

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RYAN A. LEOPOLD
(CRD No. 4891295),

Respondent.

Disciplinary Proceeding
No. 2007011489301

Hearing Officer – RSH

Panel Decision
May 21, 2010

The Respondent violated Conduct Rule 2110 by falsifying expense reports over a two-year period. For this violation, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Ralph J. Veth, Senior Regional Counsel, Laura Leigh Blackston, Senior Regional Counsel, and Andrew A. Favret, Regional Chief Counsel, New Orleans, LA, representing the FINRA Department of Enforcement.

Meredith A. Cunningham, Brad Cousins, and George C. Freeman, III, of Barrasso Usdin Kupperman Freeman & Sarver, LLC, New Orleans, LA, representing Ryan A. Leopold.

DECISION

I. PROCEDURAL HISTORY¹

FINRA commenced the investigation that led to the filing of the Complaint in December 2007. On March 30, 2009, the Department of Enforcement filed a Complaint

¹ As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules that were in effect at the time of the Respondent’s alleged misconduct and cited in the Complaint as the basis for the charges against him.

with the Office of Hearing Officers alleging that Respondent Ryan A. Leopold violated Conduct Rule 2110 by falsifying expense reports and submitting the false documentation to his member firm, PLANCO Financial Services, LLC, a subsidiary of The Hartford Financial Services Group, Inc. (“Planco”). Enforcement alleged that Leopold’s conduct also violated Rule 2110 by causing Planco to maintain inaccurate books and records.

On April 27, 2009, Leopold filed an Answer in which he admitted that he had falsified his expense reports as alleged in the Complaint. He requested a hearing in order to argue that, although he should receive a “material sanction,” he should be allowed to remain in the securities industry. The parties filed Joint Proposed Stipulations on January 19, 2010, in which Leopold stipulated that he had falsified expense reports, as alleged in the Complaint.

A hearing to decide sanctions was held on February 25, 2010, in New Orleans, Louisiana before a Hearing Panel composed of the Hearing Officer and two current members of FINRA’s District 5 Committee. Enforcement, relying on Leopold’s stipulations as to liability, did not call any witnesses. Leopold testified on his own behalf and also called one witness--his supervisor at his current member firm. The parties stipulated to the admissibility of 24 Enforcement exhibits and nine Respondent exhibits. All of the parties’ exhibits were entered into evidence.²

² In this decision, “Stip.” refers to the parties’ joint stipulations; “Tr.” to the transcript of the hearing; “CX” to Enforcement’s exhibits; and “RX” to Respondent’s exhibits.

II. FINDINGS OF FACT

A. The Respondent

Leopold first became registered with FINRA in January 2005 as an Investment Company and Variable Products Representative (“IR”) of Planco.³ On December 12, 2007, Planco filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) disclosing that it had terminated Leopold’s employment because he had filed “expense reports that contained misrepresentations and inaccuracies.” On June 10, 2008, Leopold became registered as an IR with FINRA member firm Lincoln Financial Distributors, Inc., where he is currently employed.⁴

B. Leopold Falsified Expense Reports

While at Planco, Leopold was employed as a regional marketing director or “wholesaler” of variable annuity products issued by The Hartford Group (“Hartford”) or one of its subsidiaries. As a wholesaler, Leopold made presentations and gave seminars to registered representatives of other broker-dealers, who would then sell Hartford variable annuities. He traveled extensively and incurred business expenses for which Planco reimbursed him, up to approximately \$50,000 annually. Leopold routinely incurred over \$50,000 in business expenses annually. Although Planco did not reimburse Leopold for expenses over \$50,000, it paid him an equivalent amount of his gross commissions without deducting income taxes, thereby reducing Leopold’s taxable income. Planco required Leopold to produce actual receipts for seminar expenses, as

³ Stip. 2; CX-20, p. 3.

⁴ CX-20.

well as verification letters from broker-dealers whose representatives attended Leopold's seminars.⁵

From on or about July 28, 2005, through on or about June 7, 2007, Leopold created 19 sets of false receipts and verification letters. Ten of these were false hotel invoices for meetings Leopold admits did not occur. To create each false invoice, Leopold used a template (which was found on his Planco computer) containing a logo for the Embassy Suites hotel chain.⁶ He then made up numerous individualized details, including the date of the fictitious seminar, the number of people who attended, the room rental fee, food and beverages served, and sales tax. To accompany these fabricated hotel invoices, Leopold also created ten false verification letters from broker-dealers, purportedly thanking him for holding the seminars. In creating these fake letters, Leopold used the logos for broker-dealers Morgan Keegan, Morgan Stanley, UBS, Citigroup, Smith Barney, and AG Edwards. Leopold typed the name of a broker-dealer employee below the signature line on each letter. On seven of the letters, he signed the employees' names. He left three of the letters unsigned. Leopold did not have authorization from any of the broker-dealers to draft any letters or to sign their employees' names. Leopold submitted the false invoices and verification letters to Planco so that Planco would deduct fewer taxes from his gross income.⁷

In addition to the ten receipt and letter sets for seminars that never took place, Leopold fabricated nine other invoices and verification letters for meetings that he claims occurred, but for which he did not maintain original receipts. These hotel receipts and broker-dealer letters appear identical to the first ten letters; however, Leopold claims that

⁵ Stips. 6-12; Answer at ¶7; CX-22 at p. 5.

⁶ CX-22, p. 3.

⁷ Stips. 13-16; CX-1-10.

he approximated the amounts contained in the invoices because he did not keep the actual receipts. As he did with the other fake documents, Leopold submitted the false invoices and verification letters to Planco, without informing the firm that he had created the documents himself.⁸

Leopold's falsification of expense reports was discovered during an investigation by Hartford's internal audit department. During the course of the audit, the investigator discovered hundreds of discrepancies between expense reports Leopold submitted and underlying documentation. Leopold admitted in many cases that he had either fabricated expenses or could not account for them. For example, in response to a question about a \$2,082 expense for a broker outing, Leopold said, "I expensed the entire \$2,082 on my expense report when in actuality I only paid \$1,041 of the amount reflected on my credit card. The result of my expensing the entire amount is that it reflects in lesser income for me for tax purposes. I knew that my expense allotment would be exceeded and that this expense would come out of my pocket and not Planco's."⁹ In explaining 68 other discrepancies, Leopold said, "It appears that in these sixty eight instances I must have mischaracterized my expense report by indicating that I had expensed them on my credit card...I do not have any independent documentation to show how I paid for these expenses."¹⁰ In at least three other instances, Leopold admitted that he had simply made up expenses that he did not incur.¹¹ In response to a question about 268 presumably

⁸ Stips. 17-19; CX-11-19.

⁹ CX-22, p. 5.

¹⁰ *Id.*, p. 2.

¹¹ *Id.*, pp. 8-10.

minor discrepancies between expense reports and credit card documentation, Leopold said that he often did not document exact amounts of his expenses.¹²

As a result of the investigation, Planco terminated Leopold's employment. The total amount of the false expense reports Leopold submitted to Planco was \$7,760.38. Leopold filed an Amended U.S. Individual Tax Return for the year 2006, and paid an additional \$720 in taxes on the additional income he declared. FINRA does not contend that Leopold converted Planco funds or property.¹³

Tad Fifer, Leopold's current supervisor at Lincoln Financial, testified that he had recruited Leopold to work for him because he believed Leopold was "honest and trustworthy and hardworking." Fifer explained that Leopold had been on a heightened supervision program that requires Fifer to travel with Leopold on a quarterly basis and to review his expense reports weekly.¹⁴ He testified that he has not had any problems with Leopold's expense reporting at Lincoln and that Leopold had, in fact, been a model employee. Fifer noted that he had known Leopold socially through Leopold's brother, and that he believed that Leopold was sincerely remorseful for what he had done and had learned from the experience. Fifer admitted that he had never actually seen Leopold's falsified receipts and broker letters until he was shown them at the hearing.¹⁵ Fifer explained that as a wholesaler of Lincoln Financial products, Leopold calls on brokers daily to educate them about the products. Fifer also testified that Leopold spent between five and ten percent of his time in meetings with registered representatives and

¹² *Id.*, p. 2.

¹³ Stips. 20-23; 25.

¹⁴ Tr., p. 31.

¹⁵ Tr., pp. 27, 35.

prospective customers. In these meetings, Leopold explains the Lincoln Financial products to the registered representatives and their prospective customers.¹⁶

C. Enforcement Failed to Prove that Leopold Caused His Member Firm to be in Violation of the Books and Records Rule, as Alleged in the Second Cause of Action of the Complaint

Leopold did not admit the violation alleged in the Second Cause of Action, and the Stipulations do not address the allegations in the Second Cause of Action. Enforcement did not present any evidence at the hearing or in its exhibits about Planco's books and records. Enforcement stipulated that it does not contend that Leopold converted Planco funds or property. It also does not contend that Planco revised its tax returns, issued Leopold amended tax forms W-2 or 1099, or otherwise revised its financial statements as a result of Leopold's actions.¹⁷ Enforcement failed to present any evidence about how Planco recorded or accounted for Leopold's expenses in its books and records. For this reason, the Hearing Panel finds that Enforcement failed to prove that Leopold caused Planco to be in violation of the books and records rule, as alleged in the Second Cause of Action of the Complaint. Therefore, the Second Cause of Action is dismissed.

III. CONCLUSIONS OF LAW

Leopold Violated Conduct Rule 2110 by Falsifying Expense Reports

Conduct Rule 2110 requires registered persons to observe high standards of commercial honor and just and equitable principles of trade. As recently reiterated by the National Adjudicatory Council in the *Saad* case, "Rule 2110 is an ethical rule...FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to

¹⁶ Tr., pp. 21-22, 43, 46-48.

¹⁷ Stips. 23-24.

encompass any unethical business-related misconduct, regardless of whether it involves a security.”¹⁸

Leopold does not dispute that he fabricated receipts and submitted false expense reports to Planco. The Hearing Panel therefore finds that he violated Conduct Rule 2110.

IV. SANCTIONS

FINRA Sanction Guidelines (“Guidelines”) governing sanctions for forgery and/or falsification of records recommend a fine of \$5,000 to \$100,000 and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases.¹⁹ The Guidelines also direct adjudicators to consider the nature of the documents falsified, and whether the respondent had a good-faith, but mistaken, belief of express or implied authority to falsify the documents. Both of these factors aggravate Leopold’s misconduct. The false expense reports Leopold submitted were used to obtain funds, in the form of reduced income taxes, to which he was not entitled. They also served to assist Leopold in filing inaccurate income tax returns. Leopold documented the expense reports with fabricated receipts and letters. In deceiving his employer, Leopold implicated completely unrelated companies and broker-dealer employees. Leopold admitted that the seminars for which the expense reports were concocted never occurred; he clearly did not believe he had any authority to falsify the documents.

In determining sanctions, the Hearing Panel also considered the Guidelines’ Principal Considerations, and a majority of the Hearing Panel found them to be

¹⁸ *Department of Enforcement v. John M. Saad*, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (finding that a registered person’s submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110).

¹⁹ FINRA Sanction Guidelines 39 (2007), www.finra.org/sanctionguidelines.

aggravating.²⁰ Leopold did not acknowledge his misconduct until he was caught falsifying expense reports (Principal Considerations 2 and 3). He created falsified receipts and letters and submitted false expense reports 19 times over a two-year period (Principal Considerations 8 and 9). The purpose for Leopold's misconduct was to deceive his member firm about his expenses (Principal Consideration 10). His misconduct was intentional (Principal Consideration 13). Finally, Leopold's misconduct resulted in monetary gain to him; he avoided paying taxes on over \$7,700 of income (Principal Consideration 17).

The Hearing Panel also considered Leopold's arguments for mitigation of sanctions, but the majority found them unpersuasive. First, he argued that his actions did not result in a conversion of Planco property and had no effect on any public customer. Although Leopold's conduct in this instance did not involve customer funds or securities, his willingness to deceive his employer over a prolonged period of time indicates a "troubling disregard for fundamental ethical principles which, on other occasions, may manifest itself in a customer-related or securities-related transaction."²¹ Leopold's supervisor testified that Leopold educates brokers about Lincoln Financial products and spends from five to ten percent of his time with customers and their advisors. Besides the misconduct for which Leopold is charged here, the numerous instances of expense account discrepancies and admitted falsification uncovered by the Hartford's investigation suggest a basic dishonesty that is inimical to promoting public confidence in the integrity of professionals in the securities industry.

²⁰ FINRA Sanction Guidelines 6-7 (2007).

²¹ *Saad*, at *28.

Next, the Hearing Panel considered Leopold's argument that we should find mitigation in his relative youth and reliance on an older mentor who had tutored him in falsifying documents. The NAC has held that "youth and inexperience do not shield registered representatives from liability and we do not consider such factors as evidence of mitigation."²² Leopold's excuse that an older mentor at Planco had led him to falsify the documents is similarly not mitigating.

While the Hearing Panel was persuaded that Leopold is remorseful for his conduct, the majority did not believe his remorsefulness outweighs the blatant dishonesty and lack of integrity that his aggravated misconduct exemplifies. The majority was not confident that Leopold could be trusted to act honestly if he was not being supervised as intensely as he is currently at Lincoln Financial, and was not convinced that he should remain in the securities industry.

A majority of the Hearing Panel found that Leopold's conduct was egregious and that the aggravating facts outweighed any mitigating facts. He will therefore be barred from associating with any member in any capacity.

V. Dissent as to Sanctions

One of the Panelists dissents as to the sanctions imposed on Leopold. The dissenting Panelist was persuaded that there were mitigating factors in this case which should have resulted in a sanction of much less than a bar. Specifically, the dissenting Panelist found that Leopold's relative youth and inexperience led him to follow the training given by a more experienced broker with respect to expense reimbursement procedures. Also mitigating was the fact that Leopold, not being Series 7-registered,

²² *Department of Enforcement v. Charles J. Cuzzo, Jr.*, 2007 NASD Discip. LEXIS 12, at *37 (N.A.C. Feb. 27, 2007).

does not recommend investments to public customers. In addition, no customers were harmed because of Leopold's misconduct. Finally, the dissenting Panelist was persuaded by the strength of Fifer's testimony that Leopold is sincerely remorseful, and has learned from his mistakes. His exemplary record at Lincoln Financial is strong evidence that Leopold deserves a second chance and should be able to work in the securities industry after a serious sanction. The dissenting Panelist would have imposed a six-to-nine month suspension.

VI. Order

Ryan A. Leopold is barred from association with any member firm in any capacity for his violation of NASD Conduct Rule 2110. In addition, he is ordered to pay costs in the amount of \$1403.60, which includes a \$750 administrative fee 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. The bar will become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.²³

Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to: Ryan A. Leopold (*via overnight courier and first-class mail*)
George C. Freeman, III, Esq. (*via electronic and first-class mail*)
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David R. Sonnenberg, Esq. (*via electronic mail*)

²³ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.