

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALFRED P. REEVES III
(CRD No. 372836),

Respondent.

Disciplinary Proceeding
No. 2011030192201

Hearing Officer Andrew H. Perkins

HEARING PANEL DECISION

April 15, 2013

Respondent is barred from associating with any member firm in any capacity for violating FINRA Conduct Rule 2010 by converting funds from his former employer. Respondent also is ordered to pay restitution and the costs of this proceeding.

Appearances

For FINRA DEPARTMENT OF ENFORCEMENT, Complainant, Michael A. Gross, Esq., Kathryn M. Wilson, Esq., and David B. Klafter, Esq.

Respondent, Alfred P. Reeves III, appeared *pro se*.

DECISION

I. INTRODUCTION

Respondent Alfred P. Reeves III had been a registered principal with FINRA member firm HWJ Capital Partners II, LLC (“HWJ”). After Reeves left HWJ, he received an email from HWJ’s clearing firm, Legent Clearing LLC (“Legent”), asking that he complete an Accounting Questionnaire and provide payment instructions for funds it was holding. Reeves completed the questionnaire and instructed Legent to pay the funds to his consulting company instead of to HWJ. Based on those instructions, Legent wired the funds to Reeves’ consulting company. When HWJ discovered the unauthorized transfer, it demanded that Reeves reimburse the firm. Ultimately, Reeves repaid a portion of the money, leaving a balance due to HWJ.

HWJ filed a complaint with FINRA. Following FINRA staff's resulting investigation, Enforcement initiated this disciplinary proceeding. The Complaint alleges that Reeves violated FINRA Conduct Rule 2010 by converting funds belonging to HWJ.¹ Reeves answered the Complaint, denying the charge and requesting a hearing. Reeves contended that he had mistakenly believed that the funds referenced in Legent's email were due to him for consulting work he had performed for HWJ. The hearing was held on January 15-17, 2013, in Boca Raton, Florida.²

The Hearing Panel that heard the case was comprised of a Hearing Officer and two members of FINRA's District 7 Committee. On April 1, 2013, pursuant to FINRA Rule 9231(e), the Hearing Officer that participated in the hearing was replaced because she is no longer a Hearing Officer with FINRA's Office of Hearing Officers. Pursuant to Procedural Rule 9231(e)(1), the current Hearing Officer did not participate in the resolution of the issues in this proceeding.³

For the reasons discussed below, the Hearing Panel concludes that Reeves violated FINRA Conduct Rule 2010 by converting funds belonging to HWJ. The Hearing Panel bars Reeves from associating with any member firm in any capacity and orders him to pay restitution and the costs of the proceeding.

¹ FINRA has jurisdiction over this matter although Reeves is not currently registered. Enforcement filed the Complaint on May 29, 2012, within two years after his last FINRA registration terminated on December 2, 2011. See Article V, Sec 4(a), FINRA By-Laws, available at www.finra.org/rules.

² In this decision, "Tr." refers to the hearing transcript, "CX" refers to Enforcement's exhibits, and "RX" refers to Respondent's exhibits.

³ The Hearing Panel that heard the case reached its decision by unanimous vote before the current Hearing Officer was appointed.

II. FINDINGS OF FACT

There is no dispute that Reeves directed HWJ's clearing firm to send him funds belonging to HWJ, which he used for his benefit. It is also undisputed that Reeves has not repaid all of the money even though he admits it is not his. Nonetheless, Reeves contends that he did nothing wrong. He argues that he had a good-faith belief that the funds were due him when he directed HWJ's clearing firm to send him the money and when he used the money for his benefit.

A. Reeves' Background And Experience In The Securities Industry

Reeves entered the securities industry in or about 1971. In the years that followed, he worked for numerous broker-dealers at which he was registered in multiple principal capacities.⁴ In addition to his employment with various broker-dealers, Reeves had broad experience providing a variety of consulting services to broker-dealers. Reeves owned and operated a consulting company known as Access Capital Financial Group ("Access Consulting").⁵ He also owned Access Capital Investment Group ("Access Broker-Dealer"), a registered broker-dealer that also did business under the name Affiliated Funding Corp.⁶

B. Reeves' Employment At HWJ

In December 2010, HWJ entered into a contract with Access Consulting. At the time, HWJ had shut down because of insufficient net capital, and HWJ's president, Joseph Harch, asked Reeves to assist with its reorganization and to obtain FINRA's approval for HWJ to resume operations as a broker-dealer.⁷ The contract, dated December 13, 2010, had a 90-day term. Once the contract expired, Harch hired Reeves to serve as HWJ's registered Financial and

⁴ CX-1.

⁵ Tr. 34.

⁶ Tr. 220-21, 528.

⁷ Tr. 154, 333-35.

Operations Principal (“FINOP”).⁸ However, because HWJ did not get FINRA’s approval to resume operations until June 2011, HWJ did not need a full range of FINOP services. HWJ did not process securities transactions for members of the public while Reeves was associated with the firm although Harch did engage in proprietary trading during this time.⁹

Reeves worked for HWJ on a month-to-month basis until August 30, 2011, at which time Harch discharged Reeves.¹⁰ After Reeves left HWJ, he was associated with two other FINRA member firms. Reeves has not been registered with FINRA since December 19, 2011.¹¹

C. HWJ’s Agreement With Legent Clearing

In May 2011, HWJ retained Legent to provide clearing services to HWJ. Harch asked Reeves to complete the necessary paperwork with Legent, which he did.¹² Reeves listed himself as HWJ’s “Authorized Billing Contact,” and provided his personal cell phone number and email address.¹³ Reeves testified that he used his personal contact information because Harch wanted Legent to direct all billing questions to Reeves. Harch signed the agreement and returned it to Legent.¹⁴ Legent began providing clearing services to HWJ in June 2011.¹⁵

⁸ Tr. 335, 340, 344. Harch paid Reeves by separate checks for consulting services and FINOP services. Tr. 182-84.

⁹ Tr. 338-40, 366-67. HWJ’s only business was executing trades for Harch. Tr. 31.

¹⁰ Tr. 155, 161, 336, 357-58; CX-1, at 2.

¹¹ CX-1, at 1-2.

¹² Tr. 155; CX-3.

¹³ Tr. 158-59; CX-3, at 1, 13.

¹⁴ Tr. 155-57. Harch testified that he did not realize Reeves had inserted his name as the billing contact. Harch claimed that Reeves did not provide him with a copy of the first page of the Legent documents. However, the Hearing Panel disregarded Harch’s claim; there was insufficient evidence to show that Reeves surreptitiously included his contact information on the forms.

¹⁵ Tr. 156.

D. Reeves Converted Funds Belonging To HWJ

In or about September 2011, Harch made proprietary trades in his IRA account.¹⁶ Legent withheld a total of \$59,704.93 in commissions on these trades, which it reported as commission income on HWJ's October 2011 statement of clearing charges.¹⁷ Because HWJ did so few trades through its trading account at the time, Harch did not regularly review the account.¹⁸

Accordingly, HWJ did not detect the error until November 2011.¹⁹ In the meantime, however, at Reeves' direction Legent had paid the commissions to Reeves' consulting company.

Legent did not have payment instructions on file for HWJ because the relationship was new and there had not been a need to forward funds to HWJ before October 2011. Accordingly, Legent moved the commissions due HWJ into a suspense account²⁰ and asked Reeves, HWJ's Authorized Billing Contact, for payment instructions. On October 7, 2011, Legent's Correspondent Billing department sent Reeves an email asking that he complete and return the attached "Accounting Questionnaire."²¹ Legent had not been notified that Reeves was no longer at HWJ and that he should be removed as the designated billing contact. The subject line of the

¹⁶ Tr. 455.

¹⁷ Tr. 455-56.

¹⁸ Tr. 385-86. There was conflicting testimony over how the trades were entered and mismarked to generate commission charges. Harch accused Reeves of illegally entering HWJ's system and rebooking the trades to create the commissions. Tr. 383-84. Reeves denied the accusation, and FINRA staff found no evidence to support Harch's allegations. Tr. 44-45, 66. The examiner surmised that the charges might have resulted from a "blip" in Legent's system or from someone at HWJ forgetting to check the "no commission" button when the trades were processed. Tr. 141, 147-48.

¹⁹ Tr. 412, 417.

²⁰ Tr. 458.

²¹ CX-4, at 2.

email read “150 September billing invoice.”²² The number “150” referred to HWJ’s firm number at Legent.²³ The email stated:

Alfred,

Your September billing invoice is complete and Legent owes you money. We do not have payment instructions on file for you. Please fill out the following Accounting Questionnaire and send back to Correspondent Billing@legentclearing.com. We will then be able to get your payment to you.²⁴

The Accounting Questionnaire asked for typical information a FINOP would understand related to correspondent clearing services. Legent asked, (1) “Do you trade in Inventory Accounts?” and (2) “Do you plan to hold inventory positions overnight?” Legent also asked Reeves to fill out the desired payment method for month-end settlements.²⁵ Reeves completed the Accounting Questionnaire with Access Consulting’s bank account information.

After receipt of the completed Accounting Questionnaire, Legent wired \$59,704.93 to the bank account for Reeves’ consulting company.²⁶ Reeves testified that he learned of the deposit on October 21 or 22, 2011, when he called the bank’s automated information system to check the balance in the account.²⁷ Reeves then immediately began withdrawing money, including \$50,000 he transferred to an account controlled by his ex-wife.²⁸ Reeves also paid some personal

²² *Id.*

²³ Tr. 72.

²⁴ CX-4, at 2.

²⁵ CX-4, at 4.

²⁶ CX-5, at 5.

²⁷ Tr. 186-87, 194.

²⁸ Tr. 194-95. The October account statement showed a beginning balance of \$156.29 and an ending balance of \$1,289.17. CX-5, at 5. Reeves remarried in 2006. Reeves claimed that his ex-wife was dying of cancer and that he transferred \$50,000 to an account she controlled to help her pay medical bills. Tr. 84-85, 196.

expenses from the Access Consulting account, such as his mortgage and credit cards.²⁹ Reeves did not contact either HWJ or Legent before he began withdrawing money.

In November 2011, HWJ discovered that Legent had withheld commissions on Harch's trades and paid those commissions to Reeves. On November 19, 2011, Harch sent Reeves an email, accusing Reeves of stealing money from HWJ and demanding its return.³⁰ Reeves denied any wrongdoing and refused to return the money. He replied that he did not have access to Harch's funds and therefore he could not have taken the funds.³¹

On November 20, 2011, Harch lodged a complaint against Reeves with the FINRA examiner who was at HWJ conducting a routine cycle examination.³² Harch told the examiner that Reeves had hacked into HWJ's computer system, added commissions to Harch's IRA trades, and then directed Legent to pay the commissions to his consulting company. Harch based his accusations on conjecture. Harch's complaint started the investigation that led Enforcement to initiate this disciplinary proceeding against Reeves.³³

After Harch accused Reeves of stealing money, Reeves contacted Legent and offered to "make a deal" to repay the money to Legent on two conditions.³⁴ First, Reeves demanded that Legent admit that it had misappropriated HWJ's funds and paid them to Reeves in error. Second, he would not make any payments until he resolved all issues with FINRA.³⁵ Reeves made these demands despite the fact that by this time he knew he had no right to retain the

²⁹ Tr. 198-99.

³⁰ Tr. 315.

³¹ Tr. 315-16.

³² Tr. 28-29.

³³ Tr. 28-30. FINRA staff opened the investigation immediately upon receipt of Harch's complaint and took Reeves' on-the-record testimony ten days later on November 30, 2011.

³⁴ Tr. 312-14, 317, 320-23.

³⁵ Tr. 319-21.

money. The October bank statement for Access Consulting clearly reflected that Legent was the source of the \$59,704.93 wire. The deposit appeared on the statement with the notation “Legent Clearing Cash Disb 22550.”³⁶

Reeves offered to settle with Legent by paying it \$5,000 per month.³⁷ But Legent refused to admit that it had misappropriated HWJ’s funds.³⁸ Accordingly, Reeves did not enter into the proposed settlement agreement with Legent, nor did he make any payments directly to HWJ although he knew that the funds belonged to HWJ.

Reeves eventually repaid \$31,000 to Legent.³⁹ At the hearing, he admitted that he has not repaid the balance.⁴⁰

III. CONCLUSIONS OF LAW

We find that Reeves violated FINRA Rule 2010 by converting \$59,704.93 belonging to HWJ. FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” “Conversion is the wrongful exercise of dominion over the personal property of another” and violates the ethical mandate of Rule 2010.⁴¹ FINRA’s disciplinary authority under Rule 2010 encompasses business-related conduct that is

³⁶ CX-5, at 5.

³⁷ Tr. 312. At the hearing, Reeves denied that he accused Legent of misappropriating the funds, but the record demonstrates that he did want Legent to admit that it had acted improperly by misappropriating the funds.

³⁸ Tr. 312.

³⁹ Tr. 58. At the hearing, Reeves explained he got \$30,000 back from his ex-wife to make the repayment. Tr. 592.

⁴⁰ Tr. 322-23. Reeves approximated the balance due as \$29,000.

⁴¹ *Dep’t of Enforcement v. Mullins*, No. 20070094345, 2011 FINRA Discip. LEXIS 61, at *21 (NAC Feb. 24, 2011) (quoting *Dep’t of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (NAC Mar. 7, 2008)). See also FINRA SANCTION GUIDELINES 38 n.2 (2011), available at www.finra.org/sanctionguidelines (Conversion 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.”).

inconsistent with just and equitable principles of trade, even if that activity does not involve a security.⁴²

It is undisputed that Reeves directed Legent to wire funds to his consulting company, which he then spent or disbursed for his own personal benefit.⁴³ Reeves concedes that he filled out the Legent Account Questionnaire after his employment with HWJ ended even though he had not had any independent business relationship with Legent. Reeves had only dealt with Legent on HWJ's behalf. Reeves further concedes that—by no later than November 22, 2011—he knew the funds Legent wired did not belong to him, yet he refused—and continues to refuse—to repay HWJ in full. Reeves argues, however, that he did not intend to steal any money. He interprets the entire matter as a misunderstanding. Reeves argues that he filled out the Account Questionnaire as he did because he thought HWJ had instructed Legent to pay an outstanding invoice for consulting services he rendered in August 2011 before he was terminated from HWJ.⁴⁴ Next, he argues that he spent almost all of the money before he realized the funds were not his. Reeves claims that he did not question the source of the deposit because over the years he had often received large wire deposits for life insurance settlement deals⁴⁵ that closed

⁴² *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam) (affirming SEC's finding that representative violated just and equitable principles of trade by misappropriating funds belonging to a political club while serving as that organization's treasurer), *aff'g*, 52 S.E.C. 339, 342 (1995) (holding that "Vail commingled his and the Club's funds for the sake of his own personal convenience" and, in doing so, "make[s] us doubt his commitment to the high fiduciary standards demanded by the securities industry").

⁴³ *See Dist. Bus. Conduct Comm. v. Klein*, No. C02940041, 1995 NASD Discip. LEXIS 229 (NAC June 20, 1995) (holding that respondent converted funds by wiring the funds from the account of one set of customers to the account of another customer), *aff'd*, 52 S.E.C. 535, 536 (1995).

⁴⁴ Tr. 178-80; CX-16.

⁴⁵ An individual who had worked with Reeves on a number of life settlement deals testified that life settlements involving variable insurance policies often required a broker-dealer to receive the fees and commissions when a deal closed. Tr. 249.

through Access Broker-Dealer. The Hearing Panel rejects Reeves' defenses as they are not supported by the evidence.⁴⁶

Reeves' first defense that he acted in good faith when he responded to Legent's October 7 email is without merit. Reeves argued that he reasonably concluded that Legent's email referred to the consulting services invoice he had sent HWJ because the subject line and first sentence of the email referenced a "150 September billing Invoice."⁴⁷ Reeves therefore provided his consulting firm's bank account number to facilitate the wire transfer from Legent. But the text of Legent's email and all of the circumstantial evidence contradict Reeves' defense.⁴⁸

The text of the email addressed to Reeves reads, "Your September billing invoice is complete and Legent owes *you* money."⁴⁹ The email does not state HWJ owes him money. It is therefore totally illogical to construe this simple declarative sentence as Reeves does to mean that Legent was holding money that HWJ owed Reeves. Legent had no business relationship with Reeves or his consulting company, and Legent did not owe either of them any money. Thus, Reeves could not have believed that Legent was holding money belonging to him.

The uncontroverted evidence likewise completely negates Reeves' arguments. Reeves had no reason for concluding that HWJ would pay him in this manner. First, neither Harch nor anyone else at HWJ had told Reeves that HWJ would pay the invoice.⁵⁰ This factor is particularly significant given the distrust and hostility that surrounded Harch's termination of

⁴⁶ Reeves bore the burden of proving these defenses. See *Kirlin Sec.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at *64 n.87 (Dec. 10, 2009) ("[A]s we have stated previously, the applicant bears the burden of producing evidence to support his claimed defenses."); *Husky Trading LLC*, Exchange Act Rel. No. 60180, 2009 SEC LEXIS 2250, at *28 & n.31 (June 26, 2009) ("Applicants had the burden going forward to establish any affirmative defense.") (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *Donald T. Sheldon*, 51 S.E.C. 59, 77 n.70 (1992), *aff'd*, 45 F.3d 1515 (11th Cir. 1995)).

⁴⁷ CX-4.

⁴⁸ The reference to "150" in the subject line also did not match Reeves' invoice.

⁴⁹ CX-4 (emphasis added).

⁵⁰ Tr. 182.

Reeves. In fact, Reeves realized that Harch might not pay Reeves' invoice.⁵¹ Second, HWJ had never used Legent to pay him.⁵² HWJ always paid Reeves by check for his FINOP and consulting services.⁵³ Third, Reeves did not produce any evidence of circumstances where a broker-dealer he was working for had its bills paid by its clearing firm. Fourth, and most importantly, the Accounting Questionnaire asked for information that an experienced securities professional such as Reeves would recognize readily as relating to the provision of clearing services. The form asked Reeves whether he traded in inventory accounts and whether he intended to hold inventory positions overnight. As Reeves well knew, Legent had no need for this information to forward payment of his consulting invoice to HWJ and he was not due any month-end settlement. Reeves made no effort to reconcile these inconsistencies. He simply asserted that it was a reasonable mistake for him to have concluded that the information request related to the payment of his \$2,000 September 2011 invoice. In sum, Reeves' first defense lacks any credibility.

Reeves' second defense fares no better. Reeves claimed that he had no reason to question the size of the deposit because over the years he had often received large wire deposits in connection with life settlement deals. Reeves presented testimony from several witnesses who had done such deals with him in the past.⁵⁴ However, their testimony only highlighted the infirmity of Reeves' position. Each witness confirmed that he did not have any open deals with

⁵¹ Tr. 188.

⁵² Tr. 185.

⁵³ Tr. 182-83.

⁵⁴ *See* Tr. 236-50, 488.

Reeves that were ready to close in October 2011.⁵⁵ Reeves also could not point to any deal that could possibly have been the source of the \$59,704.93 wire deposit to his consulting company's bank account. Thus, the substance of their testimony contradicted Reeves' argument that it would not have been unusual for him to have received unknown wires of large sums into his consulting firm's checking account. For these reasons, the Hearing Panel rejects Reeves' arguments.

IV. SANCTIONS

FINRA's Sanction Guidelines ("Guidelines") applicable to conversion recommend a bar as the standard sanction regardless of the amount converted.⁵⁶ The Guidelines recommend a bar as the standard sanction because conversion "is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that [FINRA] seeks to promote."⁵⁷

The Guidelines define conversion generally as "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."⁵⁸ As discussed above, the Hearing Panel concluded that Reeves converted \$59,704.93 from HWJ. Reeves intentionally exercised ownership over HWJ's funds knowing that he neither owned the funds nor had any right to possess them. Even if the Hearing Panel were to accept Reeves' defense that he acted with the good-faith belief that HWJ had instructed Legent to pay his outstanding consulting invoice when he completed Legent's Account

⁵⁵ Tr. 227, 495, 549. For example, one witness testified that the paperwork had not been finalized on the deal he was working on, and no payments could be expected before March 2012, five months after the transaction in question. Tr. 53-55.

⁵⁶ SANCTION GUIDELINES 36. The guideline for conversion is specifically applicable to cases involving violations of FINRA Rule 2010. *Id.*

⁵⁷ *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976).

⁵⁸ GUIDELINES 36, n.2.

Questionnaire (which the Hearing Panel does not), by no later than November 22, 2011, Reeves knew that the funds were not his and that he had no right to possess them. Nonetheless, he refused to repay the entire amount. Accordingly, consistent with the Guidelines, the Hearing Panel finds that a bar is the appropriate sanction in this case.

In assessing sanctions, the Hearing Panel also reviewed the Principal Considerations in Determining Sanctions section of the Guidelines.⁵⁹ The Hearing Panel found several aggravating factors.⁶⁰ First, the Hearing Panel found troubling Reeves' refusal to acknowledge and accept responsibility for his wrongdoing.⁶¹ Although he continues to hold HWJ's funds, he denies any wrongdoing, arguing that he acted in good faith at all times.⁶² Second, we also found troubling Reeves' efforts to impede the staff's investigation.⁶³ At first, Reeves refused to provide his bank statements and other documents relating to his work on investment banking deals, claiming that they were protected by attorney-client privilege after he gave them to his attorney.⁶⁴ Third, Reeves' misconduct benefitted him monetarily and caused financial harm to HWJ.⁶⁵ On the other hand, we found no mitigating factors that would justify a sanction other than a bar.

In addition, we conclude that Reeves should be ordered to pay restitution to HWJ. The Guidelines encourage ordering restitution "to restore the *status quo ante* where a victim

⁵⁹ GUIDELINES 6-7.

⁶⁰ See *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005) (finding that, in connection with sanctions, it is appropriate to consider: (1) all mitigating factors that respondent has raised; (2) the seriousness of respondent's offenses; (3) the corresponding harm that respondent caused to members of the trading public; (4) respondent's potential gain for disobeying the rules; (5) the potential for repetition of respondent's misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others).

⁶¹ GUIDELINES 6, Principal Consideration No. 2.

⁶² See also GUIDELINES 6, Principal Consideration No. 4, advising adjudicators to consider whether a respondent voluntarily paid restitution or otherwise remedied his misconduct.

⁶³ *Id.* at 7, Principal Consideration No. 12.

⁶⁴ Tr. 48, 50. Eventually, Reeves did produce the requested documents.

⁶⁵ GUIDELINES 7, Principal Consideration No. 17.

otherwise would unjustly suffer loss.”⁶⁶ Reeves should not be permitted to benefit from his wrongdoing at HWJ’s expense. The Hearing Panel therefore orders Reeves to pay \$28,704.93 to HWJ, plus interest thereon from November 19, 2011 (the date HWJ demanded repayment of the funds) until paid in full.

V. ORDER

The Hearing Panel bars Respondent Alfred P. Reeves III from associating with any member in any capacity and orders that he pay restitution to HWJ in the sum of \$28,704.93, plus interest on the unpaid balance from November 19, 2011, until paid in full. Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).⁶⁷ If this decision becomes FINRA’s final disciplinary action, the bar will take effect immediately and payment of restitution shall be due in full on June 6, 2013.

In addition, Reeves is ordered to pay costs in the amount of \$5,609.92, which includes a \$750 administrative fee and the cost of the hearing transcript. The cost shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA’s final disciplinary action in this matter.⁶⁸

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

⁶⁶ *Id.* at 4, General Principles Applicable to All Sanction Determinations ¶ 5.

⁶⁷ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

⁶⁸ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.