

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9A980020
v.	:	
	:	Hearing Officer - JMF
STURDIVANT & CO., INC.	:	
(BD #24583)	:	
Clementon, NJ,	:	Hearing Panel Decision
	:	
	:	
	:	January 20, 1999
HARVEY R. DEKRAFFT	:	
(CRD #1579931)	:	
Clementon, NJ,	:	
	:	
	:	
ALBERT A. STURDIVANT	:	
(CRD #1702262)	:	
Clementon, NJ,	:	
	:	
	:	
Respondents.	:	

Digest

The Department of Enforcement (“Enforcement”) filed a Four Cause Complaint alleging that Respondent Sturdivant & Co., Inc. (“Sturdivant”) violated MSRB Rule G-37 for failing to file form G-37 within 30 days of the end of a calendar quarter and NASD Rules 1021(e) and 2110 by conducting a securities business while employing only one registered general securities principal; that Respondent Sturdivant and Albert Sturdivant, the firm’s Chief Executive Officer, violated NASD Rules 1120 and 2110 by failing to provide Firm element training to its eligible registered persons; that Respondents

Sturdivant, Albert Sturdivant and Harvey deKrafft, a Managing Director at Sturdivant, violated NASD Rules 1021(a) and 2110 in that deKrafft served as a general securities principal at Sturdivant prior to properly qualifying and registering as a general securities principal.

Respondents filed an Answer admitting the MSRB, continuing education and registration violations, contesting that violations of continuing education and membership rules also constituted violations of NASD Conduct Rule 2110, and requesting a hearing concerning sanctions.

The Hearing Panel determined that the underlying violations of Membership Rules 1021(a), 1021(e), and 1120 also constituted violations of Conduct Rule 2110. The Hearing Panel censured Sturdivant, Albert Sturdivant and Harvey deKrafft; fined Sturdivant \$1,000 for violating MSRB Rule G-37, \$2,500 for violating Membership Rule 1120 and Conduct Rule 2110, and \$7,500 (jointly and severally with Albert Sturdivant) for violating Membership Rules 1021(a), 1021(e) and Conduct Rule 2110; fined Albert Sturdivant \$7,500, jointly and severally with Sturdivant, and suspended him from acting in his capacity as a general securities principal for 30 calendar days for violating Membership Rule 1021(a) and Conduct Rule 2110; and fined Harvey deKrafft \$10,000, and suspended him from acting in his capacity as a principal for 60 calendar days for violating Membership Rule 1021(a) and Conduct Rule 2110.

Appearances

Michael J. Newman, Esq., Philadelphia, PA, (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for the Department of Enforcement.

James J. Shrager, Esq., Hannoch Weisman, Roseland, NJ, on behalf of Sturdivant Co., Inc., Albert A. Sturdivant, and Harvey deKrafft.

I. Introduction

The Department of Enforcement filed a Four Count Complaint against Sturdivant & Co., Inc., Albert Sturdivant and Harvey deKrafft on July 30, 1998. The Complaint alleges that Respondent deKrafft operated as a principal at Sturdivant & Co. without being properly registered as a securities principal from March 1995 to June 21, 1998. The Complaint alleges that, as a result, Sturdivant & Co., Albert Sturdivant, and Harvey deKrafft violated Membership Rule 1021(a) and Conduct Rule 2110. (Complaint at ¶¶ 4-9). Count Two alleges that Sturdivant & Co. violated Membership Rule 1021(e) and Conduct Rule 2210 by conducting a general securities business while only having one registered general securities principal, Albert Sturdivant, when a minimum of two were required. (Complaint at ¶¶ 11-12). Count Three alleges that Sturdivant & Co. and Albert Sturdivant violated Membership and Registration Rule 1120 and Conduct Rule 2110 for failing to conduct a training needs analysis and for failing to provide Sturdivant & Co.'s registered persons with required Firm Element training for the period March 1995 through December 1996. (Complaint at ¶¶ 14-16). The Fourth Count alleges that Sturdivant & Co. violated MSRB Rule G-37 by failing to file MSRB form G-37 within 30 calendar days after the end of the quarter for the quarterly periods ending September 30, 1994, March 31, 1995, June 30, 1995 and March 31, 1996. (Complaint at ¶¶ 18-19).

Respondents, through counsel filed their Answer on August 25, 1998. In their Answer, Respondents admitted to a violation of Registration Rule 1021(a) as alleged in Cause One, but denied that the violation of Registration Rule 1021(a) also constituted a

violation of Conduct Rule 2110. (Answer at ¶ 9). Respondents also admitted to violations of Registration Rule 1021(e), as alleged in Count Two, and Membership Rule 1120, as alleged in Cause Three, but denied that those admitted violations also constituted violations of Conduct Rule 2110. (Answer at ¶ 12 and ¶ 16). Respondents also admitted that Sturdivant & Co. violated MSRB Rule G-37 as alleged in Cause Four of the Complaint. (Answer at ¶¶ 18-19).

The Department of Enforcement filed a Motion for Partial Summary Disposition on October 15, 1998 relating to the issue of whether Respondents' admission to the underlying membership/registration and continuing education rule violations also constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Conduct Rule 2110. Respondents opposed Enforcement's motion and submitted a Reply Memorandum on October 29, 1998. Respondents argued that, although there is case law supporting the proposition that any violation of any NASD rule may result in a corresponding violation of Conduct Rule 2210, such a result is not required.¹ The Hearing Panel deferred ruling on Enforcement's Motion for Partial Summary Disposition.²

The Hearing in this proceeding was held on November 10, 1998 at the NASD Regulation District Office in Philadelphia, PA. The Hearing Officer admitted into

¹ See Respondents' Memorandum in Reply to the Department's Motion for Partial Summary Disposition at 2 and 7. "Respondents must concede that relevant precedent supports the proposition that violations of NASD Rules may constitute violation of Conduct Rule 2110 and punishment applied accordingly. Because of the vagueness of rule 2110 and the seemingly unfairness of piling on punishment for the same offense, the concession is made regretfully and reluctantly. But, nothing in any of the cases requires such a result; nothing requires piling on." Id. at 7-8.

² See Final Pre-Hearing Conference Order dated November 9, 1998 at ¶ 2; Hearing Transcript (hereafter cited as Tr.) at 9.

evidence seven exhibits offered by the Department of Enforcement (CX-1 through CX-7) and two exhibits offered by Respondents.³ The Department of Enforcement called three witnesses, Respondents Albert Sturdivant and Harvey deKrafft and Richard English, an NASD Regulation Special Investigator assigned to the NASD District Office in Philadelphia. Respondents called four witnesses in connection with the issue of mitigation and sanctions: Albert Sturdivant, Harvey deKrafft, Barbara Aaron and John Schobel. Ms. Aaron is the Vice President of Operations, Administration, Finance and Compliance at Sturdivant & Co.,⁴ and Mr. Schobel is the President of Securities Education Institute, Inc., a company that provides continuing education programs for securities firms.⁵

II. FINDINGS OF FACT

There is no dispute as to the underlying facts in this proceeding. The Parties have filed a Joint Stipulation of Facts (CX-1), and the Respondents admit to the underlying violations of the Membership and Registration Rules 1021(a), 1021(e), 1120 and MSRB Rule G-37. (Respondents' Answer ¶¶ 9, 12, 16, and 18-19). The only issues for the Hearing Panel to decide are whether the underlying violations of NASD Rules 1021(a), 1021(e), and 1120 also constitute violations of Conduct Rule 2110 and what sanctions are appropriate for Respondents Sturdivant & Co., Albert Sturdivant, and Harvey deKrafft.

Sturdivant, a registered broker-dealer and member of the NASD since 1989, employed approximately 20 full time employees in 1996. (CX-1 at ¶ 1). Albert

³ The Hearing Officer previously determined that two of Respondents' Pre-Hearing Exhibits would not be admissible. See Final Pre-Hearing Conference Order dated November 9, 1998 at ¶¶ 3-4.

⁴ Tr. at 106.

⁵ Tr. at 95.

Sturdivant, the President and CEO of Sturdivant and one of the firm's co-founders, has been licensed as a general securities representative since 1987 and as a general securities principal since 1989. (CX-1 at ¶ 3). Harvey deKrafft, a managing director and partner of Sturdivant, has been licensed as a general securities representative since 1986 and as a general securities principal only since June 22, 1998. (Tr. at 25-26; CX-1 at ¶ 2).

NASD Regulation staff from the NASD's Philadelphia District Office began a routine examination of Sturdivant in late 1996. (Tr. at 40). The field work associated with this examination was completed on December 11, 1996, when the NASD Regulation examiner, Richard English, conducted an exit interview. (Tr. at 41). Mr. deKrafft was present at the exit interview and learned that Mr. English had identified NASD and MSRB rule violations. (Tr. at 41-42). Among other things, Mr. English informed Mr. deKrafft that, based on his activities, he was functioning as a general securities principal without being properly registered in that capacity. (Tr. at 42 and CX-2).⁶ Mr. English also noted in the exit interview that Sturdivant was violating NASD Rules by operating with only one registered securities principal and had not complied with the NASD's continuing education requirements for 1996.⁷ In addition, Mr. English referenced several MSRB Rule G-37 reporting violations in the exit interview form.⁸

⁶ Mr. English indicated in the exit interview form that "Harvey deKrafft should be registered as a General Securities Principal because he is contact person for firm, signs checks and legal documents and has several areas of responsibility within the firm." (CX-2 at 2). See also Tr. at 86-87.

⁷ CX-2 at 3. Mr. English specifically noted that "[t]he firm failed to prepare and implement the following areas: a.) Needs Analysis incomplete b.) No written Training Plan c.) Training Plan not implemented in 1996 d.) No training materials utilized." Id.

⁸ CX-2 at 2.

Albert Sturdivant sent NASD Regulation staff a December 17, 1996 letter representing that Mr. deKrafft would be added as a general securities principal of Sturdivant within 60 days. (CX-3; CX-1 at ¶ 6; Tr. at 44-45). Mr. deKrafft, however, did not take the test within that period. (CX-1 at ¶ 6). In fact, Sturdivant, acting through counsel, notified the NASD in the fall of 1997 that Mr. deKrafft was scheduled to take the general securities principal examination on February 17, 1998. Contrary to these representations, Mr. deKrafft did not take the general securities principal examination until June 22, 1998. (CX-1 at ¶ 7).⁹ Mr. deKrafft nevertheless continued to act as a principal of Sturdivant and performed the same duties for the firm that he had performed prior to being notified that he had to register as a principal. (CX-1 at ¶ 7; Tr. at 42).¹⁰

Although there is no dispute that deKrafft acted as principal of Sturdivant during the period December 1996 through June 1998 (CX-1 at ¶ 7 and Tr. at 54-56), deKrafft

⁹ Mr. deKrafft testified that in January 1997 he and another Sturdivant principal, Bufus Outlaw, registered to take the Series 24 examination. (Tr. at 45-46). Mr. deKrafft testified that “[o]ne thing just led to another with just the day-to-day operation of the firm. It was during the time that we were going through the estate litigation with Ralph Sturdivant’s estate. It was just a tremendous amount of, you know, additional information, extra duties that just --- that I was involved in and running the firm, providing material information to the lawyers, trying to settle the --- you know, with Ralph Sturdivant’s estate.” (Tr. at 45-46). Neither Mr. deKrafft nor Mr. Outlaw took the examination. Each again registered to take the Series 24 examination in June of 1997. In connection with this second registration for the Series 24 examination, Mr. deKrafft learned from the NASD in July 1997 that Mr. Outlaw was duly registered with another firm. (Tr. at 51).

¹⁰ Mr. deKrafft also used a business card that identified him as a principal of Sturdivant. CX-5. Mr. deKrafft testified that his use of the word “principal” on his business card and in signing documents on behalf of Sturdivant was to indicate that he was an owner of the firm, not to imply that he was registered as a general securities principal. (Tr. at 38-40).

testified repeatedly that he didn't take the principal examination because of the day-to-day distractions and pressures he handled that related to keeping Sturdivant in business.¹¹ Mr. deKrafft denied that he failed to take the examination because he did not believe it was important, noting "I can't stress enough the fact of just the distractions that occurred when you loose a family member of the organization. ... [W]e knew that it was important. I mean there's only so many hours in a day. You're trying to operate. You're trying to do this, do that. But it was never at any time unimportant to us, believe me." (Tr. at 60). Albert Sturdivant testified that he was aware that Mr. deKrafft needed to become registered (Tr. at 76), and that he had registered for the examination twice but had not taken the exam. (Tr. at 78). Albert Sturdivant also acknowledged that when he inquired why Mr. deKrafft had not taken the principal examination the conversation would shift to what was going on with Sturdivant's business. (Tr. at 79).¹²

III. CONCLUSIONS OF LAW

The Hearing Panel concluded that the Respondents' admitted registration and continuing education rule violations also constituted separate violations of Conduct Rule 2110. In this regard, precedent clearly supports the proposition that a violation of a specific NASD Rule may also be a violation of Conduct Rule 2110. See, e.g., In the

¹¹ Albert Sturdivant testified that after his brother Ralph died in a scuba diving accident in 1995, he was consumed with contacting clients and trying to hold the firm together. (Tr. at 68-69). At the same time, his deceased brother's wife commenced litigation on behalf of Ralph Sturdivant's estate to take control of the firm. (Tr. at 81).

¹² "It wasn't an explanation. It was the fact that he said, Al, I got, you know, I'm trying. I have a kid that was just born. I got to, you know, my plate's full. I want to do this. And it seems like every time I get ready to do it, you know, Bufus leaves, Ralph passes. There were things that came up that caused him not to be able to do it." (Tr. at 79).

Matter of the Application of William S. Mentis, Securities Exchange Act Release No. 37952 (November 15, 1996) (failure to designate a financial principal as required by NASD Rule 3010(a)(2) violated Rule 3010(a)(2) as well as NASD Conduct Rule 2110).¹³ The Hearing Panel believes that member firm and associated person compliance with NASD registration and continuing education requirements is fundamentally important.¹⁴ Respondents' non-compliance with these provisions, in the Hearing Panel's judgment, does not comport with high standards of commercial honor and just and equitable principles of trade and therefore is violative of Conduct Rule 2110.

IV. SANCTIONS

The Hearing Panel turns to the NASD Sanction Guidelines for guidance in determining what the appropriate sanctions should be for Respondents' admitted violations.¹⁵

A. Violations of Membership Rules 1021(a), 1021(e) and Rule 2110 (Two Principal Requirement and Principal Registration)

The applicable Sanction Guideline for violations of Membership and Registration Rules 1000 through 1120 suggests a fine for both member firms and responsible

¹³ See also In Re Theys, Exchange Act Release No. 32358, 54 S.E.C. Docket 352 (May 24, 1993), 1993 WL 183720. ("We further believe that the NASD may properly find that violations of these, or any other sections of the Rules, to be inconsistent with just and equitable principles of trade, in contravention of Article III, Section 1 thereof.") Id. at 35133. Article III, Section I is the predecessor to Conduct Rule 2110.

¹⁴ See District Business Conduct Committee for District 8 v. Bruce L. Pecaro (Complaint No. C8A960029), 1998 NASD Discip. LEXIS 13 * 22. Cf. In re Ashvin R. Shah, Exchange Act Release No. 37954 (November 15, 1996).

¹⁵ NASD Sanction Guidelines (May 1998 ed.). See generally id. at 3-9 (general principles and principal considerations), 39 (continuing education violations), 43 (registration violations), and 68 (MSRB G-37 violations).

individuals ranging from \$2,500 to \$50,000. In egregious situations, adjudicators are instructed to consider suspending a firm with respect to any or all activities for up to 30 business days, and suspending an individual in any or all capacities for 30 business days to two years or imposing a bar. (NASD Sanction Guidelines at 43). In addition to the principal considerations adjudicators generally consider when imposing sanctions, the Registration Violation Guideline specifically instructs adjudicators to consider the nature and extent of an unregistered person's responsibilities and whether the respondent had filed a registration application. (Id.).

The Department of Enforcement argues that the Rule 1021(a) violations warrant serious sanctions against Albert Sturdivant and Harvey deKrafft. (Tr. at 152). Indeed, Enforcement argued that this is an egregious case and that several aggravating factors -- the extended time period during which Mr. deKrafft continued to act as an unregistered principal and representations to NASDR staff that Mr. deKrafft would become registered as a general securities principal -- justify a six month suspension and \$25,000 fine for Mr. deKrafft, and a \$15,000 fine (joint and several with the firm) and a 30 day suspension in all capacities and 90 day principal capacity suspension for Albert Sturdivant. (Tr. at 159-160).

Respondents' counsel, on the other hand, views the circumstances quite differently, arguing that from the time NASD Regulation examination staff notified Albert Sturdivant and Harvey deKrafft of the registration violations in December 1996, Messrs. Sturdivant and deKrafft intended to have deKrafft promptly become a general securities principal. Although Mr. deKrafft should have become a registered general securities principal much sooner, he did not because of a series of events that caused Mr. deKrafft to

focus his attention on the day-to-day operational needs of Sturdivant. Respondents' counsel further argues that Sturdivant is an institutional firm that does not directly deal with the public, and that no investors have been harmed. Consequently, any fine imposed should be under \$10,000, the NASDR publicity threshold,¹⁶ so as to minimize the adverse publicity Sturdivant would encounter.

The Hearing Panel determined that Sturdivant encountered various difficulties after the death of Ralph Sturdivant, a founding partner of the firm, including litigation with Ralph Sturdivant's estate for control of the firm, loss of institutional clients and the departure of Bufus Outlaw, another Sturdivant principal. These circumstances, however, do not excuse the fact that deKrafft continued to function as a general securities principal without being properly registered for over two years after being notified by NASDR staff that his activities at Sturdivant required principal registration. Moreover, Albert Sturdivant, despite committing to the NASD in writing that deKrafft would become registered as a general securities principal within 60 days, took no action to force deKrafft to take the qualification examination or otherwise restrict deKrafft's activities until he became registered.

The Hearing Panel recognizes that Sturdivant is primarily a money management firm that also is a registered broker-dealer and NASD member. Although Respondents view Sturdivant principally as an investment advisory firm, Sturdivant is nonetheless a

¹⁶ See IM-8310-2 Release of Disciplinary Information. "The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; ..." IM-8310-2(d)(1).

member firm broker-dealer.¹⁷ As a member firm, Sturdivant is responsible for complying with all NASD rules and regulations. Registration and qualification requirements for people engaged in the securities and investment banking business as well as those persons with supervisory responsibilities go to the very heart of effective self-regulation and investor protection. See District Business Conduct Committee for District 8 v. Bruce L. Pecaro (Complaint No. C8A960029), 1998 NASD Discip. LEXIS 13 * 22. Cf. In re Ashvin R. Shah, Exchange Act Release No. 37954 (November 15, 1996). These requirements are not and cannot be considered trivial.

Even though neither Albert Sturdivant nor Harvey deKrafft has any disciplinary history, significant sanctions are required in this proceeding for two principal reasons. First, as Enforcement notes, Mr. deKrafft continued to function in a capacity he knew required registration for an extensive period of time (December 1996 to June 22, 1998). Although he registered to take the Series 24 on two occasions during 1997 and took review courses to prepare for the examination, Mr. deKrafft did not take the examination until June 1998, after he had been informed that NASD Regulation was going to institute disciplinary proceedings. (Tr. at 78-80).

Second, Mr. Sturdivant, in response to deficiencies Mr. English identified during the December 1996 examination exit interview, specifically identified Harvey deKrafft as the second general securities principal Sturdivant was required to have pursuant to NASD Rules and committed to have Mr. deKrafft qualified as a general securities principal within 60 days. (CX-3 and Tr. at 76). Despite this commitment and actual knowledge that Mr.

¹⁷ Respondents Albert Sturdivant and Harvey deKrafft repeatedly emphasized that, in the aftermath of Ralph Sturdivant's death and the ensuing litigation with his estate, they focused their attention on the

deKrafft had not become registered as a general securities principal, Mr. Sturdivant did not require Mr. deKrafft to cease any of his job duties or otherwise require another individual to become a general securities principal until March 1998.¹⁸ Moreover, the Hearing Panel believes it is significant that Albert Sturdivant has taken no internal disciplinary action against Mr. deKrafft for failing to become Series 24 qualified. (Tr. at 82).

The Hearing Panel, although sympathetic to the difficult circumstances Sturdivant, Albert Sturdivant and Harvey deKrafft experienced in the aftermath of Ralph Sturdivant's death, cannot ignore the aggravating factors that accompany the violations of Membership and Registration Rules 1021(a) and 1021(e). At the same time, the Hearing Panel does not believe that the record developed in this proceeding justifies the fines and suspensions that Enforcement is seeking.

On balance, the Hearing Panel concluded that Albert Sturdivant and Sturdivant should be censured, and fined jointly and severally in the amount of \$7,500 for permitting Harvey deKrafft to function as an unregistered general securities principal in violation of Rules 1021(a) and 2110.¹⁹ In addition, the Hearing Panel determined that Albert Sturdivant should be suspended from acting in a principal capacity for 30 calendar days.²⁰ The Hearing Panel also censured Harvey deKrafft, suspended him from acting in a

firm's survival and the retention of Sturdivant's money management clients. The broker-dealer component of Sturdivant's business was secondary and dependent on the firm's advisory clients.

¹⁸ Gene Madred, another Sturdivant employee, became registered as a general securities principal in March 1998, bringing Sturdivant in to compliance with Membership and Registration Rule 1021(e).

¹⁹ The Hearing Panel concluded that no additional fine was warranted for Sturdivant's violation of Rules 1021(e) and 2110.

²⁰ Mr. Sturdivant's and deKrafft's suspensions, however, shall be served consecutively, rather than concurrently, so as to minimize the impact on Sturdivant's operations.

principal capacity for 60 days and fined him \$10,000 for acting as an unregistered principal in violation of Rules 1021(a) and 2110.²¹ These sanctions, in the Hearing Panel's view, are sufficiently remedial to deter Respondents and others from future violations of the NASD's principal registration requirements.

B. Violation of Rules 1120 and 2110 (Continuing Education)

The applicable Sanction Guideline for violations of the continuing education (firm element) requirements of Rule 1120 indicates that a member firm and/or responsible principal should be fined between \$2,500 and \$20,000. (NASD Sanction Guidelines at 39). In cases involving multiple violations, a violation of extended duration, or where the firm has taken no corrective action and appears unwilling to comply, the guideline suggests the adjudicator consider suspending the firm for up to five business days and requiring demonstrated compliance with Rule 1120. (*Id.*). In egregious cases, such as where the firm has not conducted a needs analysis or developed a written training plan, adjudicators should consider a longer suspension (up to two years) or expulsion. (*Id.*).

Although Sturdivant admitted it violated Rule 1120 in 1995-96 as alleged in the Complaint, the firm presented evidence concerning steps it took in 1997 to remediate this violation. (RX-1 and RX-2).²² In particular, Sturdivant retained a consultant, Securities Education Institute, Inc. ("SEII"), and offered the testimony of James Schobel, SEII's President. (Tr. at 95-106). Mr. Schobel testified that Sturdivant retained SEII in 1997 and

²¹ See note 20, *supra*.

²² RX-1 is Sturdivant's 1997 Firm Element Training Plan. RX-2 is Sturdivant's Firm Element Training Plan Update for 1998. Sturdivant retained Securities Education Institute, Inc., which assisted the firm in developing and implementing Sturdivant's continuing education plan.

that Sturdivant's registered personnel completed their continuing education requirements for 1997.²³

The Department of Enforcement does not claim that Sturdivant's continuing education violations in this proceeding are egregious. (Tr. at 151). Recognizing that Sturdivant took action to develop and implement a firm element training component in 1997 to rectify its past deficiencies, Enforcement requested a fine against the firm and Albert Sturdivant at the low end of the recommended fine amount. (Tr. at 151). Enforcement specifically recommended that the Hearing Panel impose a \$2,500 fine against Sturdivant and Albert Sturdivant jointly and severally. Respondents' counsel did not contest Enforcement's recommended \$2,500 fine. (Tr. at 161).

The Hearing Panel concluded that in the absence of any identified aggravating factors or circumstances, Enforcement's request appears appropriate. Consequently, Sturdivant and Albert Sturdivant are censured and fined, jointly and severally, \$2,500 for violating NASD Membership Rule 1120 and Conduct Rule 2110, as charged in Cause Three of the Complaint.

C. Violations of MSRB Rule G-37²⁴

The NASD Sanction Guideline applicable to late filings of MSRB G-37 reports provides for a fine of \$1,000 to \$3,000.²⁵ The Guideline also indicates that in egregious

²³ Barbara Aaron completed her courses on December 29, 1997, Albert deKrafft completed his class on December 28, 1997, Gene Madred completed his courses on December 27-28, 1997, and Albert Sturdivant completed his courses on January 20, 1998. (Tr. at 101-102).

²⁴ MSRB Rule G-37, as relevant here, requires each dealer to file with the MSRB two copies of Form G-37 within 30 days after the end of each calendar quarter. Form G-37 must be filed with the MSRB if, during the reporting period, political contributions were made by those entities or persons subject to rule G-37, or the dealer engaged in municipal business with a municipal securities issuer. See MSRB G-37(e) and MSRB Manual (CCH), MSRB Interpretation, dated May 24, 1994, at ¶ 3681.

cases the adjudicator should consider suspending the firm from engaging in all municipal underwritings for up to 30 business days and consider suspending the individual responsible for up to 30 business days.

Barbara Aaron, Sturdivant's Vice President of Operations, Administration, Finance and Compliance,²⁶ testified that Sturdivant's G-37 reports were filed late because the firm had created a G-37 compliance time line calendar that incorrectly indicated that the G-37 reports were due 45 days after month end rather than 30 days after month end (Tr. 108-109). Ms. Aaron further testified that after Mr. English brought the MSRB G-37 violations to their attention, Sturdivant, ... "of course changed [its] calendar time line and understood it to be 30 days." (Tr. at 109). In addition, Ms. Aaron noted that shortly after Mr. English informed Sturdivant of its MSRB G-37 reporting problems, "there was a decision made by the management committee that we were not going to pursue that business anymore. And we relinquished our abilities to do any municipal business which would require us to do G-37 filings." (Tr. at 109).

The Department of Enforcement does not claim that the MSRB G-37 violations in this proceeding were egregious (Tr. at 150), and seeks a monetary fine at the lowest level of the appropriate Guideline, \$1,000. Counsel for Sturdivant does not take issue with the amount of the fine Enforcement seeks for the MSRB G-37 violations. (Tr. at 166).

The Hearing Panel agrees that there is no evidence of egregious conduct by Sturdivant, and that the fine imposed should be at the low end of the range set forth in the

²⁵ NASD Sanction Guidelines (May 1998 ed.) at 68.

²⁶ Ms. Aaron was hired by Sturdivant to serve as the firm's Vice President of Administration and Operations. (Tr. at 107). She subsequently, after the NASD Regulation examination that gave rise to this disciplinary proceeding, assumed responsibility for compliance. (Id.)

Sanction Guideline. Accordingly, the Hearing Panel censures Sturdivant for violating MSRB Rule G-37 as set forth in Cause Four of the Complaint and imposes a \$1,000 fine.

V. CONCLUSION

The Hearing Panel determined that the underlying violations of Membership Rules 1021(a), 1021(e), and 1120 also constituted violations of Conduct Rule 2110. The Hearing Panel censured Sturdivant, Albert Sturdivant and Harvey deKrafft; fined Sturdivant \$1,000 for violating MSRB Rule G-37, \$2,500 for violating Membership Rule 1120 and Conduct Rule 2110, and \$7,500 (jointly and severally with Albert Sturdivant) for violating Membership Rule 1021(a), 1021(e) and Conduct Rule 2110; fined Albert Sturdivant \$7,500, jointly and severally with Sturdivant, and suspended him from acting in his capacity as a general securities principal for 30 calendar days for violating Membership Rule 1021 and Conduct Rule 2110; and fined Harvey deKrafft \$10,000, and suspended him from acting in his capacity as a principal for 60 days for violating Membership Rule 1021(a) and Conduct Rule 2110.²⁷ Mr. Sturdivant's and deKrafft's suspensions shall be served consecutively, rather than concurrently.

Hearing Panel

by: _____
Joseph M. Furey
Deputy Chief Hearing Officer

Dated: January 20, 1999
Washington, DC

²⁷ The Hearing Panel considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Copies to:

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