

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FREDDY A. MEDINA
(CRD No. 4988363),

Respondent.

Disciplinary Proceeding
No. 2009016551301

Hearing Officer – MC

HEARING PANEL DECISION

March 8, 2011

Respondent is censured and fined \$10,000 for violating NASD Conduct Rules 2110 and 3110 by altering a customer account document and causing his employer firm to maintain a false record. Respondent is also ordered to pay costs.

Appearances

Thomas M. Huber, Senior Regional Counsel, Philadelphia, Pennsylvania, and Kathryn M. Wilson, Principal Regional Counsel, New York, New York, for the Department of Enforcement.

Joel E. Davidson, Esq., Orangeburg, New York, for Respondent Freddy A. Medina.

DECISION

I. Background

The Complaint filed in this matter alleges that Respondent Freddy A. Medina violated NASD Conduct Rules 2110 and 3110¹ when he copied a customer's signature onto an account

¹ 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. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of the misconduct described in the Complaint. The applicable rules are available at www.finra.org/rules.

application and submitted it to his firm,² causing the firm to retain and preserve a false or inaccurate record.³

In this case, the Department of Enforcement and Medina agree on the underlying facts, Medina's liability, and the need to sanction Medina's misconduct.⁴ The parties disagree, however, over the severity of the sanction. Enforcement argues that the Hearing Panel should suspend Medina from associating with a FINRA member firm in any capacity for 30 calendar days and impose a fine of \$5,000. Medina argues that a suspension of any length would be excessively punitive and unnecessary to achieve the appropriate remedial objectives of FINRA sanctions, and asks instead to be subjected to a censure and a \$5,000 fine.

II. Facts

A. Medina's Background

After graduating from college in 2005, Medina took a job at a bank that is a FINRA member. Through that employer, he registered with FINRA in July 2005 as an Investment Company and Variable Contracts Products Representative. He subsequently obtained Series 6 and Series 63 licenses. A little more than a year later, in October 2006, Medina accepted a position as a banker with PNC Investments LLC ("PNC"), also a FINRA member, where he had the opportunity to become financial advisor.⁵ At PNC, Medina obtained his Series 7 license in October 2007 and began working as a financial advisor. He provided investment advice to bank customers at three PNC branch office locations in Newark, New Jersey.⁶ He is currently

² Complaint ¶ 7.

³ Complaint ¶ 9.

⁴ The parties submitted joint exhibits in this case. References to the exhibits are designated as "JX" followed by the exhibit number and, if necessary, the page number. References to the testimony at the hearing are designated as "Tr." followed by the page number. The parties also filed Stipulations of Fact, which are referred to as "Stip." with the appropriate paragraph number. In addition, Medina filed one exhibit, RX-1.

⁵ Tr. 17; Stip. ¶ 1; JX-1.

⁶ Tr. 18.

employed as an investment banker and registered with FINRA through another bank, also a FINRA member.⁷

B. Medina's Misconduct

While at PNC, Medina met with GD, a bank customer, at a PNC branch office to discuss her assets.⁸ On May 6, 2008, GD signed a form to initiate the withdrawal of funds from her life insurance accounts at another institution in contemplation of purchasing a fixed annuity plan through PNC that she had discussed with Medina.⁹ They met again on May 28, 2008, and GD signed several more documents in the course of authorizing Medina to purchase the fixed annuity for her.¹⁰

Sometime after the May 6 meeting, Medina discovered that he had failed to obtain GD's signature on a new account form he needed to file in order to transfer GD's funds and purchase the fixed annuity.¹¹ Medina should have contacted GD, explained that he needed her signature on another account form, and arranged to meet with her again so that she could sign it. Medina did not do so. According to Medina, GD had a busy schedule and he did not want to "inconvenience the customer" with an additional meeting.¹² Moreover, Medina had promised GD that she would receive a five percent rate on her fixed annuity. At the time, Medina testified, companies were reducing interest rates without giving notice; Medina was concerned that any delay in processing the paperwork would increase the risk that he would not be able to provide

⁷ Because the Complaint alleges misconduct occurring while Medina was registered with FINRA, and because Medina continues to be employed with a FINRA member, he is subject to FINRA's jurisdiction.

⁸ Tr. 20-21.

⁹ Tr. 23; Stip. ¶ 5.

¹⁰ Stip. ¶ 6.

¹¹ Medina could not recall precisely when he created the false signature on the account opening application, but testified it was likely before the May 28 meeting, because the account had to be opened before the funds from GD's life insurance accounts could be deposited into PNC. Tr. 40.

¹² Tr. 32.

her with the promised rate, and this would embarrass him.¹³ Consequently, in his words, he “used bad judgment” and completed the new account form by placing a photocopy of a genuine signature of GD onto the account opening application.¹⁴ Medina did so without GD’s knowledge or consent.¹⁵ Medina then submitted the altered document to PNC with the other paperwork to accomplish the purchase for GD, causing PNC to maintain a falsified record.

C. PNC Discovers the Misconduct

In December 2008, approximately seven months after Medina submitted the paperwork, Medina’s branch manager reviewed the documents and discovered GD’s photocopied signature.¹⁶ PNC’s HR Department summoned Medina to a meeting on December 11, 2008.¹⁷ Medina did not know the reason for the meeting in advance, although he inferred that it was “nothing good.”¹⁸ At the meeting, PNC employee Richard Brizzi asked Medina about GD’s signature on the new account application. Medina told PNC “exactly what took place and what happened,”¹⁹ readily admitting that he had copied GD’s signature from another form and placed it onto the application.²⁰ Brizzi informed Medina that PNC would put him on paid leave while it conducted an investigation. Medina immediately submitted his resignation.²¹

In its investigation of the matter, PNC contacted GD about the altered form, confirmed that she understood and was satisfied with the purchase of the fixed annuity that Medina had purchased for her, and obtained GD’s signature on a new account application to replace the

¹³ Tr. 33.

¹⁴ Tr. 29-30, 32, 54.

¹⁵ Stip. ¶ 8.

¹⁶ Tr. 68; JX-7, p. 2. The branch manager’s signature appears to be dated December 5, 2008. There was no explanation for the delay in the review of the paperwork.

¹⁷ Tr. 34, 41.

¹⁸ Tr. 41.

¹⁹ Tr. 42-43.

²⁰ Stip. ¶ 10.

²¹ Medina had confided in a fellow PNC representative that he had been told to meet with the HR Department. Acting on that person’s advice, Medina composed the resignation letter, JX-9, and carried it with him into the meeting. Tr. 34-35, 41-42.

altered form. In addition, PNC reviewed Medina's customer files and contacted a number of his customers to determine whether Medina was responsible for any other, similar irregularities.

PNC found none.²²

Prior to the December 11 meeting at PNC, Medina had been negotiating the terms of a job offer with another bank, also a FINRA member.²³ After resigning from PNC, Medina fully disclosed to his prospective employer the circumstances surrounding his leaving PNC, including his alteration of GD's account opening application. Nonetheless, the other bank hired Medina after clearing the matter through its legal department.²⁴

Based on Medina's disclosure, his new employer imposed a number of requirements on him. The bank required Medina to sign a "Corrective Action and Counseling" agreement that included a training regimen designed specifically for him. It required Medina to engage in counseling and to complete training in compliance, ethics, and firm policies and procedures. From January 2 to April 20, 2009, Medina worked as "an understudy to a broker" to be instructed on the "proper ways of doing things."²⁵ The program required Medina to observe for a full month, then to work under observation and to be "coached" by an experienced financial advisor. During this period, Medina was prohibited from becoming a producing agent. After Medina completed the program and began work as a financial advisor, he did so under a heightened level of supervision, which required him to obtain approval for every trade he executed.²⁶ Medina remains employed with the bank as an investment advisor.

²² Tr. 46-49.

²³ Tr. 41.

²⁴ Tr. 42-43.

²⁵ *Id.*

²⁶ *Id.*; RX-1.

III. Sanctions

As noted above, the single cause of action in the Complaint charges that Medina violated NASD Conduct Rules 2110 and 3110 when he “cut-and-pasted the copied signature” of GD onto an account application and submitted it to his firm,²⁷ causing the firm to “retain and preserve a false and/or inaccurate record.”²⁸

In its Pre-Hearing Submission, Enforcement notes that it does not view Medina’s violation of the Conduct Rules in this instance to be egregious.

When mitigation is present, the FINRA Sanction Guidelines pertaining to forgery and falsification of records recommend a fine of \$5,000 to \$100,000 and consideration of a suspension in all capacities for up to two years. Principal Considerations include the nature of the falsified document and whether the respondent had a good-faith, but mistaken, belief of authority to alter the document.²⁹ The Guidelines for the recordkeeping violations of Conduct Rule 3110 recommend consideration of a fine of \$1,000 to \$10,000 and a suspension for up to 30 days. Principal Considerations include the nature and materiality of the inaccurate information.³⁰

As Enforcement notes, Medina’s violation of the Conduct Rules was a single occurrence, not part of a pattern of misconduct persisting over an extended period.³¹ Furthermore, Medina had no apparent intent to deceive GD or to harm her. To the contrary, the evidence shows that Medina sought to expedite the purchase of the fixed annuity GD had decided to acquire on his advice. Indeed, when PNC advised GD of the matter, she chose to retain the annuity, and signed a replacement for the form that Medina had altered. And although Medina did not acknowledge or accept responsibility for his misconduct prior to PNC’s discovery of the falsified signature,

²⁷ Complaint ¶ 7.

²⁸ Complaint ¶ 9.

²⁹ *FINRA Sanction Guidelines* at p. 37 (2010).

³⁰ *Id.* at p. 29.

³¹ Tr. 8.

when confronted, Medina fully admitted what he had done to PNC, to his subsequent employer, and to FINRA.³² Thus, Medina did not attempt to conceal information or mislead those who investigated the matter. In addition, Medina was not motivated by a potential for monetary gain. While these factors are not mitigating, they illustrate the absence of aggravating factors.

Although Medina asks that no suspension be imposed, he acknowledges that he must be punished.³³ Medina points out that GD filed no complaint as a result of his misconduct and that he caused no harm to her, noting that she essentially ratified the investment she had made through him by signing a new form, even after being informed of what Medina had done. In his testimony, Medina observed that he was just 24 years old and had held his Series 7 license for only approximately six months when he exercised the error in judgment leading to the Complaint.³⁴ Medina, properly, does not argue that these are mitigating factors, but suggests they provide perspective with regard to the circumstances surrounding his misconduct.

The Hearing Panel notes that FINRA's Sanction Guidelines "do not prescribe fixed sanctions for particular violations," "are not intended to be absolute," and that "[a]djudicators may impose sanctions that fall outside the ranges recommended."³⁵ The Hearing Panel recognizes that "[d]isciplinary sanctions are remedial in nature,"³⁶ not punitive,³⁷ and should be fashioned to address the circumstances of each individual case.³⁸ In reaching its determination in this case, the Hearing Panel took into consideration factors long recognized as appropriate in assessing whether a particular sanction is in the public interest, including: (i) the egregiousness

³² Tr. 82.

³³ Tr. 50. In his Amended and Corrected Pre-Hearing Submission, Medina claims that he will lose his job if suspended for any period. Enforcement does not contradict this claim.

³⁴ Tr. 40, 50.

³⁵ *Sanction Guidelines* at p. 1.

³⁶ *Id.*, General Principle No. 1 at p. 2.

³⁷ The SEC has directed adjudicators to determine "whether a suspension is appropriately remedial and not punitive." *James Gerard O'Callaghan*, Exch. Act Rel. No. 57840, 2008 SEC LEXIS 1154, at *39 (May 20, 2008).

³⁸ *Sanction Guidelines*, General Principle No. 3 at p. 3.

of the conduct; (ii) the isolated or recurrent nature of the violation; (iii) the degree of scienter involved; (iv) the sincerity of the respondent's assurances against future violations; (v) the degree to which the respondent recognizes the wrongfulness of the conduct; and (vi) the likelihood of future misconduct.³⁹

Based on its opportunity to observe Medina's demeanor and assess his credibility, and on its review of the entire record, the Hearing Panel finds that to achieve the remedial goals of the Guidelines and to serve the public interest it is unnecessary to impose a suspension upon Medina. The Hearing Panel agrees with the parties that Medina's violations were not egregious. The Hearing Panel finds Medina's repeated expressions of remorse to be sincere and concludes that Medina fully appreciates the wrongfulness of his conduct. The Hearing Panel notes that Medina fully informed his current employer of his misconduct at PNC, and that his current employer consequently invested significant resources and effort to train and counsel Medina to ensure that he does not exercise such bad judgment in the future. The Hearing Panel credits Medina's testimony that he has learned important lessons from these experiences, and finds that he poses no discernible threat of future misconduct to member firms and the investing public.

For all of these reasons, the Hearing Panel declines to impose the 30-day suspension recommended by Enforcement. The Hearing Panel concludes, under the unique circumstances of this case, that the Guidelines pertaining to recordkeeping violations provide more appropriate guidance in this case than the Guidelines pertaining to forgery. The Hearing Panel therefore concludes that a censure and a fine of \$10,000, which are within the parameters of the sanctions recommended for recordkeeping violations, will serve to deter Medina and others from further such misconduct.⁴⁰

³⁹ *Philip A. Lehman*, Exch. Act Rel. No. 54660, 2006 SEC LEXIS 2498, at *11 (Oct. 27, 2006).

⁴⁰ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

IV. Order

Respondent Freddy A. Medina is censured and fined \$10,000 for violating NASD Conduct Rules 2110 and 3110 by altering a customer account document and causing his employer firm to maintain a false document.

Further, Medina is ordered to pay the costs of the hearing, in the amount of \$1,690.30, which includes an administrative fee of \$750 and the cost of the hearing transcript.

The fine and costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. If this decision becomes FINRA's final disciplinary action, the censure will be effective immediately.

HEARING PANEL.

By: Matthew Campbell
Hearing Officer

Copies to:

Freddy A. Medina (*via overnight courier and first-class mail*)
Joel E. Davidson, Esq. (*via electronic and first-class mail*)
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