

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TINA NEWMAN
(CRD No. 2547704),

Respondent.

Disciplinary Proceeding
No. 2008011719501

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

March 30, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for conversion of firm funds, in violation of NASD Conduct Rule 2110. In addition, Respondent is ordered to pay the costs of this proceeding.

Appearances

Jeff Kern, Esq., and Frank Mazzarelli, Esq., for the DEPARTMENT OF ENFORCEMENT.

Tina Newman, pro se.

DECISION

I. INTRODUCTION

The Complaint filed by the Department of Enforcement (“Enforcement”) on February 1, 2010, alleges that Respondent Tina Newman (“Newman”) converted and made improper use of funds and credit card reward points belonging to her employer, Corby Capital Markets, Inc. (“Corby Capital”), in violation of NASD Conduct Rule 2110, which rule provides that “[a] member, in the conduct of its business, shall observe

high standards of commercial honor and just and equitable principles of trade.”¹ The Complaint alleges that she improperly charged \$10,166.34 to her two corporate American Express (“Amex”) credit cards² in connection with a family vacation to Disney World in April 2006. The Complaint further alleges that she improperly transferred Amex Membership Rewards Points® (“Rewards Points”) belonging to Corby Capital to her JetBlue frequent flyer account to reduce the cost of airline tickets for the Disney World vacation in April 2006 and for a vacation to the Bahamas in March 2007.

Newman filed an Answer on March 1, 2010, denying any misconduct and requesting a hearing. The hearing was held on October 13 and 14, 2010, at FINRA’s office in Boston, Massachusetts. The hearing panel was composed of a hearing officer, a current member of FINRA’s District 9 Committee, and a current member of FINRA’s District 11 Committee. Enforcement presented testimony from four witnesses, including Newman, and introduced 16 exhibits. Newman testified in her defense and introduced six exhibits.³

The Hearing Panel finds that Newman committed the violations alleged in the Complaint and bars her from associating with any FINRA member firm in any capacity.

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules. December 15, 2008, FINRA’s procedural rules apply. The conduct rule that applies is NASD Conduct Rule 2110, which was the rule in effect at the time of the conduct at issue.

² Before January 2006, Corby Capital provided Amex Gold cards to its employees. In about January 2006, Newman upgraded the corporate Amex account to Platinum cards. At that point she received an Amex Platinum card as did the other employees who had been issued Gold cards, but, unlike the other employees, she did not cancel her Amex Gold card. It is not clear from the evidence why she alone retained the Gold card.

³ “Tr.” refers to the transcript of the hearing. Enforcement’s exhibits are labeled CX-2 through CX-18. Newman’s exhibits are labeled with the letters D through F and H through J.

II. FINDINGS OF FACT

A. Newman's background and experience in the securities industry

Newman entered the securities industry upon graduation from college in 1994.⁴ She later joined Brown Brothers Harriman in Boston, Massachusetts, where she worked as an equity specialist and as an assistant bond trader. While at Brown Brothers Harriman, she met Michael Reilly ("Reilly"), one of the owners of Corby Capital, a FINRA member firm.⁵

Newman left the securities industry in 2002 because she became dissatisfied with her employment opportunities at Brown Brothers Harriman. With Reilly's assistance, she obtained a position as an assistant golf professional at his country club.

While Newman was working as a golf professional, she did some financial and computer consulting work for a few companies. In 2003, Reilly retained Newman as a consultant to assist Corby Capital.⁶ In October 2005, Corby Capital hired Newman full time to take over the firm's bookkeeping function.⁷

Shortly after Newman joined Corby Capital, its president, Tim Coffin ("Coffin"), announced his departure. Coffin left Corby Capital in January 2006. At that time, Newman assumed some of his responsibilities, including management of the firm's Amex account. Upon taking over responsibility for management of the Amex account, she upgraded the account and established an on-line payment option.⁸ With the upgrade, she and others at the firm received Amex Platinum Cards to replace their Amex Gold Cards.⁹

⁴ Tr. 27.

⁵ Tr. 30; CX-4, at 3 (OTR transcript page 8).

⁶ Tr. 30; CX-4, at 3 (OTR transcript page 9).

⁷ Tr. 43.

⁸ Tr. 59-60.

⁹ Newman testified that she canceled her Gold card when she received the Platinum card. In fact, she did not, and some of the charges at issue she admits were made on the Gold card account number.

Newman had Reilly's high trust and confidence, and she advanced rapidly at Corby Capital. Within months, she was managing all the firm's daily financial functions.¹⁰ In March 2006, Newman became the firm's chief financial officer, and she became the firm's Financial and Operations Principal ("FINOP") in August 2007.¹¹ While at Corby Capital, Newman was registered as a General Securities Representative as well as a FINOP.¹²

Corby Capital terminated Newman's employment in March 2008 due to her unauthorized use of her corporate credit cards.¹³ Following her separation from Corby Capital, she was employed and registered as a General Securities Representative and FINOP at another FINRA member firm.¹⁴

B. Newman's Improper Use of her Corporate Credit Card Account

Newman admitted that she charged \$6,519.17 to her Corby Capital Platinum credit card to cover some of the costs of a vacation to Disney World that she took with her family in April 2006. She further admitted that she intentionally paid those personal charges using Corby Capital's corporate bank account. Moreover, she admitted that at the time she paid the Amex statement containing her vacation expenses, she knew that she lacked authorization to use corporate funds to pay the Disney World charge and that it would be improper for her to pay the Disney World charge using Corby Capital funds.

Despite the fact that Newman lacked authorization to pay the Disney World charge from Corby Capital's account, she denied that she intended to misappropriate funds from Corby Capital. Rather, Newman characterized her actions as a series of

¹⁰ Tr. 48.

¹¹ Tr. 44-46.

¹² Tr. 225.

¹³ Tr. 93, 324.

¹⁴ FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws. The alleged misconduct occurred while she was registered with FINRA and associated with Corby Capital, and Enforcement filed the Complaint within two years after her last FINRA registration terminated.

mistakes. First, she claimed that she erred when she gave the Disney World reservation agent her corporate credit card. Next, she claimed that she erred by not correcting the mistake promptly. Then she claimed that she erred by not properly separating her personal charges from the firm's expenses on the firm's books and records. And, she claimed that she erred by using company funds to pay the Disney World charge. For the reasons discussed below, the Hearing Panel rejected Newman's claims of mistake and found that she intentionally misappropriated funds from Corby Capital.

1. Disney World Charge

Newman claimed that she had not intended to use her corporate credit card when she made the Disney World reservation.¹⁵ She testified that when she called Disney World reservations, she gave the reservations agent her Corby Capital corporate credit card number by reading the number from a spreadsheet she kept on her laptop computer.¹⁶ The spreadsheet listed her credit cards along with other personal account information. The Corby Capital Platinum account number was listed as "American Express Corby," and it appeared two entries below the listing for "American Express Tina," which was her personal Amex account number and the first listed credit card in that section of the spreadsheet.¹⁷ Newman claimed that she had intended to use her personal Amex card, not her corporate card.¹⁸

When Newman received the Amex corporate credit card statement from Amex in early April 2006, she immediately noticed her Disney World charges and realized that she had improperly charged those expenses to her corporate credit card.¹⁹ Nonetheless, on

¹⁵ Tr. 101-05.

¹⁶ Tr. 102-03, 146.

¹⁷ CX-7.

¹⁸ Tr. 83, 103.

¹⁹ Tr. 107-08. The statement reflects a number of charges and credits because Newman changed the reservation several times before she made a final selection of the vacation package she and her family wanted. *See* CX-15.

April 26, 2006, she paid the Amex bill in full using the on-line payment function that she had enabled when she took over managing the Amex account from Coffin in January 2006.²⁰ This was the first time Newman paid the Amex account using the on-line system rather than presenting the bill to Reilly for payment.²¹ By using the on-line payment system, no one at Corby Capital had an opportunity to review the Amex statement before she paid the bill.

Although Newman paid her personal vacation expenses with Corby Capital funds, Newman nonetheless claimed that she did not intend to benefit financially. She testified that she called Disney World to request that it transfer the charges to her personal Amex credit card.²² According to her, Disney refused and referred her to Amex.²³

Newman testified that she then called Amex to request that it transfer the Disney World charges to her personal Amex account. Newman claims that the Amex representative she spoke to agreed to make the transfer.²⁴ However, Newman admits that she did nothing thereafter to verify that Amex made the transfer.²⁵ She did not review either her personal account statements or the Corby Capital account statements to verify that the charges were transferred. In addition, she did not get a confirmation or transaction number or otherwise document her alleged call with Amex.²⁶ Indeed, she stated that she gave the matter no further thought until January 2008, approximately 20 months later, when the corporate Amex account statements from 2006 were subpoenaed in connection with a civil action involving Reilly.²⁷ Newman claimed that in reviewing

²⁰ Tr. 116-17, 359-60.

²¹ Tr. 355-60.

²² Tr. 111.

²³ Tr. 112.

²⁴ Tr. 112-13.

²⁵ Tr. 114.

²⁶ Tr. 114-15.

²⁷ Tr. 69.

the subpoenaed records she was shocked to see that Amex had never transferred the Disney World charges.²⁸ At that point, she called a former business associate for advice. He told her to repay Corby Capital and then tell Reilly what had happened.²⁹

Newman reviewed the corporate Amex account statements and concluded that she should reimburse Corby Capital for the Disney World charges, as well as certain other personal travel expenses she had charged to her corporate credit cards. Accordingly, on January 25, 2008, she deposited \$10,166.34 to Corby Capital's checking account to reimburse the firm for these personal expenses.³⁰ The reimbursement amount included: (1) \$6,519.17 for the Disney World trip in April 2006; (2) \$1,598 for JetBlue airline tickets related to the Disney World trip; (3) \$1,999.17 for JetBlue airline tickets for a family vacation to the Bahamas in March 2007; and (4) \$50 for a fee related to her personal travel.³¹

On or about January 28, 2008, Newman met with Reilly at his apartment to deliver the subpoenaed Amex records and to tell him that she had deposited \$10,166.34 in the firm's checking account to reimburse the firm for personal travel expenses. Newman said she first went over a number of business issues with Reilly.³² At the end of the meeting, she told Reilly that she had deposited \$10,166.34 to Corby Capital's checking account to reimburse the firm for the Disney World reservation she had charged to her Amex Platinum corporate credit card.³³ Newman gave Reilly a photocopy of her check and the corresponding deposit ticket, along with copies of the subpoenaed Amex account statements.³⁴ The check was dated January 25, 2008, and it contains the notation,

²⁸ Tr. 72-73.

²⁹ Tr. 73-75.

³⁰ Tr. 84; CX-16. Newman charged the JetBlue tickets to her corporate Amex Gold card.

³¹ CX-3, at 1; CX-15 (April Amex Statement at 3); Tr. 106-07, 152, 155, 393-95; CX-8.

³² Tr. 81-82.

³³ Tr. 84, 233-34, 267; CX-16.

³⁴ Tr. 81; CX-16.

“Reimb. Amex Travel Exp.”³⁵ The deposit ticket contains the notation, “TN reimb. for Amex Travel 06/07.”³⁶ Newman did not provide Reilly with an itemization of the reimbursement.³⁷ Nor did she explain that the reimbursement covered more than the alleged erroneous Disney World reservation charge. She also did not mention that she had used Corby Capital’s Rewards Points to reduce the cost of her airfare for both the Disney World vacation in April 2006 and another vacation she took to the Bahamas in March 2007.³⁸

2. Newman Converted Funds from Corby Capital

Newman’s contention that she was guilty of nothing more than carelessness was undercut by her actions. She intentionally paid the Disney World reservation charge with firm funds and then booked the charge as a firm expense. She did not tell anyone at Corby Capital about her alleged mistake, and she did not make a notation in the firm’s records to reflect that this was a personal charge.³⁹ Thus, her personal vacation expense improperly appeared on Corby Capital’s books as a business expense. As the firm’s Chief Financial Officer, she had responsibility for assuring the accuracy of the firm’s books and records and knew that it was improper to reflect her vacation travel as a business expense. In addition, she took steps to hide the true nature of the charge from her firm and its auditor.

First, she paid the firm’s Amex statement in April 2006 through an online system that had not been used before. By using the online system, she did not have to present the Amex statement to Reilly along with a draft check for his signature, as was the firm’s

³⁵ CX-16.

³⁶ *Id.*

³⁷ Tr. 90-91.

³⁸ Tr. 91.

³⁹ Tr. 118-21, 130-31.

customary practice. The online payment system allowed her to make the payment without anyone else at the firm knowing that it included payment for her Disney World vacation.

Second, Newman posted the April 2006 Amex payment in the firm's books in a manner to conceal the fact that the payment included her vacation expense. Arlindo Ramos ("Ramos"), the FINRA Examiner who was assigned to the MSRB examination of Corby Capital that ultimately led to this proceeding, obtained a copy of the firm's ledger for the relevant periods in 2006 and 2007.⁴⁰ The ledger shows that Newman allocated the firm's April 2006 Amex payment in the amount of \$15,979.90 to the following expense categories: (1) travel; (2) meals and entertainment; (3) marketing; (4) professional development; (5) legal and professional fees; (6) telephone; (7) supplies; and (8) advertising and sales literature.⁴¹ Some of the expense allocations did not match charges on the Amex statement because she disguised the Disney World charge by allocating it to a number of these firm expense categories.⁴² For example, there were no charges for marketing on the Amex statement, yet Newman allocated \$2,588 to that expense category.⁴³ The Hearing Panel finds that Newman intentionally created fictitious and false entries in the firm's books to cover up her conversion of firm funds for her personal benefit.

C. Newman's Unauthorized Use of Corby Capital's Rewards Points

Newman also admitted that she transferred Rewards Points from Corby Capital's Amex account to her JetBlue frequent flyer account when she purchased airline tickets for vacation travel in April 2006 and March 2007.⁴⁴ The Rewards Points were earned

⁴⁰ CX-18; Tr. 366. The original MSRB exam expanded when Ramos uncovered Newman's reimbursement of \$10,166.34 in January 2008. Tr. 347.

⁴¹ Tr. 382.

⁴² Tr. 383-86.

⁴³ Tr. 384.

⁴⁴ Tr. 148.

from the cumulative activity of all Corby Capital's corporate card holders, not just from her charges.⁴⁵ By using the Rewards Points, she obtained the airline tickets at a reduced cost.⁴⁶

Newman testified that she did not obtain express permission to use Corby Capital's Rewards Points for her two vacations.⁴⁷ Nonetheless, Newman defended her actions by claiming that she often had joked with Reilly that she was the only one at the firm that knew how to get the points out of the account and that Reilly had authorized her to use the Rewards Points at her liberty.⁴⁸

Reilly disputed Newman's contention that he had approved her use of the firm's Rewards Points for her vacation travel in April 2006 and March 2007. Although he added that he probably would have acquiesced if someone had asked him for rewards points, he concluded, "We hadn't given them to anybody."⁴⁹

Based on the totality of the evidence, the Hearing Panel finds that Newman had not sought or received permission to use Corby Capital's Rewards Points for her personal travel in April 2006 and March 2007. In addition, Newman's actions in concealing the airfare expenses that she charged to her Amex corporate Gold card undercut her claim that she was authorized to use firm assets for her vacation travel. As she had done with the Disney World charge, Newman posted the JetBlue airfares to business expense categories. For example, Newman did not properly record the airfare for her trip to the Bahamas in 2007. Instead, she posted her personal travel costs to the travel expenses of

⁴⁵ Tr. 149.

⁴⁶ There is no evidence in the record of the amount of the discount Newman received by using Rewards Points.

⁴⁷ Tr. 150, 152.

⁴⁸ Tr. 149-50, 152.

⁴⁹ Tr. 238.

several other employees and to a general travel expense category.⁵⁰ These entries were false, disguising the true nature of the non-business expenses she charged to the firm.

III. CONCLUSIONS OF LAW

The Hearing Panel finds that Newman converted \$10,166.34 by charging personal vacation expenses to her Corby Capital Amex credit cards, which she paid using firm funds, and that she misused Rewards Points belonging to Corby Capital in connection with her vacation travel, in violation of NASD Conduct Rule 2110.⁵¹

Rule 2110 is an ethical rule. It requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.⁵² The test to determine whether conduct violates Rule 2110 is whether "the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money."⁵³

Enforcement proved by a preponderance of the evidence, including Newman's own admissions, that Newman violated Rule 2110 by charging her personal vacation expenses to Corby Capital and then paying the charges from the firm's checking account. Enforcement also proved by a preponderance of the evidence that she violated Rule 2110

⁵⁰ Tr. 399-402.

⁵¹ See *Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd* 101 F.3d 37 (5th Cir. 1996).

⁵² *Department of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (citing *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684, at *11 (Oct. 23, 2002) (finding that registered representative who used a co-worker's credit card without authorization violated Rule 2110); *James A. Goetz*, 53 S.E.C. 472, 475 (1998) (finding that registered person's misuse of member firm's matching gift program to obtain private school tuition credit violated Rule 2110); *District Bus. Conduct Comm. v. Bruun*, No. C3B960004, 1998 NASD Discip. LEXIS 23, at *10 (N.A.C. Jan. 23, 1998) (finding that registered person's submission of false reimbursement requests for seminar expenses that he did not incur violated Rule 2110)).

⁵³ *Manoff*, 2002 SEC LEXIS 2684, at *12.

by misusing Corby Capital's Rewards Points in connection with her vacation travel. Once Enforcement proved the violations, the burden shifted to Newman to "produce evidence that refuted or rebutted the material introduced by Enforcement," which she failed to do.⁵⁴

First, as discussed above, the Hearing Panel rejected Newman's claim that she charged \$6,519.17 to her corporate Amex Platinum card by mistake. However, even if the Hearing Panel were to accept Newman's contention that the initial charge was made in error, she nonetheless intentionally paid the Disney World charge with firm funds. Moreover, she made the payment and posted the charges to Corby Capital's books and records in a manner to conceal the fact that she was using corporate funds to pay for her trip. Newman admitted that she made no entries to denote the true nature of the Disney World charges, and she never brought her alleged error to anyone's attention. She also admitted that she made no effort to reverse the charge to Corby Capital until 2008 when she realized that her misconduct would likely be discovered when the subpoenaed Amex statements were reviewed. In sum, her testimony on this point was not believable. These actions support the Hearing Panel's conclusion that Newman intentionally converted funds from Corby Capital.

Newman also did not carry the burden of proving that Reilly had authorized her to charge certain vacation expenses to the firm. Newman posted the JetBlue ticket costs to expense categories to conceal the fact that she was using firm funds to pay for her vacations, which completely undercut her contention that she had the authority to use her corporate credit cards for personal travel. In addition, Reilly and Corby Capital's Chief Compliance Officer testified that the corporate credit cards were to be used for business purposes only.⁵⁵

⁵⁴ *Department of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *19 (N.A.C. Oct. 6, 2009) (quoting *James B. Hovis*, Exchange Act. Rel. No. 55562, 2007 SEC LEXIS 604, at *28 (Mar. 30, 2007)).

⁵⁵ Tr. 219-20, 317.

The Hearing Panel also rejected Newman’s argument that she did nothing wrong because others at the firm, including Reilly, charged personal expenses to the firm and that she was entitled to even greater perks because she had recovered \$250,000 in tax refunds and accomplished other cost savings for the firm, including a settlement of \$485,000 with Fidelity.⁵⁶ However, it is not a defense that others may have charged some non-business expenses to the firm. “While [Corby Capital and Reilly] may not have challenged the propriety of employees’ questionable reimbursement requests, registered persons are expected to adhere to a standard higher than ‘what they can get away with.’”⁵⁷

Finally, the Hearing Panel found that Newman did not have authority to use the firm’s Rewards Points for personal travel. Although Reilly testified that he likely would have allowed someone to use the points had he been asked, the evidence is clear that she did not secure such approval. In addition, the Hearing Panel took into consideration that the use of the Rewards Points was tied directly to her unauthorized charges of the JetBlue ticket costs to her corporate credit card. In effect, the use of the Rewards Points was part of her overall scheme to have the firm pay her vacation travel costs.

IV. SANCTIONS

FINRA’s Sanction Guidelines (“Guidelines”) applicable to conversion or the improper use of funds recommend a bar.⁵⁸ The Guidelines define conversion for purposes of imposing sanctions generally as “an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.”⁵⁹ As discussed above, the Hearing Panel concluded that Newman converted

⁵⁶ Tr. 132-34, 267.

⁵⁷ *Leonard John Ialeggio*, Exchange Act Rel. No. 37910, 1996 SEC LEXIS 3057, at *9 (Oct. 31, 1996), *aff’d*, 1999 U.S. App. LEXIS 10362 (9th Cir. 1999) (holding that respondent must have realized that he wasn’t paying certain expenses himself, yet was being reimbursed for them over a period of 19 months, and therefore his retention of the funds constituted conduct inconsistent with Rule 2110 (formerly Article III, Section 1 of the NASD’s Rules)).

⁵⁸ FINRA Sanction Guidelines 36 (2010), *available at* www.finra.org/sanctionguidelines.

⁵⁹ *Id.* n.2.

\$10,166.34 from Corby Capital. Accordingly, consistent with the Guidelines, the Hearing Panel finds that a bar is the appropriate sanction in this case.⁶⁰

In assessing sanctions, the Hearing Panel considered the factors set forth in the Principal Considerations in Determining Sanctions section of the Guidelines,⁶¹ as well as other case specific factors. The Hearing Panel found several aggravating factors.⁶² First, the Hearing Panel rejects Newman's argument that a bar is excessive for what she describes as an honest mistake. Rather, the Hearing Panel finds that Newman's misconduct was premeditated, intentional, and ongoing, factors that the Hearing Panel finds aggravating.⁶³ Crediting Newman's version of events, Newman learned when she received the Corby Capital Amex statement dated April 5, 2006, that she had charged more than \$6,000 for her family vacation to Disney World to her corporate credit card. Rather than advise her employer of this alleged mistake, she chose instead to pay the charges from the firm's bank account. Thereafter, she compounded her misconduct by deliberately creating false entries in the firm's books to conceal her actions. She did not reimburse the firm for those Disney World charges and the cost of the airline tickets she purchased for that trip and another vacation in March 2007 to the Bahamas until January 2008 when she realized that her misconduct would likely be discovered when the Amex statements were reviewed in connection with an unrelated civil action involving Reilly personally. Newman's decision to misrepresent the nature of the charges and falsify her

⁶⁰ The Hearing Panel did not base the bar on Newman's improper use of the Rewards Points.

⁶¹ Guidelines at 6-7.

⁶² See *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005) (finding that, in connection with sanctions, it is appropriate to consider: (1) all mitigating factors that the respondent has raised; (2) the seriousness of respondent's offenses; (3) the corresponding harm that respondent caused to members of the trading public; (4) respondent's potential gain for disobeying the rules; (5) the potential for repetition of respondent's misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others).

⁶³ Guidelines, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 9, 13).

firm's books was unethical. Newman's intentional and ongoing misrepresentation is an aggravating factor with respect to sanctions.⁶⁴

The Hearing Panel also considered and rejected Newman's contention that she accepts responsibility for her actions and understands that she made a mistake in not diligently following up to have the initial Disney World charges reversed.⁶⁵ The Hearing Panel found just the opposite. Newman buried the improper charges and miscoded them so that they could not be discovered. It was only when she realized that the statements were going to be reviewed in depth that she came forward to correct her alleged "mistake." Further, Newman continued to maintain at the hearing that she was entitled to grant herself additional compensation because she had recovered significant sums of money for the firm. But, as the Hearing Panel found, the evidence did not support her claims. Even if Reilly would have agreed to have the firm pay some of her vacation expenses because they had an agreement that she would receive a bonus due to her efforts in recovering money from the IRS and Fidelity, Newman's decision to misrepresent her expenses was unethical. "The suggestion that [she] may have been able to obtain reimbursement for [such expenses] if submitted properly does not exonerate or lessen the significance of [her] unethical conduct."⁶⁶

In addition, the Hearing Panel considered the seriousness of Newman's offense and the potential for recurrence. "Although [Newman's] wrongdoing in this instance did not involve customer funds or securities, [her] willingness to lie to [Corby Capital] and obtain funds to which [she] was not entitled indicates a troubling disregard for fundamental ethical principles which, on other occasions, may manifest itself in a customer-related or securities-related transaction. The securities industry is 'rife with

⁶⁴ *Saad*, 2009 FINRA Discip. LEXIS 29, at *24.

⁶⁵ Guidelines, at 6 (Principal Considerations in Determining Sanctions, No. 2).

⁶⁶ *Saad*, 2009 FINRA Discip. LEXIS 29, at *22.

opportunities for abuse,’ and [Newman’s] misconduct is no less serious because the firm ... [was her victim] rather than a public customer.”⁶⁷ Newman’s actions suggest that her “continued participation in the securities industry poses an unwarranted risk to the investing public.”⁶⁸

Finally, the Hearing Panel rejected Newman’s argument that she has a clean disciplinary history that should mitigate sanctions. “While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating. ... A respondent should not be rewarded because he may have previously acted appropriately as a registered person.”⁶⁹

In the absence of mitigation and in light of the aggravating factors present here, the Hearing Panel concludes that a bar is consistent with the Guidelines and is the appropriate remedial sanction for Newman’s conversion of funds.

V. ORDER

Respondent Tina Newman is barred from associating with any FINRA member firm in any capacity for conversion of firm funds, in violation of NASD Conduct Rule 2110. In addition, Newman is ordered to pay costs in the amount of \$5,351.25, which includes an administrative fee of \$750 and hearing transcript costs of \$4,601.25.

The bar shall be effective immediately if this decision becomes FINRA’s final disciplinary action. The payment of costs shall be due on a date set by FINRA, but not

⁶⁷ *Saad*, 2009 FINRA Discip. LEXIS 29, at *28.

⁶⁸ *Id.* at *29.

⁶⁹ *Id.* at *20.

sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.⁷⁰

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Tina Newman (*via electronic and first-class mail*)
Jeff Kern, Esq. (*via electronic and first-class mail*)
Frank Mazzaelli, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁷⁰ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.