NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	Disciplinary Proceeding No. C9A990007
Complainant,	:	
v.	:	**HEARING PANEL DECISION**
DANIEL D. MANOFF (CRD #1720001) Poolesville, Maryland	:	
	:	Hearing Officer-JN
	:	June 6, 2000
Respondent.	:	

Digest

The two-count Complaint charged Daniel D. Manoff with making unauthorized transfers of client funds and with effecting unauthorized charges to a co-worker's credit card. Both charges were based on NASD Conduct Rule 2110. The Hearing Panel found that the Department of Enforcement failed to prove the unauthorized transfers by a preponderance of credible evidence, but did prove that Respondent made improper use of the credit card. As sanctions for the latter offense, the Hearing Panel barred Manoff from associating with any NASD member in any capacity and ordered that Manoff pay costs of $4,342.25.

Appearances

Thomas M. Huber, Esq., Philadelphia, PA, for the Department of Enforcement.

John M. Shoreman, Esq., McFadden, Shoreman, P.C., for the Respondent.

DECISION

I. Introduction

This case involves conduct of Respondent Manoff while he was employed by the Guardian Life Insurance Company in a Maryland office, headed by a Mr. Crawford, general agent for the insurance company. Manoff and Crawford were also registered representatives of Guardian Investor Services Corporation (Guardian), a wholly-owned subsidiary of the insurance company, and an NASD member (CX-1; Tr. 175). In addition, Mr. Crawford owned and operated a "trade name" company called "First Financial Group" (Tr. 176), which also employed Manoff and others involved in the case. Although First Financial was often mentioned in the record, there is no significant distinction between it and Guardian for purposes of the actions alleged in the Complaint. For simplicity of meaning, this Decision generally uses "Guardian" in referring to the member firm and to First Financial.

The Complaint contains two counts. The first charges Manoff with making unauthorized transfers of a customer's money to Guardian. The second count charges that he made unauthorized use of a co-worker's credit card in charging certain of his professional and personal expenses. Manoff's registration terminated on May 11, 1998 (CX-1).[1] The Complaint was filed on September 3, 1999, within the two-year period of retained jurisdiction prescribed by Article V, Section 4(a) of the NASD By-Laws for conduct occurring prior to such termination.

Respondent, represented by counsel, answered the Complaint and requested a hearing. A Hearing Panel, composed of an NASD Hearing Officer and two current members of the

District Committee for District 9, heard this case in Washington, DC, on February 8 and 9, 2000. Enforcement presented testimony from five witnesses and introduced forty-two exhibits; Respondent testified and introduced thirteen exhibits. Enforcement filed a post-hearing brief on March 20, 2000; Respondent filed a brief on April 7, 2000; and Enforcement filed a reply on April 12, 2000.

II. Discussion

A. Cause One - alleged unauthorized transfer of customer funds

This cause concerns transfers of a customer's (Ms. CPD's) money from various Fidelity and American Century accounts to Guardian. Respondent admitted making the transfers, but insisted that he did so with CPD's permission. She testified that she had not approved the transfers.

1.) Facts

CPD was interested in an assessment of her financial portfolio and, for that purpose participated in a series of meetings with Respondent and her friend, Mr. Louie, both of whom worked for Guardian. Over the course of time, she accepted some of their recommendations and authorized Manoff to transfer a certain IRA account to Guardian (CX-16).

In February of 1998, Manoff and Louie discussed with CPD the consolidation of her various funds into Guardian, as a way to save the costs and administrative fees inherent in multiple funds (Tr. 297). She testified that she was willing to do so if they could show her that it would be advantageous, that such showing was never made, and that she, therefore, never authorized Manoff to take any action concerning her accounts (Tr. 297-298, 314, 352).

[1] "CX" refers to Enforcement's exhibits; "RX" refers to Respondent's exhibits.

Manoff testified in contrast that he presented CPD with a "detailed analysis" of the costs and benefits of the transfers, that "she wanted to proceed," and that she signed the forms to transfer the funds (Tr. 610, 612).

It is undisputed that during a meeting with Respondent and Louie, CPD did sign various blank forms which would authorize transfer of her funds to Guardian (CX-19-22; Tr. 320-332). She said that she signed them, "putting all my faith and trust in [Manoff] … to only be opening these accounts to be sitting there ready and waiting for us to do something once the final decisions were made" (Tr. 322-323). She spoke of Guardian maintaining an empty "holding account" to be available for subsequent transfers (Tr. 424). Manoff, on the other hand, testified that CPD decided to sign the forms in blank because she was tired, the room was hot, and the information he would transfer to them would be the same as that reflected on previously completed forms (Tr. 612-613).[2]

On March 16, 1998, CPD drew a check for $25,341 on her Fidelity money market fund, payable to Guardian. The front of the check bore her notation "to close account," and the back contained her restrictive endorsement "For Deposit Only to the Account Of [CPD]" (CX-21, p. 4). According to CPD, she drew the check so Manoff could show a "good faith" copy to Guardian, but not negotiate it (Tr. 335, 337-338, 396-397). Manoff testified that CPD drew the check to close her account for transfer to Guardian, and not for him to hold (Tr. 621-622).

On March 26, 1998, she received a telephone call from a Fidelity agent who said that the funds she transferred from her annuity account to Guardian would ultimately cost her money because of higher fees and a new surrender period (Tr. 344-345). She then took action to

stop those transfers which she could (Tr. 347-350). After she complained to Guardian, that company ultimately undid the transactions (Tr. 369-371), and Enforcement acknowledged that it was not attempting to prove that CPD sustained any losses (Tr. 9, 446).

2. Conclusion

The Department of Enforcement had the burden of establishing, by a preponderance of credible evidence (i.e., that it was more likely than not) that Manoff committed the alleged violations.[3] For the first cause, the Department's case rested heavily on CPD herself. The Panel saw and heard her at length and cannot accept her version of the events. In short, the evidence failed to persuade the Panel that the transfers occurred without CPD's authority.

It is undisputed that CPD signed blank forms to transfer her accounts to Guardian; that she drew a check for $25,341, payable to Guardian for deposit to her account, and marked "to close account;" that she gave that check to Respondent along with the above forms; and that she stated "I was closing out the accounts" with Fidelity, when she received a call from that firm (CX-19-22; CX-25). These actions on their face are entirely consistent with Manoff's testimony that CPD decided to close the accounts and transfer the money, and inconsistent with her view that she was only getting things ready for later possible closings and transfers.

The Panel, which saw and heard CPD at length, found her to be highly intelligent, careful, and thoughtful. She was cautious and deliberate in answering questions, often

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[2] She said that Respondent urged her to sign, stating that it was hot (Tr. 315).

[3] Steadman v. SEC, 450 U.S. 91, 96 (1981); Wall Street West, Inc. v. SEC, 718 F.2d 973, 974 (10th Cir. 1983); Seaton v. SEC, 670 F.2d 309, 311 (D.C. Cir. 1982); In re First Honolulu Securities, Inc., Exchange Act Rel No. 32933, 1992 SEC LEXIS 2422 at *14 (September 21, 1993); District Business Conduct Committee v. Lawrence P. Bruno, Jr., No. C10970007 (July 8, 1998) slip op. at 4; District Business Conduct Committee v. Stratton Oakmont, Inc., 1996 NASD Discip. LEXIS 52 at *42 (December 5, 1996); District Business Conduct Committee v. Robert Payne Jackson, 1996 NASD Discip. LEXIS 22 at *10 (January 31, 1996).

thoroughly reading exhibits and pausing to reflect before answering. In the Panel's view, she is an experienced and meticulous professional who would not have placed signed blank forms and a $25,341 "close account" check in the hands of a representative unless she intended to close the accounts and transfer the money.

CPD had "worked for the last 30 years in the accounting field, and I'm now a business manager for a commercial architect," employing twenty-five to thirty people (Tr. 259, 376). She does all of the accounting for the firm and has responsibility for employee benefits (including deposits in 401(k) plans), for accounts receivable and payable, and for the payroll (Tr. 259, 376). She has supervisory responsibilities and reports directly to the president and vice president regarding financial matters (Tr. 375).

Her testimony reflects her experienced background, and her care and attention to detail. Before her first meeting with Manoff and Louie, CPD went "through my personal documents and made copies of the things I felt they would need, in order to have account numbers and to verify some of the information …" (Tr. 265). She did her own "spreadsheets and calculations" in studying their recommendations (Tr. 279). She designates "contingent beneficiaries" in directing the disposition of assets (Tr. 290, 319). She knows what "liquidation" means and what a prospectus is (Tr. 288, 328). Since her husband's death in January of 1996, she makes her own investment decisions, is "real cautious about making [investment] changes," and believes that she has not done badly (Tr. 271-272). CPD described herself as "always question[ing] everything, no matter who would make a statement, I would have a tendency to question their judgment" (Tr. 437).

The witness whom the Panel saw and heard would not likely execute signed transfer forms and an account-closing check as a matter of "faith and trust," or believe in the need to show Guardian "good faith" in order to deposit money in its funds. Moreover, if Guardian somehow required "good faith" before accepting money, CPD would likely have kept the original check (while allowing Manoff to have a copy for demonstration purposes) or would have used some safer and non-negotiable way of showing "good faith," such as a copy of a bank statement.

CPD's version of events was also at odds with her own contemporaneous documents. Her immediate notes of the conversation with the Fidelity agent said nothing about the transfer being unauthorized, but focused solely on the numbers he supplied (CX-24). Her detailed memorandum to Manoff and Louie, written later that day, was similarly silent about the alleged lack of authority; dealt entirely with the merits of the Fidelity agent's figures; and, as noted, stated that "I was closing out the accounts with them" (CX-25). Four days later, another memorandum to Manoff and Louie again stopped short of charging unauthorized transactions[4] and contained statements that "I did stop the rollover of the annuity and the IRA's from Fidelity. I realize this may cause some unrest but it is what I felt comfortable doing" and "I am upset at this point but not directly with either of you but more with myself, for not being clear on what is actually taking place"(CX-26). The words and tone of these documents are inconsistent with those of a person claiming to be the victim of unauthorized transactions.

[4] This memorandum stated "I am sure you are well aware … that when I feel that changes are taking place which are not in alignment with my understanding of discussions we have had, I jump very quickly"(CX-26). Making changes out of alignment with CPD's understanding of discussions is not the same thing as making them without authority - especially in the case of a careful and articulate person such as this customer.

Enforcement emphasizes Mr. Louie's memorandum, purportedly endorsing a letter from CPD which mentioned trusting Manoff and opening an account as a preparatory matter (Brief, pp. 7-9; CX-30, 41). This evidence fails to persuade the Panel that the transfers were unauthorized.

Louie admittedly did not attend all Manoff-CPD meetings and, indeed, missed the meeting (after she signed the transfer forms) when she gave Manoff her check payable to Guardian to "close" her Fidelity account, endorsed for deposit in her account (CX-41). Moreover, CPD wrote the letter to persuade Guardian to undo the transfers (CX-30, p.1) and for that purpose would naturally portray Manoff in an unfavorable light. Meanwhile, Louie was upset because he lost CPD's business (Tr. 478-480), and may have endorsed her letter in an effort to re-gain her confidence. In any event, CPD wrote the letter well after the events in question. As noted, supra, her more contemporaneous actions (e.g., the check to Guardian to "close account") and memoranda (CX-25, 26) were inconsistent with the notion of unauthorized transfers. The argument that Manoff is liable because Louie's out-of-court statement endorses CPD's out-of-court statement is thus not persuasive. Double hearsay may have its place in NASD proceedings, but does not here outweigh the Panel's extensive opportunity to evaluate CPD through her actual testimony.

For all of the above reasons, the Panel cannot accept CPD's version of events. It believes, rather, that she did approve the transfers, and later suffered "buyer remorse," when a Fidelity representative told her that certain cost considerations made the transfer unwise. Enforcement's case for the alleged unauthorized transfers thus fails, and that cause is dismissed.

B. Cause two - improper use of the credit card

Introduction

This cause alleged that Manoff, without authorization, charged personal expenses to the credit cards of a co-worker, Ms. MLF. She was a clerical employee in the Guardian office (headed by Mr. Crawford) where Manoff was a Vice President. That office used a sales system known as the "LEAP process," wherein the client would fill out a LEAP questionnaire and furnish information as to his or her financial situation. Thereafter, the Guardian representative, trained and licensed by the LEAP vendor, would make financial planning recommendations.

Respondent, a single parent with a college-age daughter, was concerned about her own finances. Manoff offered to take her through the LEAP process, in an effort to determine whether she could purchase some life insurance for her daughter's benefit. She filled out the questionnaire and gave him financial information, including (she said) credit card statements, bearing her cards' numbers.

Several months later, Manoff (who had financial difficulties stemming from a costly custody dispute) asked MLF if she would loan him money to pay his daughter's college tuition bill. She had gone through similar difficulties with her own daughter's tuition payments, and authorized Respondent to charge some $4,500 in tuition to one of her credit cards.

On the next day, Respondent charged $1,000 to that card, for expenses owed to a private detective service which he had used on a personal matter. A deposition from the president of that firm, Mr. Bradley, is part of Enforcement's case. One week later, Manoff made two charges (for $240 and $310) to the same credit card for certain LEAP system

supplies, purchases which were the personal responsibility of the particular representative. After another week, Manoff charged $2,195 to another of MLF's credit cards for registration at a LEAP training seminar.

The question is whether MLF authorized Manoff's charges for his detective bill, his LEAP supplies, and his seminar registration. She denies any such permission, while Manoff claims that she authorized him to make these charges to her credit cards.

a. Subject matter jurisdiction

Respondent contends that NASD lacks disciplinary jurisdiction because the alleged conduct involves neither a security nor the breach of a fiduciary responsibility (Brief, pp. 7-8). This argument has no merit. The SEC has "consistently held that misconduct not directly related to the securities industry nonetheless may violate" NASD's requirement for high standards of commercial honor and just and equitable principles of trade. In re Leonard John Ialeggio, Exchange Act Rel. No. 37910, 1996 SEC LEXIS 3057, at *10-12 and cases there cited (October 31, 1996) (falsely inducing firm to pay country club fees). See also In re James A. Goetz, Exchange Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11-12 (March 25, 1998) (falsely inducing firm to pay Respondent's child's private school expenses). The test is whether the underlying misconduct reflects on Manoff's ability to perform his duties, including "his fiduciary responsibilities in handling other people's money" (Id.).

Contrary to Respondent's contention (Brief, pp. 7-8), the presence of an antecedent fiduciary relationship is not essential to liability under Rule 2110. The focus instead is on the implications of the misconduct for future fiduciary responsibility. See also District Business Conduct Committee v. Tammy S. Kwikkel-Elliott, 1998 NASD Discip. LEXIS 4 (NBCC,

January 16, 1998), where, like Ialeggio and Goetz, the non-securities misconduct involved false claims against the firm. "[B]usiness-related misconduct is actionable under NASD Rules as unethical conduct" when it "reflects directly on [a Respondent's] ability … to fulfill his fiduciary responsibilities in handling other people's money" (Goetz, supra).[5]

Measured by that standard, NASD has jurisdiction to discipline Manoff for unauthorized use of a co-worker's credit cards. The conduct was "business-related," and it had serious implications for his trustworthiness in handling customers' money. Three of the four unauthorized charges involved expenses for the LEAP system, which was Guardian's "primary sales system" (Tr. 182). The victim (MLF) was the firm's office manager and Respondent obtained the credit card information in the course of performing a financial analysis for her. Moreover, the activity occurred in the office. As to the misconduct itself, the record shows that Manoff's personal needs, coupled with his financial difficulties, led him to use another person's credit card without permission. Such conduct raises obvious questions about his ability to be responsible for money belonging to others. As the Commission said in In re Thomas E. Jackson, 45 S.E.C. 771, 772 (1975), "[a]lthough [respondent's] wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might."

[5] In any event, Manoff was in a relationship of trust with MLF. He was taking her through the LEAP financial analysis (Tr. 29-34). The LEAP questionnaire stated inter alia "[y]ou may be sure that your documents will be professionally safeguarded under strict, confidential control during the analysis period" (CX-2, p. 2), and Manoff himself described the LEAP process as generally involving "a fiduciary responsibility to the client" (Tr. 596).

b.) The credibility dispute between MLF and Respondent

This case boils down to a credibility dispute between MLF, who said that she did not authorize the credit card charges, and Respondent, who said that she did. After careful review of the record, the Panel credits MLF's testimony that she gave Manoff her credit card statements in the course of the LEAP analysis and concludes that Manoff made improper use of that information.[6]

1.) corroboration

Significant aspects of MLF's testimony were corroborated by other evidence of record. She said that when she confronted Manoff with the unauthorized charges, he told her that he had two "yellow stickies" - one bearing her credit card number and one bearing his wife's credit card number - and must have used the wrong one (Tr. 54). Mr. Crawford, head of the Guardian office which employed Respondent, similarly testified that when he asked Manoff about the alleged unauthorized use, Respondent said that he confused two "yellow stickies" on which he had written MLF's and his wife's credit card numbers (Tr. 192). Mr. Bradley, president of the detective service which received $1,000 from Respondent via MLF's credit card, testified similarly as to Respondent's explanation: "somehow inadvertently he had [MLF]'s credit card number on a piece of paper and he must have given that to me, instead of his" (CX-37, p. 42).

[6] MLF testified that Manoff made the credit card charges without her authorization, explaining that she had earlier given him her credit card statements when she submitted personal financial data for preparation of her LEAP financial analysis (Tr. 41, 50-52, 170). The credit card charges in issue were made to MLF's First USA Bank (VISA) and Chevy Chase Bank cards (CX-3, 4). Her LEAP questionnaire lists balances due on her First USA and Chevy Chase cards and includes a "flow" of money diagram drawn by Manoff, which refers to "VISA" (CX-2. pp. 7, 12).

Crawford and Bradley thus independently corroborated MLF's testimony about Respondent's inculpatory statement. Bradley's testimony was especially persuasive. He is Manoff's friend, and Respondent has a high regard for his honesty and integrity (Tr. 567, 640). Even if Crawford were biased against Manoff, as Respondent contends (Br. pp. 9-10), that circumstance would not weaken Bradley's corroborative account of Respondent's story of confusion over pieces of paper.

If Manoff had MLF's authorization, as he claims, there would have been no reason for him to say that he confused her credit card number with another. Nor was there any reason for Bradley to invent such a conversation with his friend. Respondent suggests none.

2.) the signature on the supply order form

In testifying that MLF authorized the charges in question, Manoff claimed that the signature on the form reflecting the $240 credit card charge for LEAP supplies was hers (Tr. 577; CX-38, p. 67). MLF denied having signed the form (Tr. 74-75). A comparison of MLF's signatures (R-2, CX-7, CX-8)[7] with the document in question (CX-6, p. 2) does not corroborate Respondent's version of the events. The signatures have several different characteristics. For example, MLF's way of writing the capital letter "F" and the lower case letters "s" and "e" in her last name differs distinctly from the way those same letters appear in her purported signature on the order form. Respondent's false assertion that MLF signed the documents weakens his credibility.[8]

[7] Respondent himself acknowledged that MLF signed Exhibit R-2 (Tr. 699).

[8] Cause two of the Complaint alleged that Manoff forged MLF's signature on the form, as part of his unauthorized use of the credit cards (Complaint, par. 18). The facts are consistent with that allegation. He needed the supplies, had financial difficulties, and admitted making some of the entries on the form. But, the Panel sees no need for particular subsidiary findings as to Manoff's precise involvement in one signature.

There is no merit in Respondent's contention that the absence of a handwriting expert is "fatal" (Brief, p. 11). A fact finder can - without the aid of an expert - compare known and questioned signatures in finding that purportedly authorized signatures were not genuine. See District Business Conduct Committee v. Donnell George Vaughn, 1995 NASD Discip. LEXIS 233 at *33-34 (NBCC, October 24, 1995):

> … the handwriting on the back of BN's checks which states "Pay to the order of Barry Milton" appears markedly different from the signatures for BN and for Milton. BN testified unequivocally that he did not authorize the signature of this name, or make the checks payable to any other person. The appearance of the checks' endorsements lends support to Milton's version of events, rather than to Vaughn's. [9]

So here, the differences between MLF's actual signature and the purported signature on the LEAP supply order form support her version of events, rather than Respondent's.

3.) prior inconsistencies

During the investigation, Manoff denied "any involvement in preparing" MLF's LEAP questionnaire, the process which she said involved giving him her credit card information (CX-38, p. 78). He further denied ever asking her to complete the questionnaire (Id., at 79). During the hearing, however, Respondent admitted that he "supplied her with the questionnaire"; that he told her "maybe you could complete this questionnaire … let me take a look at where you [are] and maybe I can help you out a little bit"; and that he drew a "velocity of money" diagram on

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Forgery was alleged only as part of the unauthorized use count, not as a separate offense; and, as noted, the Panel has concluded that Respondent made unauthorized use of MLF's credit cards on four separate occasions. In these circumstances, it is sufficient that the differences in the signatures on the order form support that conclusion.

[9] Without expert testimony, fact finders may similarly compare known and questioned signatures in determining that the same person wrote both. See United States v. Clifford, 704 F.2d 86, 90 (3rd Cir. 1983) and

MLF's questionnaire (Tr. 558-559, 562-563, 635). That testimony was wholly inconsistent with "no involvement" in the document.

There was a further inconsistency in Manoff's account of the events surrounding the payment to the private detective agency. Respondent told the NASD Regulation investigator that "she [MLF] handed me the card" and that he "[c]alled and made the payment" (CX-38, p. 45). At the hearing, he testified that "she called Mr. Bradley [of the detective agency] and made the payment as she [previously] did with New York University" (Tr. 568-569). The record also shows inconsistencies concerning authorship of MLF's credit card number on the LEAP supply order form involving the $240 charge. Manoff told the investigator that "I wrote it down while she read it to me from her card in my office" (CX-38, p. 68). During the hearing, Manoff first testified that MLF wrote the number (Tr. 577). He later said "I don't recall writing that credit card number in. I can't say that I wrote that number in" (Tr. 661), but ended by saying that it was possible that he could have written the number (Tr. 698).

The Panel believes that the above inconsistencies and shifts in testimony concerning important details of the supposedly authorized charges undermined Manoff's credibility.

4.) implausibility of the asserted authorization

MLF is a single parent, now employed as a cashier in a delicatessen (Tr. 21, 31). At the time in question, her salary was $30,000 per year and she was borrowing to meet her daughter's college tuition payments (Tr. 31, 33, 38). As expressed by the head of the office,

> [S]he [MLF] didn't have any money. She had a kid getting ready to go to college. She's getting ready to sell her house,

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cases there cited; United States v. Bell, 833 F.2d 272, 276 (11th Cir. 1987) cert. denied, 486 U.S. 1013 (1988); United States v. Dozie, 27 F.3d 95, 98 (9th Cir. 1994).

> she didn't have the money to sustain the house. She didn't have any money … she was just getting by (Tr. 248).

Manoff himself advised MLF that her financial situation was such that "there wasn't a lot I could do" (Tr. 564-565). Given these circumstances, the Panel finds it difficult to believe that MLF would authorize the Respondent to charge over $3,700 of his personal expenses on her credit cards.

Manoff testified that MLF authorized all of the charges because she was a "kind person," who was "sympathetic" to his financial difficulties stemming from the costs of a divorce and custody dispute (Tr. 703-704). She certainly was kind insofar as she authorized Respondent to charge his daughter's tuition payment to her credit card. But that circumstance proves nothing about his subsequent charges for personal expenses. Manoff's tuition predicament had particular appeal to MLF because of similar experiences with her own daughter's college tuition (Tr. 43, 44). Those considerations had no relationship to Respondent's subsequent charges for LEAP supplies, LEAP registration fees, and private detective bills.

It is true that when MLF first learned about the unauthorized charges, she initially agreed to await promised payments from Manoff and not to press the matter elsewhere (Tr. 159, 163). She called herself a "stupid nice person [in] trying to work with him" (Tr. 163). But gullibly relying on Manoff's later promises to pay the charges is not the same thing as authorizing them in the first place. Once she learned of Respondent's broken payment promises and of her worsening credit situation, she consistently and firmly asserted that the credit card charges were

unauthorized. She was "very upset" about the $1,000 charge for the private investigator and used "expletives" in complaining about it (CX-37, p. 37). She complained to Crawford, the head of the firm, by telephone and in person; to the president of LEAP; and to an official of Guardian (Tr. 192, CX-7). These circumstances are inconsistent with the claim that she "sympathetically" approved all of the charges.

The hypothesis that MLF was part of a conspiracy by Crawford (the head of the Guardian office) to destroy Manoff as a potential competitor (Tr. 704-707; Brief, pp. 13-14) is equally unpersuasive.[10] Respondent believes that a payment from Crawford to MLF shows that her testimony was purchased (Tr. 705). That assertion is not supported by the record.

MLF testified that in August of 1999, Crawford made a $1,100 payment to her to help her pay the private detective firm's bill, which Manoff had charged to her credit card (Tr. 118). That assistance came more than a year after her complaints about Manoff to Crawford, to the detective firm's president, to LEAP's president, and to a Guardian official. The notion that the $1,100 somehow influenced her hearing testimony would not explain - or weaken the persuasive impact of - this series of prior, contemporaneous, and consistent complaints about Manoff's unauthorized charges. That Respondent may have paid the detective firm's bill by the time Crawford gave MLF the money (R-13) shows, at most, that Crawford mistakenly gave her $1,100, an error with no demonstrated link to her testimony. As of the hearing, MLF had left Crawford's employ and taken a job as a delicatessen cashier, a position from which she

[10] Manoff earlier described Crawford as the "largest general agent in the nation for the Guardian Insurance Company" and person who "controls the whole state of Maryland, knows everybody" (Tr. 585). Why a man of such power and prominence would plot against Manoff remains unclear.

could not be subject to his supposedly malevolent influence. Finally, Manoff himself acknowledged that the supposed Crawford-MLF-payoff was "speculat[ion]" (Tr. 705). The Panel agrees with that characterization and has no cause to infer that Crawford paid MLF to testify.

In short, there was no basis in this record for believing that a single parent making $30,000 a year and struggling to make college payments would authorize Manoff to charge over $3,700 of his personal expenses to her credit cards and then lie about such authorization. On the contrary, as shown above, the record contains many circumstances supporting MLF's testimony. The Panel concludes that she did not authorize the charges in question.

5.) Respondent's other contentions

Respondent argues that the presence of MLF's office identification number on the FAX transmissions of the LEAP order forms supports his version (Brief, p. 13). This contention lacks merit. MLF testified that she shared the number with anyone that wanted it and gave it to others on request (Tr. 109-110). Nor does the record support the assertion that another employee "testified that he witnessed [MLF] fax the LEAP forms" (Brief, p. 13). That witness (currently under Manoff's supervision in another firm) saw her transmitting some LEAP order forms and merely "assumed" that they were the ones in issue (Tr. 458-459).

Respondent emphasizes the fact that the LEAP seminar registration expense ($2,195) was originally charged to MLF's Chevy Chase credit card, but ultimately billed to her First USA card (Brief, p. 12; See CX-4; CX-9 p.4). The question is whether MLF authorized the charges, not which of her cards ultimately bore them. An additional charge of some $2,200

would have exceeded the Chevy Chase card's credit limit (Tr. 132). An unsuccessful effort to effect that charge would likely cause the creditor to contact Manoff, whose name, address, and business telephone appeared on the registration form (CX-9, p. 4). Manoff, already in possession of MLF's credit card statements, could have then told the creditor to charge the fee to her First USA card.

III. Sanctions

Count two was charged as "Effecting Unauthorized Charges to Another Person's Credit Card," in violation of Rule 2110 (Complaint, p. 4). Enforcement correctly suggests (Brief, p. 28) that the appropriate analogous offense listed in the NASD Sanction Guidelines (1998) is "Conversion or Improper Use of Funds or Securities," also rooted in Rule 2110 (Guidelines, p. 34).

The instant conduct was not charged as conversion, and, in the Panel's view, the appropriate starting point here lies in the recommendation pertaining to "Improper Use." For such conduct, the Guideline advises that adjudicators "[c]onsider a bar" (Id.), a sanction which the Panel has here considered and deems appropriate in the aggravated circumstances of this case.

In using MLF's credit cards, Manoff took advantage of information which he obtained in the course of assisting her with financial analysis. In so doing, he violated the terms of the LEAP questionnaire ("your documents will be professionally safeguarded under strict, confidential control during the analysis period") (CX-12, p. 2), ignoring the very "fiduciary responsibility" which he saw as inherent in LEAP analyses (Tr. 596).

Furthermore, as a Vice-President of the firm, Respondent took advantage of a subordinate clerical employee, who functioned as a receptionist, secretary, and office manager (Tr. 25, 177, 537). MLF was pleased when Respondent paid attention to her (the "little guy") in suggesting financial analysis (Tr. 33). She identified with his daughter's tuition situation (Tr. 33, 43-45). She "felt comfortable with Dan [Manoff]" (Tr. 116). Respondent turned that trust into an opportunity for self gain.

The misconduct was not a one-time event. There were four separate charges, totaling $3,745, made on three occasions between February 11, 1998 and February 24, 1998. Even after MLF discovered the unauthorized charges, Manoff continued to act improperly. Although he alleged that he had her authorization to make the charges, Respondent nevertheless attempted to conceal his misconduct by telling MLF a story about confusing his wife's credit card number with hers (Tr. 54). Nor did he re-pay MLF promptly; at least one of his checks was returned for insufficient funds (Tr. 66, 190).

The Panel believes that a representative who allows his personal financial needs to overcome his duty and responsibility to others is an open risk in the securities industry. What he did with a subordinate co-worker he could easily do with a customer. As the SEC said in In re Henry E. Vail, Exchange Act Rel. No. 35872, 1995 SEC LEXIS 1514 at *9 (June 20, 1995), sustaining NASD's imposition of a bar for breach of fiduciary duty involving funds of a private club, "[t[hrough his mishandling of these funds, Vail demonstrated a serious misunderstanding of the fiduciary obligations he subjected himself to by becoming the Club's Treasurer. His actions make us doubt his commitment to the high fiduciary standards demanded by the securities

industry. Under the circumstances, we agree with the NASD that his continued presence in that industry threatens the public interest."[11]

In the Panel's view, the aggravating circumstances discussed above make this an egregious case which warrants a bar.[12] Under Notice to Members 99-86, no monetary sanctions are imposed. The record reflects that MLF was ultimately repaid, and Enforcement does not seek restitution (Br. p. 30, fn. 39).

IV. Conclusion

Respondent Manoff violated Rule 2110 by making unauthorized charges to credit cards which belonged to his co-worker. For that conduct, he is barred from associating with any member firm in any capacity. Respondent shall also pay costs of $4,342.25, reflecting $3,592.25 for transcripts plus the standard administrative fee of $750.[13] These sanctions shall become effective on a date set by the Association, but not earlier than 30 days after this

[11] The Commission's decision was affirmed in Vail v. S.E.C., 101 F.3d 37 (5th Cir. 1996).

[12] The absence of prior disciplinary history is not a mitigating circumstance under the decision in In re Mark S. Balbirer, No. C07980011, slip op. at 5 (NAC, October 18, 1999).

[13] The Hearing Panel considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

decision becomes the final disciplinary action of the Association; however, the bar shall become effective on the date this Decision becomes the final disciplinary action of the Association.

HEARING PANEL

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By: Jerome Nelson
Hearing Officer

Dated: Washington, DC
June 6, 2000

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