

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RONALD E. HARDY, JR.
(CRD No. 2668695)

Respondent.

Disciplinary Proceeding
No. 2005001502703

Hearing Officer – SNB

HEARING PANEL DECISION

July 21, 2009

For falsifying new account records in violation of Rules 3110 and 2110, and engaging in unauthorized transactions in violation of Rule 2110 and IM-2310-2, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Karen E. Whitaker, Esq., and Ralph J. Veth, Esq., for the Department of Enforcement.

Howard E. Greenberg, Esq., for the Respondent.

DECISION

I. Procedural History

On May 12, 2008, the Department of Enforcement (“Enforcement”) filed a Complaint against Ronald E. Hardy, Jr. (“Respondent”), alleging that he falsified new account records in violation of Rules 3110 and 2110, and engaged in unauthorized transactions in customer accounts in violation of Rule 2110 and IM-2310-2.¹ On June 23, 2008, Respondent filed an answer denying the allegations, and requesting a hearing. The hearing was held on January 13 and 14, 2009, in New York, New York, before a

¹ The Complaint also alleged that Robert A. Bellia, Jr. (“Bellia”) violated Rules 3010 and 2110 by failing to supervise Respondent. All allegations against Bellia were resolved through settlement prior to the start of the hearing.

Hearing Panel composed of the Hearing Officer and two former members of FINRA's District 10 Committee. During the hearing, Enforcement offered the testimony of four customers, the spouse of one customer, Respondent's two former supervisors, and a FINRA examiner. Respondent testified on his own behalf.² On April 2, 2009, Respondent filed his post hearing brief. On April 6, 2009, Enforcement filed its post-hearing brief.

II. Respondent

Respondent entered the securities industry in September 1995, when he became associated with former FINRA member firm Stratton Oakmont, Inc. CX-1 p. 19. He was later registered with Continental Broker-Dealer Corp. ("Continental") from August 1997 to July 2002, when he was terminated in connection with an internal review of several unauthorized trading complaints against him. CX-1 p. 11. Respondent became registered with Salomon Grey Financial Corp. ("Salomon Grey") in July 2002, where he was placed on heightened supervision due to a history of unauthorized trading complaints at Continental that was reflected on his Form U5. As part of his heightened supervision, Salomon Gray required Respondent to tape telephone calls involving customer orders. Tr. 412-13; CX-13 p. 24 (Tr. 91)³ He was terminated from Salomon Grey in February 2005 for violating firm and branch office policies and failing to return firm property, including the tape recordings of customer calls that were required as part of his heightened

² Enforcement offered Complainant's Exhibits ("CX") 1-2, CX-3 pp. 1-24 and 31-45, CX 5-8, CX-10, CX-10A-10K, CX-11-13, CX-13A-13C, CX-15-15A, and CX-16-19, all of which were admitted without objection, except exhibits CX-11 and CX-15, which were admitted over Respondent's objection. Respondent offered Respondent's Exhibits ("RX") 1-2, which were admitted without objection. Tr. 653-660. The hearing transcript is referred to as "Tr."

³ Respondent testified that he did not know that he was required to tape calls, but it is clear from the documentation and the testimony of his supervisor that he was required to do so. Tr. 248, 412-13, 581-82; CX-6 p. 50.

supervision. CX-1 p. 10; Tr. 417-18. Since then, he has been registered with several other member firms, and is currently registered with Aura Financial Services, Inc. CX-1 pp. 6-10.

III. Discussion

From March through October, 2004, Respondent cold called small business owners using lead cards, completed new account forms in connection with these calls, and placed trades in customer accounts for shares of Pfizer or Marvel. The main dispute in the case concerns what was said during these telephone calls about opening accounts and purchasing stock. Although Respondent taped customer calls as part of his heightened supervision, tapes were not available to resolve the issue. Respondent testified that they were lost or destroyed.

Four customers appeared at the hearing and corroborated the Complaint's allegations that Respondent falsified new account forms in order to establish customer accounts for FT, LH and EM, and executed unauthorized trades in the FT, LH, and DG accounts. Respondent, however, testified that the customers did not provide truthful testimony – he claimed they authorized his actions. As discussed in greater detail below, the Hearing Panel did not find Respondent's account credible, and found that he committed the violations alleged.

A. The Customers' Description of Events Was Credible

1. Customer FT - unauthorized trade and false account opening form

In March 2004, Respondent contacted FT, an 84 year-old printing and engraving shop owner in Omaha, Nebraska, with a recommendation to purchase shares of Pfizer. CX-3, pp. 1-2, 13; Tr. 71-72. Following that call, Respondent opened an account for FT

at Salomon Gray and purchased shares for that account. Tr. 535-36. FT testified that he did not authorize these actions. Tr. 74, 79, 84.

According to FT, when Respondent recommended that he purchase Pfizer shares, FT told him that he was over 80 and was no longer doing any investing. Tr. 74, 79. However, several days later, he received a statement in the mail, indicating that he purchased 100 shares of Pfizer on March 26, 2004. CX-3 pp. 2-3. FT promptly returned the statement with a handwritten note: “Never authorized this purchase – not doing any investing at this time. Thank you! Remove my name from your files. April/15/2004.” Tr. 72-73; CX-3 p. 2. He also wrote “Not doing any investing at this time” on a Salomon Grey customer disclosure statement. Tr. 75; CX-3 p. 4. FT also complained to Salomon Grey’s clearing firm, Emmett A. Larkin Company, Inc. (“Emmet Larkin”). While Respondent never heard from Salomon Grey, Emmet Larkin responded to FT’s complaint and informed FT that the trade in question, which showed a slight profit, was cancelled from the account on April 5, 2004. Tr. 75; CX-3 pp. 3, 6.

FT testified that he did not authorize the opening of an account at Salomon Grey. He also testified that he did not recall providing personal information during the call. Tr. 76-77. However, Respondent completed a new account form in FT’s name, claiming to have FT’s authority. Tr. 535, 572-576; CX-3, p 1. FT reviewed the form at the hearing and testified that it contained false entries for his social security number, date of birth, and banking relationship. Tr. 77, 109-10; CX-3, p 1. Respondent offered no explanation as to why essential information on the form, including FT’s social security number and date of birth, was incorrect. Tr. 535, 572-576.

2. Customer LH - unauthorized trade and false account opening form

In July 2004, Respondent contacted LH, an owner of a towing and auto repair company in Lincoln, Nebraska. Tr. 168, 557. Following this call, Respondent opened an account for LH at Salomon Gray and purchased shares in that account. CX-3 pp. 42-44; Tr. 171-72, 175. LH testified that he did not authorize these actions.

LH testified that when he received a call from Respondent, he had never had a brokerage account or purchased stock; his only investments were with a company in Colorado, which was the only place that he was interested in investing. Tr. 169, 187, 191-92. Respondent was pushy, referred to hot stocks, and recommended Marvel. LH told Respondent that he was not interested, but because Respondent kept calling and would not take no for an answer, LH told Respondent to send him information. Tr. 170-71.

Several days later, LH received a statement in the mail indicating that he had purchased shares of Marvel. Tr. 172-75; CX-3 p. 44. He called Salomon Grey, asked to speak with a supervisor, and stated that he had not opened an account and had not purchased stock.⁴ The Salomon Grey representative said he would take care of it. Tr. 171-75. The Marvel shares were sold from LH's account on August 3, 2004, and the account was later closed. CX-3 p. 44.

3. Customer DG - unauthorized trade

In August 2004, Respondent contacted DG, a home theatre contractor in Omaha, Nebraska, with a recommendation to purchase shares of Marvel. CX-3, p. 34; Tr. 32-33. DG testified that, when he received the call, he had never purchased securities or had a securities account. Tr. 31. DG recalled that Respondent was a fast talker who said he

⁴ LH did confirm that most of the information on the form, with the exception of his home phone number, residential address, and the spelling of his name, was accurate. CX-3 p. 42; Tr. 176-79.

had a hot stock tip and he was pushing Marvel shares. Tr. 32-33. He said that Marvel was up and coming – it was more than just a comic book company. Tr. 34. DG looked at the stock market as a big gamble – he preferred to invest in his own company - so he turned down Respondent’s offer. Id. Because Respondent would not take no for an answer, DG suggested that Respondent send him some information. Respondent agreed, but asked for some information first, including DG’s date of birth and social security number, which DG provided in an effort to get Respondent off the phone.⁵ Tr. 33. However, several days later, he received a statement in the mail indicating that he had purchased 100 shares of Marvel on August 27, 2004. CX-3 p. 34. He promptly called Salomon Grey and said that there was a mistake. Tr. 36. Despite this, he continued to receive statements for several months. Each time he received a statement, he called to complain. On November 12, 2004, Salomon Grey finally responded, confirming receipt of his October 27, 2004 complaint, and stating that the account was closed and his name was placed on the “do not call” list. CX-3 p. 37. The Marvel shares were sold from his account, at slightly more than the purchase price. CX-3 pp. 33-34.

4. Customer EM - false account opening form

In October 2004, Respondent contacted EM, an automotive repair shop owner in Stephentown, New York, with a recommendation to purchase shares of Marvel. Tr. 112-114. Following this call, Respondent completed a new account form for EM. Tr. 541; CX-3 p. 15. However, EM claimed that he did not authorize the opening of an account at Salomon Grey.

⁵ DG testified that would not give his social security number to a caller now, but, in 2004, he did not have the same sensitivity to releasing personal information Tr. 38, 64-65.

EM testified that he had never had a brokerage account or purchased stock. Tr. 113, 139. When Respondent recommended that he purchase Marvel shares, EM told him that he was not interested. Tr. 115, 135. Respondent then told EM that he “had no choice in the matter but to purchase the stock because he had [EM] on tape [agreeing] to buy it.” EM said that was ridiculous and hung up the phone. Tr. 115-16.

Several days later, EM received a new account form. At that point, EM’s wife took over and promptly wrote a complaint letter to Salomon Grey. Tr. 116-17, 143-45. Her letter stated in part, “please be advised that we received this contract in error. I don’t know where you get your information but it is wrong. This probably explains why my husband was called on the phone and told that he agreed to something that he didn’t. After the call we received it made us both not ever want to consider doing business with your company.” CX-3 p. 18; Tr. 145. On February 9, 2005, EM received another call from Respondent, again recommending Marvel. EM hung up and his wife picked up the line. She testified that the caller was rude and abrasive, and asked whether she was taking notes. When she said she was, he hung up. Tr. 146; CX 3 p. 21. EM later received a March 17, 2005 letter from Salomon Grey, confirming that his account was closed. CX-3 p. 20.

EM testified that he never agreed to open an account at Salomon Grey. Tr. 119-20, 123. Consistent with this, EM reviewed an account opening form in his name at the hearing and testified that it contained false entries for his middle initial, social security number, date of birth, home phone number, annual income, approximate net worth, approximate liquid net worth, and bank. Tr. 118, 123, 126-30; CX-3 p. 15. Respondent

offered no explanation for the false information on the form; nonetheless, he claimed that EM authorized the new account. Tr. 577-78.

B. Respondent's Explanation of the Activity in the Complaining Customers' Accounts Was Not Credible.

Respondent disputed the customers' testimony, claiming that each of the customers agreed to open an account and purchase the stock he recommended. He offered a number of arguments in support of this claim. The Panel was not persuaded by these arguments, however.

First, Respondent pointed to the testimony of his supervisors, Bellia and James R. Brown ("Brown"), who claimed that they verified the customers' orders and account opening forms. Tr. 227, 423, 475. However, neither supervisor offered an explanation of how they could have verified the wide range of false information on the forms, including social security numbers, birth dates, and financial resources. Moreover, both had motivation to testify in Respondent's favor. They derived approximately 70% of their income from commission overrides at Salomon Grey, and Respondent was the largest producer in the office. Tr. 259, 455-459. In fact, they currently work with him at another firm, and would be disadvantaged if Respondent could not continue working in the industry. Tr. 259-60. Further, they had a motive to state that they verified customer information because they were required to do so as his supervisors.

In contrast, the customers had no motive to lie - they had no financial losses from the transactions. Moreover, their prompt complaints to the firm, many of them documented, support their testimony. FT and LH also forfeited small profits from the transactions by complaining. Further, although the customers did not know each other, their accounts of Respondent's sales calls were similar. Finally, particularly in the FT

and EM accounts, essential customer information on the account opening forms, such as birth dates and social security numbers, was false.⁶

The Panel also considered that Respondent purportedly taped customer conversations involving transactions, yet the tapes were unavailable to resolve the factual disputes at the hearing. Tr. 412-13. Respondent claimed that he took the tapes with him when he left Salomon Grey, and they were later lost or destroyed. Tr. 619-21. Respondent also claimed to have had the tapes on his computer, but these records were destroyed when his computer purportedly crashed. Tr. 635. The Panel was skeptical of Respondent's account. Given Respondent's history of customer complaints of unauthorized trades - if the tapes corroborated Respondent's claim that the transactions in the customer accounts were authorized - he would likely have provided them to his firm when the customers complained, and he would have made sure that his firm retained them in the customers' records.

Respondent asserts that his most convincing defense is that he had no incentive to open unauthorized accounts or execute unauthorized trades. Respondent's Post-Hearing Brief at 20. He claimed that he did not charge commissions on initial customer transactions and each sell-out of an unpaid order in a customer account cost him approximately \$200-\$300. Tr. 539, 548. However, the Panel considered that Respondent had the highest number of sell-outs in his office, indicating, at a minimum, that Respondent was not particularly sensitive to the high cost of sell-outs. CX-13 p. 22 (Tr.

⁶ Respondent also suggested that errors on customer account forms may be attributable to errors in transferring information from "quick sheets" onto the account opening forms. Respondent's Post-Hearing Brief at 18. However, the Panel was not persuaded by this explanation. Respondent testified that he cross checked the "quick sheets" against the completed account opening forms, so any transcription errors would have been corrected. Tr. 618. Moreover, the errors are so extensive that they cannot be attributed to errors in transcription.

84-85); See, CX-8. Given this, and the weight of the evidence that Respondent engaged in unauthorized trading in the accounts at issue, the Panel found it more plausible that Respondent made a business decision to place unauthorized trades because, more often than not, customers did not complain.

Accordingly, the Panel found that the customers' testimony was credible, and Respondent's was not.

IV. Violations

A. Falsification of New Account Records - Rules 3110 and 2110

Count One of the Complaint alleges that Respondent falsified new account records for the FT, LH, and EM accounts, in violation of Rules 3110 and 2110.

Rule 3110 requires every FINRA member to make and preserve the books and records required under SEC Rule 17a-3.⁷ SEC Rule 17a-3(a) requires every broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 to make and keep current certain books and records relating to its business. SEC Rule 17a-3(a)(17)(i)(A) requires a firm to maintain account records with customer information, including the customer's tax identification number or social security number, date of birth, address, telephone number, annual income, and net worth.

In this case, Respondent prepared new account forms for FT, LH, and EM that were not authorized by the customers, and, particularly in the cases of FT and EM, contained extensive false information, including inaccurate dates of birth, social security numbers, and financial information. By submitting these new account forms to Salomon

⁷ It is also violation of Rule 2110 to falsify a member's books and records. E.g., Charles E. Kautz, Exchange Act Release No. 37,072, 1996 SEC LEXIS 994, at **11-12 (Apr. 5, 1996).

Grey, Respondent caused the firm's required records to be inaccurate. Accordingly, Respondent violated Rules 3110 and 2110.

B. Unauthorized Transactions

Count Two of the Complaint alleges that Respondent engaged in unauthorized transactions in customer accounts, in violation of Rule 2110 and IM-2310-2.

As the SEC recently emphasized:

'Unauthorized trades are a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade.' Such misconduct goes 'to the heart of the trustworthiness of a securities professional,' and 'is a fundamental betrayal of the duty owed by a sales [person] to his [or her] customers.'

Wanda P. Sears, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (citations omitted).

The National Adjudicatory Council ("NAC") has recognized that a finding of unauthorized trading may often rest on the customer's word.

In many cases involving isolated instances of unauthorized trading, the only evidence pertinent to the claim that the trading was unauthorized is the customer's testimony that the trades at issue were not authorized and the respondent's testimony that they were. In such cases, if we concluded that the customer's testimony is more credible, that is sufficient to support a finding that the trade at issue was unauthorized.

District Bus. Conduct Comm. v. Hellen, No. C3A970031, 1999 NASD Discip. LEXIS 22 at **18-19 (NAC June 15, 1999).

Here, the Panel found that the testimony of FT, LH, and DG that the transactions were not authorized was more credible than Respondent's testimony to the contrary.

Accordingly, the Panel found that Respondent violated Rule 2110 and IM-2310-2.

V. Sanctions

A. Falsification of New Account Forms

The FINRA Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000 for falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. Guidelines at 39 (2007 ed.).⁸ Enforcement asserted that the conduct was egregious and warranted a bar. Respondent urged that a warning and a requirement to comply with clearly defined heightened supervision terms, along with a requirement to requalify and/or a minimal suspension would be appropriate under the circumstances.

In determining appropriate sanctions under the Guidelines, the Adjudicator is to consider the nature of the falsified document and whether the respondent had a good-faith, but mistaken, belief of express or implied authority. Id. Here, the falsified documents were significant because they facilitated the opening of unauthorized customer accounts, and, in turn, unauthorized trades. Moreover, Respondent did not have a mistaken belief that he had authority to open the customer accounts, as illustrated by his fabrication of essential customer information on the new account forms. The Panel also considered that Respondent took no responsibility for his misconduct.

Accordingly, the Panel finds that the appropriate sanction is a bar. In light of the bar, no fine is imposed.

B. Unauthorized Transactions

For unauthorized transactions, the Guidelines recommend a fine of \$5,000 to \$75,000 and consideration of a suspension of ten business days to one year, or, in

⁸ These Guidelines are available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

egregious cases, a longer suspension or a bar. Guidelines at 103 (2007 ed.). In addition, there are two specific considerations to determine sanctions in unauthorized transaction cases - whether the respondent misunderstood his authority, and whether the unauthorized trading was egregious. Id. Again, Enforcement asserted that Respondent's misconduct was egregious and urged that the Panel impose a bar. Respondent urged that heightened supervision and/or a minimal suspension would be appropriate.

The Guidelines' principal considerations for unauthorized trading include whether the respondent misunderstood his or her authority or the terms of the customer's orders and whether the unauthorized trading was egregious. Id. The NAC has identified three categories of egregious unauthorized trading: (1) quantitatively egregious unauthorized trading (i.e., unauthorized trading that is egregious because of the sheer number of unauthorized trades executed); (2) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct; and (3) qualitatively egregious unauthorized trading, which is measured by the strength of the evidence and the respondent's motives in effecting the trades (i.e., whether the respondent acted in bad faith or as a result of a reasonable misunderstanding). See District Bus. Conduct Comm. v. Hellen, No. C3A970031, 1999 NASD Discip. LEXIS 22, at **15-24 (NAC June 15, 1999).

Here, the Panel found that Respondent's unauthorized trading was qualitatively egregious and involved aggravating factors. Respondent did not misunderstand his authority, as was clear from his fabrication of customer information on the account statements. While there was no customer loss, this factor was far outweighed by

Respondent's bad faith in executing the unauthorized trades, and his continuing failure to take responsibility.

Accordingly, the Panel finds that Respondent's violation was egregious and warrants a bar. Again, in light of the bar, no fine is imposed.⁹

VI. Conclusion

For falsifying new account records in violation of Rules 3110 and 2110, and engaging in unauthorized transactions in violation of Rule 2110 and IM-2310-2, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Hearing Panel Decision becomes the final disciplinary action of FINRA.

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Copies to: Ronald E. Hardy, Jr. (*via overnight and first-class mail*)
Howard E. Greenberg, Esq. (*via first-class & electronic mail*)
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Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁹ The Hearing Panel has 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.