NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. GEOFFREY ORTIZ (CRD No. 1808280), Respondent.	Disciplinary Proceeding No. E0220030425-01 Hearing Officer – DMF **HEARING PANEL DECISION** June 9, 2006

Summary

Respondent is barred from associating with any NASD member in any capacity for forging the initials of two customers on account applications and submitting the applications to his member firm, in violation of Rule 2110, and for providing false information in response to two requests for information and during an on-the-record interview, in violation of Rules 8210 and 2110.

Appearances

Cynthia Kittle, Esq., (Rory C. Flynn, Esq., and Roger D. Hogoboom, Esq., Of Counsel) for Complainant.

Douglas J. Rovens, Esq. for Respondent.

DECISION

I. Procedural History

The Department of Enforcement filed a Complaint on August 30, 2005, charging that Respondent Geoffrey Ortiz (1) forged the initials of two customers on account applications, in violation of Rule 2110; (2) submitted the forged applications to his employer firm, in violation of Rule 2110; and (3) provided false information about his actions to NASD staff in written responses to two requests for information and in testimony during an on-the-record interview, in violation of Rules 8210 and 2110. Ortiz

filed an Answer denying the allegations and requested a hearing, which was held in Los Angeles, California, on April 18 and 19, 2006.

II. Facts

Ortiz has been in the securities industry since 1988. From March 2000 until January 2004, he was associated with UBS Financial Services Inc. (then known as UBS PaineWebber), and was registered through UBS as a general securities representative. He is currently associated with another NASD member firm and registered in the same capacity. At the relevant time, Ortiz was located in UBS' Beverly Hills, California branch office. He has no prior disciplinary history. (CX 1; Tr. II at 39-44.)[1]

Customers DB and YB are husband and wife. DB is retired from the Los Angeles County Probation Department; YB, who emigrated from Japan as a teenager, operates a successful business as a translator. Although DB and YB consult each other on investment decisions, they have quite different investment strategies. DB invests primarily in municipal bonds; he does not invest in equities. He began purchasing bonds from Ortiz in the 1980's or early 1990's and continued to do so through 2002. (Tr. I at 31-35, 36, 155-56, 158-59, 169; Tr. II at 45-47.)

In contrast, YB began self-directed investing in equities through mutual funds in the mid-1990's. She focused, in particular, on no-load funds with relatively low expenses. As early as 1996, Ortiz began to try to persuade her to open managed accounts through him to handle her equities investments, but at that time YB believed she could manage her own investments. (Tr. I at 37-40; Tr. II at 51-53.)

[1] In this decision, "CX" refers to Complainant's exhibits; "RX" to Respondent's exhibits; "Tr. I" to the transcript of the first hearing day; and "Tr. II" to the transcript of the second hearing day.

In 2001, however, after the stock market began a downward trend, YB began to consider managed accounts more seriously. She opened one such account with another brokerage firm in mid-2001. The annual fee on that account was 1.5%. (Tr. I at 41-43, 46.)

During 2001 Ortiz met with DB and YB at their home on several occasions seeking to persuade them to open ACCESS managed accounts at UBS. Although both customers attended these meetings, because the ACCESS account proposal concerned their equities investments, YB was the active participant, while DB's participation was essentially passive. (Tr. I at 44, 160-61, 210-11; Tr. II at 56-58.)

In considering Ortiz's ACCESS account proposal, YB was particularly concerned with the amount of fees that would be charged. Based on the customers' other managed account, she believed that 1.5% per year was a reasonable charge, and was unwilling to pay more. Although the standard fees for ACCESS accounts were higher, Ortiz represented, correctly, that he had some discretion to discount those rates. (Tr. I at 46-47; Tr. II at 60-61.)

On August 8, 2001, DB and YB executed applications to open five ACCESS accounts – each with a different manager – with initial funding of $100,000 per account, for a total of $500,000. The fee schedule set forth on the ACCESS account applications indicated that there were several breakpoints. The standard fee was 2.80% per year for the first $500,000; 2.20% for the next $500,000; 1.60% for the next $4,000,000 and 1.40% for amounts over $5,000,000. (For purposes of meeting these breakpoints, the amounts in all five accounts could be aggregated). On the ACCESS account applications that DB and YB executed, however, Ortiz had handwritten "1.5" next to the printed

standard fees prior to the customers executing the applications. There is no dispute that this indicated that the annual fee for these accounts would be 1.5%. Ortiz picked up the applications at the customers' home on August 9, 2001. (CX 3.1; Tr. I at 48-56; Tr. II at 66-68.)

Although the applications indicated that the customers intended to invest only $500,000 in the ACCESS accounts initially, Ortiz's contemporaneous notes state that they planned to invest an additional $300,000 after there was an upturn in the market. Moreover, Ortiz testified that when the customers opened the ACCESS accounts, they also opened an additional account into which they planned to move more than $1 million of their municipal bond portfolio. (CX 8.2; Tr. II at 65, 74.)

After Ortiz and the Beverly Hills resident manager signed off on the ACCESS account applications, the Beverly Hills branch sent them to UBS' home office on August 14, 2001, by second day delivery, and the home office received them on August 16, 2001. The same day, a home office representative advised Ortiz by telephone and the branch by wire that the applications were not acceptable,[2] because the 1.5% rate for the first $500,000 was below the minimum for ACCESS accounts.[3] Later that day, at Ortiz's direction, his assistant sent a response to the home office representative: "Please update the breakpoints to 1.75 and 1.4." (CX 3.1, 5, 5.1, 5.2, 6; Tr. I at 259, 332.)

On the morning of August 17, the home office representative notified Ortiz's assistant: "As the first breakpoint was signed off at 1.5, I will need client initials to raise

[2] Although Ortiz testified during the investigation that he was certain he received the call on August 16 (CX 12 at 69), at the hearing he testified he might have received the call "within a day or two before the wires were received." (Tr. II at 77.) But the home office could not have called him about the fees before August 16, because the home office did not receive the applications until that date.

[3] Under UBS' standard practice, representatives had discretion to discount the fees for ACCESS accounts to minimums of 1.75% for the first $500,000, 1.40% for the next $500,000, 0.90% for the next $4,000,000 and 0.75% for amounts over $5,000,000. (CX 25; Tr. I at 232-234.)

up to 1.75. Please have the new fees initialed and fax over to [the home office]." Later that day, Ortiz's assistant faxed revised applications to the home office on which the handwritten "1.5" numbers had been struck out, and new handwritten figures of "1.75" for the first $500,000, "1.4" for the next $500,000 and "1.4" for the next $4,000,000 had been inserted. Beside the new handwritten figures were the purported initials of the customers approving the changes, as the home office representative had directed.[4] (CX 3.1, 5.3, 6, 27.)

After receiving the facsimiles of the revised applications, the home office approved the ACCESS accounts and they were funded and opened later in August 2001. In September 2002, after experiencing losses in the accounts as a result of a continuing decline in the market, the customers closed the ACCESS accounts. Although they closed the accounts, the customers did not complain about their losses, concluding that they were simply the result of a general decline in the market, and DB continued to purchase municipal bonds through Ortiz. (CX 3.3 (a)-(e), 5, 5.4; Tr. I at 56-58, 168-69, 172-73.)

On January 5, 2003, however, the customers sent a letter to UBS in which they complained that after reviewing their account records, they had determined they had been charged higher fees on the ACCESS accounts than the 1.5% to which they had agreed.

[4] The evidence is sufficient to support these findings. The Beverly Hills branch office's files contained a fax transmittal cover sheet prepared by Ortiz's assistant. It is dated August 17, 2001; indicates that the fax concerned "Breakpoint changed and initialed" and that a total of six pages, including the cover sheet were being faxed; and has at the top a date, time and fax number imprint showing that it was faxed from the branch's operations department. Although copies of the revised and initialed applications were not found in the branch office's files with the fax cover sheet, the copies found in the home office files bear imprints at the top showing that they were faxed on August 17, 2001 from the same fax number and at the same time as the cover sheet. UBS was unable to find the original revised applications with the customers' initials in either the home office files or the Beverly Hills branch's operations files, but the faxed copies were duplicates of the originals, and as such were admissible and probative. In addition, the administrative manager of the branch office testified that under normal practice, the original revised and initialed applications would have been retained in Ortiz's files, rather than in the home office files or the branch's operations files. (Tr. I at 141-42, 297-302, 320-21; CX 3.1, 27.)

They demanded that UBS refund the alleged overcharge with interest. (CX 3.4, 3.4A; Tr. I at 59-65, 171-75.)

UBS rejected the customers' complaint based upon their approval of the revised fee schedule, as shown by their initials on the applications. The customers replied that they had not agreed to any revised fee schedule and had not initialed the applications. After UBS gave them copies of the revised and initialed applications, the customers filed a complaint with the Beverly Hills police alleging forgery. The Beverly Hills police, with the customers' agreement, referred the matter to NASD, which began an investigation. (CX 2; Tr. I at 66-67, 175-80, 288.)

During the investigation, NASD staff requested, pursuant to Rule 8210, that Ortiz provide a written statement addressing the customers' contention that their initials on the revised fee schedule were forged. Ortiz responded with a letter to NASD staff dated May 5, 2003. He stated that after being advised by the home office that the fees in the initial applications were too low:

> I immediately contacted the [customers] and informed them of this, and that I would need to meet with them again to confirm [the higher] rates. They agreed to meet again on or about August 17, 2001 at their home. At that meeting I explained the details of the rate structure to the [customers] over their dining room table. I recall indicating to them that the blended rate on $1 million in assets in the Access program would be 1.575%, but that the rate on assets below $500,000 would be 1.75%. I apologized for my misunderstanding of the rate structure, and for previously informing them that the rate would be 1.5% on all of the assets. The [customers] understood the structure that I explained, and although they were not happy about the changes, they agreed to the amended rate structure and signed the applications consenting to such. This occurred at their home the week after they initially signed the agreements with the incorrect rates reflected on them. The alteration in question was done with the [customers'] authorization after we discussed the issue in detail. Moreover, the [customers] each initialed the change on the agreement in my presence.

(CX 3.6.)[5]

In a May 20, 2003, letter responding to a subsequent Rule 8210 request from NASD staff for more details, Ortiz said that his meeting with the customers might have occurred "the early part of the following week," rather than on August 17, 2001, but: "While I am not certain as to the exact time or date of this meeting, I do recall that both [customers] were present at the meeting at their home to discuss the details of the rate structure." (CX 7, 8.3.)

On November 26, 2003, in response to another Rule 8210 request, Ortiz provided sworn testimony in an on-the-record interview (OTR) conducted by NASD staff. During the OTR, he testified that he spoke with DB on August 16, 2001, advising him that the ACCESS fees had to be increased and that he needed to meet with DB and YB to obtain their initials approving the increase, and that he met with the customers on the morning of August 17:

> And I left the office mid morning and drove to their home and had a short meeting with them at their home at their dining room table. I do recall [YB] offering me something to drink. I asked for a glass of water. I recall [DB] wasn't pleased about [the] fees at all, discussing fees or the increased fees. [YB] was much more agreeable. And I recall them both signing in succession, passing the papers back and forth to each other and signing the documents.

(CX 12 at 74-76.)

The customers, however, continued to tell NASD staff that they had not approved the increase in fees for the ACCESS accounts, and that they had not initialed the revised account applications. Moreover, the customers provided documents to NASD staff

[5] Similarly, Ortiz's branch manager testified that after the customers complained in January 2003, Ortiz told him that "he was at the [customers'] at their living room or dining room table at their home and they both signed it," and the branch's administrative manager testified that Ortiz told her that "he had visited the [customers] and sat down with them and that they initialed off on the fee change." (Tr. I at 260, 285.)

showing that YB was in North Carolina on August 17, 2001, the date on which Ortiz claimed he met with both customers and obtained their approvals and initials. (CX 13.)

III. Discussion

There can be no dispute that forgery of customer initials on account applications and the submission of falsified applications to a member firm, if proven, would violate Rule 2110's requirement that NASD members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."[6] In addition, it is well established that providing false information to NASD in response to Rule 8210 requests or in an OTR is a violation of Rules 8210 and 2110.[7]

The customers have consistently denied approving the increase in fees for the ACCESS accounts or signing their initials on the revised account applications. They appeared as witnesses at the hearing and again denied approving the increase or signing their initials on the applications, and their testimony in that regard was direct and credible.[8] (Tr. I at 68-72, 162-68, 218-20, 223-24.) Their testimony was buttressed by Enforcement's expert document examiner, who compared the revised account applications with exemplars of the customers' initials on documents that pre-dated the revised applications, and concluded that the customers did not sign the initials that appear on the revised applications. (CX 14, 29; Tr. I at 83-86, 270, 276.)

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[6] See, e.g., Department of Enforcement v. Mizenko, No. C8B030012, 2004 NASD Discip. LEXIS 20 (N.A.C. Dec. 21, 2004) (forgery); Department of Enforcement v. Greer, No. C05990035, 2001 NASD Discip. LEXIS 34 (N.A.C. Aug. 6, 2001) (submission of falsified account application).

[7] See, e.g., Department of Enforcement v. Newberg, No. CAF030013, 2004 NASD Discip. LEXIS 50 (O.H.O. July 6, 2004).

[8] Ortiz suggested that the customers may have been motivated to lie in order to obtain a settlement from UBS. Initially, the customers demanded that UBS refund the overcharge with interest, but after UBS rebuffed their claim, they sought, in addition, a modest payment to compensate them for their trouble in obtaining the refund. Well before the hearing, they settled with UBS for $3,000. (Tr. I at 134, 183; CX 26.) They had no obligation to attend the hearing, and no financial motive to give false testimony.

Most tellingly, the customers provided documents showing that YB was working on a translating assignment in North Carolina beginning on August 13 and did not travel back to California until August 18, 2001. (CX 13; Tr. I at 73-74, 82-83.) Because (1) UBS' home office did not receive the applications until August 16; (2) the home office did not advise Ortiz's assistant that the customers' initials were required until August 17; and (3) the revised and initialed applications were faxed to the home office on August 17, it is clear that YB could not possibly have initialed the applications.[9]

The only contrary evidence was Ortiz's repeated statements, prior to the hearing, that both customers initialed the revised applications in his presence. At the hearing, however, Ortiz testified that he was no longer certain that he met with the customers and obtained their initials on the revised applications. (Tr. II at 154, 168.) Therefore, the Hearing Panel concludes, based on a preponderance of the evidence, that the customers' initials on the revised applications were forged. The remaining question is whether Ortiz was responsible for the forgery.

There is no direct evidence that Ortiz forged the applications. He denies forging them; no one testified to observing him commit the forgery; Enforcement's expert testified that he could not determine whether Ortiz was the person who forged the

[9] During the hearing, Ortiz pointed out that in the August 16 wire explaining why the applications could not be approved, the home office representative also indicated that certain trustee certification forms signed by the customers were also required, and that such forms, signed by the customers but undated, are in the record. From this he seems to imply that perhaps the customers actually initialed the revised applications at the same time they signed those forms, which the customers admit bear their signatures. But it is more likely that (1) the customers signed the trustee forms earlier, but the branch failed to send them to the home office with the applications on August 14, 2001, or (2) the customers signed the trustee forms sometime between August 18, when YB returned to California, and August 24-28, 2001, when the home office approved the accounts. There is no evidence that they were signed at the same time the revised applications were initialed – even Ortiz testified that he did not recall when the customers signed the forms. (CX 3.1, 5.4; Tr. I at 204-05; Tr. II at 79.)

customers' initials; and Ortiz's expert went farther, opining that Ortiz "probably" was not the person who forged the customers' initials.[10] (Tr. II at 38, 170; CX 29; RX 51.)

Nevertheless, the sequence of events, as established by the evidence, strongly supports the conclusion that Ortiz was responsible. The home office notified him on August 16 that the fees on the ACCESS account applications were too low, and shortly thereafter his assistant advised the home office that the fees could be increased to the acceptable minimum. On the morning of August 17, however, the home office instructed his assistant that the customers' initials approving the increase were required, and Ortiz admits he knew of this development. The applications were then revised, the customers' initials signed by someone and the revised applications faxed to the home office, all on August 17. Prior to the hearing Ortiz repeatedly represented that he met with both customers at their home, where they initialed the revised applications in his presence, but the evidence showed that could not have happened, because YB was in North Carolina. Finally, even though Ortiz received only a nominal amount of the higher fees, he had a potential financial motive for forging the customers' initials on the revised applications. He was not a high producer, and, given how strongly YB felt that 1.5% was the "upper limit" for fees, if he had asked the customers to approve an increase, they might well have declined to open the ACCESS accounts that Ortiz had been trying to persuade YB to open for years. (Tr. I at 52, 199; Tr. II at 51, 230-31.)

All these circumstances support a finding that Ortiz forged the applications. Ortiz's expert, however, opined that Ortiz "probably" did not forge the initials on the revised applications, and that "probably" the initials were written by two different

[10] Ortiz's expert was not asked to determine whether the customers had signed their initials on the revised applications and offered no opinion on that issue. (Tr. II at 133.)

persons. The Hearing Panel did not find this persuasive for several reasons. First, the Panel found Enforcement's expert's testimony that it was not reasonably possible to identify the forger more persuasive than the testimony of Ortiz's expert.[11] Second, Ortiz's expert based his opinion on exemplars that Ortiz provided in 2006 specifically for the expert to use in formulating his opinions, giving Ortiz a motive to attempt to disguise his writing when preparing the exemplars. Third, Ortiz's expert did not observe Ortiz write the exemplars, so he had no personal knowledge that Ortiz actually wrote them, or, if he did, under what conditions. Fourth, Ortiz's expert couched his opinions in terms of "probably," a term of art in his profession meaning that his opinions "fall[] short of virtual certainty with respect to a degree of confidence."[12] (Tr. II at 121-23.)

Even if Ortiz did not forge the initials himself, as his expert opined, Ortiz could have induced others to commit the actual forgery. Based on the evidence adduced at the

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[11] Enforcement's expert explained:

> [I]n this case with these initials, are they really handwriting or are they drawing[?] By that I mean is it spontaneous act of an individual using their normal writing pattern or is it the product of someone who is trying to simulate someone else's writing, which would mean you drop your own handwriting characterization and try to adopt somebody else's so you would be drawing. And when you draw, like I say, you are focusing on the design, not relying on habit. So drawings neither I or anybody else can identify back to its author.

(Tr. I at 272-73.)

[12] By comparison, Enforcement's expert testified: "I can say with what I would consider to be a high level of certainty that what purports to be the initials of [the customers] are not in fact their initials." (Tr. I at 270.)

hearing, he was the only person with the motive, means and opportunity to commit or cause the forgeries.[13]

In order to be fair to Ortiz in that regard, each member of the Hearing Panel asked Ortiz if he could offer any alternative explanation for the forgery of the customers' initials on the revised account applications, noting that he was in the best position to do so. Although he continued to deny that he forged the initials, Ortiz was unable to offer any alternative scenario under which the initials could have been placed on the applications without his involvement.[14] (Tr. II at 168-72.) The Hearing Panel therefore concludes that a preponderance of the evidence establishes that Ortiz forged the applications, or was responsible for the forgery, in violation of Rule 2110.[15]

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[13] Prior to the hearing, the Hearing Officer originally assigned to this case ruled that Ortiz would not be permitted to call a polygraph (lie detector) expert as a witness or offer in evidence the results of a polygraph examination that the expert administered to Ortiz in December 2003. Although this case was transferred to another Hearing Officer prior to the hearing for administrative convenience, the new Hearing Officer concurred with and adopted that ruling. Polygraph evidence is not generally admissible in court or administrative proceedings. It purports to address credibility determinations that are committed to the trier of fact, and because of the technical issues underlying such examinations, would be extremely difficult for a Hearing Panel to evaluate. Moreover, the polygraph examination at issue in this case was commissioned by Ortiz and administered by his chosen examiner without any input from or participation by NASD staff. It is noteworthy that one of the polygraph examiner's purported findings was that Ortiz truthfully represented that both customers initialed the revised applications in his presence, yet, for reasons described above, it is clear that YB could not have done that. (CX 12 at 116-17.)

[14] Ortiz did not suggest that his assistant might have forged the initials and submitted the applications without his knowledge, but the Hearing Panel considered that possibility. His assistant testified at the hearing and denied forging the customers' initials on the revised applications. (Tr. I at 336.) Having observed and questioned her, the Panel finds her testimony in that regard credible. She had no reason to forge the applications, and if she had, Ortiz would have been alerted as soon as the home office approved the accounts, because he knew that would not happen until it received revised applications initialed by the customers. There is no evidence that anyone else could have forged the customers' initials and submitted the applications, but again, if they had, Ortiz would have been alerted when the accounts were approved.

[15] This case is distinguishable from Rooney A. Sahai, Exch. Act Rel. No. 51549, 2005 SEC LEXIS 864 at *22-23 (Apr. 15, 2005). There the respondent asserted that others had an opportunity to forge the documents, and the SEC noted that the respondent employed part-time workers who, among other tasks, obtained customer signatures on documents. The SEC concluded that there was "no record evidence that Sahai either instructed anyone to forge the customer signatures or was aware that any customer signatures had been forged." As explained above, Ortiz was unable to suggest any alternative explanation for the customers' forged initials; he claimed to have personally obtained the customers' initials; and, if someone else had committed the forgery, Ortiz would have become aware of that when the accounts were approved.

The Hearing Panel also finds that Ortiz made false statements in his written responses to NASD staff's requests for information and during his OTR. Events could not have transpired as he repeatedly represented to NASD staff. He did not meet with the customers at their home and did not obtain their initials on the applications reflecting their approval of the increased fees.

Ortiz argued that he provided his best recollection, and should not be disciplined for a faulty memory. But although he sometimes said he was uncertain of the precise date of the meeting, Ortiz repeatedly claimed to remember his meeting with the customers in very specific detail, including the time of day they met; that both customers were present; that the discussion took place over the customers' dining room table; the substance of the discussion; and most importantly, that both customers agreed to the increase and initialed the revised applications in his presence. These statements were not tentative or uncertain.[16] Yet it is now clear that the meeting did not take place, and that none of the details Ortiz claimed to remember were true. The Hearing Panel, therefore, concludes that Ortiz provided false information to NASD staff, in violation of Rules 8210 and 2110.

IV. Sanctions

For forgery or falsification of records, NASD's Sanction Guidelines recommend that adjudicators impose a fine of $5,000 to $100,000, as well as a suspension of up to two years where mitigating factors exist, or a bar in egregious cases. NASD Sanction Guidelines at 39. In determining specific sanctions for forgery or falsification, adjudicators are directed to consider the nature of the documents forged or falsified, and

[16] In contrast, at the hearing Ortiz's testimony was tentative and unconvincing. On cross-examination, in response to questions that he had answered with certainty during the investigation, he repeatedly responded: "That is what I recall," or "That is my recollection," or "I don't recall." (Tr. II at 150-65.)

whether the respondent had a good faith, but mistaken, belief of express or implied authority. In this case, the forged documents were account applications, the forgery relates to the amount of fees to be charged and Ortiz does not claim to have had any belief that he had authority to sign the customers' initials approving the higher fees.

The Guidelines also include general considerations to help adjudicators arrive at appropriate sanctions in all cases. Sanction Guidelines at 6-7. Applying these considerations to the facts of this case, the Hearing Panel notes: (1) Ortiz has not acknowledged and accepted responsibility for his misconduct; (2) he made no effort, prior to detection, to remedy his misconduct; (3) he attempted to conceal his misconduct, lying to his managers when the customers complained; (4) he also lied to NASD about his conduct repeatedly during NASD's investigation; (5) his forgery of the customers' initials on the applications was intentional; and (6) by forging the applications, Ortiz was able to ensure that the customers opened accounts with $500,000 of equity investments, giving him the potential for monetary gain. All of these are significant aggravating circumstances under the Guidelines.

There are no significant mitigating factors. Ortiz argues that he has no prior disciplinary actions or customer complaints on his record, but the National Adjudicatory Council has stated repeatedly that the lack of a prior disciplinary history is not mitigating. See, e.g., Department of Enforcement v. Keyes, No. C02040016, 2005 NASD Discip. LEXIS 9 at *29 (N.A.C. Dec. 28, 2005):

> In addition, Keyes argues that the Hearing Panel erroneously refused to credit his absence of prior disciplinary history when it imposed sanctions. While the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating.… A respondent should not be rewarded because he may have previously acted appropriately as a registered person. Indeed, the [SEC] has consistently

rejected arguments that a lack of a disciplinary record is a factor mitigating the sanction of a bar.

Ortiz's former branch manager testified that Ortiz's professional conduct "was of the highest level." (Tr. I at 230, 248.) And the branch manager, the branch administrative manager and even the customers testified that based on their prior dealings with him, they did not initially believe Ortiz forged the customers' initials on the revised applications. (Tr. I at 180-81, 260, 288.) But the fact that Ortiz may have comported himself in a professional manner until the events at issue does not mitigate the seriousness of his misconduct. The Hearing Panel has an obligation under the Sanction Guidelines to impose "sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices." Sanction Guidelines at 2. Even a single instance of forgery casts strong doubt on a respondent's ability to conform his conduct to the standards required of registered representatives. Where, as in this case, a respondent also refuses to acknowledge the misconduct and repeatedly lies in an effort to cover it up, it calls for a bar to protect the investing public.

The Guidelines also provide that a bar is the standard sanction if a respondent does not respond in any manner to a request for information under Rule 8210. Sanction Guidelines at 35. The National Adjudicatory Council has held that a bar is equally appropriate where the respondent provided false information or testimony. See Department of Enforcement v. Walker, No. C10970141, 2000 NASD Discip. LEXIS 2, at *31 (N.A.C. Apr. 20, 2000) (finding that the respondent's untruthful testimony was "as harmful as a complete failure to respond and, as such, that a bar is the appropriate sanction"); Department of Enforcement v. Doshi, No. C10960047, 1999 NASD Discip.

LEXIS 6, at *13 (N.A.C. Jan. 20, 1999) ("The NASD Sanction Guideline for failure to respond truthfully suggests that in the absence of mitigation, a bar should be standard").

Once again, there is no evidence of mitigating factors that would justify a lesser sanction. As explained above, there is no basis, for example, to conclude that Ortiz's repeated false statements were good faith mistakes based upon faulty recollection. The Panel, therefore, concludes that a bar is required for this violation, as well.

V. Conclusion

Respondent Geoffrey Ortiz is barred from associating with any NASD member firm in any capacity for forging customer initials on account applications and submitting the applications to his member firm, in violation of Rule 2110, and for providing false information and testimony to NASD, in violation of Rules 8210 and 2110. In addition, Ortiz is ordered to pay costs in the amount of $4,778.52, which includes an administrative fee of $750 and the cost of the hearing transcript. The bars shall become effective immediately if this decision becomes NASD's final disciplinary action in this matter.[17]

HEARING PANEL

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By: David M. FitzGerald
Hearing Officer

Copies to: Geoffrey Ortiz (*via overnight and first class mail*)
Douglas J. Rovens, Esq. (*via facsimile and first class mail*)
Cynthia A. Kittle, Esq., Esq. (*electronically and via first class mail*)
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[17] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.