FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. THOMAS J. CHARLES, JR. (CRD No. 1182923), Respondent.	Disciplinary Proceeding No. 2008016036901 Hearing Officer – MC **HEARING PANEL DECISION** **November 3, 2010**

Respondent violated Conduct Rule 2110 by forging customer signatures on documents relating to life insurance policies, and making misrepresentations to his employer firm about the forgeries. For these violations, Respondent is suspended from associating in any capacity with any FINRA member firm for one year, is fined $35,000, and is assessed costs.

Appearances

Jeremy Bloom, Senior Counsel, and Julie H. Broderick, Director, New York, NY, for the Department of Enforcement.

Joel R. Beck, Esq., Snellville, GA, for Respondent Thomas J. Charles, Jr.

DECISION

I. Background and Procedural History[1]

A. The Respondent

Respondent Thomas J. Charles, Jr. has been registered with FINRA as an Investment Company and Variable Contracts Representative since January 1984. At the time of the misconduct described in the Complaint, Charles was registered through FINRA member firm

[1] References to the testimony at the hearing of this disciplinary proceeding are designated as "Tr.__." References to the joint exhibits are designated as "JX-__." References to Charles' exhibits are designated as "RX-__," and references to the stipulations filed by the parties are designated as "Stip." followed by the appropriate paragraph number of the stipulation.

Resource Horizons Group, L.L.C. ("Resource Horizons" or the "Firm"). He is now employed by another FINRA member firm and retains his FINRA registration.[2] At his present firm, as it was at Resource Horizons, Charles' business is focused on insurance, variable annuities and mutual funds. He does not engage in trading stocks.[3] During his 26-year career, Charles has not been the subject of any customer complaints, arbitration claims, or, with the exception of this matter, firm discipline or regulatory inquiries.[4]

B. The Misconduct

Between 1996 and 2000, Charles sold variable life insurance products of Western Reserve Life Assurance Co. of Ohio ("WRL") to seven of his customers.[5] After leaving WRL, Charles remained the assigned representative on the seven accounts and annually received modest "trailing commissions."[6] In August 2008, however, because Charles was not selling a sufficient additional number of its products,[7] WRL notified Charles that in order to continue to service the seven accounts, within 30 days he had to pay a single "appointment fee" of $100 to WRL or submit a "Telephone or Electronic Transaction Authorization" form signed by each of the seven customers.[8] Charles chose to do neither and set the forms aside. On August 26, 2008, when he realized the deadline was approaching, without notifying the customers or obtaining

[2] Stip. ¶¶ 1-3. Because the Complaint alleges misconduct by Charles while registered with FINRA, and because he continues to be registered with a FINRA member firm, Charles is subject to FINRA's jurisdiction.

[3] Tr. 28, 17-18.

[4] Tr. 18, 20-21.

[5] Stip. ¶ 4; Tr. 29.

[6] From 2006 through 2008, most of the commissions were less than $100 per year per account. The lowest commission for an account for a year was $4.70 and the highest was $1,045.87. JX-5, pp. 8-9.

[7] Stip. ¶ 6.

[8] *Id.*; Tr. 73; JX-5, p. 3. The form authorized the representative to request loans, and to make withdrawals and transfers among a customer's sub-accounts on behalf of the policy holders by telephone. JX-1, p. 1; Stip. ¶ 7.

their permission, Charles signed their names on the authorization forms and sent them to WRL by facsimile.[9]

Subsequently, WRL sent a notice to the customers confirming the firm's receipt of the authorization forms. Upon receipt of the confirmation, one of the customers wrote the company to state that she had not signed the authorization form, had not given Charles permission to sign her name, and that Charles had forged her signature on the form.[10] In response, on November 4, 2008, WRL notified Charles and Resource Horizons of the customer's allegation and asked Charles to provide a written explanation.[11] Resource Horizons investigated.[12] On November 10, 2008, Laura Tedball, Resource Horizons' Chief Compliance Officer, accompanied by David Williams, Charles' immediate supervisor, interviewed Charles at his home office.[13]

At the interview, Charles denied that he signed the customers' names and sent the authorization forms to WRL. Incredibly, he said that on August 26, 2008, while he was out of town, someone must have broken into his home, found the forms, signed the customers' names on them, and used his fax machine to send them to WRL.[14] To corroborate his claim that he was not at home that day, Charles produced a letter signed by his brother stating that Charles was in Charlotte, NC, until late in the afternoon on August 26.[15]

C. The Confession

On November 11, 2008, the day after the interview, Williams called Charles. Williams told Charles his story was unbelievable and that Charles needed to tell the truth "even if it

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[9] Stip. ¶ 8; CX-1.

[10] JX-2, p. 2; JX-5, p. 1.

[11] Stip. ¶ 12; JX-2, p. 1.

[12] Stip. ¶ 13.

[13] Stip. ¶ 14.

[14] Stip. ¶¶ 15-16; JX-5, pp. 1, 4.

[15] JX-3, p. 4. Charles' home is located in Spartanburg, SC. JX-2, p. 1.

hurt."[16] Williams added that Charles should do so before Resource Horizons submitted Charles' false statement to WRL.[17] A few minutes later, Charles called Williams back and confessed that he signed the customers' names on the forms.[18]

From that point, Charles cooperated with Resource Horizons' investigation. He admitted to Williams and Tedball that he had signed and submitted the forms to WRL and that his alibi was false.[19] Consequently, on December 2, 2008, Resource Horizons terminated Charles' employment.[20]

Williams had spoken about Charles' misconduct with Kathi Mansfield, the Chief Compliance Officer of another FINRA member firm. Mansfield had preceded Tedball as Resource Horizons' Chief Compliance Officer and supervised Charles from 2005 through 2007.[21] Williams, anticipating that Resource Horizons would terminate Charles' employment because of the forgeries, asked Mansfield if she would be willing to employ Charles.[22] When Mansfield interviewed him, Charles fully admitted the forgeries and lying about them to Resource Horizons. Mansfield found Charles to be remorseful and agreed to hire him. She testified that, based on her experience working with Charles, she believes his misconduct was the result of an aberrational exercise of bad judgment.[23] Charles continues to work under heightened supervision, reporting directly to Mansfield, who reviews all of his business. Either she or the

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[16] Stip. ¶ 18; JX-5, p. 4.

[17] JX-5, p. 5.

[18] JX-5, p. 4.

[19] Stip. ¶ 19.

[20] Stip. ¶ 21; JX-5, p. 2.

[21] Tr. 16-17.

[22] Tr. 18-19.

[23] Tr. 19-20, 22.

firm's CEO reviews Charles' business activities with him approximately four times each month.[24] All of his paperwork must be reviewed by the firm's main office.[25]

D. The Complaint and Answer

The Department of Enforcement filed the two-cause Complaint concerning these events on March 2, 2010. The First Cause of the Complaint alleges that Charles forged his customers' signatures on the authorization forms sent to him by WRL without their authorization or consent. The Second Cause of the Complaint alleges that Charles made misrepresentations to the Firm during its investigation of the forged authorization forms. Both causes of action charge Charles with violating Conduct Rule 2110.[26]

In his Answer, Charles concedes he committed the violations alleged in the Complaint and requests a hearing solely for the purpose of determining the appropriate sanctions. To that end, a Hearing Panel[27] convened a Disciplinary Hearing on June 29, 2010, in Atlanta, GA. At the hearing, Charles testified that he had deliberately forged his customers' signatures on the forms and lied to his supervisors when they questioned him about the matter.[28] He expressed remorse for his misconduct, acknowledged the wrongfulness of his behavior, and agreed that he should be punished for what he had done.[29]

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[24] Tr. 21.

[25] Tr. 25.

[26] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). Charles' misconduct occurred in August 2008, prior to the adoption of the new rules. This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

[27] The Hearing Panel was composed of two current members of the District 7 Committee and the Hearing Officer.

[28] Tr. 33, 68.

[29] Tr. 42-43.

II. Charles Violated Conduct Rule 2110 by Forging Customer Signatures on Authorization Forms and by Making Misrepresentations to His Firm

It is indisputable that signing another's name on a document without authority constitutes forgery and violates Conduct Rule 2110.[30] Providing false information to one's firm also violates Conduct Rule 2110.[31] This is because the Rule imposes ethical standards as well as legal obligations requiring members to "observe high standards of commercial honor and just and equitable principles of trade."[32] The Rule is violated by unethical conduct that is not securities-related[33] but that reflects on a person's "ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."[34]

Based upon the Stipulations, the Joint Exhibits and Charles' Exhibits admitted into evidence, and the testimony given by Charles at the hearing, the Hearing Panel finds that Charles violated Conduct Rule 2110 by forging seven customer signatures on authorization forms relating to their variable life insurance policies, and by making oral and written misrepresentations to Resource Horizons when it investigated the forgeries, as alleged in Cause One and Cause Two of the Complaint, respectively.

For these violations, which it characterizes as egregious, Enforcement argues that Charles should be barred from associating with any FINRA member firm in any capacity.[35] Charles

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[30] *Dep't of Enforcement v. Claggett*, No. 205000631501, 2007 NASD Discip. LEXIS 27, at *10 (NAC Sept. 28, 2008); *Dep't of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *9 (NAC May 7, 2007).

[31] *James A. Goetz*, Exch. Act Rel. No. 39,796, 1998 SEC LEXIS 499, at *11 (Mar. 25, 1998).

[32] *Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *8-9 (NAC May 7, 2003).

[33] *Id.,* *16 ("Conduct Rule 2110 is not limited to securities-related conduct; instead it covers all unethical business-related conduct.").

[34] *Id.,* *35 (*quoting James A. Goetz, supra* at *11).

[35] Pre-Hearing Brief of Complainant, p. 7; Tr. 79-84.

argues that a bar would be unduly harsh and punitive, and proposes a suspension of three months and, in light of his limited financial resources,[36] a fine of $5,000.[37]

III. Sanctions

For the reasons set forth below, the Hearing Panel finds that Charles' misconduct, although serious, was not egregious. Substantial sanctions short of a bar will therefore accomplish the remedial and deterrent objectives of disciplinary sanctions.[38]

For forgery, FINRA's Sanction Guidelines recommend a fine from $5,000 to $100,000. In addition, the Guidelines recommend considering imposition of a suspension in any or all capacities for up to two years, or a bar in egregious cases.[39]

The Guidelines for forgery contain two Principal Considerations. The first is the nature of the documents forged. The second is whether the respondent had a good-faith, but mistaken, belief of express or implied authority. In addition, there are several general Principal Considerations in Determining Sanctions that are applicable: Principal Consideration No. 2, whether the respondent accepted responsibility prior to detection by the firm; Principal Consideration No. 8, whether the respondent engaged in numerous acts constituting a pattern of misconduct; Principal Consideration No. 11, whether there was injury to any parties; Principal Consideration No. 12, whether the respondent provided assistance to FINRA in its investigation or attempted to mislead and conceal information from FINRA; Principal Consideration No. 13, whether the misconduct resulted from intentional misconduct, from recklessness or negligence;

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[36] Tr. 43. Charles testified that he had earned income of only approximately $8,000 in the first six months of 2010.

[37] Tr. 43, 92-93.

[38] *See* General Principle No. 1, *FINRA Sanction Guidelines,* p. 2 (2007).

[39] Guidelines, p. 39.

and Principal Consideration No. 17, whether the misconduct resulted in the potential for monetary or other gain.[40]

Enforcement argues that the nature of the forged documents contributes to the egregiousness of Charles' forgeries. Enforcement characterizes the authorization forms as essential documents required in order for Charles to remain as the representative on the accounts, retain authority to take actions concerning the accounts on behalf of customers, and to continue to receive commissions.

Enforcement cites several other aggravating factors in support of a bar. Charles did not initially accept responsibility after Resource Horizons had been informed of the forgeries. Furthermore, in Enforcement's view, Charles' forgery of seven customer signatures and lying to conceal his misconduct involved numerous discrete acts suggestive of a pattern of misconduct. Finally, Enforcement suggests that Charles' forgeries provided him with potential monetary gain and exposed his customers to harm, because the forgeries gave him free rein to affect the customers' accounts without their authorization.

Unsurprisingly, Charles' sanctions analysis differs substantially from Enforcement's. Charles minimizes the importance of the authorization forms. Charles notes that when the customers purchased the policies, they gave him authority to act on their behalf in the accounts. In other words, the authorization forms did not provide Charles with the ability to do anything he had not previously been authorized to do.

Furthermore, according to Charles, the seven forged signatures should be batched for the purpose of determining sanctions, because he executed and transmitted them on a single

[40] Guidelines, pp. 6-7.

occasion.[41] In addition, Charles argues that his forgeries resulted in no harm to the customers. Charles stresses that he has no history of disciplinary actions, aside from this case, or customer complaints in his almost three decades in the securities industry. Finally, Charles cites a number of disciplinary cases, some of them settled rather than litigated, as precedents for imposing a less severe sanction than a bar in this case.[42]

The Hearing Panel notes that the determination of the appropriateness of sanctions depends upon the particular facts and circumstances of each case.[43] It is inappropriate to base sanctions upon those imposed in other cases, particularly when the other cases are the result of negotiated settlements. This is because of the recognized principle, noted in the Overview to the Sanction Guidelines, that settlements generally result in lower sanctions than those imposed in cases which are litigated.[44]

As for Charles' clean disciplinary history, it is well-established that lack of a disciplinary history is not a mitigating factor.[45]

The Hearing Panel carefully considered the facts and the arguments of the parties on the question of whether to impose a bar in this case. A bar may be an appropriate sanction when a representative engages in willful misconduct violating the securities laws and FINRA rules, and when the public interest would be served by such a severe sanction. Factors to consider to

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[41] For authority, Charles cites *Dep't of Enforcement v. Bukovcik*, 2007 NASD Discip. LEXIS 21 (NAC July 25, 2007).

[42] Respondent's Pre-Hearing Brief on Sanctions, pp. 7-10.

[43] *Bukovcik, supra,* at *17, n.10; *Dep't of Enforcement v. Mizenko*, No. C8B030012, 2004 NASD Discip. LEXIS 20, at *19, n.13 (NAC Dec. 21, 2004) (*citing Dep't of Enforcement v. Flannigan*, No. C8A980097, 2001 NASD Discip. LEXIS 36, at *22-23 (NAC June 4, 2001) ("it is not appropriate to compare the sanctions imposed in one disciplinary matter to the sanctions imposed in another where … the issues under review differ significantly")).

[44] Sanction Guidelines, p. 1; *Dep't of Enforcement v. Keyes*, No. C02040016, 2005 NASD Discip. LEXIS 5, at *30-31 (NAC Dec. 28, 2005); *see also Dep't of Enforcement v. Nicolas et al.*, No. CAF040052, 2008 FINRA Discip. LEXIS 9, at *80-81 (Mar. 12, 2008).

[45] *Mizenko, supra,* at *21, *citing Dep't of Enforcement v. Roethlisberger*, No. C8A020014, 2003 NASD Discip. LEXIS 48, at *18 (NAC Dec. 15, 2003).

determine whether a bar is in the public interest include "the egregiousness of the respondent's actions, the isolated or recurrent nature of the violation, the degree of scienter involved, the sincerity of any assurances against future violations, the respondent's recognition that the conduct was wrongful, and the likelihood of recurring violations."[46]

Considering the nature of the forged documents, the Hearing Panel finds that the authorization forms were not as critical in nature as Enforcement argues. The properly executed forms would have allowed him to continue to service the seven accounts. The authorization forms did not permit Charles to do anything that he had not previously been allowed to do on behalf of his customers.[47] Contrary to Enforcement's assertion, the authorization forms did not provide Charles with unlimited discretion to effect transactions in the customers' accounts.[48] Furthermore, there is no evidence that Charles intended to do anything other than remain as the servicing representative on the accounts.

There is no question that Charles compounded his wrongdoing by misleading Williams and Tedball with his preposterous alibi. The Hearing Panel considers this to be a serious independent violation of Rule 2110. Nonetheless, Charles did not exacerbate the aggravating nature of this misconduct by persisting in his transparent deception, as he would have if he had not told the truth the next day and thenceforth cooperated with the Firm's internal investigation.[49] From that point forward, Charles expressed remorse, which the Hearing Panel finds sincere, agreeing with Mansfield's assessment, noted above. Consistent with his admission

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[46] *Phillip H. Lehman*, Exch. Act Rel. No. 54660, 2006 SEC LEXIS 2498, at *10-11 (Oct. 27, 2006), citing *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[47] Tr. 31; JX-7, p. 25.

[48] Tr. 31-32; JX-1, p. 1.

[49] Stip. ¶ 20.

that he acted wrongfully, and his acknowledgment that he deserves to be punished, Charles did not frustrate FINRA's investigation, but cooperated with it, as it was his responsibility to do.

The forgeries, as Charles admits, were deliberate,[50] and this is an aggravating factor. However, the Hearing Panel does not consider the forgeries and Charles' untruthful denial to constitute numerous independent acts of wrongdoing, as Enforcement argues. The forgeries were apparently completed and submitted on a single date,[51] and were the product of a single misguided decision.[52] Charles' deceptive denial of the truth to the Firm appears to have been the product of panic and impulse, as he testified.[53]

Although these do not constitute mitigating factors, the Hearing Panel notes that Charles' misconduct did not harm any of his clients,[54] and to the extent Charles may have been motivated by pecuniary interest to maintain his role in servicing these accounts, the commissions he had previously received were minimal.[55] The Hearing Panel also notes that one of the customers is Charles' disabled sister who resides with Charles and whom he helps to support.[56] In addition to her, three other of the seven customers provided affidavits on Charles' behalf in which they stated that had he merely asked, they would have given him permission to sign the authorization forms.[57]

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[50] Tr. 68.

[51] Tr. 33.

[52] *See Bukovcik*, *supra*, at *12 ("Bukovcik's actions in signing a number of customers' signatures [the names of 44 customers on 159 account documents] all flowed from [a] singular decision.").

[53] Tr. 35.

[54] Stip. ¶ 23; *see Mizenko*, *supra*, at *20 (injury to customers constitutes an aggravating circumstance but no authority makes absence of harm a mitigating circumstance).

[55] Stip. ¶ 24; *see Mizenko*, *supra*, at *20 (the Guidelines focus on the potential for a respondent's gain, realization of gain is immaterial).

[56] Charles also supports a brother who resides with him. Tr. 27, 44.

[57] RX-1.

Taking into consideration all of these factors, the Hearing Panel concludes that Charles' serious but not egregious misconduct requires substantial sanctions short of a bar. The Hearing Panel also finds that there is no evidence that Charles poses a future threat to the investing public or to member firms. For these reasons, the Hearing Panel believes that for each of the violations of Conduct Rule 2110 alleged in the Complaint, Charles should be suspended from associating in any capacity with a FINRA member for one year, to run concurrently, and fined a total of $35,000.

IV. Order

For violating Conduct Rule 2110 by forging seven customer signatures on documents relating to life insurance policies, and by making false oral and written statements to his employer firm when it investigated the forgeries, Respondent Thomas J. Charles, Jr., is suspended in all capacities from associating with any FINRA member firm for one year, and shall pay a fine of $35,000. The suspensions shall run concurrently.

If this decision becomes FINRA's final disciplinary action, the one-year suspension shall become effective upon the opening of business on January 3, 2011, and end at the close of business on January 2, 2012. The fines shall be due and payable upon Charles' return to the securities industry.[58]

Finally, Charles is ordered to pay the costs of the hearing, in the amount of $1,449, which includes an administrative fee of $750 and the cost of the hearing transcript.

HEARING PANEL.

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By: Matthew Campbell
Hearing Officer

[58] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

Copies to:

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