NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CARLTON CASE ELLIS (CRD #1371058), Mercer Island, WA Respondent.	Disciplinary Proceeding No. C3B980006 **DECISION** Hearing Officer - DMF October 30, 1998

Digest

The Department of Enforcement filed a Complaint alleging that respondent Carleton Case Ellis violated NASD Rules 2110 and 3040 by participating in private securities transactions without giving his employer prior written notification, and violated Rule 2110 by signing a letter agreement on behalf of his employer's clearing firm without authority to do so. Ellis filed an Answer denying the charges, and requested a hearing. Prior to the hearing, the Hearing Panel granted, in part, Enforcement's motion for a partial summary disposition of the charges against Ellis, holding that the undisputed facts established that Ellis violated Rules 2110 and 3040 by participating in private securities transactions without giving his employer prior written notice, as alleged in the first charge in the Complaint. Accordingly, the only issue left for hearing on that charge was what sanctions should be imposed. Based on the NASD's Sanctions Guidelines and the evidence adduced at the hearing, the Hearing Panel determined that the appropriate sanctions for this violation were a censure, a six month suspension, a $20,000 fine, and a requirement that

Ellis requalify in all capacities.

The Hearing Panel denied Enforcement's motion for partial summary disposition with regard to the second charge, leaving as issues for the hearing both whether Ellis violated Rule 2110 as alleged, and, if so, what sanctions to impose. Based on the evidence adduced at the hearing, the Hearing Panel concluded that Ellis violated Rule 2110 by signing a letter agreement on behalf of his employer's clearing firm, without authority to do so, as alleged in the second charge. The Hearing Panel determined that the appropriate sanctions for this violation were a censure, a $5,000 fine, and a requalification requirement.

Accordingly, the Hearing Panel censured Ellis, fined him a total of $25,000 ($20,000 on the first charge and $5,000 on the second), suspended him in all capacities for six months (on the first charge), and required him to requalify by examination in all capacities before again being employed in the securities industry (on both charges). The Hearing Panel also ordered Ellis to pay costs in the amount of $2,075.60.

Appearances

Lewis Taylor Egan, Regional Counsel, Seattle, WA (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, of counsel), for the Department of Enforcement.

Jack G. Orr, Tacoma, WA, for respondent.

DECISION

Procedural Background

The Department of Enforcement filed the Complaint in this proceeding against respondent Carlton Case Ellis on March 26, 1998. The First Cause of Complaint charged that Ellis violated Rules 3040 and 2110 by participating in private securities transactions ("selling away") without notice to his employer, Progressive Asset Management, Inc. ("PAM"). The Second Cause of

Complaint charged that Ellis violated the general provisions of Rule 2110 by signing a letter agreement on behalf of PAM's clearing firm, Correspondent Services Corporation ("CSC"), without authority to do so. Ellis, through counsel, filed his Answer on April 20, 1998, in which he denied the charges and asked for a hearing.

The Hearing Panel included the Hearing Officer and two current members of the District Committee for District 3. Prior to the hearing, Enforcement filed a motion for partial summary disposition under Rule 9264, supported by the Declarations of Diane K. Golbeck (with exhibits), Frank J. Niezgoda, and Lewis Taylor Egan. In the motion, Enforcement argued that there was no genuine issue of material fact regarding whether Ellis violated Rules 3040 and 2110 as alleged in the selling away charge, or whether he violated Rule 2110 as alleged in the unauthorized signing charge. Ellis opposed the motion, arguing that there were genuine issues of material fact, but did not file any evidentiary materials to support his opposition. The Hearing Panel granted the motion as to the selling away charge, leaving for the hearing the issue of what sanctions should be imposed for that violation. The Hearing Panel denied Enforcement's motion with regard to the unauthorized signing charge, leaving as issues for the hearing both whether Ellis violated Rule 2110 as alleged, and, if so, what sanctions to impose.

The Hearing Panel conducted a hearing in Seattle, Washington, on August 24 and 25, 1998. Enforcement offered the testimony of one witness, Frank Niezgoda, PAM's former compliance officer, and 37 Exhibits (CX 1-37), of which all but one, CX 37, were admitted into evidence during the course of the hearing. Ellis offered his own testimony and 11 Exhibits (RX 1-11), all of which were admitted. The parties also offered three Joint Exhibits (JX 1-3), which were admitted.

The Charges

1. Selling Away

A. Facts

Although the Hearing Panel granted partial summary disposition on this charge, at the hearing the parties offered evidence, including Ellis' extensive testimony, that fully addressed all the material facts. The evidence confirmed the absence of any dispute as to those facts.[1]

Ellis first became registered with the NASD in 1985, as a general securities representative. He was employed by Prudential until May 1996, when he voluntarily left Prudential and became associated with PAM. Ellis' employment with PAM ended in October 1996. He is presently associated with Brookstreet Securities Corporation, and is registered as both a general securities representative and a general securities principal.[2]

Neil Roe was one of Ellis' customers at Prudential. In March 1996, shortly before Ellis left Prudential, Roe introduced him to Edward McKee. Roe and McKee were marketing something they called a "High Yield Investment Program." Ellis says that, at the time, he had very little understanding of the High Yield Investment. He did, however, understand that it involved some form of off-shore investing.[3]

Roe and McKee asked Ellis to attend a sales presentation in Oregon in order to provide

---

[1] References to the record are as follows: "Niezgoda Decl." refers to the Declaration of Frank Niezgoda; "DGX" refers to the exhibits to the Declaration of Diane Golbeck; "Ellis Dep." refers to DGX 25, the transcript of Ellis' testimony given during the investigation; "Tr." refers to the transcript of the hearing held on August 24 and 25, 1998; "CX" refers to Complainant's Exhibits offered at the hearing; and "RX" refers to Respondent's Exhibits offered at the hearing; "Stip" refers to the Agreed Stipulations between the parties, filed in this matter prior to the hearing.

[2] Stip. ¶ 1; DGX 1; CX 1 (CRD); Tr. 206 (Ellis).

[3] Stip. ¶¶ 2, 4; Ellis Dep. 49, 52, 55-56; Tr. 235-38 (Ellis).

information to prospective investors about opening Prudential accounts. Their plan was for Ellis to open securities accounts for prospective investors. The customers would deposit their funds in their securities accounts, then transfer the funds into another securities account controlled by Roe and McKee, from which Roe and McKee would withdraw funds for the High Yield Investment.[4] Ellis did not expect to earn any commissions or other direct benefits from these investments, but agreed to attend the meeting because he understood that the persons who would be attending had won large sums of money in lotteries and hoped they would make other investments through him in the future.[5]

The selling away charges are based on Ellis' involvement in the High Yield Investment purchases of two married couples in July 1996, after Ellis moved to PAM. At McKee's direction, Ellis contacted the couples and opened accounts for them at PAM.[6] Each couple deposited $250,000 in their account. As soon as the money was deposited in the accounts, Ellis received transfer request forms from McKee signed by both couples transferring their entire accounts, a total of $500,000, into a PAM account controlled by Roe and McKee. Ellis understood these transfers were for the purpose of investing in the High Yield Investment, and he received copies

---

[4] There was a precedent for this arrangement. Roe had previously enlisted Ellis to open Prudential accounts for prospective investors to provide funds for Roe to buy homes at foreclosure sales, with the goal of improving them and selling them at a profit. The investors deposited funds in their Prudential accounts, then transferred the funds to Roe's Prudential account, through letters of authorization, when Roe needed the funds to bid at a foreclosure auction sale. If Roe did not succeed in purchasing the property at the sale, he transferred the funds back to the investors' accounts by letters of authorization. Ellis testified that he discussed this use of Prudential accounts with a Prudential compliance officer, who raised no objections. (Tr. 223-31.) The charges against Ellis were not based on these transactions, so the Hearing Panel expresses no view as to whether they constituted private securities transactions.

[5] Stip. ¶¶ 11- 13; Ellis Dep. 55-56, 62; Tr. 231-40, 349, 354-56. Ellis testified that the Oregon presentation was "a bust" for him, because he did not have an opportunity to establish any relationship with the attendees, but at least one of those who attended the Oregon meeting, WSM, did invest in the High Yield Investment through an account she opened with Ellis at PAM. (Tr. 241-58.) Ellis, however, has not been charged with any violation based on that investment.

of each couple's contract, in which they agreed to invest $250,000 in the High Yield Investment. In early August 1996, Ellis received a transfer request form from McKee transferring the entire $500,000 from the PAM account controlled by McKee and Roe to an account at Piper Jaffray, Inc.[7]

Ellis did not disclose to anyone at PAM that the customers were opening PAM accounts in order to invest in the High Yield Investment, and he did not disclose his role in the transactions. He testified he did not notify PAM because he did not view himself as "participating" in the transactions. Instead, Ellis thought of himself as strictly a "banker," carrying out his customers' decisions to invest in the High Yield Investment, while providing them with a useful "audit trail" through the PAM accounts. Ellis thought the High Yield Investment purchases "had nothing to do with [him]," so he consciously avoided absorbing the details of the transactions, even though he received copies of the customers' High Yield Investment agreements. Ellis did have a basic understanding that the High Yield Investment involved offshore investing of some kind, which was speculative and not suitable for these customers, based on the information they provided when they opened their accounts. But Ellis thought that was none of his business, because he was just acting as a "banker," following the customers' directions in transferring their money.[8]

Ellis, however, played a key role in these investments. It is quite clear – as Ellis now recognizes – that the High Yield Investment was a fraud. Investment contracts and promotional documents in the record – which Ellis says he either did not receive or did not read at the time –

---

6 Apparently, the two couples did not attend the Oregon presentation, but learned of the High Yield Investment from WSM, who had attended the Oregon presentation. (DGX 18, ¶ 5.)

7 Stip. ¶¶ 14-41; Ellis Dep. 67, 69-70, 82-83, 108; DGX 2-3, 11-14, 20; Tr. 260-61, 266-69, 273, 277-78, 284-85; CX 9-12, 15. It appears that after the funds were moved to Piper Jaffray, a portion of the funds was transferred to an overseas account, before the funds were frozen at the instance of the Department of Justice. It is not clear from the record whether the two couples have ever obtained a full refund of their funds.

show that, in return for an investment of $500,000, Roe and McKee promised investors a guaranteed return of principal together with huge profits in a very short term, without any clear description of what the funds would be used for or how the profits would be derived.[9] There is no dispute that the High Yield Investment was a security.[10]

Roe and McKee emphasized the supposed involvement of Ellis, PAM, PAM's clearing firm, CSC, and CSC's parent, PaineWebber, Inc., in the "Overview" they sent to prospective investors and the contracts the investors signed. The contracts touted:

> Financial documents are administered by Progressive Asset Management. Progressive Asset Management is a national securities firm that clears all of their transactions through the Correspondent Services Corporation, which is a wholly owned subsidiary of Paine Weber Securities [sic].

The agreement further explained:

> The Correspondent Services Corporation Resource Management Account Documents will be completed and each Investor will open a Resource Management Account at the Seattle Office of Progressive Asset Management to: 1. Receive the required Investor deposit of investment funds. 2. Transfer investment funds into the [account controlled by Roe and McKee]. 3. Receive disbursement of proceeds ….

The agreement went on to emphasize that all funds invested and all returns on those investments would pass through these accounts. The "Overview" describing the High Yield Investment to prospective investors – which Ellis says he did not see – emphasized even more strongly the

---

8 Stip. ¶¶ 15, 32-33; Niezgoda Decl. ¶¶ 8-9; Ellis Dep. 55-57, 70, 76-77; Tr. 339, 342-43, 349, 430-32 (Ellis); JX 2-3; DGX 7.

9 According to the agreements signed by the investors, "The High Yield Investment Program is initiated with a refundable deposit of a Five-Hundred-Thousand-Dollars ($500,000 USD) that is deposited into an Investment Portfolio Account. The Five-Hundred-Thousand-Dollars ($500,000 USD) is returned to the Investor(s) at the end of the contract term. The proceeds from the High Yield Investment Program are anticipated to provide the Investor(s) a return of three-hundred percent (300%) on the amount invested, within thirty (30) days from the date of the receipt of funds by the Provider." (CX 2, p. 1.) Neither the agreement nor the "Overview" sent to investors (CX 19) explains how the funds will be invested or how these returns will be generated, except for vague references to an "International Investment Portfolio Account."

10 Stip. ¶¶ 8-11; Tr. 269-70 (Ellis).

involvement of Ellis, PAM, CSC, and PaineWebber. Ellis also acknowledged that, at the Oregon sales presentation he attended, Roe used Ellis' affiliation with (at that time) Prudential to give comfort to potential investors. At the hearing, Ellis admitted that he now recognizes "the bottom line is [Roe and McKee] were holding out Prudential and then PAM and PaineWebber and CSC, all the fancy names and numbers, to show … they had a level of legitimacy in order to try to steal the money."[11]

B. Analysis

Rule 9264(d) provides that "[t]he Hearing Panel … may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law." In this case, the materials offered by Enforcement to support its motion showed, and the testimony at the hearing confirmed, that there is no genuine issue as to the material facts concerning the selling away charge against Ellis.

These undisputed facts establish that Ellis participated in private securities transactions in violation of Rule 3040. Rule 3040 prohibits an associated person from "participat[ing] in any manner in a private securities transaction" without giving prior written notice to the member firm with which he is associated "describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction." The Rule defines "private securities transaction" as including "any securities transaction outside the regular course or scope of an associated person's employment with a member."

The NASD and the SEC have interpreted Rule 3040 broadly in accordance with its purposes, which are to "protect[] the firm from exposure to loss and litigation, and investors from

---

[11] Stip. ¶ ¶ 17, 19, 38-41; DGX 2-3, 12-14, 17-20; Ellis Dep. 89, 98; CX 2-3, 17-19; Tr. 359-367, 429 (Ellis).

the hazards of unmonitored sales." William Louis Morgan, Exchange Act Release No. 32744, 54 SEC Docket 1611 (Aug. 12, 1993). In Jay Frederick Keeton, Exchange Act Release No. 31082, 52 S.E.C. Docket 1093 (Aug. 24, 1992), the SEC upheld application of the selling away rule to an associated person who had organized investment partnerships to invest in the securities of developmental companies. The SEC explained:

> Outside sales activities, even if uncompensated, expose investors to possible losses and employers to possible liability. A securities firm, through which salesmen are registered for the protection of the public, must protect investors as well as itself through supervisory measures that impose conditions on a salesman's employment. To implement and enforce those measures, the firm must be apprised of any associated person's outside involvement in securities transactions.
>
> This case illustrates the potential for harm arising from undisclosed, and hence unmonitored, outside sales. The record shows that the partnership agreement … may have given investors the false impression that [the employer firm] was behind the sales. … The firm's ignorance of [the sales] made it impossible for it to prevent these misrepresentations.[12]

Ellis' role in this case – knowingly opening PAM accounts to facilitate the transfers of funds into the High Yield Investments away from PAM – clearly constituted participating "in any manner" in securities transactions that were outside the regular course or scope of Ellis' employment with PAM. There is no dispute that the High Yield Investments were securities, and no dispute that Ellis opened the PAM accounts for the customers with the specific intent and expectation that the customers would deposit funds into the account to invest in the High Yield Investment. Roe and McKee plainly used the supposed involvement of Ellis and PAM to give the

[12] See also Terry Don Wamsganz, Exchange Act Release No. 22411, 33 S.E.C. Docket 1432 (Sept. 16, 1985), where the SEC upheld application of the selling away rule against an associated person who introduced two former customers, who wanted to obtain control of a business, to a third party, who needed additional capital and management personnel for his firm. The former customers ultimately agreed to acquire a majority of the firm's outstanding stock, and paid the associated person a "finder's fee." The SEC emphasized that the rule applied whenever "employees effect transactions for customers outside of the normal channels and without disclosure to the employer …."

transactions an air of legitimacy, and the pass through of funds from the customers' PAM accounts to the PAM account controlled by Roe and McKee was a key feature in completing the purchases, as Ellis well knew.[13] Thus, the policies underlying the selling away rule plainly apply to Ellis' participation in these transactions. The customers had the right to assume that, by opening the accounts at PAM and purchasing their investments through those accounts, they were protected by the supervisory monitoring structure established for broker/dealers under the securities laws and NASD regulations.

If Ellis had notified PAM of his participation in these transactions, as required, PAM could have acted to prevent the losses. The record strongly suggests that the firm would have recognized that the High Yield Investment was a fraud, obviously not suitable for the customers, and would have forbidden Ellis from participating, thereby protecting both the customers and the firm from risk of loss.[14]

2. Unauthorized Signing

On or about September 25, 1996, Ellis received a letter written by MDA, an attorney who was the trustee of a PAM account he opened with Ellis. MDA's purpose in writing the letter is not entirely clear from the text. The letter describes, in rather confusing terms, a transaction that MDA is contemplating, involving the purchase of $2.4 million in Treasury Bills, and indicates that he has deposited $2.4 million in the account in anticipation of that transaction. The letter also says: "The Funds will remain on deposit in my above-referenced account, under your supervision, and will not be released or transferred therefrom until you have received written notice from me authorizing and directing you to release or transfer the Funds therefrom." The letter concludes:

---

[13] Tr. 371, 376 (Ellis).

[14] Tr. 57-58, 188 (Niezgoda).

"Please reflect your consent to the above provisions in the space provided below." And below MDA's signature appears:

AGREED TO:

CORRESPONDENT SERVICES CORPORATION

BY: ____________________________
Casey Ellis

Ellis signed "Casey Ellis Independent Investment Consultant" above his name, and returned the letter to MDA.[15]

Ellis admitted that he signed the letter, and that he did not have authority to sign on behalf of CSC. He claimed that, based on conversations with MDA, he understood that MDA simply wanted Ellis to confirm that he would make no unauthorized transfers from the account. Ellis said he understood MDA wanted such an agreement because he had no prior dealings with Ellis and was going on vacation. Ellis testified that because the account was a PAM account, he understood that MDA wanted the agreement from PAM, not CSC. He said he intended to sign on behalf of PAM, but failed to note that the signature line listed CSC, rather than PAM, as the agreeing party.[16]

The Hearing Panel did not find this testimony entirely credible. The letter did not simply ask Ellis to confirm, on behalf of PAM, that no unauthorized transfers would be made from a PAM account. The letter was addressed to Ellis, but the addressees listed under his name included PAM, CSC, and PaineWebber. The text of the letter expressly referred to MDA's "Paine Webber/CSC account," and reflected apparent confusion about the relationship among the

[15] Stip. ¶¶ 42-50; CX 22; Tr. 212 (Ellis).

[16] Stip. ¶¶ 44, 48, 51; Tr. 208-11, 392-93 (Ellis).

various firms. The description of the contemplated transaction in the letter also suggests that MDA mistakenly believed that PaineWebber was somehow involved in the transaction, though it is undisputed that neither PaineWebber, nor CSC, nor PAM had any involvement or knowledge of the contemplated transaction. And of course, the words "CORRESPONDENT SERVICES CORPORATION" appeared in all capital letters directly over Ellis' signature.[17]

Taken as a whole, the letter should strongly have suggested to Ellis that MDA was confused as to Ellis' affiliation, the relationship between PAM, CSC and PaineWebber, and the involvement of PaineWebber in the contemplated transaction. At a minimum, both the text of the letter and the signature line should have indicated to Ellis that MDA mistakenly believed his account was with "PaineWebber/CSC," not PAM.

Instead of noting MDA's confusion, and providing clarification, Ellis signed the letter, suggesting he was empowered to sign on behalf of CSC, though he was not. Even if Ellis did not <u>intend</u> to sign on behalf of CSC, he was at least negligent or reckless in doing so under these circumstances. Accordingly, the Hearing Panel finds that, by signing the letter, Ellis failed to "observe high standards of commercial honor and just and equitable principles of trade," as required by Rule 2110.

Sanctions

1. Selling Away

Enforcement requested that Ellis be censured, barred, and fined $50,000 for the selling

---

[17] Ellis could not explain why he inserted the words "Independent Investment Consultant" after his signature, and admitted that he did not generally include such language in letters he signed on behalf of PAM. (Tr. 395 (Ellis).) One possible explanation is that Ellis <u>did</u> note CSC's name, knew he was not authorized to sign for CSC, but signed anyway, and included the words "Independent Investment Consultant" in an effort to signal that he was "independent" of CSC. The Hearing Panel does not find it necessary to adopt this interpretation, however, in order to sustain the charge against Ellis.

away violation. In considering the appropriateness of these sanctions, the Hearing Panel was guided by the NASD Sanction Guidelines. The Selling Away Guideline suggests a fine ranging from $5,000 to $50,000, to which may be added the amount of any financial benefit received by the respondent, as well as a suspension for up to two years, or a bar in egregious cases.[18]

Looking first to the specific Considerations listed in the Selling Away Guideline, the Hearing Panel found:

(1) Ellis did not have "a propriety or beneficial interest in," nor was he "otherwise affiliated with" Roe and McKee.

(2) Ellis did not deliberately "attempt[] to create the impression that [PAM] sanctioned" the High Yield Investment, but allowing the use of PAM accounts to facilitate the purchases of the High Yield Investment had that effect.

(3) While the selling away did not involve preexisting PAM customers, the investors did become PAM customers in order to facilitate the transactions.

Thus, the Hearing Panel concludes that these Considerations weigh in favor of a fine that is substantial, but not at the very top of the range suggested in the Selling Away Guideline.

Turning to more general factors affecting sanctions, the Hearing Panel concluded, based on the evidence and Ellis' demeanor in testifying at the hearing, that Ellis was a dupe, rather than a knowing participant in the High Yield Investment fraud. It appeared to the Hearing Panel that Ellis really believed that his "banker" role absolved him from complying with the selling away rule. In addition, the Hearing Panel believed that Ellis did not understand that the High Yield Investment was a fraud, and noted that Ellis did not receive any financial gains from these sales, but rather hoped to win the good will of the customers, as well as Roe and McKee, so they would

[18] NASD Sanction Guidelines, 15 (1998 ed.).

look to him for future investment opportunities.[19] On the other hand, the Hearing Panel concluded that, having been in the industry for more than ten years, Ellis should have known what he was doing was improper. He avoided recognizing that the High Yield Investment was a fraud only by keeping his eyes firmly closed to its true nature, under the theory that, as a mere "banker," he did not want to know more about the High Yield Investment.

The Hearing Panel was influenced by Ellis' otherwise unblemished record over more than ten years in the industry. Ellis testified that, apart from the transactions surrounding the charges in this proceeding, he had never had a customer complaint. Ellis does not, however, appear to have had a good grasp of his obligations as an associated person. He testified that his business was always primarily in the area of managed commodities, rather than securities. Until he began working for PAM, Ellis had always worked in a large office with established procedures. When he moved to PAM, Ellis became an independent contractor in a one-man office. He appears to have received limited training and oversight from PAM in that role.[20]

Under these circumstances, the Hearing Panel has determined that a six month suspension, rather than a bar, and a $20,000 fine, rather than the $50,000 requested by Enforcement, are appropriate sanctions. In addition, given Ellis' apparent confusion regarding his responsibilities as an associated person, Ellis will be required to requalify by examination in all capacities.

2. Unauthorized Signing

---

[19] Tr. 315 (Ellis).

[20] Tr. 195, 204, 207-08. Based on the evidence, including the testimony of Frank Niezgoda, PAM's former compliance officer, the Hearing Panel also felt that PAM had missed an opportunity to identify and prevent these transactions when Ellis opened the accounts for the customers and immediately forwarded transfer request forms transferring the entire balance of the accounts to the PAM account of another of Ellis' customers. This sequence of events should have alerted PAM to a possible problem. Tr. 126 (Niezgoda).

Enforcement requested that Ellis be censured, barred, and fined $25,000 for this violation. Enforcement acknowledged that there are no directly applicable Sanction Guidelines, but argued that this violation was highly egregious, and that the sanctions it sought were justified under the general Principles and Considerations set forth in the Guidelines.

In particular, Enforcement argued that severe sanctions were warranted because the underlying transaction referred to in the letter may have been another instance in which Ellis was allowing PAM accounts to be used, without PAM's knowledge, to facilitate a fraudulent investment away from PAM – essentially another selling away violation by Ellis. The Hearing Panel, however was unwilling to base severe sanctions on possible violations not charged.

It does not appear that Ellis caused any actual harm to the customer, PAM, CSC, PaineWebber, or any other party by signing the letter. There is no evidence of unauthorized transactions in the account, and it appears undisputed that all of the funds were returned to MDA. Under these circumstances, the Hearing Panel believes that the sanctions requested by Enforcement are too severe. The Hearing Panel finds that a censure, a $5,000 fine, and a requirement that Ellis requalify by examination in all capacities are appropriate sanctions for this violation.

Accordingly, Ellis is censured, suspended in all capacities for a period of six months, fined a total of $25,000, and required to requalify by examination before acting in any capacity requiring qualification. Ellis is also ordered to pay costs in the amount of $2,075.60, which includes an administrative fee of $600 and hearing transcript costs of $1,475.60.[21]

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Dated: Washington, DC
October 30, 1998

Copies to:

Carlton Case Ellis (by certified and first class mail)
Jack G. Orr, Esq. (by first class mail)
Rory C. Flynn, Esq. (by first class mail)
Lewis Taylor Egan, Esq. (by first class mail)

[21] 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.