

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,  Complainant,  v.  MARYLAN TAYLOR (CRD No. 2263196)  Respondent.	Disciplinary Proceeding No. C8A050027  Hearing Officer - AWH  <b>HEARING PANEL DECISION</b>  December 30, 2005
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**Formerly registered representative barred for falsifying documents, in violation of NASD Conduct Rule 2110, and providing false testimony in an on-the-record interview, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. In light of the bars, no further sanctions are imposed for failing timely to update her Form U-4. Respondent also assessed costs.**

Appearances:

UnBo Chung, Esq., and Marcletta Kerr, Esq., for the Department of Enforcement

Christopher M. DeVito, Esq., and Laurel G. Stein, Esq., for Marylan Taylor

**DECISION**

**Introduction**

On April 28, 2005, the Department of Enforcement issued the four-cause Complaint in this proceeding, alleging that Marylan Taylor (“Taylor” or “Respondent”) (1) submitted a falsified document to the Kentucky Department of Insurance and another falsified document to the Ohio Department of Insurance; (2) made herself the beneficiary of a customer’s annuity, without the consent or knowledge of that customer; (3) failed to amend her Form U-4 to disclose that, on two separate occasions, she was charged with

the felony of forgery in the State of Kentucky;<sup>1</sup> and (4) failed to testify truthfully, in an NASD on-the-record interview, about the existence of the second forgery charge against her in the State of Kentucky, and about the status of her Kentucky insurance licenses. On May 19, 2005, Taylor filed an Answer to the Complaint and a request for a hearing. The Answer admitted that NASD has jurisdiction over Respondent, but denied all substantive allegations in the Complaint. A hearing was held in Cleveland, Ohio, on September 20, 2005, before a hearing panel composed of the Hearing Officer and two current members of the District 8 Committee. On November 3, 2005, the parties filed post-hearing submissions.

## **Findings of Fact<sup>2</sup>**

### **I. Falsified Documents**

In 1992, Marylan K. Taylor obtained life insurance and health insurance licenses from the State of Kentucky where she resided.<sup>3</sup> In 1995 she moved permanently from Kentucky to Ohio, and, in March 2000, she began employment with Financial Networks of America (“FNA”), an Ohio insurance firm.<sup>4</sup> In conjunction with her employment by FNA, Taylor obtained an Ohio non-resident insurance license, one that depended on the good standing of her Kentucky licenses.<sup>5</sup> In November 2000, she obtained her NASD

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<sup>1</sup> The Complaint originally alleged that Taylor also failed to update her Form U-4 to disclose an administrative proceeding against her in Ohio that could potentially lead to a finding that she made false statements or omissions or had been dishonest, unfair, or unethical. That allegation was withdrawn by the Department of Enforcement at the opening of the hearing in this case.

<sup>2</sup> References to Enforcement’s Exhibits are designated CX\_; Respondent’s Exhibits, as RX\_; and the transcript of the hearing, as Tr.\_.

<sup>3</sup> CX-6e.

<sup>4</sup> RX-1. Her actual employment was with WRP Investments, Inc., a broker-dealer affiliated with FMA.

<sup>5</sup> Tr. 71-72.

Series 6 license and became a registered representative of WRP Investments, Inc., (“WRP”).<sup>6</sup>

Submissions to the Kentucky Department of Insurance

On December 14, 2000, the Kentucky Department of Insurance (“KDOI”) notified Taylor that its records indicated she had not completed the required 24 hours of continuing education for the biennium ending June 30, 2000. The notice advised Taylor to check the KDOI website listing of her continuing education credits, and provide it with any missing certificates of completion she claimed were relevant to correct the list and reflect that she was in compliance with continuing education requirements. Should she fail to do so, the notice admonished Taylor that her insurance agent licenses would be terminated effective December 1, 2000.<sup>7</sup>

Taylor verified that, according to the KDOI website, she had been credited only with 19 hours of continuing education for the relevant two year period. Because she claimed to have had 39 credit hours of continuing education during the relevant period, on January 8, 2001, she directed an employee of FNA to fax to KDOI certificates of completion of continuing education courses that would substantiate her claim of sufficient credit hours to maintain her Kentucky licenses.<sup>8</sup>

At the hearing, Taylor testified that the certificates of completion, which she caused to be faxed to the KDOI to show 39 credit hours, were those contained in exhibit RX-20. However, that exhibit contains only four certificates of completion that total 16 credit hours, which, when added to the 19 hours that KDOI recognized, total only 35 credit hours. Moreover, those 16 hours were earned in courses sponsored by FNA which

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<sup>6</sup> CX-1; Tr. 70.

<sup>7</sup> CX-6b.

<sup>8</sup> CX-5; Tr. 297.

is not an approved continuing education provider in Kentucky.<sup>9</sup> As a result, Taylor was credited only with the 19 hours originally recognized by the KDOI.

Taylor could not account for the missing four credit hours that were faxed to the KDOI.<sup>10</sup> However, the fourth page of the eight-page fax that was sent to the KDOI on January 8, 2001, is a certificate of completion by Marylan K. Taylor of a course entitled “Business Life,” course certification number 00089, provided by Independent Insurance Agents of KY, Inc., an approved provider in the State of Kentucky.<sup>11</sup> The handwritten course completion date is “6-16-00”; however, the two zeros appear to overwrite another date. After receiving the fax, the KDOI contacted the course provider who advised that “Business Life,” course 00089, was last taught in 1998 and was not on the calendar for the year 2000. The provider also stated that the only seminar it conducted on June 16, 2000, was course 00004, “Related Personal Lines.”<sup>12</sup> After receiving this information from the course provider, the KDOI declared Taylor’s insurance licenses “inactive” as of December 1, 2000.<sup>13</sup>

### Submissions to the Ohio Department of Insurance

#### A. The Letter of Clearance and Certification

On March 19, 2003, Taylor applied to the Ohio Department of Insurance (“ODOI”) for continued licensure as a non-resident Ohio insurance agent.<sup>14</sup> To that end, on June 13, 2003, she wrote to the KDOI, requesting copies of a certification/clearance letter that would show whether she had an active license in Kentucky.<sup>15</sup> On June 18,

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<sup>9</sup> Tr. 74-75. FNA is approved only in the State of Ohio.

<sup>10</sup> Tr. 299-300.

<sup>11</sup> CX-5.

<sup>12</sup> CX-6c.

<sup>13</sup> CX-6e.

<sup>14</sup> CX-13, ¶ 4.

<sup>15</sup> RX-7-9.

2003, the KDOI sent Taylor a Letter of Clearance and Certification, stating that her Kentucky insurance licenses were inactive due to failure to comply with continuing education requirements.<sup>16</sup> Taylor, on the other hand, testified that she received, and sent on to the ODOI without any changes, a Letter of Clearance and Certification stating that her Kentucky insurance licenses were active.<sup>17</sup> However, the KDOI analyzed the Clearance and Certification letter Taylor claimed to have received from it, and concluded that the letter had been altered.<sup>18</sup> On June 2, 2004, Taylor was notified that the ODOI intended to suspend or revoke her licenses for submitting an altered clearance letter and an altered continuing education certificate. After a hearing before a Hearing Officer on August 24, 2004, the ODOI found that the clearance letter and the continuing education certificate had been altered and were false.<sup>19</sup> As a result, on May 26, 2005, Taylor's non-resident Ohio insurance agent's license was permanently revoked, and her application to become an Ohio resident insurance agent was denied for obtaining or attempting to obtain a license through misrepresentation or fraud.<sup>20</sup>

#### B. The Continuing Education Certificate

In revoking Taylor's non-resident license and denying her application for an Ohio insurance agent's license, the Ohio Superintendent of Insurance upheld the Hearing Officer's conclusion that Taylor "submitted an altered Kentucky Continuing Education

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<sup>16</sup> CX-6e. The letter was sent to Taylor's former address in Kentucky. However, her step-daughter lived at that address and forwarded the letter to Taylor at her Ohio address. Tr. 287-88. Her step-daughter also forwarded to her a second copy of the Letter of Clearance and Certification that Taylor had requested. Tr. 253; RX-13.

<sup>17</sup> RX-10. Taylor submitted the altered clearance letter to the ODIO on June 24, 2003. CX-12-13.

<sup>18</sup> CX-6d. The report noted at least six discrepancies between the altered letter and an authentic letter.

<sup>19</sup> CX-13. Taylor testified in that proceeding as follows:

I got the clearance letter. I attached it to the application and sent – I sent it in. And over the period of the time I have been licensed, I've probably received one hundred of these for different – different things that I needed them for. I never scrutinized one. I didn't realize I had to.

<sup>20</sup> CX-14.

Certificate to the Ohio Department of Insurance on April 30, 2001, in order to obtain Ohio insurance agent licensure as a Resident with Variable Life and Annuities.”<sup>21</sup> The particular continuing education certificate is not identified in the Hearing Officer’s Report and Recommendation or the Superintendent’s Order accepting the Hearing Officer’s Recommendation. However, at the hearing in this case, Taylor identified it as Respondent’s Exhibit 19 which states that she completed a course entitled “Retirement Annuities and Life Insurance” on June 16, 2000. Taylor testified that she took the course in Kentucky in 1992 or 1994. She also identified her signature at the top of the page, although she was not sure that she could identify the signature at the bottom of the page as hers. She stated that she did not provide the document to the State of Ohio, and she saw it for the first time on or about August 4 or 5, 2003, when Joe Randazzo, then vice-president of FNA, confronted her with it.<sup>22</sup> The Hearing Panel does not find her testimony to be credible for the reasons that follow.

The course title on Respondent’s Exhibit 19 is “Retirement Annuities and Life Insurance”; the course title on Complainant’s Exhibit 5 is “Business Life.” However, the two documents look remarkably similar. They both purport to have the course certification number 00089; they both purport to have been completed on June 16, 2000; and they both purport to have been offered by the same Kentucky-approved provider. As noted above, the provider represented that course 00089 was last taught in 1998; it was not on the calendar for the year 2000; and the only seminar it conducted on June 16,

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<sup>21</sup> *Id.*

<sup>22</sup> Tr. 256-58. This testimony is inconsistent with the statement of the fraud investigator in Kentucky that Taylor claimed to have first seen the “*Business Life*” certificate in early August when Randazzo showed it to her. CX-10, p. 4.

2000, was course 00004, “Related Personal Lines.”<sup>23</sup> Finally, as Respondent’s Exhibit 43 shows, Taylor completed course number 00089, “Business Life,” on June 16, 1994, but has never completed a course entitled “Retirement Annuities and Life Insurance.” Respondent’s Exhibit 43 also shows that she has not been credited with any continuing education course for the year 2000, except for the 19 credit hours she earned by completing a Series 6 course. Accordingly, the Hearing Panel finds that a preponderance of the evidence establishes that Taylor submitted (1) a falsified continuing education certificate to the KDOI; (2) a falsified clearance letter to the ODOI; and (3) a falsified continuing education certificate to the ODOI.

## **II. Reporting of Forgery Charges**

### The investigation

On March 19, 2003, Taylor submitted an application to renew her Ohio non-resident insurance license.<sup>24</sup> At some time shortly thereafter, FNA was informed by an insurance company with which it was seeking affiliation that Taylor’s Kentucky licenses were not in good standing. Taylor informed Joe Randazzo that the problem concerned a continuing education requirement that would be rectified.<sup>25</sup> In July 2003, Randazzo was notified that Taylor was being investigated by the KDOI for submitting a falsified continuing education document. Taylor told Randazzo that she suspected her ex-husband, who had some influence in Kentucky, was attempting to ruin her career. Nevertheless, FNA suspended Taylor while the matter was being investigated.<sup>26</sup> On August 8, 2003, FNA terminated Taylor, and WRP Investments, Inc., FNA’s affiliated

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<sup>23</sup> CX-6c.

<sup>24</sup> CX-13, ¶ 4.

<sup>25</sup> Tr. 77-78.

<sup>26</sup> Tr. 81-84.

broker-dealer, filed a Form U-5, noting that the insurance departments of Kentucky and Ohio were investigating the apparent alteration of a continuing education certificate and a letter of clearance and certification.<sup>27</sup>

#### Employment by The Legend Group

In October 2003, The Legend Group (“Legend”), a broker-dealer, considered hiring Taylor as an independent registered representative. Because Legend’s Chief Compliance Officer, James Halvosa, had concerns about the information on the Form U-5 filed by WRP on behalf of Taylor, he requested further information from her on the disclosures.<sup>28</sup> On October 3, 2003, Taylor sent a letter to Legend, explaining the investigations by the Fraud Units of the Kentucky and Ohio Departments of Insurance. In the letter, Taylor acknowledged that, over the preceding 24 months, she had been attempting to resolve the issue surrounding her continuing education credits for the period ending December 31, 2000, but the KDOI had declared her license “inactive.”<sup>29</sup> Legend hired Taylor on October 23, 2003.<sup>30</sup>

#### The First Criminal Complaint

On December 4, 2003, Taylor was served with a summons to appear on January 6, 2004, in the District Court of Franklin County, Kentucky, to answer the charge of criminal possession of a forged instrument in the second degree, a Class D Felony. The criminal complaint charged that she faxed or had faxed to the KDOI an altered document indicating that she had completed a “Business Life” continuing education course on June

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<sup>27</sup> CX-1, RX-1.

<sup>28</sup> Tr. 23-25.

<sup>29</sup> CX-9, RX-25.

<sup>30</sup> CX-1, RX-1.



16, 2000.<sup>31</sup> On January 20, 2004, she pleaded not guilty and waived a preliminary hearing. On March 2, 2004, the court declined to bind the matter over to a grand jury and dismissed the case for lack of probable cause.<sup>32</sup> On April 13, 2004, Taylor first provided documentation to Legend that substantiated the nature of this criminal charge and its disposition.<sup>33</sup>

### The Second Criminal Complaint

On August 2, 2004, Taylor was served with a summons to appear on September 28, 2004, in the District Court of Franklin County, Kentucky, to answer the charge of forgery in the second degree, a Class D Felony. The criminal complaint alleged that she fraudulently filled out a form showing that she had completed a “Business Life” insurance course and faxed, or caused it to be faxed, to the KDOI. Taylor failed to appear on September 28, 2004.<sup>34</sup> As a result, she was arrested in Ohio on October 1, 2004, and later released.<sup>35</sup>

On November 25, 2004, Legend received a letter from Taylor which was dated October 25, 2004.<sup>36</sup> The letter appends a Form U-4 with handwritten notes indicating that she did not appear to answer a second charge of forgery because her attorney advised her that, because the summons was not signed by a judge, she need not respond. She also noted that a bench warrant was issued because she failed to appear, but she was confident

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<sup>31</sup> CX-10, pp. 2, 4.

<sup>32</sup> CX-10, p.1, RX-2; Tr. 211.

<sup>33</sup> RX-2; Tr. 26-28. Legend did not update Taylor’s U-4 until November 30, 2004. Tr. 41. On March 9, 2004, Taylor faxed a letter dated March 5, 2004, to Legend’s Compliance Support Services informing Legend of the dismissal of the criminal case. Taylor was asked to provide court documents to substantiate her claim of dismissal; however, Taylor did not provide them prior to April 13, 2004. RX-29.

<sup>34</sup> CX-11.

<sup>35</sup> Tr. 212, 272.

<sup>36</sup> Tr. 28.

that the charge would be dropped for lack of probable cause.<sup>37</sup> Legend asked her for more information and documentation regarding this second charge, but she failed to provide any.<sup>38</sup>

On December 28, 2004, the District Court found probable cause and bound over to the Grand Jury the case against Taylor.<sup>39</sup> On March 3, 2005, Halvosa, Legend's Compliance Officer, received a copy of a "Wells" letter sent to Taylor by NASD which included information about the second charge. Halvosa sought more information from Taylor and informed her to cease any business activity with Legend until they "get to the bottom of the matter."<sup>40</sup> Taylor's attorney sent a letter to Halvosa, dated March 11, 2004, attempting to explain the status of the cases pending against Taylor.<sup>41</sup> However, it was not until March 17, 2005, that Halvosa received documents from NASD that confirmed for the first time that Taylor had been charged with a second felony, arrested for failing to appear to answer the second criminal charge, and had her Ohio licenses suspended.<sup>42</sup> The following day, Legend updated Taylor's Form U-4 and terminated her employment for lack of production.<sup>43</sup> The second felony case against Taylor ended when, on June 29, 2005, the Kentucky Grand Jury had insufficient votes to return an indictment, and issued a No True Bill.<sup>44</sup>

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<sup>37</sup> RX-32.

<sup>38</sup> Tr. 29-30.

<sup>39</sup> CX-11; Tr. 213.

<sup>40</sup> Tr. 30-31.

<sup>41</sup> Tr. 31-32; RX-39. The attorney's letter indicated his belief that the second charge would be dismissed for lack of probable cause. However, as noted above, probable cause had already been found on December 28, 2004, and the matter was pending before the Grand Jury at the time the letter was written.

<sup>42</sup> Tr. 32-33.

<sup>43</sup> Tr. 62; CX-1.

<sup>44</sup> RX-3.

### **III. Testimony in an On-The-Record Interview**

On August 26, 2004, Taylor gave sworn testimony in an NASD on-the-record interview conducted pursuant to NASD Procedural Rule 8210. She testified that there was no litigation pending against her at that time.<sup>45</sup> Although she acknowledged that she had given testimony before the ODOI two days before her NASD on-the-record interview, she did not disclose that the ODOI hearing was a proceeding against her, seeking to suspend or revoke her insurance licenses. She also failed to state that she had been served with a summons in the second Kentucky criminal case on August 2, 2004.

Taylor also testified that (1) her Kentucky licenses had never been suspended or become inactive for any reason, (2) they were still active as of the day of the on-the-record interview, and (3) she was current with all of her continuing education requirements for Kentucky.<sup>46</sup> However, she acknowledged in her October 3, 2003, letter to Legend that the KDOI “took it upon themselves to declare my license inactive. . . .”<sup>47</sup> Moreover, her Kentucky licenses have remained inactive since December 1, 2000.<sup>48</sup>

### **IV. Change of Beneficiary Form**

On February 25, 2003, Taylor’s customer, ES, signed a blank change of beneficiary form for one of her annuities.<sup>49</sup> ES had wanted the beneficiary to be changed to her daughter. Some time later, ES learned that Taylor was designated on the form as the beneficiary.<sup>50</sup> ES complained to FNA about the change in July 2003. FNA

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<sup>45</sup> CX-15, pp. 6-7.

<sup>46</sup> CX-15, pp. 19, 25, 28-32.

<sup>47</sup> RX-25.

<sup>48</sup> CX-6e.

<sup>49</sup> ES was a 92 year-old widow who died five days before the hearing. Tr. 89, 91.

<sup>50</sup> Tr. 91-92; CX-2. FNA received a copy of the completed change of beneficiary form from ES’s newly retained accountant. CX-4; Tr. 97.

confronted Taylor about the complaint, and Taylor admitted making herself the beneficiary, but claimed that it was done at the insistence of ES.<sup>51</sup>

At the hearing, Taylor denied that she had filled out the change of beneficiary form to designate herself as the beneficiary. She denied that any of her handwriting appears on the form.<sup>52</sup> The Hearing Panel does not credit her denial. Her hearing testimony is inconsistent with evidence that, when she was first confronted with the form by FNA, she admitted making herself the beneficiary, but claimed she did so at ES's request. Moreover, her falsification of other documents and her denials of those falsifications indicate a pattern of conduct consistent with falsification of the change in beneficiary form.

Finally, her handwritten name and address on the change of beneficiary form look to be the same as her handwritten name and address on Exhibit R-8, the request for a certification/clearance letter to the KDOI. The letters and numbers are formed in the same way, including the backward "F," the slant of the letters is similar, and the spacing of the letters and numbers is similar. Taylor admitted that her handwriting appears on R-8.<sup>53</sup> At the hearing, Taylor pointed out that the handwritten date of birth for her on the form was incorrect. The form indicates that Taylor was born on June 25, 1945; however, Taylor testified that her correct date of birth is June 25, 1949.<sup>54</sup> That testimony is not persuasive evidence that the handwriting on the form is not hers. CRD records, court

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<sup>51</sup> Tr. 93-94.

<sup>52</sup> Tr. 267-68.

<sup>53</sup> Tr. 249-50.

<sup>54</sup> Tr. 268.

documents, and her testimony during an NASD on-the-record interview all indicate that she was born in 1945.<sup>55</sup> Other documents list her birth date as 1949.<sup>56</sup>

The Hearing Panel also does not find the testimony of GC to be persuasive evidence on the issue whether ES actually requested a change of annuity beneficiary. GC, who testified on behalf of Taylor, is vice-president of brokerage sales at American National Insurance Company (“American National”). He described himself as a friend of Taylor who has known her for 15 years. He testified that American National looked at policies that *his* company issued to ES, but found “nothing in the file to lead us to believe that any type of beneficiary change was trying to be made.”<sup>57</sup> However, the change of beneficiary form was not for an American National annuity; it was for an annuity issued by North American Company for Life and Health Insurance, a separate company with no affiliation with American National. GC had no authority to review any policies or documents associated with North American Company for Life and Health Insurance.<sup>58</sup>

The Hearing Panel finds that the preponderance of evidence demonstrates that Taylor affixed her name as the beneficiary of ES’s annuity, which ES had signed in blank, and that she did so without the knowledge or consent of ES.

## **Discussion**

### **1. Falsification of Documents**

NASD Conduct Rule 2110 requires that associated individuals “observe high standards of commercial honor, and just and equitable principles of trade.” NASD’s “disciplinary authority is broad enough to encompass business-related conduct that is

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<sup>55</sup> RX-1, 2, 32, CX-10, 11; Tr. 281.

<sup>56</sup> RX-17 (Insurance license), RX-25 (Agent Data Form).

<sup>57</sup> Tr. 139-41, 149; RX-50.

<sup>58</sup> Tr. 146-49.

inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”<sup>59</sup> Falsifying documents is an archetypal violation of Conduct Rule 2110.<sup>60</sup>

Taylor falsified four documents that are at issue in this case: (1) a certificate of completion of a continuing education course entitled “Business Life,” which was submitted to the KDOI on January 8, 2001; (2) a certificate of completion of a continuing education course entitled “Retirement Annuities and Life Insurance,” which was submitted to the ODOI on April 30, 2001; (3) a change of beneficiary form that was completed on or after February 25, 2003; and (4) a Letter of Clearance and Certification from the KDOI, which was submitted to the ODOI on June 24, 2003.

Taylor denied responsibility for any of the falsifications and gave conflicting accounts of who might have been responsible. She told Joe Randazzo that she thought her ex-husband, who had some influence in Kentucky, might have been responsible, and she later suggested that Joe Randazzo or his father, Charles Randazzo, or someone else at FNA might have been responsible. Two former employees of FNA testified that there was an abusive environment at FNA, and that Charles Randazzo was the source of many problems at the firm. However, Taylor testified that, because she was studying for the Series 6 examination, she did not begin to work actively at FNA until the second quarter of 2001, more than three months after the falsified continuing education certificate of completion was sent to the KDOI, and about the time – April 30, 2001 – that the second certificate of completion was sent to the ODOI. Joe Randazzo testified, without

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<sup>59</sup> *Daniel D. Manoff*, Exchange Act Rel. No. 46,708, 2002 SEC LEXIS 2684, at \*12 (Oct. 23, 2002); *James A. Goetz*, Exchange Act Rel. No. 39,796, 1998 SEC LEXIS 499 (Mar. 25, 1998); *Ernest A. Cipriani, Jr.*, Exchange Act Rel. No. 33,675, 1994 SEC LEXIS 506 at \*4 (Feb. 24, 1994).

<sup>60</sup> See *Charles E. Kautz*, 1996 SEC LEXIS 994 (April 5, 1996); *Dep’t of Enforcement v. Brookes McIntosh Bendetsen*, 2003 NASD Discip. LEXIS 30 (OHO July 8, 2003).

contradiction from Taylor, that he had a falling out with Taylor in late Spring or Summer of 2003, after the time ES signed a change of beneficiary form, and at about the same time – June 24, 2003 – that the KDOI Letter of Clearance and Certification was sent to the ODOI. Finally, Taylor introduced into evidence the transcript of a conversation that she had with Charles Randazzo during which he referred to a problem at North American and a customer who may have switched her account from FNA to Taylor.<sup>61</sup> Charles Randazzo then stated:

I'm declaring war on you if that's true. I'm telling you right up front. I hand delivered those people to you. You've done so many things wrong in this business it's disgusting. And you shouldn't even have a license to participate in anything. The wrath of Charles J. is going to start now. You better call me or you're going to have even more problems than you can imagine.

However, even if this conversation were interpreted to be threatening, it took place in November 2003,<sup>62</sup> well after the falsifications of the documents at issue occurred. Moreover, Taylor claimed to have sent the Kentucky Letter of Clearance and Certification to the ODOI, purportedly unaltered from the form in which she received it, but there is no evidence to show that anyone at FNA could have altered the document either at the KDOI or at some point before or after Taylor received it and forwarded it to the ODOI. Accordingly, the Hearing Panel finds no credible evidence that anyone other than Taylor committed the falsifications. By falsifying those four documents, Taylor violated NASD Conduct Rule 2110, as alleged in the First and Second Causes in the Complaint.

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<sup>61</sup> There is no evidence that was adduced to indicate whether this problem at North American was the change in beneficiary form for customer ES. RX-6.

<sup>62</sup> CX-15, p. 75.

## 2. Amendments to the Form U-4

Article V, Section 2(c) of the NASD By-Laws requires that registered representatives keep current at all times their Form U-4. To that end, Section 2(c) requires that amendments to the Form U-4 be filed “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” The Form U-4 “serves as a vital screening device for hiring firms and the NASD against individuals with ‘suspect history.’”<sup>63</sup> Failing promptly to file amendments to a Form U-4 is a violation of NASD Conduct Rule 2110.<sup>64</sup>

On December 4, 2003, Taylor was served with a summons to answer the felony charge of criminal possession of a forged instrument (“first charge”). She failed to report that charge to her member firm until April 13, 2004. On August 2, 2004, Taylor was served with a summons to again answer a charge of felony forgery (“second charge”). She did not notify her member firm of the second charge until November 25, 2004, and it was not until March 18, 2005, that the firm received documents from NASD that it had been seeking from Taylor which would be sufficient for it to update her Form U-4.

Taylor argues on brief that she was not aware that she was required to disclose a “frivolous criminal charge,” as she describes the first charge, “especially when it was dismissed for lack of probable cause.” However, the Form U-4 simply asks whether the registered representative ever has been charged with *any* felony. The question is unqualified. The registered representative is able to further amend the Form U-4 to disclose the resolution of any charge.

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<sup>63</sup> *Dist. Bus. Conduct Comm. v. Bernadette Jones*, 1998 NASD Discip. LEXIS 60 at \*9 (NAC Aug. 7, 1998).

<sup>64</sup> *Dist. Bus. Conduct Comm. v. Respondent 1 and Respondent 2*, 1998 NASD Discip. LEXIS 63 at \*\* 14-15 (NAC Oct.13, 1998).



She also argues that she was never indicted on any charge, that she notified her member firm of the second charge by handwritten notes, and provided the firm with contact information for her Kentucky attorney and her Ohio criminal defense attorney. Those arguments are no defense. The absence of an indictment does nothing to erase the existence of the charge, or the fact that the district court found probable cause and bound the matter over to the Grand Jury. The Form U-4 explains that “**CHARGES** means being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).” Moreover, the handwritten notes were not provided to the firm until more than three months after she was served with the summons and charge. Finally, it is her responsibility to provide documentation required by the firm; it is not the responsibility of the firm to ferret out that information. Accordingly, by failing timely to update her Form U-4 to reflect the two felony charges against her, Taylor violated NASD Conduct Rule 2110.

### **3. Failure to Respond Truthfully During an Interview**

Procedural Rule 8210 authorizes NASD, in the course of an investigation, to require persons associated with an NASD member to provide information orally or in writing with respect to any matter involved in such investigation. The failure to respond truthfully to NASD requests for information, whether in writing or in oral testimony, constitutes a violation of Procedural Rule 8210 and Conduct Rule 2110.<sup>65</sup> Providing misleading and inaccurate information to NASD, or omitting to provide information, is

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<sup>65</sup> *Dist. Bus. Conduct Comm. v. Doshi*, 1999 NASD Discip. LEXIS 6 (NAC Jan. 20, 1999).

also conduct that is contrary to high standards of commercial honor and is inconsistent with just and equitable principals of trade.<sup>66</sup>

In her on-the-record interview of August 26, 2004, Taylor falsely testified that (1) there was no pending litigation against her; (2) her Kentucky licenses had never been suspended or become inactive; (3) those licenses were then currently active; and (4) she was current with all of her continuing education requirements for Kentucky. By providing false information during that on-the-record interview, conducted pursuant to an investigation, Taylor violated Procedural Rule 8210 and Conduct Rule 2110.

### **Sanctions**

The NASD Sanction Guideline for forgery and/or falsification of records recommends a fine of \$5,000 to \$100,000, and, where mitigating factors exist, a suspension of up to two years. In egregious cases, a bar should be considered.<sup>67</sup> The principal considerations in determining sanctions are the nature of the documents forged and whether the respondent had a good-faith, but mistaken, belief of authority to make the entries.

The documents at issue are material to the active status of Taylor's insurance licenses and to the distribution of ES's estate according to her intentions. There is no conceivable way that Taylor could have authority to make active her inactive insurance licenses or to substitute herself as an annuity beneficiary without the knowledge or consent of the owner of that annuity. Because there are no mitigating factors to warrant a lesser sanction, the Hearing Panel will bar Taylor from associating with any member in

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<sup>66</sup> *Brian L. Gibbons*, Exchange Act Release No. 37,170, 1996 SEC LEXIS 1291, at \*\*9-10 (May 8, 1996), *aff'd.*, 112 F.3d 516 (table) (9th Cir. 1997).

<sup>67</sup> NASD SANCTION GUIDELINES, p. 39 (2005 ed.).

any capacity for the falsification of records, as alleged in the First and Second Causes in the Complaint.

For late-filed amendments to a Form U-4, the Sanction Guidelines recommend a fine of from \$2,500 to \$25,000. In egregious cases, a suspension of up to two years or a bar may be considered.<sup>68</sup> The Hearing Panel finds that the delays in reporting information in order to amend the Form U-4 were unreasonable, especially the delay in reporting the second criminal charge, and would warrant a long suspension. However, in light of the bars, a suspension would be redundant and serve no remedial purpose. Accordingly, no further sanctions will be imposed for the late-filed amendments to Taylor's Form U-4.

For failure to respond truthfully to requests for information made pursuant to NASD Procedural Rule 8210, the Sanction Guidelines recommend a fine of from \$25,000 to \$50,000, and, where mitigation exists, a suspension of up to two years.<sup>69</sup> Here, the nature of the information requested went to the heart of the NASD investigation. Taylor clearly knew that her testimony was false, and there are no mitigating circumstances. Accordingly, the Hearing Panel finds that her false testimony was egregious and warrants a bar. In light of the bar, no fine will be imposed. However, Taylor will be assessed costs the total amount of \$3,055.46, consisting of a \$750 administrative fee and a \$2,305.46 transcript fee.

### **Conclusion**

Marylan Taylor is barred from association with any member firm in any capacity for falsification of documents, in violation of Conduct Rule 2110, and failure to respond

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<sup>68</sup> *Id.*, p. 73-74.

<sup>69</sup> *Id.*, p. 35.

truthfully to requests for information in an investigation, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bars, no sanctions are imposed for her failures timely to amend the Form U-4. Taylor is also assessed costs in the total amount of \$3,055.46. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

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