

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DALLAS R. SEAGRAVES, II
(CRD No. 2245698),

Respondent.

Disciplinary Proceeding
No. 2007009181101

Hearing Officer – MC

HEARING PANEL DECISION

October 21, 2010

For willfully failing to update his Form U4 on a timely basis, in violation of Conduct Rule 2110 and IM-1000-1, Respondent is suspended from associating with any FINRA member firm in all capacities for three months, barred from associating with any FINRA member firm in any principal capacity, and is fined \$5,000. For sales literature violations of Conduct Rules 2110 and 2210, Respondent is suspended from associating with any FINRA member firm in any capacity for an additional six months, barred from associating with any member firm in any principal capacity, fined \$5,000, and assessed hearing costs.

Appearances

Dale A. Glanzman, Senior Regional Counsel, and Kevin G. Kulling, Senior Regional Counsel, Chicago, IL, for the Department of Enforcement.

James J. Eccleston, Esq., and Ronald M. Amato, Esq., for Respondent Dallas R. Seagraves, II.

DECISION

I. Procedural History

The Complaint filed by the Department of Enforcement in this disciplinary proceeding on January 19, 2010, charges Respondent Dallas R. Seagraves, II with two unrelated categories of misconduct: (i) failing to update his Form U4; and (ii) violating the rules governing the creation and dissemination of advertising and sales literature.

The First Cause of Action alleges that Seagraves willfully failed, from 2004 to 2007, to amend and update his Form U4 to disclose four tax liens that had been filed against him, in violation of Conduct Rule 2110 and IM-1000-1.¹

The remaining six causes of action allege that Seagraves violated Conduct Rules 2110 and 2210, pertaining to sales and advertising literature, in connection with three “investment seminars” Seagraves presented to members of the public. These violations arise specifically from (a) an invitation to the seminars that Seagraves composed and mailed, and (b) a PowerPoint presentation he created and used at the seminars. The Complaint alleges that Seagraves failed to obtain approval from a principal of his firm prior to sending the invitation and using the PowerPoint slides. The Complaint further alleges that the invitation and slides contain various misleading statements and otherwise fail to meet the standards for sales literature set by the rules.

In his Answer, Seagraves admits that he failed to amend his Form U4 to disclose the tax liens filed against him, but denies that he did so willfully. Seagraves also admits that he failed to obtain principal approval of the invitation and the PowerPoint presentations, as alleged in the Second and Fifth Causes of Action, but claims his failure to do so was an inadvertent oversight. Seagraves denies that the invitation and slides contain statements that allegedly violate Rules 2110 and 2210.

A Hearing Panel composed of two current District 8 Committee members and the Hearing Officer conducted a two-day hearing commencing on May 27, 2010, in Chicago, IL.

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, including certain conduct rules and procedural rules. *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 alleged misconduct. The applicable rules are available at www.finra.org/rules.

After carefully considering the testimony at the hearing, the evidence received, and the arguments of the parties, the Hearing Panel finds Seagraves liable for the violations alleged in all seven causes of action.

II. Findings of Fact and Conclusions of Law

A. Respondent

Seagraves was employed by FINRA member firm Jefferson Pilot Securities Corporation (“JPS”) between July 2000 and June 2007.² At JPS, Seagraves was registered as a General Securities Representative and a General Securities Principal,³ and was a manager of an office of supervisory jurisdiction (“OSJ”) with supervisory responsibility for six registered representatives.⁴ Seagraves also owned his own investor advisor firm, which was registered in the state of Kentucky.⁵ After leaving JPS, Seagraves maintained his registration with FINRA at another member firm until January 27, 2010, shortly after the Complaint was filed.⁶

B. Factual Background

In October 2006, Seagraves hosted three investment seminars aimed at persons over 60 years old with incomes greater than \$75,000. His goal was to “gain new clients.”⁷ To attract attendees, he sent 4,000 invitations to dinner at a Lexington, KY location for a presentation he

² JX-1, p. 2. 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.

³ Stip. ¶ 1; Tr. 31; JX-1, p. 3.

⁴ Tr. 28-29; Stip. ¶ 2. In 2008, JPS changed its name to Lincoln Financial Securities Corporation after being purchased by Lincoln Financial Group. Tr. 28.

⁵ Tr. 236; JX-1, p. 3.

⁶ JX-1, pp. 2-3. Because the Complaint alleges misconduct that occurred while Seagraves was registered with FINRA, and the Complaint was filed while he was registered with FINRA, he is subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding.

⁷ Tr. 281.

titled “Mistakes Seniors Make with their Money and How to Avoid Them.”⁸ At the seminars, he employed a PowerPoint presentation with 36 slides containing general advice about investing, a “case study,” and information about the stock market, mutual funds and bonds.⁹

JPS received checks totaling \$1,500 from two product sponsors with selling agreements with JPS to reimburse Seagraves for expenses he incurred in connection with the seminars.¹⁰ In March 2007, Seagraves called JPS administrative personnel repeatedly to ask the firm to expedite the release of the reimbursement checks, indicating that he needed the money immediately.¹¹ The urgency of Seagraves’ requests prompted Jennifer Orr, a JPS compliance manager, to ask Seagraves why he needed the money.¹² Seagraves explained that he had recently been through an expensive divorce and was experiencing credit problems.¹³

Upon hearing this, Orr decided to run a credit check on Seagraves. To do so, she needed Seagraves’ authorization, which he provided on April 2, 2007.¹⁴ Orr testified that when she spoke with him, Seagraves said nothing about the existence of tax liens. However, when Orr obtained the credit report on April 4, 2007, she saw that three federal tax liens and one state tax lien had been filed against Seagraves between 2002 and 2005 in the Jessamine County, KY, Court. Seagraves had not disclosed the liens to JPS and had not reported them on his Form U4.¹⁵

Orr told Seagraves it was necessary to disclose the liens on his Form U4. Through April and into May 2007, Orr and another JPS compliance staff person asked Seagraves on multiple

⁸ JX-5, p. 4.

⁹ JX-9, pp. 12-83.

¹⁰ Tr. 64-66.

¹¹ Tr. 158-59.

¹² Tr. 26.

¹³ Tr. 73-75, 159.

¹⁴ Tr. 111; JX-9, pp. 102-103.

¹⁵ Stip. ¶ 10; Tr. 76, 114; JX-2, pp. 1-2; JX-9, pp. 104, 107.

occasions to provide documentation to enable them to ascertain whether the amounts of the liens reflected in the credit report were accurate.¹⁶ It was not until May 24, 2007, however, that Seagraves provided any information, when he gave Orr a copy of an IRS statement reflecting the payment that had been due the previous December.¹⁷

The evidence shows that Seagraves had known of the liens at least since “sometime in 2004” after receiving a notice from the IRS.¹⁸ In response to the notice, Seagraves contacted the IRS to say that he had worked out a payment plan for his overdue taxes and to ask why, in light of this, the IRS found it necessary to file a lien. He learned that it is standard for the IRS to file a lien in such circumstances. He then discovered that the IRS had filed another lien against him two years earlier.¹⁹

C. First Cause of Action

1. Seagraves Failed to Update His Form U4

It is undisputed that the filing of a tax lien constitutes material information, required to be disclosed on a registered representative’s Form U4.²⁰ It is also undisputed that Seagraves was on notice of this requirement. Question 23(M) on the Form U4, dated July 26, 2000, with Seagraves’ name under the designation “Signature of Applicant,” unambiguously required him to

¹⁶ Tr. 79-80; JX-10, p. 6.

¹⁷ Tr. 81; JX-9, p. 117; JX-10, p. 6.

¹⁸ Stip. ¶ 6. The amounts of the four liens and their dates of entry are: (i) \$16,185 on November 25, 2002 (federal); (ii) \$4,369 on March 16, 2004 (Kentucky); (iii) \$27,562 on August 16, 2004 (federal); and (iv) \$463 on March 14, 2005 (federal). JX-2.

¹⁹ Seagraves testified that he must have “missed” the notice of the filing of the first lien mailed to him by the IRS. Tr. 241.

²⁰ *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *5, n. 10 (NAC Aug. 19, 2010), citing *Scott Mathis*, Exch. Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009).

disclose the liens.²¹ It was Seagraves' "obligation to ensure that the information provided on the form [was] true and accurate."²² Seagraves did not fulfill that responsibility.

As noted above, Seagraves does not deny that he failed to update his Form U4 to report the filing of the tax liens. He contests only the allegation that his failure was willful. In support of his assertion that his failure was not willful, Seagraves testified that he had previously disclosed the existence of the liens to JPS personnel, but he could not recall when or to whom he made the disclosure.²³

2. Seagraves Acted Willfully

Throughout his tenure at JPS, Seagraves managed an OSJ and was therefore responsible for enforcing provisions of the JPS compliance manual.²⁴ The manual, consistent with Article V, Section 2(c) of FINRA's By-Laws and IM-1000-1,²⁵ required all representatives keep their Forms U4 current in order to ensure that the firm would be apprised if the representatives encountered any financial issues, including bankruptcies, judgments, and liens.²⁶

Furthermore, JPS required its representatives to sign an annual compliance questionnaire. Before 2005, the questionnaire did not contain a question that specifically asked about the existence of liens. It asked only if any *judgments* had been filed. Seagraves claimed that when he answered "No" on the 2004 form, his answer was correct because at that time the questionnaire did not mention liens.²⁷

²¹ Tr. 32; JX-3, pp. 8, 10; *Mathis, supra* at *21.

²² *Mathis, supra* at *16.

²³ Tr. 264.

²⁴ Tr. 34-36.

²⁵ IM-1000-1 provides that the information registered representatives are required to file must be complete and accurate.

²⁶ Tr. 34-35.

²⁷ Tr. 241-42; JX-9, p. 408.

In 2005, however, the questionnaire was revised to ask whether any “judgments or liens” had been filed.²⁸ As Seagraves admitted at the hearing, his answer of “No” to the revised question was clearly incorrect.²⁹

In his defense, Seagraves testified that in 2005 and 2006, because he was distracted by personal problems, he filled out the questionnaire as quickly as possible simply to “get it done,” and thus wrote “No” as he had in previous years in response to the question about judgments.³⁰

A “willful” failure to report does not require a showing that Seagraves “was aware of the rule he violated or ... acted with a culpable state of mind.”³¹ To find Seagraves’ failure was willful, the evidence must show only that he intentionally failed to provide JPS with accurate information regarding the tax liens filed against him.

Based on the evidence presented, the Hearing Panel does not credit Seagraves’ claims that his incorrect answers on the compliance questionnaires in 2005 and 2006 were unintentional and the product of distraction and inattention.³² The Hearing Panel is satisfied that Seagraves intentionally omitted to inform JPS about the tax liens he knew had been filed against him, and consequently that he willfully failed to fulfill his obligation to ensure that his Form U4 was properly amended to keep it current.³³

²⁸ JX-9, pp. 413-14, 422.

²⁹ Tr. 314-15.

³⁰ Tr. 314-18.

³¹ *Mathis, supra* at *19.

³² Under similar circumstances, the Securities and Exchange Commission found a failure to amend a Form U4 to be willful. *Mathis, supra* at *21-22. In *Mathis*, the respondent failed to disclose tax liens on two initial Forms U4 and failed to amend his Form U4 to disclose the liens. As here, Mathis had been asked by his firm in an annual certification form to disclose if any liens had been entered against him that had not been previously disclosed on his Form U4. Like Seagraves, Mathis contended, to no avail, that his failures to disclose were not willful.

³³ Because the Hearing Panel finds Seagraves’ failure to disclose the existence of the tax liens on his Form U4 was willful, Seagraves is statutorily disqualified, pursuant to Sections 3(a)(39) and 15(b)(4)(A) of the Securities Exchange Act of 1934, which states that a person who has willfully “omitted to state” in any application for association with a member of a self-regulatory organization “any material fact” is subject to statutory disqualification.

D. The Second Through Seventh Causes of Action: Seagraves Used Sales Literature Without Approval that Failed to Meet Applicable Standards

1. The Second and Fifth Causes of Action: Failure to Obtain Approval of Sales Literature

As noted above, Seagraves admits that he violated Conduct Rules 2110 and 2210 by failing to submit the invitation to his investment seminars for principal approval before sending it to members of the general public,³⁴ as alleged in the Second Cause of Action, and by using unapproved PowerPoint slides at the seminars, as alleged in the Fifth Cause of Action. However, he asserts that his failures to do so were inadvertent.

The Hearing Panel finds no merit in this contention. Inadvertence is not a defense to failing to obtain approval before disseminating sales literature to the public. In any event, Seagraves' failures to do so were not inadvertent. He was at the time an experienced securities industry professional, having begun his career in approximately May 1992.³⁵ As noted above, during the period relevant to this disciplinary proceeding, he was registered as both a General Securities Representative and a General Securities Principal, and he supervised an OSJ, responsible for overseeing compliance with FINRA rules by others. Finally, while at JPS, Seagraves had previously submitted sales literature to the firm for advance approval, and thus was personally familiar with the requirement to do so.³⁶

2. The Third, Fourth, Sixth and Seventh Causes of Action

Seagraves denies that he is liable for the violations enumerated in the Third, Fourth, Sixth and Seventh Causes of Action, alleging that he used sales literature containing statements that

³⁴ Stip. ¶ 12. The un rebutted testimony of David Roscum, a member of FINRA's Advertising Regulation Department, was that the invitation is sales literature, distinguished from advertising matter because advertisements are broadcast without any control over who receives them, whereas the invitation was sent to specific addressees. Tr. 186-87.

³⁵ Tr. 234.

³⁶ Tr. 158.

violate the standards for sales literature set forth in Conduct Rule 2210. The Hearing Panel finds, however, that the invitation he sent and the slides he used in connection with the seminars contain numerous exaggerated, misleading and promissory statements that contravene the Rule's requirements for sales literature.

First, the Hearing Panel finds that the invitation and PowerPoint slides are sales literature as Enforcement alleges, and Seagraves does not contest.

The invitation does not name the investment products to be discussed at the seminars. Consequently, it violates Rule 2210(d)(1)(A), because the omission of this information, and resulting failure to inform recipients of the invitation of the subject matter of the seminar, is material.³⁷ In addition, the invitation contains misleading and promissory statements. For example, the invitation states that the seminars will teach “6 ways to protect your capital, lower taxes, and have more money to enjoy life,” “new options-how to grow you (sic) money while guaranteeing income” and “how to earn above average returns.”³⁸ These assertions are promissory in nature, fail to reflect the uncertainties inherent in any investment and the inability to guarantee income, or returns, and therefore violate Rule 2210(d)(1)(B), as alleged in the Third Cause of Action.³⁹

Rule 2210 also required Seagraves to *prominently* identify his FINRA member firm employer on the invitation. Seagraves did not do so. The invitation refers to JPS only in small font, easily overlooked.⁴⁰ It mentions Seagraves' state-registered investor advisor entity, Independent Advisory Services, but does not describe the relationship between it and JPS.

³⁷ Tr. 194-95.

³⁸ JX-12, pp. 3-4.

³⁹ Tr. 199-201.

⁴⁰ JX-12, p. 4

Because of these deficiencies, the invitation contravenes Rules 2110 and 2210(d)(2)(C), as alleged in Fourth Cause of Action.⁴¹

The slides comprising the PowerPoint presentation are replete with misleading, exaggerated and promissory representations and omissions that violate Rule 2210(d). The slides fail to disclose risks, costs, and limitations associated with products and strategies that are favorably presented. For example, the slides do not note any limitations of asset-diversification strategies, fees, and withdrawal penalties associated with equity-indexed annuities. The slides imply that there is such a thing as risk-free diversification when, in fact, diversification cannot eliminate all risks.⁴² These deficiencies violate Rules 2110 and 2210(d)(1)(A), as alleged in the Sixth Cause of Action.

Finally, slides in Seagraves' PowerPoint presentation echo exaggerated and unwarranted claims that appear in the invitation, noted above. In addition, several slides employ out-of-date historical market data without the information necessary to provide context, and refer to the S&P 500 without explaining what it is.⁴³ The slides fail to inform that the products mentioned have risks and carry costs in the form of fees and other charges, and repeatedly use problematic promissory language.⁴⁴ One slide refers to "Safe Money Management" and "Avoiding Retirement Ruin,"⁴⁵ and another slide refers to "Market Opportunities ... guaranteeing a fixed % of income for life"⁴⁶ failing to note that there is some risk in any investment. These

⁴¹ Tr. 211-13; JX-12, p. 4.

⁴² Tr. 198-99.

⁴³ Tr. 194-95; JX-9, pp. 16-17, 19.

⁴⁴ Tr. 198-99.

⁴⁵ Tr. 199-200; JX-9, p. 14.

⁴⁶ JX-9, p. 37.

unwarranted, unbalanced, promissory and exaggerated statements violate Rule 2210,⁴⁷ as alleged in the Seventh Cause of Action.

III. Sanctions

For Seagraves' failure to disclose material information on his Form U4, as alleged in the First Cause of the Complaint, Enforcement initially recommended suspension from associating with any FINRA member firm in all capacities for three months and a fine of \$5,000.⁴⁸ For Seagraves' violations of Rules 2110 and 2210, Enforcement recommended a suspension in all capacities for six months and a fine of \$15,000.⁴⁹ At the hearing, in light of the totality of Seagraves' misconduct, and Enforcement's conclusion that Seagraves failed to acknowledge his personal responsibility for complying with the FINRA rules he violated, Enforcement added the recommendation that the Hearing Panel bar Seagraves from associating with any FINRA member firm in any principal capacity.⁵⁰

Seagraves asks, for the misconduct for which he admits responsibility, imposition of a suspension of not more than two months and no fine.⁵¹

A. Willful Failure to Update Form U4 in Violation of Rule 2110 and IM-1001-1

For an individual who fails to maintain current and accurate information on his Form U4, FINRA's Sanction Guidelines call for a suspension for five to 30 business days, and fines

⁴⁷ Tr. 207-08.

⁴⁸ Enforcement's Pre-Hearing Brief, p. 7.

⁴⁹ Enforcement's Pre-Hearing Brief, p. 14.

⁵⁰ Tr. 422-27.

⁵¹ Tr. 447-48.

ranging from \$2,500 to \$25,000.⁵² In an egregious case, the Guidelines recommend consideration of a suspension for up to two years, or a bar, and fines of \$5,000 to \$100,000.⁵³

To determine the appropriate sanctions for failing to maintain an accurate and current Form U4, the Guidelines enumerate several factors to weigh: (i) the nature and significance of the information unreported or inaccurately disclosed; (ii) whether the inaccurate or misleading disclosure led to a statutorily disqualified person being associated with a firm; and (iii) whether the inaccurate Form U4 resulted in harm to a person or firm.⁵⁴ There is no evidence implicating the latter two factors in this case.

However, the Hearing Panel finds that the information Seagraves failed to disclose on his Form U4 was significant. As noted in testimony at the hearing, in order to monitor the financial situation of its representatives, it is important for a firm to possess information pertaining to the representatives' financial obligations, such as existing property tax liens.⁵⁵ This information can alert a firm to outside financial pressures that might impact upon a representative's job performance, affect the level of confidence a firm may repose in a representative, and allow regulators to become aware of financial difficulties relevant to a representative's ability to manage his or her financial obligations.⁵⁶ The four tax liens here, reflecting that Seagraves was nearly \$50,000 in arrears in paying his taxes, constituted financial obligations about which Seagraves' firm was entitled to know. Furthermore, because Seagraves was on notice of the existence of the tax liens from at least early 2004, his willful failure to make any effort to

⁵² *FINRA Sanction Guidelines*, p. 73 (2007).

⁵³ *Id.* at 74.

⁵⁴ *Id.* at 73.

⁵⁵ Tr. 39.

⁵⁶ *Mathis, supra* at *29.

disclose the liens for more than two years is an aggravating factor.⁵⁷ Finally, the Hearing Panel agrees with Enforcement's arguments that the circumstances surrounding Seagraves' failure to disclose the liens, and his proffered explanations for doing so, in light of his lengthy experience in the securities industry and exercise of supervisory authority as a registered principal and OSJ manager, are aggravating factors.⁵⁸

For these reasons, the Hearing Panel concludes that a suspension from associating with any FINRA member firm in all capacities for three months, a fine of \$5,000, and a bar from associating with any FINRA member firm in any principal capacity, are appropriate sanctions, sufficient to reflect the seriousness of Seagraves' failure to disclose the tax liens on his Form U4, and to deter Seagraves and others from ignoring this important responsibility in the future.

B. Sales Literature Violations of Rules 2110 and 2210

The Guidelines provide for a fine of \$1,000 to \$20,000 for a violation of the requirements of Rule 2210. In egregious cases, the Guidelines suggest considering a suspension in any or all capacities for up to 60 days.⁵⁹

The Hearing Panel finds that Seagraves' several violations of Rule 2210, as alleged in the Second through Seventh Causes of Action, were serious. Seagraves mailed the invitation to 4,000 people without obtaining prior principal approval, fully aware of the requirement that he do so. He held three seminars making presentations using unapproved materials that contained misleading, unbalanced, promissory, exaggerated and unwarranted claims and material omissions. Approximately one month after the seminars, he falsely represented to JPS on its

⁵⁷ *Zayed, supra* at *25.

⁵⁸ See *Dep't of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *16 (May 7, 2007) ("Cooper's conduct is particularly worrisome given his status as a registered principal. ... Principals are those who are actively engaged in the management of a firm's investment banking or securities business, and they play an essential role in compliance by ensuring that NASD rules and the federal securities laws are followed.").

⁵⁹ Sanction Guidelines at 84.

annual compliance questionnaire that he did not use any sales literature without first having it approved by the firm.⁶⁰ Furthermore, Seagraves was an experienced securities professional, a licensed General Securities Principal and manager of an OSJ with responsibility for ensuring that representatives under his supervision complied with JSP's procedures and FINRA rules. The Hearing Panel finds that Seagraves' violations cannot reasonably be attributable, as Seagraves suggests, to inadvertent oversight.

The Hearing Panel considered the number and seriousness of these violations, and the importance of impressing upon Seagraves and others in the securities industry of the need to comply with the rules governing sales literature. For Seagraves' violations of Rules 2110 and 2210, as alleged in the Second through Seventh Causes of Action, therefore, the Hearing Panel imposes a suspension from associating with any FINRA member firm in any capacity for six months, a fine of \$5,000, and a bar in all principal capacities.

IV. Order

Respondent Dallas R. Seagraves, II, is suspended in all capacities from associating with any FINRA member firm for three months, barred from associating with any FINRA member in any principal capacity, and fined \$5,000 for willfully failing to amend his Form U4, as alleged in the First Cause of Action, in violation of Rule 2110 and IM-1000-1. Seagraves is further suspended from associating with any FINRA member firm in any capacity for an additional six months, barred from associating with any FINRA member firm in any principal capacity, and fined an additional \$5,000 for his misconduct concerning sales literature as alleged in the Second through Seventh Causes of Action, in violation of Rules 2110 and 2210.

⁶⁰ JX-9, p. 424.

If this decision becomes FINRA's final disciplinary action, the bar from associating with any FINRA member firm in any principal capacity shall be effective immediately. The cumulative nine-month suspension shall become effective upon the opening of business on December 20, 2010, and end at the close of business on September 19, 2011. The fines shall be due and payable upon Seagraves' return to the securities industry.⁶¹

Finally, Seagraves is ordered to pay the costs of the hearing, in the amount of \$3,297.10, which includes an administrative fee of \$750 and the cost of the hearing transcripts.

HEARING PANEL.

By: Matthew Campbell
Hearing Officer

Copies to:

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⁶¹ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.