

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID HARARI
(CRD No. 4094088)

and

SIAN HARARI
(CRD No. 4617506),

Respondents.

Disciplinary Proceeding
No. 2011025899601

Hearing Officer – RLP

HEARING PANEL DECISION

March 28, 2014

Respondent David Harari is barred from associating with any FINRA member firm in any capacity for providing false information and documentation to FINRA and a FINRA member firm, in violation of FINRA Rules 8210 and 2010. He also is barred for obtaining customer funds by false pretenses and converting them, in violation of FINRA Rule 2010 and NASD Rule 2110. In light of the imposition of these bars, the Panel imposes no sanction for David Harari’s failure to disclose tax liens on his Form U4, in violation of NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010.

Respondent Sian Harari is suspended from associating with any FINRA member firm for eighteen months for participating in the creation of false documentation supplied to FINRA and a FINRA member firm, in violation of FINRA Rule 2010.

Appearances

Jonathan Golomb, Esq., and Lane Thurgood, Esq., Rockville, MD, for the Department of Enforcement.

Eric A. Pullen, Esq., San Antonio, TX, for Respondents David Harari and Sian Harari.

DECISION

I. Introduction

Concerns raised by Ameriprise Financial Services, Inc.'s filing of a report, disclosing that David Harari had been suspended, led to a FINRA investigation and, ultimately, the institution of this proceeding.¹ The complaint, filed April 4, 2013, by FINRA's Department of Enforcement ("Enforcement"), alleges five causes of action. The first cause charges Respondent David Harari with violating FINRA Rules 8210 and 2010 by supplying FINRA and his employer with false information and documentation. The second cause charges that Respondent Sian Harari, David Harari's wife, participated in the creation of false documentation, in violation of FINRA Rule 2010. The third cause charges that David Harari obtained money from a customer by false pretenses, in violation of NASD Rule 2110 and FINRA Rule 2010, and the fourth cause charges that he converted or misused those funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rules 2150 and 2010. Finally, the fifth cause of action charges that David Harari failed to disclose tax liens on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"), in violation of Article V, § 2 of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010.² The Hararis filed an answer on May 2, 2013, denying many of the complaint's allegations.

¹ Hearing Transcript ("Tr.") 21-25 (Goodman).

² The Hararis worked in the securities industry until January 2013, when they left a FINRA member firm with which they had been associated for nearly one year. Revised Stipulations ("Stips.") 3, 8. Although neither David nor Sian Harari is currently registered through or associated with any FINRA member firm, FINRA has jurisdiction over this proceeding pursuant to Article V, § 4 of FINRA's By-Laws. As to David Harari, there is jurisdiction because the complaint: (i) was filed within two years of the January 2013 termination of his registration with a FINRA member; and (ii) charges him with misconduct committed while he was registered with a FINRA member. FINRA retains jurisdiction over Sian Harari because the complaint: (i) was filed within two years after she ceased to be associated with a FINRA member; and (ii) charges her with misconduct committed while she was associated with a FINRA member.

After a two-day hearing,³ the Hearing Panel finds that the Hararis engaged in the violative conduct charged in the complaint. First, the Panel concludes that, as the Hararis in some measure concede, both Sian and David Harari participated in creating a false customer letter. David Harari then restated and elaborated upon the letter's falsehoods in a response to a FINRA information request he supplied, along with the letter, to both FINRA and his firm. At around the same time, Sian Harari created additional false documentation to support those falsehoods. In so doing, both David and Sian Harari violated FINRA Rule 2010, and David Harari also violated Rule 8210. Second, despite David Harari's denials, the Panel concludes that he obtained money from a customer by false pretenses and then converted it, in violation of NASD Rule 2110 and FINRA Rule 2010. Finally, although David Harari variously asserts that he was unaware of tax liens or that he was advised that they need not be reported because they were "not liens as such," the Panel rejects his defenses and concludes that he violated NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, by failing to report the liens on his Form U4.

The securities industry depends on the honesty and integrity of its participants. By providing false information and documentation to FINRA and his firm in response to an information request, David Harari has demonstrated himself unfit to continue to participate in the securities industry. He therefore is barred from associating with any FINRA member firm for this misconduct. David Harari also is barred for obtaining customer funds by falsely representing that he would put them to one use and then converting them to another. Sian Harari's participation in creating false documentation also warrants a significant sanction but, considering the circumstances surrounding her misconduct, the Panel has determined that an

³ The hearing was held in San Antonio, Texas, on November 18-19, 2013.

eighteen-month suspension, rather than a longer suspension or a bar from association with any member firm, is sufficiently remedial. Because the Panel has imposed two bars on David Harari, it assesses, but declines to impose, a two-month suspension as a remedy for his failure to disclose tax liens.

II. Findings of Fact

A. By 2004, When David and Sian Harari Were Associated with Ameriprise, JG Became David Harari's Client.

David Harari entered the securities industry in December 1999, when he joined Ameriprise Financial Services, Inc. Around two months later, he registered with FINRA through Ameriprise as a General Securities Representative.⁴ Much of David Harari's business involved providing financial planning services to clients, including writing and implementing financial plans. He charged clients flat fees, which Ameriprise collected. He also received commissions on investment products he sold to clients, typically mutual funds or variable universal life insurance products.⁵

In July 2002, David Harari's wife, Sian, became associated with Ameriprise as an unregistered assistant to her husband. She wrote letters summarizing client meetings, gathered client financial information and entered it into firm templates, typed financial plans, and marketed her husband's services by, among other means, organizing luncheons for clients.⁶ She was actively involved in her husband's business and clients considered the couple in tandem.⁷

⁴ Stip. 1; Complainant's Exhibit ("CX")-1, at 2; Tr. 213 (D. Harari). By 2002, David Harari held general securities (Series 7), state agent (Series 63), and investment adviser (Series 65) licenses. Stip. 5; *see* CX-1, at 5-6.

⁵ Stip. 4; RX-18; Tr. 400 (King). The cash value of a variable universal life insurance contract is invested in separate accounts that in turn are invested in securities. Accordingly, the contracts are treated as both insurance and as securities. *See* Notice to Members 96-86, 1996 NASD LEXIS 108 (Dec. 1996). *See also* Tr. 413-414 (King).

⁶ Stip. 8; CX-2, at 2; Tr. 238-241, 338 (S. Harari).

⁷ *E.g.*, Tr. 517 (SR).

By mid-2004, JG became a client of David Harari's after contacting American Express and seeking a financial advisor who spoke Spanish.⁸ She had recently divorced and sought initially to invest at least \$50,000 of the assets she had been awarded in the divorce.⁹ During the course of their business dealings, David Harari prepared at least two financial plans for JG and provided JG with other services he characterized as going "far beyond" those he customarily provided.¹⁰ He also sold her variable life insurance products (insuring her life and the lives of her children), variable annuities, and mutual funds.¹¹

B. In 2008, JG Loaned the Hararis \$20,000 and, Thereafter, Unsuccessfully Sought Repayment.

As time went on, JG became close friends with the Hararis, particularly with Sian Harari. She frequently socialized with the Hararis outside of the business context, even spending holidays them.¹² Accordingly, when, after David Harari became severely ill and was hospitalized, the Hararis' financial condition began to deteriorate, and Sian Harari expressed her concerns to JG, JG gave Sian Harari a \$20,000 check dated February 28, 2008.¹³

The Hararis and JG disagree about whether JG loaned the \$20,000 to the Hararis or gave it to them as a gift.¹⁴ JG testified that, after she asked Sian Harari how she could help alleviate the Hararis' financial difficulties, Sian Harari suggested that JG lend the couple some money. Then, after JG asked how much they needed, Sian Harari suggested \$20,000. Although there

⁸ Stip. 10; Tr. 90-91 (JG). JG's first language is Spanish. She has only a limited command of English.

⁹ Tr. 92, 179 (JG).

¹⁰ Tr. 140 (JG), 465 (D. Harari).

¹¹ Tr. 365-366, 412 (King). David Harari thus functioned as both an investment adviser and as a broker to JG.

¹² Stip. 13; Tr. 93 (JG), 251-252 (S. Harari), 450 (D. Harari).

¹³ Stips. 14-16; CX-3; Tr. 94-96 (JG), 253, 258-260 (S. Harari).

¹⁴ The Hararis have asserted that JG made the loan or gift to Sian Harari, not to David Harari. As set forth below, however, events that transpired after 2008 demonstrate that JG and the Hararis considered both Hararis to have been the recipients of the \$20,000.

was no written loan agreement, Sian Harari understood, according to JG, that she had received a loan and promised to repay it by April.¹⁵

The Hararis' testimony is more equivocal and, to a large extent, contradictory. On one hand, the Hararis insist that the money was a gift.¹⁶ Sian Harari testified, for example, that after JG offered to give her the money and Sian Harari demurred that she did not know when or if she could ever pay JG back, JG said simply that it was "not about that," "there is no problem," and that "one day you could return the favor to me."¹⁷ On the other hand, the Hararis also have characterized the transaction as a loan. Thus, for example, in on-the-record testimony before FINRA, Sian Harari testified that, when the \$20,000 was discussed, JG stated, "Please let me lend you \$20,000."¹⁸ Similarly, both Hararis have repeatedly referred to the \$20,000 as a loan that was forgiven or "considered fully repaid."¹⁹

Accordingly, although JG and the Hararis agree that the Hararis did not pay JG \$20,000 in April 2008 and that JG did not mention the money again for nearly two years,²⁰ they disagree about what transpired thereafter. According to JG, she waited to seek repayment in view of the

¹⁵ Tr. 94-95, 146, 170 (JG). We do not believe that Sian Harari specified that she would repay the loan in April. Instead, we conclude that JG understood that the Hararis would repay the loan as soon as David Harari got out of the hospital and returned to work—something that JG anticipated would happen in the near future. Tr. 178 (JG). David Harari was hospitalized for around six weeks, beginning on January 25, 2008, and did, in fact, return to the office by April. CX-22, at 20 (David Harari's November 15, 2012 on-the-record testimony); Tr. 105-106 (JG). See Tr. 253-256, 339 (S. Harari). Although JG's belief that she would be repaid in a matter of months was, at best, unrealistic given the Harari's financial condition, it does not cause us to disbelieve her testimony that she loaned the money to the Hararis.

¹⁶ *E.g.*, Tr. 214 (D. Harari), 312 (S. Harari).

¹⁷ Tr. 259-260, 312-313 (S. Harari).

¹⁸ Tr. 314-315 (S. Harari). At the hearing, Sian Harari asserted that her on-the-record testimony concerned a Spanish verb, "which is give you money," and that she was "translating [it] to English, let me lend you money." Although it is unclear what is meant by this explanation, the fact remains that Sian Harari used the English term "lend" to describe what JG offered to do.

¹⁹ See *infra* pp. 7-8.

²⁰ *E.g.*, Stip. 17; Tr. 98-99, 174, 185 (JG).

Hararis' continuing financial difficulties.²¹ Then, after the Hararis paid for their daughter's wedding and JG concluded that they could afford to repay the loan, she asked David Harari when he was going to pay back the \$20,000. According to JG, he responded by telling her that he had "paid [her] back" through the money he had helped her make on investments and directed her to her account statements.²²

JG testified that she then told Sian Harari about the interaction with David Harari, asked for repayment of the loan, and thereafter was assured that she would be paid back "little by little."²³ However, JG received nothing from the Hararis until July 2011, when Sian Harari gave JG a \$1,000 check that JG understood to be payment toward the loan.²⁴ JG also testified that, around seven months later, at her urging, David Harari provided her with a handwritten IOU, acknowledging that he owed her \$19,000.²⁵ In sum, according to JG, she never told the Hararis that she had forgiven the loan.²⁶

The Hararis told several versions of a different story. On one hand, they testified that, in the years following the drawing and cashing of the \$20,000 check, JG repeatedly referred to the \$20,000 as a "loan" she had forgiven or considered repaid.²⁷ Indeed, Sian Harari repeatedly testified in her on-the-record testimony that the "loan was repaid, those are the words that [JG] used."²⁸ At the hearing, David Harari testified that, after he had a lengthy discussion with JG

²¹ Tr. 99, 185 (JG).

²² Tr. 98-100, 174-175 (JG).

²³ Tr. 100-101 (JG).

²⁴ Stips. 18, 19; CX-4; Tr. 115, 164 (JG), 197-198 (Pyle).

²⁵ *See infra* pp. 18-19.

²⁶ Tr. 127 (JG); *see* Tr. 164 (JG).

²⁷ *E.g.*, Tr. 280, 321 (S. Harari), 463 (D. Harari); CX-22, at 9 (D. Harari); CX-23, at 7-8 (Sian Harari's November 15, 2012 on-the-record testimony).

²⁸ CX-23, at 10; CX-23, at 4, 8, 11 (S. Harari).

about concerns she had regarding the planning services he had provided, JG and her boyfriend stated that David Harari had “repaid” JG by rendering those services.²⁹

By contrast, the Hararis also testified that JG viewed her “gift” of \$20,000 as a “favor” to the couple—one they undertook to return when they could even though JG did not expect them to do so. According to the Hararis, JG “never called [the \$20,000] a loan”; the \$1,000 check was not a loan repayment but a voluntary return “favor”; and David Harari provided the handwritten IOU to JG to assure her that he would “repay [her] favor,” even as JG was insisting that he need not.³⁰

On the other hand, the Hararis acknowledged that JG did ask, more than once, that they *repay* the “favor,” “gift,” or “loan” she had extended. Indeed, as David Harari testified, there were “several instances, at least twice, where [Sian], in particular, was made to feel badly about the gift that [JG] had given us.”³¹ In this account, one of those instances resulted in the delivery of the \$1,000 check, after JG told Sian Harari that she was in a precarious financial situation and needed to assist a family member. In his on-the-record testimony, David Harari recounted the circumstances as follows: “[W]e had had that conversation . . . that her sister was ill and she wanted repayment. So, we said . . . we’ll just start repaying that.”³² Indeed, he admitted that, even prior to this conversation, JG had indicated that she expected repayment of the \$20,000.³³ As the Hararis further acknowledged, after JG retained counsel in the spring of 2012, Sian Harari signed and David Harari guaranteed a June 13, 2012 note promising to pay JG \$19,000 plus six

²⁹ Tr. 217, 463 (D. Harari); *see* Tr. 270 (S. Harari).

³⁰ Tr. 226, 473-474 (D. Harari), 335 (S. Harari).

³¹ Tr. 472 (D. Harari).

³² CX-22, at 10 (D. Harari).

³³ CX-22, at 11 (D. Harari).

percent annual interest in installments beginning on June 15, 2012.³⁴ Sian Harari testified that she signed the promissory note—even though the \$20,000 “was never a loan”—because she was told that JG was “in a very difficult financial situation, and that she needed money.”³⁵

For the most part,³⁶ we credit JG’s version of events and reject the Hararis’. We conclude that JG lent the money to the Hararis, that the Hararis understood that the transaction was a loan, that JG sought repayment numerous times to little avail, and that she never forgave the debt.³⁷ JG was and is a single mother of three children, one of whom has special needs. Because of her child’s needs, she was and is not able to work outside the home, and her lack of income coupled with her spending habits rendered her financial outlook problematic when she was David Harari’s customer. As she also testified, her current financial situation “is really bad.”³⁸ In light of her financial situation, as well as her manner of testifying and demeanor while testifying, we credit her testimony that she would not have gifted the money to the Hararis because she could not have afforded to do so.³⁹ In addition, JG’s subsequent actions, including requesting repayment and retaining a lawyer to collect the debt, as well as testimony corroborating her version of events, also support her contention that she did not make a gift of the \$20,000.⁴⁰

³⁴ Stips. 20, 21; Tr. 115, 147-148 (JG), 285, 288 (S. Harari). To date, only \$500 has been paid under the note. *See* Stip. 22.

³⁵ Tr. 286 (S. Harari).

³⁶ *See supra* n. 15.

³⁷ Our conclusion is unaffected by our additional findings that there were times when JG did not press for repayment; told the Hararis not to worry about the loan; and referred to the loan as a favor.

³⁸ *See* Tr. 89-90, 159-160 (JG), 416 (King), 497 (D. Harari).

³⁹ Tr. 97 (JG).

⁴⁰ According to Ameriprise’s compliance officer, JG told him in early 2011 that she had loaned the Hararis “in the vicinity of \$20,000,” that one of the Hararis had asked for the assistance, that JG made the loan to help “bridg[e] over medical difficulties that Mr. Harari was having,” and that JG “expected repayment after that.” Tr. 364, 378-379 (King).

Indeed, much of what the Hararis did and said in the years following their receipt of the \$20,000 confirms that, despite their shifting and obfuscatory testimony, they understood that they had received a loan that they needed to repay. As for the Hararis' words, we consider the testimony of Joseph Pyle, Raymond James and Associates San Antonio operations manager, to be particularly significant.⁴¹ When Pyle noticed that, in July 2011, David Harari had made a withdrawal from his brokerage account in the form of a \$1,000 check payable to JG, Pyle sought to learn more. According to Pyle, David Harari explained that he had borrowed money from JG and that the check represented his "final payment." That David Harari chose to describe the \$1,000 in this way is strong evidence that he understood that the \$20,000 was a loan.⁴² As far as the Hararis' actions are concerned, we consider David Harari's writing out the IOU, and Sian Harari's signing and David Harari's guaranteeing a promissory note, to be compelling evidence that, contrary to much of their testimony, they knew, at all times pertinent, that they had received a loan and not a gift, that the loan had not been repaid, and that JG was seeking repayment.

C. In 2008 and 2010, David Harari Induced JG to Pay "Planning Fees" Directly to Him and Then Appropriated the Funds for Other Purposes.

At Ameriprise, financial planning engagements were considered "360-day contract[s], during which [planners] provide[d] supportive services and advi[sory] services to the client."⁴³ The planning year began on May 30th of each calendar year and ran through May 29th of the following year. Typically, the payment of planning fees was "contemporaneous" with the beginning of the planning year and fees were paid by credit card or by account transfer.⁴⁴ Thus,

⁴¹ As set forth *infra* p. 17, the Hararis joined Raymond James in December 2010, after leaving Ameriprise.

⁴² Tr. 196-198 (Pyle); CX-4. That the check actually represented the first payment on the loan does not diminish the significance of David Harari's admission that JG had loaned him money.

⁴³ Tr. 362 (King).

⁴⁴ Tr. 27 (Goodman), 362 (King).

for example, on June 4, 2007, JG paid \$7,500 to Ameriprise by credit card for financial planning services David Harari was to render for the planning year beginning May 30, 2007, and ending May 29, 2008.⁴⁵

According to JG, while she was meeting with David Harari at his office in April 2008, however, he asked her to pay her upcoming \$7,500 financial planning fee to him directly. JG testified that David Harari stated that he needed the money and that he would see to it that \$7,500 was paid to Ameriprise by the due date.⁴⁶ JG complied, giving David Harari a \$7,500 check, dated April 23, 2008, made out to cash.⁴⁷ On May 14, 2008, however, Ameriprise processed a payment by account transfer for the planning services David Harari was to provide JG for the 2008-2009 planning year.⁴⁸ JG did not realize that she would be paying the fee twice, and she did not think it odd that David Harari asked her to pay the fee to him because she thought that “it was the same paying David or paying Ameriprise.”⁴⁹ In all events, David Harari did not deliver \$7,500 to Ameriprise.

According to JG, David Harari again induced her to pay her “planning fee” to him directly in 2010, stating that he was in a difficult financial situation and again asking her to pay the fee earlier than it would otherwise be due.⁵⁰ This time, because JG did not have \$7,500 in her checking account, she wrote three checks, totaling \$7,500: a \$3,500 check to David Harari dated June 15, 2010; a \$3,000 check to herself dated June 21, 2010; and a \$1,000 check to cash dated June 30, 2010. The latter two checks bore the notation “David Harari” on the memo line;

⁴⁵ Stips. 11, 12; CX-8; Tr. 26-27, 32 (Goodman), 113-114 (JG).

⁴⁶ Tr. 106-107 (JG). JG understood that she was paying her financial planning fees in advance and that David Harari would serve as a conduit for the payment of those fees to Ameriprise. Tr. 134 (JG).

⁴⁷ Stips. 23, 24; CX-6; Tr. 105-107 (JG).

⁴⁸ CX-8, at 2; Tr. 28 (Goodman), 149 (JG).

⁴⁹ Tr. 63-64 (Goodman), 105-106, 110-111 (JG).

⁵⁰ Tr. 109-110, 112-113 (JG).

JG cashed them and gave the proceeds to David Harari.⁵¹ Again, JG testified that she thought that she was paying a planning fee to David Harari (even though Ameriprise had already processed her fee payment for the 2010-2011 planning year).⁵² Again, JG did not realize that she would be paying the fee twice⁵³ and, again, David Harari did not convey \$7,500 to Ameriprise.

David Harari's explanation of these payments differs from that of JG. He testified unequivocally that JG never paid financial planning fees to him directly.⁵⁴ In a 2012 response to a question from FINRA about the 2010 checks, he represented that he had cashed some of the checks for JG and that other checks repaid loans he had made to her.⁵⁵ At the hearing, he testified that he could not recall what the \$15,000 worth of checks was for and speculated that they might have repaid loans he made to JG for landscaping, roofing, or plumbing, or that they may have been used to provide JG with cash to take on trips to Mexico.⁵⁶

We credit JG's version of events and conclude that David Harari obtained \$15,000 from JG by falsely representing that those funds would ultimately be used to pay financial planning fees when, in fact, he appropriated them for other purposes. We arrive at this conclusion for four primary reasons. First, Ameriprise's compliance officer's testimony corroborates JG's. He testified that, in 2011, JG disclosed to Ameriprise that she had paid financial planning fees directly to David Harari in cash and she brought evidence of those payments to the firm, in the

⁵¹ Stips. 25-28; CX-7; Tr. 108-109 (JG).

⁵² CX-8, at 3; CX-9; Tr. 110-111, 151 (JG); *see* Tr. 32 (Goodman).

⁵³ Tr. 110 (JG). As JG told the FINRA examiner, she trusted David Harari and did not realize, until around one year later (*see infra* p. 18), that she may have paid for the same services more than once. Tr. 64 (Goodman).

⁵⁴ Tr. 452, 489 (D. Harari). Sian Harari also testified that David Harari loaned money to JG for trips and meals and to pay for a tire. Tr. 274-276 (S. Harari). She added that the loans amounted to "a few hundred dollars here and there." Tr. 275 (S. Harari).

⁵⁵ *See infra* p. 24.

⁵⁶ Tr. 489-491 (D. Harari).

form of copies of the checks she had written.⁵⁷ Second, JG denied ever receiving loans from the Hararis or cash from David Harari to take to Mexico.⁵⁸ We credit this testimony, at least with respect to events taking place in 2008-2010. Based on her demonstrated desire to have the Hararis repay the loan, had JG received money from the Hararis after February 2008, she would have treated it as partial repayment of the \$20,000 loan. As one witness put it, the assertion that JG was repaying loans made to her by David Harari “just didn’t make sense. . . . If [JG] loaned Mr. Harari \$20,000, then why was he loaning [JG] \$7,500?”⁵⁹

Third, it is significant that JG’s financial planning fee was \$7,500, that the 2008 check was for exactly \$7,500, and that the 2010 checks added up to exactly \$7,500 and were drawn in fairly quick succession. It is highly improbable that a series of undocumented loans from the Hararis to JG would happen to add up to, or be voluntarily paid off at, the precise amount of JG’s planning fee, not once but twice over a period of two years.

Fourth, in contrast to JG’s coherent and consistent testimony that she understood she was paying the \$15,000 to David Harari as planning fees, David Harari’s explanation of the checks has been inconsistent, and, as he testified at the hearing, also a matter of “conjecture.”⁶⁰ And, while the checks JG produced provide support for her testimony, David Harari’s testimony was without any documentary support.

Based on all the circumstances surrounding JG’s 2008 and 2010 payments, we further conclude that David Harari never intended to advance the funds to Ameriprise as planning fee

⁵⁷ Tr. 407-411 (King).

⁵⁸ Tr. 114-115 (JG).

⁵⁹ Tr. 199 (Pyle).

⁶⁰ Tr. 490 (D. Harari).

payments.⁶¹ Considering the systems in place for charging and receiving fees, David Harari must have been aware that Ameriprise would process JG's fee payments in the normal course. Thus, as Sian Harari testified, for example, before David Harari could charge a fee, it had to be approved and the plan needed to be "closed." Moreover, when the client paid Ameriprise the fee, the couple would send the client a receipt and a summary thank-you letter.⁶² Accordingly, David Harari's requests for advance fee payments were deliberately deceptive.

On the other hand, although JG had similar contemporaneous opportunities to recognize that she was apparently paying twice for the same service,⁶³ we reject the Hararis' assertion that JG's failure to raise contemporaneous concerns about double payment establishes that, in fact, she did not believe she was paying planning fees directly to David Harari. Instead, we conclude that JG's inaction was attributable to the fact that JG did not carefully attend to statements or other paperwork pertaining to her account and therefore was unaware of the facts that would give rise to concerns. Thus, for example, when asked whether she was aware of when she was paying fees year to year, she answered "unfortunately no" and shook her head "no" when asked whether she had observed a pattern of when fee payments were made.⁶⁴

Finally, although the Hararis urge the Panel to conclude that JG has lied about the payments because, as detailed below, she came to the Hararis' aid *after* she learned of the double

⁶¹ Of course, that Harari did not, in fact, convey the funds to Ameriprise gives rise to a strong inference that he never intended to do so.

⁶² Tr. 243-244 (S. Harari).

⁶³ *E.g.*, Tr. 150 (JG). JG was required to sign forms to authorize each fee payment, unless she had authorized future annual charges on her credit card. *See* Tr. 243-244 (S. Harari), 359-360 (King), 453 (D. Harari). As the testimony concerning the Harari's practices establishes, JG would have received a receipt and summary letter when a payment was made and, in addition, JG had access to account documentation, including to her credit card statements, that would have reflected her fee payments. Finally, as David Harari correctly points out, JG's April 2008 payment to David Harari for "fees" and her May 2008 payment to Ameriprise were in close proximity.

⁶⁴ Tr. 176-177 (JG).

payments and felt betrayed,⁶⁵ the Panel declines to do so. Instead, the Panel credits JG's testimony that, in part, she helped the Hararis "because of . . . the friendship that existed before."⁶⁶

D. Beginning in 2007, David Harari Failed to Disclose Tax Liens.

At times pertinent to this proceeding, the Hararis were subject to tax liens for tax years 2002 through 2008. On November 30, 2007, the IRS filed a tax lien with the county clerk for Bexar County, Texas (the county in which the Hararis resided) for tax years 2002-2005. Additional federal tax liens were prepared and filed in mid-2009 (for tax year 2007), late 2009 (for tax year 2006), and early 2010 (for tax year 2008). The liens were filed to satisfy unpaid taxes assessed at more than \$203,000.⁶⁷ Although he filed four amendments to his Form U4 between late 2007 and December 2010, David Harari did not disclose the liens on his Form U4 until after he joined Raymond James in December 2010.⁶⁸ Even then, he did not disclose the liens in the first version of the Form U4 that he submitted to Raymond James.⁶⁹ Instead, only after Raymond James discovered, as a result of a standard fingerprinting and background check, that the liens had been filed and advised David Harari that he needed to disclose them, did his Form U4 disclose liens.⁷⁰

⁶⁵ Tr. 143, 172 (JG).

⁶⁶ Tr. 144-145 (JG). The Hararis also emphasize that JG neither complained to the Hararis or the criminal authorities about these payments nor informed the Hararis that Ameriprise ultimately reimbursed her planning fees (*see infra* p. 18). For the reasons stated above, however, we credit JG's testimony and we consider this inaction insignificant and not indicative of knowledge on JG's part that she did not pay planning fees to David Harari.

⁶⁷ Stips. 50-53; CX-18; CX-19; Tr. 40-43 (Goodman).

⁶⁸ Stip. 54; CX-21, at 12, 16; CX-20, at 12; CX-1, at 7; Tr. 39-40, 44-46 (Goodman); *see infra* p. 17.

⁶⁹ Tr. 192-193, 205-206 (Pyle).

⁷⁰ CX-21, at 12, 16; Tr. 192-193, 200, 203-206 (Pyle). Even then, the disclosure, which reflected only what had been reported to the firm in the course of the background check, did not accurately or completely describe the liens. *See* CX-21, at 16, and *compare* CX-18; Tr. 208-209 (Pyle). Accordingly, when David Harari represented to FINRA in a response to an 8210 request that he told Raymond James about the tax lien situation when he began employment with the firm, his response was misleading at best. *See* CX-15, at 2.

David Harari testified that he did not receive notices of certain liens.⁷¹ At the same time, he testified that he did not disclose liens he knew about because he was advised by an attorney with a tax relief service that he “was in a noncollectable status with the IRS” and, therefore, “it was not a lien as such” and need not be reported.⁷² We do not credit his claims and conclude instead that he was aware of the liens at or around the time they were filed and that, even according to his own testimony, his failure to disclose the first and second liens could not have been attributable to legal advice. First, as for David Harari’s assertion that he did not receive notices, nothing in the record corroborates it and much undermines it. Most importantly, the record contains copies of IRS records documenting certified mailings of notices of tax liens filed in 2007 and 2009.⁷³ The IRS records reflect the number assigned to each certified mailing and dates on which they were sent: November 27, 2007, May 19, 2009, and October 6, 2009. The records also show that the notices were each sent separately to David Harari and Sian Harari at their residential address.⁷⁴ In addition, David Harari’s own testimony undermines his contention that he did not receive notices of liens. Asked when he first became aware of the liens, David Harari ultimately answered “2009” and acknowledged that, before he conversed with the attorney with the tax relief service about the liens—sometime in or after September 2009—he “saw something that [he] understood to indicate a tax lien.”⁷⁵ Accordingly, by his own

⁷¹ David Harari specifically denied receiving notice of the November 2007 lien (Tr. 478) and generally denied seeing any document bearing the county clerk’s certification of filing and recordation of liens. Tr. 501, 510 (D. Harari).

⁷² Tr. 229, 478, 501, 509 (D. Harari).

⁷³ CX-19.

⁷⁴ CX-19; CX-20, at 7.

⁷⁵ Tr. 508, 510-511 (D. Harari). See Tr. 228-230 (D. Harari). At one point in the proceeding, David Harari testified, inconsistently, in quick succession, that he first learned of the liens when Raymond James discovered them (in 2010) or when he hired the tax relief service (in 2009). Tr. 231. Then, he testified that he could not remember whether he knew about the liens when he hired the tax relief service. *Id.* Later, he stated that Raymond James first made him aware of *the need to disclose* the liens in 2010 but that *he was aware* of the liens in 2009. Tr. 508 (D. Harari).

admission, David Harari was aware of liens no later than the fall of 2009. Second, while we do not credit his unsupported assertions that he did not disclose the liens because the attorney with the tax relief service told him they were not liens, David Harari testified that he did not retain the service until September 2009. Therefore, even if we were to credit his assertions, his failure earlier to disclose liens filed before the fall of 2009 could not have been attributable to any advice from the tax attorney, as David Harari himself acknowledged.⁷⁶

E. In Connection with a FINRA Inquiry, the Hararis Created False Documentation to Support False Statements David Harari Provided to FINRA and the Hararis' Employer about JG's Loan and Her 2010 "Planning Fee" Payment.

In December 2010, David and Sian Harari terminated their association with Ameriprise and joined Raymond James.⁷⁷ On November 30, 2011, Ameriprise amended David Harari's Form U5 to disclose that he was subject to internal review for violating company policy related to commingling funds and accepting cash payments from a client.⁷⁸ The review was predicated on information Ameriprise compliance officer Matthew King gleaned from conversations involving JG.

King had initiated contact with David Harari's clients, including JG, in the course of his investigation into the suitability of David Harari's recommendations and in an effort to notify them that they would receive a refund of planning fees that had been prepaid for the planning

⁷⁶ CX-15, at 1; Tr. 228-230 (D. Harari). By the fall of 2009, David Harari had filed three of the four pertinent amendments to his Form U4 and none of those amendments disclosed the first lien. *See* CX-1, at 7. In addition, he had failed for at least four months to update his Form U4 to reflect the second lien.

⁷⁷ Stips. 1, 2; CX-1, at 1, 2; Tr. 191-192 (Pyle). David Harari had been suspended from Ameriprise for engaging in transactions that the firm deemed unsuitable even though the transactions previously had been approved by Ameriprise principals. Tr. 22-23, 55-56 (Goodman), 350-352, 366-367, 375 (King).

⁷⁸ *See* CX-1, at 13-14; CX-10; Tr. 24-25 (Goodman).

year beginning in May 2010.⁷⁹ Initially, King was unable to reach JG. Ultimately, however, beginning in early 2011, JG met with or otherwise conversed with King (or her new Ameriprise representative) numerous times, discussing, among other things, the suitability of her investments and the propriety of the fees she had paid for financial planning services.⁸⁰ In the course of these conversations, JG learned that, at least once, she apparently had paid David Harari planning fees twice—both indirectly through Ameriprise and directly by checks paid to David Harari.⁸¹ During these conversations, JG also told King that she had made a loan “in the vicinity of \$20,000” to the Hararis; related that she had expected repayment; expressed “a great deal of distress that she had not been able to be repaid on [the] loan”; and sought repayment from Ameriprise.⁸² Ultimately, Ameriprise did not repay the loan, but it did reimburse JG \$7,500 on account of the 2008 “planning fee” payment made directly to David Harari and, in addition, reimbursed \$30,000 collected as planning fees from 2007 through 2009.⁸³

The disclosure of Ameriprise’s investigation led FINRA staff to inquire into the \$20,000 loan, the checks JG provided to David Harari purportedly for financial planning services, and

⁷⁹ Tr. 355, 358, 370, 400 (King). The record does not support the Hararis’ assertions that King launched the investigation in retaliation for David Harari raising concerns that King’s position as an office manager of the building in which the Hararis worked gave rise to a conflict of interest. King testified, without meaningful contradiction, that his office manager position was disclosed to and approved by Ameriprise, that he was not asked to resign from it, and that he was not aware that David Harari had raised any concern about the role. Tr. 369, 383, 391 (King). King also testified, without any contradiction, that Ameriprise conducted similar investigations into the practices of other advisers, that other advisers also were suspended, and that his investigation of David Harari began around nine months before King resigned as office manager of his own accord. Tr. 376, 390, 392 (King). Accordingly, we reject the Hararis’ contention that King harbored personal animosity toward them. We further conclude that the record lacks any support for the Hararis’ contention that the concerns about David Harari that JG raised with Ameriprise (and, ultimately, FINRA) were the product of King’s improper influence or that King somehow induced JG to testify falsely in this proceeding.

⁸⁰ Tr. 103-104, 137, 141 (JG), 356-357, 361, 363-365, 401, 405-407, 411 (King).

⁸¹ Tr. 105, 143 (JG). *See* Tr. 363-365, 367, 409-410 (King).

⁸² Tr. 368, 378 (King). *See* Tr. 103, 163 (JG).

⁸³ RX-18; RX-19; Tr. 139-140 (JG), 368, 403-404 (King). JG did not tell the Hararis that she had accepted a settlement with Ameriprise. Tr. 277 (S. Harari).

other matters, including alleged failure to disclose tax liens.⁸⁴ Accordingly, by letter dated December 29, 2011, David Harari was requested, pursuant to FINRA Rule 8210, to supply to FINRA staff information about: the status of JG’s loan, including whether it had been repaid; checks JG alleged she had written in 2010 to pay for “planning fees”; and undisclosed tax liens.⁸⁵ FINRA’s inquiry also was brought to the attention of Raymond James and, as a consequence, Raymond James began an inquiry of its own into the matter.⁸⁶

Thereafter, David Harari and his wife called JG repeatedly asking to meet; they were frightened that they were facing “imminent dismissal” from Raymond James and they needed to ensure that the firm understood that “that loan [was] done with.”⁸⁷ Ultimately, JG met with the Hararis at her home on January 8, 2012. According to all parties involved, JG asked the Hararis how she could help them.⁸⁸ From there, JG’s version of events diverges in some significant ways from the Hararis’. JG testified that David Harari suggested that she should write a letter stating that the Hararis had repaid the loan she had made to them.⁸⁹ In view of her limited English, she asked David Harari to write out what he wanted in the letter, which he did, and she then typed and signed the letter.⁹⁰ According to JG, she agreed to sign the letter in an effort to help the Hararis because of their past friendship and in return for something in writing acknowledging the debt the Hararis owed her.⁹¹ David Harari acceded to JG’s request by

⁸⁴ Tr. 21-25, 32-33 (Goodman).

⁸⁵ CX-10, at 2; Tr. 33 (Goodman).

⁸⁶ Stip. 32; Tr. 193-194, 198 (Pyle).

⁸⁷ Tr. 471-472 (D. Harari); Tr. 116-117 (JG), 318-319 (S. Harari).

⁸⁸ Tr. 118-119 (JG), 277 (S. Harari), 467 (D. Harari); *see* Stips. 33-34.

⁸⁹ Tr. 118-119 (JG).

⁹⁰ CX-11; Tr. 118-119, 168 (JG); *see* Tr. 36-37 (Goodman).

⁹¹ Tr. 121-123, 144-145 (JG).

providing her with a signed, handwritten note stating that he owed her \$19,000 and by promising, according to JG, to give her a check for \$19,000.⁹²

According to the Hararis, JG suggested that she might call someone on their behalf but, after either Sian or David Harari or both said “no,” either David Harari or JG suggested that JG could write a letter.⁹³ The Hararis recounted that JG attempted to write the letter herself but became frustrated and asked David Harari for his assistance, which he rendered.⁹⁴ Furthermore, the Hararis denied that JG conditioned her assistance on receipt of an IOU. Although they acknowledged that, as JG was signing the letter, David Harari gave her the IOU, the Hararis claimed that the IOU was simply a reflection of their earlier decision to “take care of this thing. No more friendship.”⁹⁵ Indeed, David Harari testified that he provided the IOU despite JG’s insistence that he need not.⁹⁶

The divergent accounts of the events of January 8, 2012, give rise to two material disputes of fact. As to the first, we find that, as JG testified, JG expressly conditioned her help on obtaining an IOU. By this time, JG had repeatedly expressed her desire to be repaid and had repeatedly sought repayment. Asking for an IOU would have been completely in keeping with her earlier actions. We conclude David Harari did not simply provide written acknowledgement of the debt unbidden.⁹⁷

⁹² Stips. 37-38; CX-13; CX-17, at 5; Tr. 121-124, 181 (JG). David Harari erroneously dated the note December 8, 2012. Tr. 223 (D. Harari); *see also* CX-17, at 1.

⁹³ Tr. 278, 320 (S. Harari), 468 (D. Harari).

⁹⁴ Tr. 278-279 (S. Harari), 468-470 (D. Harari).

⁹⁵ Tr. 280 (S. Harari); Tr. 222-223 (D. Harari), 279-280, 324, 326 (S. Harari).

⁹⁶ Tr. 474 (D. Harari).

⁹⁷ We need not resolve the dispute as to whether David Harari proposed giving JG a \$19,000 check, as JG testified, or whether the checks were something only JG and Sian Harari discussed, as the Hararis testified (*e.g.*, Tr. 326-327 (S. Harari), 474 (D. Harari)). It has little or no bearing on the ultimate issues in this proceeding, given that Sian Harari wrote checks payable to JG, including one for \$19,000, and provided the checks to JG, as set forth below.

Second, we conclude that David Harari, and not JG, determined the content of JG's letter. The record contains a draft of the letter (CX-12) that David Harari has admitted is, for the most part, in his handwriting.⁹⁸ Nevertheless, he stated that he did not write the letter for JG and instead merely provided JG with a "translation of two points that should have been incorporated into a proper letter."⁹⁹ When asked, in essence, what he meant by "translating," he stated that he was not converting JG's Spanish into English, but that he was helping JG to put *her thoughts* into words.¹⁰⁰ At the same time, however, he contended that JG's ideas were "not satisfactory" because "she was in a rush."¹⁰¹ As a consequence, the letter "didn't explain anything" and he did not "completely agree" with JG signing the letter.¹⁰²

We do not credit David Harari's claims. First, even a cursory examination of the handwriting in CX-12 reveals that, other than the date, David Harari wrote the draft letter in its entirety, as JG testified, and not just in part, as he claimed.¹⁰³ That we disbelieve his assertions about the handwriting also causes us to doubt his claims about whose ideas are set forth in the letter. Other factors cement this doubt and lead us to conclude that he is lying about the authorship of the letter. First, his testimony about this issue has been, by turns, shifting and confusing. When first questioned by FINRA about whether he participated in the writing of JG's letter, David Harari stated that, although he was present when the letter was written, he did not have any involvement in its "wording" and he specifically denied preparing a handwritten

⁹⁸ CX-17, at 6; Tr. 37 (Goodman). David Harari has denied writing words that describe the loan as "fully" paid. See CX-17, at 6.

⁹⁹ Tr. 221-222, 225 (D. Harari).

¹⁰⁰ Tr. 225, 507-508 (D. Harari).

¹⁰¹ Tr. 222 (D. Harari).

¹⁰² *Id.* (D. Harari).

¹⁰³ See Tr. 120-121 (JG), and compare CX-17, at 6.

draft.¹⁰⁴ Then, despite being confronted by CX-12 at the hearing, he maintained that his denial was “accurate” because he merely translated for JG.¹⁰⁵ Second, it defies common sense and logic to believe that David Harari, the person responsible for responding to the inquiries from FINRA and his firm, and who feared for his continued employment, would cede to JG the responsibility of determining how to address the two points he believed the letter needed to take up. It is particularly unbelievable that, after soliciting JG’s help to explain the situation to his employer, David Harari would have been content to supply to his employer a letter *JG drafted* in a “rush” to “get it done.”

The letter that David Harari drafted, and JG typed, signed and dated January 8, 2012,¹⁰⁶ read:

To whom it my concern:

I herby declare that the loan I made to Mrs. Sian Harari for \$20,000, while her husband Was in I.C.U. at the hospital has been fully paid to me.

The \$7,500.00, were for repayment of loans the Harari’s made to me, and was in no way Related to Ameriprise in any way.

Respectfully,

/s

JG.

Within the next few days, Sian Harari provided JG with one \$19,000 check (bearing the notation “loan”), two checks for \$5,000, and one for \$4,000.¹⁰⁷ Sian Harari backdated the checks to October 2011, and, as she admitted, she did so to support the letter’s representation that the loan

¹⁰⁴ Stip. 49; Tr. 224 (D. Harari); CX-22, at 13.

¹⁰⁵ Tr. 225 (D. Harari). As reflected in text, Sian Harari was present when the letter was solicited, written, typed, and signed. See Tr. 168 (JG), 320-323 (S. Harari).

¹⁰⁶ See Stip. 35; CX-11.

¹⁰⁷ Stip. 40; CX-14; Tr. 124-126 (JG), 281, 327-328 (S. Harari).

had been repaid should Raymond James ask for proof.¹⁰⁸ As she further admitted, the checks were not written to repay the loan, given that the Hararis “didn’t have the money to pay any of those checks back.”¹⁰⁹

Shortly after the Hararis obtained JG’s letter, David Harari sent it, together with a draft of his response to FINRA’s information request, to Raymond James operations manager Pyle, among others.¹¹⁰ According to Pyle, JG’s letter raised rather than diminished concerns because it was created in the midst of the investigation and because he could not understand the relationship between the loans referred to in the letter. Consequently, he contacted the firm’s compliance and legal departments to determine what steps should be taken. Within a few days, David Harari was permitted to resign.¹¹¹

Around the same time, David Harari sent his response, including JG’s letter, to FINRA.¹¹² As Sian Harari acknowledged, she reviewed the response before it was sent.¹¹³ In answering a question asking about the current status of the loan, David Harari wrote “The loan has been repaid in full. **SEE APPENDIX LETTER #2.**”¹¹⁴ Appendix Letter 2, in turn, was JG’s letter.¹¹⁵ Then, in an addendum to the response, “expanding and in answer to [FINRA’s] questions,” David Harari elaborated on the “JG case” by reiterating, among other things, that the

¹⁰⁸ Stips. 42-43; CX-14; Tr. 282-283, 329-330 (S. Harari).

¹⁰⁹ Tr. 282-283, 329 (S. Harari). JG testified that the Hararis told her not to cash the checks, that she was waiting until they called to cash the checks, and that they never called. Tr. 126-127 (JG). We need not determine whether, in fact, JG believed that the checks were written to eventually repay the loan. By contrast, Sian Harari’s concession that the Hararis had insufficient funds to pay the backdated checks and that she did not write the checks to repay the loan has a material bearing on the disposition of this matter.

¹¹⁰ Stip. 47; Tr. 194-196, 199 (Pyle), 222 (D. Harari).

¹¹¹ Tr. 199-200 (Pyle).

¹¹² Stips. 44, 46; Tr. 222 (D. Harari); *see* CX-15.

¹¹³ Stip. 48; Tr. 331 (S. Harari).

¹¹⁴ Stip. 44; CX-15, at 2; Tr. 33-34 (Goodman).

¹¹⁵ Tr. 34-35 (Goodman); *see* CX-11.

loan had been “fully repaid.”¹¹⁶ Similarly, in response to questions concerning the checks that JG had written in 2010 for what she thought was the upcoming financial planning fee, David Harari twice stated that JG wrote some of the checks to repay cash loans he had made to her and that she wrote others to cash so that he could negotiate them for her. Again, he referred to JG’s letter in support of his assertions.¹¹⁷

We conclude that, in drafting his response to FINRA’s inquiry, appending JG’s letter, and supplying both to his employer and FINRA, David Harari knowingly misrepresented to his employer and FINRA the status of his \$20,000 indebtedness to JG and the nature of the 2010 payments totaling \$7,500. The statements regarding the \$20,000 were false not because, as the Hararis have asserted, the \$20,000 was a gift and not a loan,¹¹⁸ but because, as we have found, the \$20,000 was a loan that had not been repaid. As we have also found, the Hararis knew JG had loaned them the \$20,000 and that the loan had not been repaid. It follows that David Harari’s misstatements about the \$20,000 were knowingly made. Similarly, David Harari’s statements about the 2010 checks, including statements in JG’s letter, were false because, as we have found, the checks were not written to repay loans or cash advances but to advance to David Harari what David Harari represented would be a planning fee payment.¹¹⁹ Given these findings, David Harari’s misstatements about the checks were knowingly made.

As for Sian Harari, we conclude that she participated in the creation of false documentation—JG’s letter and the backdated checks— that she knew or intended would be

¹¹⁶ Stip. 45; CX-15, at 7; Tr. 34 (Goodman).

¹¹⁷ CX-15, at 3, 7.

¹¹⁸ Thus, for example, while David Harari has conceded that the statements regarding the full repayment of the loan in his Rule 8210 request were untrue, he did so only after testifying the \$20,000 was a gift and not a loan. Tr. 214-218 (D. Harari).

¹¹⁹ The Hararis contend that JG’s willingness to participate in a deception undermines her credibility. But when we have credited JG’s testimony over that of the Hararis we have done so for reasons that are not undercut by the fact that JG signed the letter drafted by David Harari.

provided to FINRA or Raymond James or both. She was involved in setting up the meeting at JG's home, participated in the conversations surrounding the writing of JG's letter, and was present while it was written. She knew that it falsely stated that the loan had been repaid. Given that she reviewed her husband's Rule 8210 response, she knew that JG's letter would be supplied to FINRA and Raymond James and that the response itself repeated and elaborated on the falsehoods in JG's letter concerning the loan. At the same time, she endeavored to further the deception by writing the backdated checks—which she never intended to honor and could not honor—to supply to Raymond James as proof of the falsehoods.

III. Conclusions of Law

A. David Harari Provided False Information to FINRA and His Firm and Sian Harari Participated in the Deception.

To carry out its responsibility to police compliance with securities laws, rules, and regulations, FINRA “must have the full cooperation of persons subject to its jurisdiction.”¹²⁰ FINRA Rule 8210, which vests FINRA staff with the authority to require firms and associated persons to provide information and testimony with respect to matters involved in an investigation, thus imposes an obligation on regulated persons to scrupulously comply with requests under the rule. When regulated persons instead supply false information, they “subvert [FINRA’s] regulatory processes” by misleading FINRA and potentially concealing wrongdoing.¹²¹ It is therefore well established that when persons provide false or misleading information to FINRA during the course of a FINRA investigation, they violate Rule 8210.¹²² It is equally well established that supplying false information to FINRA is inconsistent with the

¹²⁰ *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *15-16 (Apr. 1, 2005), *aff’d*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

¹²¹ *Rooms*, 2005 SEC LEXIS 728, at *15-16.

¹²² *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *23-24 (Aug. 22, 2008) (citing *John Montelbano*, 56 S.E.C. 76, 78 (2003)).

high standards of commercial honor and just and equitable principles of trade industry members are bound to observe under FINRA Rule 2010.¹²³ Similarly, because it is “a basic duty of all securities professionals to respond truthfully and accurately to their firm’s requests for information,” supplying false information to one’s firm can be inconsistent with Rule 2010.¹²⁴

David and Sian Harari do not contest liability on this ground.¹²⁵ But they misdescribe and underestimate the basis and extent of their liability. They identify as false only: (1) the statements David Harari made and documented (in the form of JG’s letter) about the status of JG’s loan, and (2) the backdated checks Sian Harari created to support those false statements. In the main, the Hararis contend that the statements were false because JG’s loan was in fact a gift and they further “deny that either of them intentionally provided false information and documents to FINRA” or their firm.¹²⁶ Finally, they deny that David Harari drafted JG’s letter.¹²⁷

By contrast, we have found that David Harari’s response to FINRA’s Rule 8210 request—which he supplied both to FINRA and his employer—was false in at least two respects. First, it stated and documented falsehoods about the status of what the Hararis knew was an unpaid debt to JG. Second, it stated and documented knowing misrepresentations about the checks JG wrote in 2010. We also have concluded that David Harari prepared a draft of JG’s letter and that his contrary assertions and testimony are lies. As for Sian Harari, we have

¹²³ *Id.* (citing, *e.g.*, *Rooms*, 444 F.3d at 1214).

¹²⁴ *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012) (citing *Ortiz*, 2008 SEC LEXIS 2401, at *22-23).

¹²⁵ *See, e.g.*, Tr. 492-493 (D. Harari) (“I wrote a letter to the regulatory agency . . . with a lie, trying to solve a problem.”).

¹²⁶ Respondent’s Pre-Hearing Brief at 1, 6. As stated, the Hararis’ testimony about the \$20,000 is riddled with inconsistencies. To the extent that the Hararis have admitted that the \$20,000 was a “loan,” the Hararis have conceded that the loan was not, in fact, repaid in full. *E.g.*, CX-22, at 15 (D. Harari).

¹²⁷ Respondent’s Pre-Hearing Brief at 1-2.

concluded that she participated in the creation of JG's letter. She knew that the letter and her husband's response to FINRA's Rule 8210 request would be supplied to FINRA and her firm and that both misrepresented the status of JG's loan. Finally, and most significantly, Sian Harari attempted to further this deception by creating additional false documentation—the backdated checks she had no intention to honor—which she planned to supply to Raymond James should the firm seek proof of what was written in JG's letter.

Based on the foregoing, the Hearing Panel concludes that David Harari violated Rules 8210 and 2010 and Sian Harari violated Rule 2010.

B. David Harari Obtained JG's Funds by False Pretenses.

It is well established that when an associated person obtains funds under false pretenses, he violates FINRA Rule 2010 because his conduct reflects on his ability to comply with the regulatory requirements of the securities business and to fulfill his duties in handling other people's money.¹²⁸ Despite David Harari's denials, we have concluded that he twice induced JG to pay him \$7,500 as financial planning fees, although he never intended to use the funds for that purpose. Accordingly, the Hearing Panel concludes that David Harari violated NASD Rule 2110 by obtaining \$7,500 from JG by false pretenses in April 2008 and that he violated FINRA Rule 2010 by obtaining \$7,500 from JG by false pretenses in June 2010.¹²⁹

¹²⁸ *Dep't of Enforcement v. McIntyre*, No. 20100214065-01, 2012 FINRA Discip. LEXIS 56, at *11 (OHO July 9, 2012) (citing, e.g., *Daniel D. Manoff*, 55 S.E.C. 1155 (2002) (registered person's use of a co-worker's credit card without authorization violated predecessor Rule 2110)); *James A. Goetz*, 53 S.E.C. 472, 475 (1998) (registered person's misuse of firm's matching gift program to obtain private school tuition credit violated Rule 2110); *Dist. Bus. Conduct Comm. v. Bruun*, No. C3B960004, 1998 NASD Discip. LEXIS 23, at *10 (NAC Jan. 23, 1998) (registered person's submission of false reimbursement requests for expenses he did not incur violated ethical standards); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, 1998 NASD Discip. LEXIS 4, at *6-7 (DBCC Jan. 16, 1998) (respondent violated Rule 2110 by obtaining funds from her employer under false pretenses).

¹²⁹ In December 2008, NASD Rule 2110 was superseded by FINRA Rule 2010. This decision refers to the conduct rules that were in effect at the time of Respondents' misconduct. Accordingly, NASD Rule 2110 applies to conduct before December 15, 2008, and FINRA Rule 2010 applies to conduct on or after December 15, 2008. These rules are available at www.finra.org/Industry/Regulation/FINRARules.

C. David Harari Converted JG's Funds.

The FINRA Sanction Guidelines state that “[c]onversion generally is 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.”¹³⁰ Again, despite David Harari’s denials, we have found that he twice obtained \$7,500 from JG by falsely representing that the funds would pay financial planning fees when, in fact, he appropriated them for other purposes. David Harari converted JG’s funds.¹³¹

Conversion is plainly inconsistent with the high standards of commercial honor and just and equitable principles of trade that FINRA seeks to promote and that FINRA Rule 2010 requires industry members to observe.¹³² Even when, as here, the conversion is not in connection with a securities transaction, it constitutes unethical business-related conduct, because it necessarily calls into question a person’s ability to fulfill fiduciary duties in handling other people’s money.¹³³

Accordingly, the Hearing Panel concludes that David Harari’s 2010 conversion of JG’s funds violated FINRA Rule 2010 and that his conversion of her funds in 2008 violated Rule 2010 predecessor NASD Rule 2110.¹³⁴

¹³⁰ FINRA Sanction Guidelines at 36 (2011). See *Dep’t of Enforcement v. Smith*, No. 2011029152401, 2014 FINRA Discip. LEXIS ___, at *___ (NAC Feb. 21, 2014), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p448891.pdf>.

¹³¹ The complaint also charged that, by this same conduct, David Harari made improper use of customer funds in violation of NASD Rules 2330(a) and 2110 and FINRA Rules 2150 and 2010. Because we find that he converted JG’s funds, we need not reach the issue of whether David Harari misconduct violated NASD Rule 2330 or FINRA Rule 2150.

¹³² See *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226-27 (1994).

¹³³ *Manoff*, 55 S.E.C. at 1162 (holding that misconduct that called into question respondent’s “ability to . . . fulfill his fiduciary duties in handling other people’s money” violated NASD Rule 2110).

¹³⁴ See *supra* n. 129.

D. David Harari Failed to Disclose Tax Liens.

Article V, Section 2 of FINRA's By-Laws requires that associated persons applying for registration with FINRA provide "such . . . reasonable information with respect to the applicant as [FINRA] may require" and further that such applications "shall be kept current at all times by supplementary amendments . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122, like its predecessor NASD IM-1000-1, in turn prohibits associated persons from filing or failing to correct registration information that is incomplete or inaccurate so as to be misleading. These provisions give rise to a requirement that registered persons ensure that their Forms U4 contain accurate, up-to-date information so that regulators, employers, and members of the public "have all material, current information about the securities professional with whom they are dealing."¹³⁵ It follows, therefore, that filing a false or incomplete Form U4 or failing to timely amend a Form U4 violates FINRA Rule 1122 and NASD IM-1000-1.¹³⁶ Failing to timely and accurately disclose information on a Form U4 also runs afoul of the high standards of commercial honor and just and equitable principles of trade that FINRA members and their associated persons must observe under Rule 2010.¹³⁷

Form U4 requires registered representatives to disclose any "unsatisfied judgments or liens." The form also instructs registered representatives who are subject to an unsatisfied judgment or lien to complete a Disclosure Reporting Page disclosing the: (1) judgment/lien amount; (2) judgment/lien holder; and (3) judgment/lien type. It is undisputed that, although the

¹³⁵ *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011).

¹³⁶ *E.g.*, *Dep't of Enforcement v. Scott Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *16-17 (NAC Dec. 12, 2008), *aff'd*, *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

¹³⁷ *Mathis*, 2008 FINRA Discip. LEXIS 49, at *16-17.

IRS filed tax liens on the Hararis' property in 2007, 2009, and early 2010, David Harari failed to amend his Form U4 to disclose the liens until Raymond James instructed him to do so after he joined the firm in December 2010 and, even then, he did not disclose the full extent of the outstanding liens. It also is undisputed that, after the 2007 IRS filing and before December 2010, David Harari filed four amendments to his Form U4—on June 18, 2008, July 16, 2008, November 13, 2008, and April 14, 2010. It follows that David Harari failed to timely amend his Form U4 to reflect any of the liens and that he filed a false Form U4 on four occasions when he answered “no” to the question whether he had any unsatisfied judgments or liens against him.¹³⁸

David Harari defends against this charge by asserting that he was unaware of the liens, particularly the one filed in 2007, and that once he became aware of liens (sometime in 2009), he did not update his Form U4 or otherwise disclose the liens on advice of counsel. But we have found that David Harari was aware of the liens at or around the time they were filed. As for David Harari's contention that he relied on his attorney's advice in failing to disclose the liens, we have concluded that his unsupported testimony does not establish reliance on counsel and we further conclude that, because intent is not an element of these violations, any reliance would not negate liability.¹³⁹ Indeed, in this case, Enforcement has not even alleged that David Harari acted willfully—that is, that he had the intent to commit the act constituting the violations.

Based on the foregoing, the Hearing Panel concludes that, by failing to amend his Form U4 to disclose tax liens, and by failing to disclose liens on amended filings he made after liens

¹³⁸ As to the first three amendments, the filings were false in failing to reflect the lien filed in 2007. The fourth amendment, filed after the IRS had filed all four liens, was false in failing to reflect any of the four liens.

¹³⁹ See *Dep't of Enforcement v. America First Associates Corp.*, No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at *17, n.20 (NAC Aug. 15, 2008) (stating that the defense of reliance on counsel is not available where intent is not an element of the violations), *aff'd*, *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988 (Sept. 10, 2010), *petition denied*, 436 F. App'x 31 (2d Cir. 2011).

were filed, David Harari violated NASD IM-1000-1 and NASD Rule 2110, and FINRA Rules 1122 and 2010.¹⁴⁰

IV. Sanctions

A. Providing False Information

Under the Sanction Guidelines, a bar is the standard sanction for a complete failure to respond to requests made pursuant to Rule 8210.¹⁴¹ Because supplying false information to FINRA can subvert its ability to perform its regulatory function to a degree as significant as, or even more significant than, refusing to respond at all can, the Securities and Exchange Commission has concluded that the failure to provide truthful responses to Rule 8210 requests can render the violator presumptively unfit for employment in the securities industry.¹⁴² Thus, in cases involving, as does David Harari's, a registered representative's deliberate attempt to mislead both FINRA and his employer by supplying false information during an investigation, a bar is an appropriate remedy, absent mitigating factors.¹⁴³

David Harari contends that there are mitigating factors here. Some are asserted generally, as to all violations, and others are specific to particular violations. Those that he asserts generally are: his alleged cooperation with FINRA's investigation; his clean disciplinary history; awards he won while at Ameriprise; his customers' appreciation of the services he

¹⁴⁰ NASD IM-1000-1 is applicable to David Harari's conduct through August 16, 2009, and FINRA Rule 1122 is applicable to conduct that took place thereafter. As stated *supra* n. 129, NASD Rule 2010 governs David Harari's conduct through December 14, 2008, and FINRA Rule 2010 governs his conduct thereafter.

¹⁴¹ FINRA Sanction Guidelines at 33 (2011).

¹⁴² *Ortiz*, 2008 SEC LEXIS 2401, at *32-33; *Rooms*, 2005 SEC LEXIS 728, at *15-16; *see also Dep't of Enforcement v. Walker*, No. C10970141, 2000 NASD Discip. LEXIS 2, at *31 (NAC Apr. 20, 2000) (finding that untruthful responses are tantamount to complete failure to respond and warrant a bar).

¹⁴³ *See Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *44-45 (NAC Oct. 10, 2007) (citing *Rita Delaney*, 48 S.E.C. 886, 890 (1987) (affirming bar where applicant deliberately falsified firm records to conceal activities from FINRA during its investigation and stating that "[i]n a business that depends so heavily on the integrity of its participants, such behavior cannot be countenanced")), *aff'd*, *Ortiz*, 2008 SEC LEXIS 2401.

rendered;¹⁴⁴ and the lack of customer harm.¹⁴⁵ But none of these factors is mitigating in this or any other case.¹⁴⁶

Mitigating factors that David Harari asserts specifically as to this violation are his recognition of wrongdoing and remorse. Again, however, these factors are not mitigating because David Harari did not accept responsibility for this misconduct prior to detection by his firm or FINRA.¹⁴⁷ His acknowledgement of any wrongdoing, moreover, is half-hearted and incomplete at best. As noted, David Harari has persisted in falsely placing the responsibility for the wording of JG's letter onto JG. And his acknowledgement of "mistakes" in his submission to FINRA rests largely on the false assertion that the \$20,000 was a gift and not a loan. Under these circumstances, there is no mitigation.

David Harari repeatedly made false statements to FINRA and his firm and he undertook to document those statements with a customer letter that, in turn, contained false information.

¹⁴⁴ While at Ameriprise, David Harari received a number of awards and other recognitions, including for excellence in financial planning. Tr. 445 (D. Harari). In addition, two customers testified that they were well satisfied with the advice he gave them and the services he rendered. One testified that one thing he liked about David Harari was that "he was straightforward about everything" including fees, the way products worked, and the goals they were trying to attain. Tr. 439-440 (GK); *see also* Tr. 432-433 (GK). The other customer "always felt that [David] was being honest with me . . . and taking good care of me." Tr. 522 (SR).

¹⁴⁵ To the extent that the Hararis assert that the extreme personal and financial stress they were experiencing (*e.g.*, Tr. 482 (D. Harari)) may be mitigative, we disagree. The Hararis engaged in deliberately deceptive conduct and David Harari converted customer funds. Under these circumstances, emotional and financial difficulties are not mitigating. *See, e.g., Dep't of Enforcement v. Mattes*, No. 2006005936701, 2007 FINRA Discip. LEXIS 9, at *12 (OHO Nov. 6, 2007) (citing, *e.g., Shaw*, 51 S.E.C. 1224).

¹⁴⁶ First, as to cooperation with FINRA's investigation, as a factual matter, cooperation can hardly be deemed complete when a respondent submits false information and testifies falsely, as did David Harari. But even had he fully cooperated with the investigation, cooperation is expected and not mitigating. *Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (rejecting respondent's argument for a lesser sanction because he cooperated with NASD's investigation and testified truthfully). Second, as for David Harari's lack of disciplinary history, although recidivism is aggravating (*see* FINRA Sanction Guidelines at 6 (Principal Consideration 1)), lack of disciplinary history is not mitigating because registered persons are required at all times to comply with FINRA's standards of conduct. *Rooms*, 444 F.3d at 1214. Similarly, it is not mitigating that David Harari won awards at Ameriprise, that customers appreciated his services, or that he did not harm a customer by providing false information to FINRA and his firm. *See generally Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620, at *26 (Feb. 24, 2012) ("[O]ur public interest analysis focuses on the welfare of investors generally.") (quotations omitted). We note that David Harari's obtaining funds by false pretenses and converting them did result in customer harm.

¹⁴⁷ *See* FINRA Sanction Guidelines at 6 (Principal Consideration 2).

He testified falsely in his on-the-record testimony and gave shifting and obfuscatory testimony during the hearing. This is not a question of a simple “mistake,” as David Harari would have the Panel conclude. Instead, David Harari deliberately attempted to deceive regulators and his firm about a variety of matters. Under the circumstances, David Harari has demonstrated himself unfit to continue to participate in an industry that depends on the honesty and integrity of its members. Thus, the Hearing Panel bars him for violating FINRA Rule 8210 and 2010.

Sian Harari participated in the preparation of the false customer letter and herself wrote backdated checks that she intended would be supplied to Raymond James should the firm seek support for the representations in that letter. Because her role in the preparation of the customer letter was subordinate to that of her husband, because she was not the recipient of the Rule 8210 request, and because there is no evidence that the backdated checks were supplied to Raymond James, the Hearing Panel concludes that a bar is unwarranted.¹⁴⁸ Given that she deliberately undertook to deceive FINRA and her firm, however, a significant sanction is warranted.¹⁴⁹ The Hearing Panel concludes that Sian Harari should be suspended for eighteen months for violating FINRA Rule 2010.

B. Obtaining Funds by False Pretenses and Converting Them

Because each instance of David Harari’s obtaining money by false pretenses and then converting it constitutes a continuous course of conduct, the Hearing Panel concludes that a

¹⁴⁸ For the reasons stated above, the lack of customer harm resulting from Sian Harari’s misconduct, as well as her cooperation with regulators and lack of disciplinary history, are not mitigating. To the extent that Sian Harari acknowledges wrongdoing and expresses remorse, it comes too late and is too limited to mitigate the severity of her misconduct.

¹⁴⁹ *See, e.g.*, FINRA Sanction Guidelines at 7 (Principal Consideration 13). For this reason, although Enforcement sought only a one-year suspension and a \$15,000 fine, we have determined to impose an eighteen-month suspension.

single sanction should be assessed¹⁵⁰ and will look to the guideline for conversion in doing so. That guideline recommends that the adjudicator bar the respondent regardless of the amount converted.¹⁵¹

The SEC has stated that “conversion is generally among the most grave violations committed by a registered representative.”¹⁵² It is, by its very nature “extremely serious and patently antithetical to the ‘high standards of commercial honor and just and equitable principles of trade’” securities industry participants must observe.¹⁵³ As the SEC also has stated, conversion is one of only three (out of approximately eighty) FINRA rule violations that call for a bar as a standard sanction, reflecting a considered judgment that “the misconduct (absent mitigating factors) poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry, and a bar is therefore an appropriate remedy.”¹⁵⁴

Again, the circumstances of David Harari’s misconduct warrant the imposition of a bar. As we have concluded, none of the mitigating factors David Harari generally cites lessens the severity of any violation, and certainly would not warrant a sanction of less than a bar for this

¹⁵⁰ *Dep’t of Enforcement v. Hardin*, No. E072004072501, 2007 NASD Discip. LEXIS 24, at *15-16 (NAC July 27, 2007) (citing *Dep’t of Enforcement v. J. Alexander Sec., Inc.*, No. CAF010021, 2004 NASD Discip. LEXIS 16, at *69 (NAC Aug. 16, 2004) (“[W]e aggregate the misconduct alleged because the misconduct stemmed from a continuous course of action.”)).

¹⁵¹ FINRA Sanction Guidelines at 36. There is no sanction guideline for obtaining funds by false pretenses. Accordingly, the guideline for misrepresentations or omissions of fact is an appropriate guidepost. That guideline recommends that, in cases of intentional misconduct, as here, adjudicators should consider suspending individuals in any or all capacities for a period of up to two years and assessing a fine of \$10,000 to \$100,000 or, in egregious cases, consider barring the individual. FINRA Sanction Guidelines at 88.

¹⁵² *Mullins*, 2012 SEC LEXIS 464, at *73.

¹⁵³ *Mullins*, 2012 SEC LEXIS 464, at *73 (quoting *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

¹⁵⁴ *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *22 (Nov. 8, 2007).

misconduct.¹⁵⁵ David Harari considered himself a fiduciary and “brother” to JG.¹⁵⁶ Indeed, given his status as an investment adviser to JG, he had a heightened obligation to act in JG’s best interests. Instead, he took advantage of the trust she reposed in him, twice using for other purposes funds JG understood would pay for financial planning services. By this misconduct, he has demonstrated that he poses too great a risk to customers to continue to participate in the securities industry.¹⁵⁷

C. Failure to Disclose Liens

The Sanction Guideline for an individual’s failing to file or filing an inaccurate Form U4 or amendments recommends a fine of \$2,500 to \$50,000, and for late filing of amendments a fine of \$2,500 to \$25,000. In either case, the guideline recommends a suspension for five to thirty business days or, in egregious cases (such as those involving repeated failures to file or inaccurate filings), a longer suspension or a bar. Principal Considerations include: the nature and significance of the information at issue; whether the misconduct resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether the misconduct resulted in harm to other persons or entities.¹⁵⁸ We have concluded that David Harari failed to disclose four tax liens filed over a period of three years. The omitted information would have: alerted Ameriprise to financial pressures, which might have warranted heightened supervision; allowed David Harari’s clients to assess whether his large financial obligation to the IRS had a bearing on the confidence they reposed in him; and permitted regulators to determine

¹⁵⁵ See *supra* n. 146. David Harari has not identified mitigating factors specific to these violations.

¹⁵⁶ Tr. 450, 493 (D. Harari).

¹⁵⁷ For this reason, were we to consult the guideline for misrepresentations, we would consider a bar the appropriate sanction for these violations.

¹⁵⁸ FINRA Sanction Guidelines at 69-70.

his continuing fitness to participate in the securities industry in light of his financial issues.¹⁵⁹ Accordingly, the omission of this information was very serious. On the other hand, this misconduct did not result in a statutorily disqualified individual associating with a firm or in any other harm to other persons or entities.

Next, we consider whether the record discloses additional aggravating or mitigating factors. On one hand, the seriousness of this misconduct is aggravated by the fact that it was repeated and prolonged.¹⁶⁰ On the other hand, David Harari contends that his reliance on counsel mitigates the severity of this violation.¹⁶¹ But, under the guidelines, reliance on counsel is mitigating only if it is reasonable.¹⁶² Even had David Harari established that he relied on counsel, his counsel was, by Harari's own description, a tax specialist—not a person who had any expertise in determining what needed to be disclosed on a Form U4. Under these circumstances, any reliance on the advice from counsel would not have been reasonable.¹⁶³

Considering the mix of factors we have identified, we find that this is an egregious instance of misconduct. We thus conclude that a two-month suspension from association with any member firm would appropriately remedy this violation. We will not impose this sanction, however, in light of the bars we have assessed for his other violations.

V. Conclusion

David Harari is barred from associating with any FINRA member firm in any capacity for providing false information and documentation to FINRA and his firm in violation of FINRA

¹⁵⁹ *Mathis*, 2009 SEC LEXIS 4376, at *29 (cited in *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *32-33 (Nov. 9, 2012)).

¹⁶⁰ FINRA Sanction Guidelines at 6 (Principal Considerations 8, 9).

¹⁶¹ For the reasons set out above at n. 146, the factors the Hararis point to as mitigating generally do not lessen the severity of this violation.

¹⁶² FINRA Sanction Guidelines at 6.

¹⁶³ See *Mathis*, 2008 FINRA Discip. LEXIS 49, at *21-22 (citing *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *11-12 (NAC Apr. 27, 2004)).

Rules 8210 and 2010. He also is barred for obtaining customer funds by false pretenses and converting them, in violation of FINRA Rule 2010 and NASD Rule 2110. In light of the imposition of these bars, the Panel imposes no sanction for David Harari's failure to disclose tax liens on his Form U4, in violation of NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010.

For participating in the creation of false documentation to be supplied to FINRA and a FINRA member firm, Sian Harari is suspended from associating with any FINRA member firm for a period of eighteen months.

In addition, Sian Harari and David Harari are ordered, jointly and severally, to pay costs in the amount of \$5,817.40, which includes the hearing transcript costs and an administrative fee of \$750.¹⁶⁴ These costs shall be due on a date set by FINRA, but not sooner than thirty days after this decision becomes FINRA's final disciplinary action in this proceeding.

If this decision becomes FINRA's final disciplinary action, David Harari's bars shall become effective immediately. Sian Harari's suspension shall begin on May 19, 2014, and end at the close of business on November 18, 2015.

HEARING PANEL.

Rada Lynn Potts
Hearing Officer

Copies to:

David Harari (*via overnight courier and first-class mail*)
Sian Harari (*via overnight courier and first-class mail*)
Eric A. Pullen, Esq. (*via email and first-class mail*)
Jonathan Golomb, Esq. (*via email and first-class mail*)
Lane Thurgood, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

¹⁶⁴ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.