rule 2110 by submitting a false expense report, fabricating and falsifying supporting documentation, forging another representative's name on the supporting documentation, and accepting reimbursement of \$500 to which he was not entitled. The complaint did not specifically allege that McCartney violated Rule 2110 by converting firm funds. McCartney argues that he was denied a fair process because the complaint did not allege conversion, but the Hearing Panel nonetheless found conversion for purposes of sanctions. McCartney argues that, by finding conversion when it was neither alleged in the complaint nor argued by Enforcement, the Hearing Panel improperly subjected him to a more significant sanction without providing him with the opportunity to defend against the allegation of conversion.

funds, the Guidelines state “consider a bar” and that, where mitigation exists, consider suspending respondent for six months to two years. The Guidelines for forgery and falsification of records recommend a fine of \$5,000 to \$100,000. They also recommend that the adjudicator consider a bar in egregious cases and, if mitigating factors exist, a suspension of up to two years.<sup>10</sup>

The Guidelines for forgery and falsification of records provide two considerations for determining the appropriate sanctions: (1) the nature of the documents falsified; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority to falsify the records.<sup>11</sup> Neither of these considerations serves to mitigate McCartney’s misconduct. The documents at issue are a hotel invoice, a verification letter, and a check. While not related to clients, prospective clients, or client accounts, McCartney’s willingness to falsify these documents reflects negatively on his veracity and integrity. Additionally, McCartney never contended that he had a good-faith belief that it was appropriate to falsify the hotel invoice, verification letter, and check and to submit a false expense report. In fact, he has always admitted that his actions were wrong. We find that these two factors do not mitigate McCartney’s actions.

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The Hearing Panel’s decision stated that, although the Guidelines provide that a bar is standard for conversion, the Hearing Panel did not “confine its analysis to a finding that McCartney converted \$500 from Hartford Life.” The Hearing Panel indicated that it also considered the lack of mitigating factors and existence of aggravating factors. Furthermore, although the Hearing Panel implied that it considered McCartney’s actions to constitute conversion, it also applied the Guidelines for forgery and/or falsification of records to its sanctions determination.

The complaint did not allege conversion, and we therefore do not find that McCartney “converted” firm funds and have not imposed sanctions based on such a finding. *See Saad*, 2010 SEC LEXIS 1761, at \*16-18 (rejecting similar notice argument where sole cause of complaint was labeled conversion but FINRA imposed sanctions on a basis other than conversion). Section 15A(h)(1) of the Securities Exchange Act of 1934 ensures fairness in FINRA proceedings by requiring that FINRA bring specific charges, provide notice of such charges, provide an opportunity to defend against the charges, and keep a record of the proceedings. 15 U.S.C. §78o-3(h)(1). We find that McCartney was adequately aware of the issues in controversy and had a full opportunity to defend himself.

<sup>10</sup> *Guidelines*, at 37.

<sup>11</sup> *Id.*

Turning next to the principal considerations generally applicable to all sanctions determinations, we concur with the Hearing Panel's conclusion that McCartney's lack of disciplinary history should not mitigate the sanctions imposed.<sup>12</sup>

We credit McCartney's testimony that he recognized the seriousness of his behavior, was truly remorseful, and accepted the consequences of his actions.<sup>13</sup> He acknowledges that a serious sanction is warranted for his misconduct, is genuinely ashamed of his behavior, and avows that his lapses in judgment will not be repeated. *See Perkins*, 54 S.E.C. at 994 (finding respondent's recognition that his submission of false expense reimbursement requests was inherently dishonest to be mitigating); *Leopold*, 2012 FINRA Discip. LEXIS 2, at \*20-22 (holding that respondent's expression of remorse, recognition of the severity of his misbehavior, acceptance of responsibility, and vow that lapses in judgment will not be repeated support reducing the sanction from a bar); *Dep't of Enforcement v. Nouchi*, Complaint No. E102004083705, 2009 FINRA Discip. LEXIS 8, at \*11 (FINRA NAC Aug. 7, 2009) (concluding that a sanction should fall within the lower end of the relevant Guidelines range where, among other factors, the respondent expressed "sincere remorse"). We also note that McCartney admitted his misconduct from the outset. McCartney left Hartford Life before the firm discovered his actions. When confronted by FINRA four years after the misconduct occurred, McCartney did not deny his actions and offered an explanation to the best of his memory as to what occurred. McCartney did not attempt to conceal his misconduct or cast blame on others.<sup>14</sup>

We further find that McCartney testified consistently throughout the course of the underlying investigations and at the hearing. *See Dep't of Enforcement v. Cuzzo*, Complaint No. C9B050011, 2007 NASD Discip. LEXIS 12, at \*35-36 (NASD NAC Feb. 27, 2007) (holding that factors that militate against finding respondent's misconduct to be egregious include that respondent did not attempt to conceal his false dating of documents from

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<sup>12</sup> *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 1); *see also Manoff*, 55 S.E.C. at 1165-66 n.15 (holding that a respondent should not be rewarded because he may have previously acted appropriately as a registered person).

<sup>13</sup> In response to being asked how he felt about what he did, McCartney stated: "I obviously know what I did was wrong. I'm not the type of individual that's deceitful, that lies. This was – I mean, I feel terrible. This keeps me up all the time . . . so I know what I did was wrong and I feel terrible about it, but it's not something I do on a regular basis. It's a one-time incident." The Hearing Panel was silent as to credibility determinations it may have made regarding McCartney's testimony. We credit the entirety of McCartney's testimony, which is consistent with our understanding of the events and not challenged by countervailing testimony or evidence. McCartney testified that he recognized the severity of his misbehavior, expressed sincere remorse, and accepted responsibility for his actions, and findings to the contrary are not supported by the record. *See Dep't of Enforcement v. Masceri*, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29, at \*42 n.26 (NASD NAC Dec. 18, 2006) ("We note that, on de novo review, we owe 'no special deference' to [H]earing [P]anel 'inferences and conclusions that do not hinge upon findings of credibility.'" (citation omitted).

<sup>14</sup> *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 10).

investigators; expressly acknowledged that his conduct may have harmed firm customers; accepted responsibility for his misconduct; and expressed remorse and offered sincere apologies for his actions throughout these proceedings); *Dep't of Enforcement v. Foran*, Complaint No. C8A990017, 2000 NASD Discip. LEXIS 8, at \*22-23 (NASD NAC Sept. 1, 2000) (reducing Hearing Panel bar where, when confronted, respondent immediately admitted that he had converted firm funds, repaid the firm the amount he converted, and cooperated with investigators and regulators).<sup>15</sup>

The Hearing Panel flatly rejected McCartney's contention that his violative conduct should be viewed as a single moment of very poor judgment. The Hearing Panel based its conclusions on what it found to be the premeditated and deliberate nature of his "ongoing deceit." The Hearing Panel was swayed by the following facts: McCartney possessed the Embassy Suites template several weeks before using it, he engaged in a multi-step process to facilitate his falsified reimbursement request, and he doctored his own check when Hartford Life requested proof of payment. While we agree that none of these factors mitigate the seriousness of McCartney's actions, we do not agree with the Hearing Panel that these facts disprove that his actions constitute one lapse in an otherwise unblemished career. First, McCartney worked in the securities industry for more than 10 years without incident (other than this matter). Second, McCartney did not engage in numerous acts of misconduct, a pattern of misconduct, or misconduct that extended over a lengthy period of time, and since 2006, he has not repeated his misconduct.<sup>16</sup> We find that McCartney's misconduct appears to be a one-time, isolated incident. *But see Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at \*22-24 (FINRA NAC Oct. 6, 2009) (finding that misconduct was premeditated and ongoing where respondent covered up his misconduct for nearly a year, and he fabricated an elaborate lie regarding a two-day business trip that never occurred, lied to obtain reimbursement for an acquaintance's purchase of a cell phone, misled his office staff as to his whereabouts for two days, manufactured numerous false receipts, misled a state examiner and FINRA examiner, and hedged his answers in a FINRA on-the-record interview), *aff'd*, 2010 SEC LEXIS 1761; *Dep't of Enforcement v. Manoff*, Complaint No. C9A990007, 2001 NASD Discip. LEXIS 4, at \*33-34 (NASD NAC Apr. 26, 2001) (finding misconduct egregious where respondent exploited a junior employee, actively concealed his misconduct during the firm's and regulator's

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<sup>15</sup> McCartney's attorney argued that a sanction of less than a bar is appropriate. In support of this argument, he noted that the amount at issue (\$500) was relatively minor for a company as large as Hartford Life, that McCartney did not act out of a desire for personal gain, but rather to be made whole for a donation that he made in furtherance of an important business relationship, and that there was no customer loss or harm sustained due to McCartney's misconduct. The Hearing Panel viewed these arguments as McCartney's effort to trivialize the significance of his misconduct. We disagree. We view these arguments as McCartney's efforts to place his misconduct into context for purposes of sanctions. We find that McCartney's testimony as a whole expressed an understanding of the significance of his rule violations and his willingness to accept responsibility for his actions. McCartney was entitled to defend himself, and we do not find that his efforts in this regard discount his whole-hearted admissions of misconduct and acceptance of responsibility.

<sup>16</sup> *Id.* (Principal Considerations in Determining Sanctions, Nos. 8, 9).



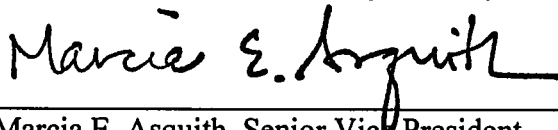
investigations, provided conflicting accounts of events, and failed to show remorse or admit wrongdoing), *aff'd*, 55 S.E.C. 1155 (2002).

Based on the presence of both aggravating and mitigating factors, and our balancing of these factors, we have determined that McCartney's misconduct was serious, but not egregious, and warrants a sanction of less than a bar. We find that McCartney breached his duty as an associated person to act ethically and in a manner that comports with high standards of commercial honor and just and equitable principles of trade. We also find that McCartney failed to use sound judgment by knowingly falsifying a hotel invoice, verification letter, and check, and signing another registered representative's name to the letter. McCartney, however, appears to understand fully the magnitude of his failings and is genuinely remorseful. Based on the foregoing, we suspend McCartney for six months in all capacities and fine him \$5,000. We find that these sanctions are tailored to address McCartney's misconduct.<sup>17</sup>

## VI. Conclusion

We affirm the Hearing Panel's findings that McCartney violated NASD Rule 2110 by fabricating a hotel receipt and verification letter, falsifying a check, and submitting these documents to Hartford Life for a \$500 reimbursement to which he was not entitled. We also find, based on the aggravating and mitigating factors, that McCartney's misconduct is serious. We suspend McCartney for six months in all capacities and fine him \$5,000. We affirm the Hearing Panel's imposition of \$1,599.65 in costs.<sup>18</sup>

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith, Senior Vice President  
and Corporate Secretary

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<sup>17</sup> FINRA sanctions may be remedial, but must not be punitive. *McCarthy v. SEC*, 406 F.3d 179, 188-89 (2d Cir. 2005); *Guidelines*, at 2. A remedial sanction is designed to correct the harm done by respondent's wrongdoing and to protect the trading public from any future wrongdoing the respondent is likely to commit. *McCarthy*, 406 F.3d at 188. In addition to remediation, deterrence may also be relied upon as an additional rationale for the imposition of sanctions. *Id.*

<sup>18</sup> 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, after seven days' notice in writing, will summarily be revoked for non-payment.

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