

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NANCY KIMBALL MELLON
(CRD No. 1253484),

Respondent.

Disciplinary Proceeding
No. 2017052760001

Hearing Officer—MJD

HEARING PANEL DECISION

Date: July 11, 2019

Respondent converted \$4,300 from her employer firm by submitting false expense reports, causing the firm to maintain inaccurate books and records. Respondent provided false and misleading information to FINRA during an investigation into her expense reports. For this misconduct, Respondent is barred from associating with any member firm in any capacity. She is also ordered to pay costs.

Appearances

For the Complainant: Kathryn M. Wilson, Esq., John F. Guild, Esq., and Tino A. Lisella, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se*.

I. Introduction

The Department of Enforcement filed a four-cause Complaint against Respondent Nancy Kimball Mellon (“Mellon” or “Respondent”). The most serious allegation, contained in cause one, charges Mellon with converting \$4,300 from her employer, FINRA member firm Wells Fargo Clearing Services, LLC (“Wells Fargo” or the “Firm”), by submitting false expense reports. For this misconduct, Mellon is charged with violating FINRA Rule 2010. Cause two alleges that by submitting the false expense reports to Wells Fargo, Mellon violated FINRA Rule 2010. Cause three charges Mellon with causing Wells Fargo to maintain inaccurate books and records as a result of submitting the false expense reports, in violation of FINRA Rules 4511 and 2010. Cause four alleges that Mellon violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA staff during the investigation that led to the filing of the Complaint.

Mellon filed an Answer to the Complaint in which she denied that her conduct violated FINRA rules and requested a hearing. Mellon claimed that Wells Fargo’s “expense process was not smooth in 2016” and contained “lots of incorrect information” and administrative errors that caused the “mis-allocation of expenses.”¹

The Hearing Panel finds that Respondent committed each of the violations alleged and bars her from associating with any member firm in any capacity.²

II. Findings of Fact

A. Respondent’s Background

Mellon entered the securities industry in 1983 when she associated with a member firm. In August 2012, she became registered as a general securities representative with FINRA through her association with Wells Fargo. Mellon worked at a Wells Fargo branch office in Tampa, Florida. The Firm terminated Mellon on December 7, 2016, as a result of the misconduct alleged in the Complaint. She has not been registered with a FINRA member firm since January 4, 2017, when Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) terminating her registration.³ On Mellon’s Form U5, Wells Fargo reported that she was terminated because of “allegations that [Mellon] submitted expenses for reimbursement that were either not business related or not paid by [Mellon].”⁴

Although Mellon is no longer registered or associated with a FINRA member, she is subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4, of FINRA’s By-Laws. The Complaint was filed within two years of the effective date of termination of her registration with Wells Fargo and the first three causes of the Complaint charge her with misconduct committed while she was registered with a FINRA member. Cause four charges Mellon with providing false and misleading responses to FINRA’s requests for information during the two-year period after the date she ceased to be registered or associated with a FINRA member.

B. Wells Fargo’s Two Expense Management Systems

During 2016, Wells Fargo maintained two systems through which its employees could request reimbursement for business expenses. One system, called Concur, allowed employees to submit out-of-pocket business expenses for reimbursement directly from Wells Fargo. The second system, called the Financial Advisor Expense Management System (“FAEMS”),

¹ Mellon Answer (“Ans.”) at 4.

² The hearing was held April 11 and 12, 2019, in Tampa, Florida.

³ Complaint (“Compl.”) ¶ 7; Ans. ¶ 7; Parties’ Stipulations (“Stip.”) ¶ 1; Complainant’s Exhibit (“CX-”) 1, at 1-3; Respondent’s Exhibit (“RX-”) 1, at 6.

⁴ CX-2, at 2; RX-1, at 11. Mellon’s termination led to the investigation that resulted in the filing of the Complaint in this disciplinary proceeding. Tr. 246-47. *See also* RX-3; RX-4; RX-5.

reimbursed employees from a flexible spending account to which they contributed pre-tax dollars from their Wells Fargo compensation. Mellon arranged to have Wells Fargo deduct \$20,000 per year (or \$1,667 per month) in pre-tax dollars from her compensation to fund her FAEMS account.⁵ Employees forfeited any unspent money remaining in the FAEMS account at the end of the calendar year.⁶ Additionally, Wells Fargo required that its employees pay expenses before they would be entitled to reimbursement through Concur or FAEMS.⁷

C. Mellon Attends the Outback Bowl and Submits False Expense Reimbursement Requests

RL had a securities account at Wells Fargo. RL and Mellon were friends, and Mellon was the registered representative on RL's account.⁸ In November 2015, RL suggested to Mellon that the Outback Bowl, an annual college football game held in Tampa, Florida, was a good opportunity to develop business contacts. RL served on its Board of Directors, and she arranged for an Outback Bowl representative to contact Mellon.⁹

Mellon agreed to buy an Outback Bowl VIP Club Membership for \$3,800. The membership included tickets to the Outback Bowl on January 1, 2016, and admission to related promotional and networking events.¹⁰ Mellon told the Outback Bowl's Director of Sales that she wanted to pay for the membership with a check in 2016 because she had exhausted her 2015 marketing budget. Mellon gave the Director of Sales her credit card information to secure her membership.¹¹ However, because Mellon did not have an existing relationship with the Outback Bowl, the Outback Bowl also asked RL to personally guarantee Mellon's payment, and RL did so.¹²

Mellon attended the Outback Bowl game with family, current customers, and prospective customers.¹³ On January 6, 2016, the Outback Bowl emailed Mellon an invoice for \$3,800, with a notation that it was payable on receipt.¹⁴ The same day, Mellon told the Outback Bowl's

⁵ Stip. ¶ 4.

⁶ Stip. ¶ 2.

⁷ Tr. 38, 176; Stip. ¶ 3.

⁸ Tr. 134-35, 216, 234.

⁹ Tr. 217-18.

¹⁰ CX-4.

¹¹ CX-4, at 1.

¹² Tr. 219, 242-43.

¹³ Stip. ¶ 5.

¹⁴ CX-5. On January 6, 2016, promptly after receiving the invoice for the Outback Bowl event, Mellon submitted an expense report to Wells Fargo. But the Firm immediately rejected it, apparently having initially determined the expense was not business related. *See* Tr. 177-78; CX-9.

Director of Sales that she was waiting for Wells Fargo to fund her expense account.¹⁵ Three weeks later, on January 27, the Director of Sales asked Mellon if a check was on the way, noting that the Outback Bowl was about to close its books for 2015. Mellon told him he would get a check shortly but said he had earlier agreed to hold off depositing it until late February. The Director of Sales disputed that he had agreed to hold onto the check, saying that the Outback Bowl deposits checks soon after it receives them. Additionally, Mellon complained to him that she was disappointed by the business networking opportunities at the game because she had met no one at the event.¹⁶

1. Mellon's First Expense Report (January 2016)

By late January 2016, Mellon had still not paid the Outback Bowl.¹⁷ Nonetheless, on January 27, 2016, Mellon directed her assistant, Mace Maraman, Jr. ("Maraman"), to submit a FAEMS expense report for the \$3,800 Outback Bowl VIP Club Membership. Mellon gave Maraman a photocopy of the front of a check she had written for \$3,800 and dated January 2, 2016. The check was drawn on a joint account Mellon held with her husband at the Bank of Tampa.¹⁸

Maraman submitted the expense report to FAEMS by fax with a copy of the front of the check.¹⁹ Maraman believed that Mellon had paid the Outback Bowl with the photocopied check she provided him.²⁰ A few minutes after Maraman submitted the expense report, Mellon approved the expense report in FAEMS, even though she knew she had not sent the check to the Outback Bowl.²¹

The next morning, January 28, FAEMS rejected the expense report because Mellon had not included the back of the check to evidence that she had incurred the expense for the Outback Bowl.²² In an email later that day, Maraman told Mellon the Firm needed the back of the check to show that the invoice was paid. Even though she had not sent the check to the Outback Bowl, Mellon responded, "Will try to dig it out tonight or over [the] weekend."²³

Nothing more happened with the rejected expense report for a month and a half.

¹⁵ CX-6, at 2.

¹⁶ Tr. 44; CX-6, at 1.

¹⁷ Tr. 46.

¹⁸ Tr. 179-80; CX-16, at 3.

¹⁹ Tr. 179-80; CX-16.

²⁰ Tr. 180-81.

²¹ Tr. 50-51; CX-17.

²² CX-17.

²³ CX-10.

2. Mellon Sends the Outback Bowl a Check from Her Overdrawn Account

On March 16, 2016, a Bank of Tampa commercial banking officer informed Mellon by email that her joint account had been overdrawn for nearly two months and had a number of unpaid or returned checks.²⁴ On March 17, RL emailed Mellon that she was “taking real heat” from the Outback Bowl because Mellon had not yet paid the invoice. On March 18, Mellon wrote in an email to RL that she had mailed the check to the Outback Bowl “in early March.”²⁵ That same day, however, and only two days after the Bank of Tampa notified her that the joint account was overdrawn, Mellon finally mailed the \$3,800 check to the Outback Bowl. The Outback Bowl received the check on March 23, 2016.²⁶

The Outback Bowl deposited Mellon’s check on March 31, 2016. On April 4, Mellon gave Maraman a copy of the back of the now-processed \$3,800 check and instructed him to submit the expense through Concur for reimbursement.²⁷ But that day, the bank returned the check to the Outback Bowl because Mellon had insufficient funds in the joint account.²⁸ The next day, April 5, the Outback Bowl emailed Mellon that her check had not cleared. Mellon responded, “Weird. Will see what [the bank] has done.”²⁹

Mellon testified that she did not intentionally mail a check that she knew would bounce because at the same time she was expecting a \$25,000 payment of an annual performance bonus from Wells Fargo.³⁰ Mellon received the \$25,000 bonus payment in the joint account on March 21, 2016, placing the account in the black.³¹ But when Mellon mailed the check to the Outback Bowl on March 18, the joint account had a negative balance.³² Even with the \$25,000 bonus, multiple other payments went out from the joint account. Thus by the time the check was presented for payment on April 1, the joint account had a negative balance exceeding \$6,000.³³

²⁴ CX-29, at 1.

²⁵ CX-26. RL testified that Mellon had already told her that she mailed the check to the Outback Bowl in early March. Tr. 221-22. *See also* CX-26.

²⁶ Tr. 58-59; CX-7, at 1. The Outback Bowl’s Director of Sales told Mellon in an email that the envelope was postmarked March 18. CX-7, at 1.

²⁷ CX-11.

²⁸ CX-34, at 31.

²⁹ CX-8, at 1. In her Answer, Mellon stated that she “assumed the check had been paid, as evidenced by the bank statement, until alerted later.” Ans. ¶ 51. She added that she did not know the check had bounced until she produced copies of her bank records to FINRA staff in early 2017. The check, she said in her Answer, had been “noted as paid, but inadvertently not paid” in her bank statement. *See* Ans. at 4. However, these statements are false because the Outback Bowl told Mellon on April 5 that the check had not cleared.

³⁰ Tr. 66; CX-29, at 2; RX-13, at 1-4.

³¹ *See* CX-34, at 29; RX-14.

³² Tr. 62; CX-34, at 23.

³³ *See* CX-34, at 29-31.

3. Mellon's Second and Third Expense Reports (April 2016)

Maraman did not immediately submit another expense report after Mellon gave him a copy of the back of the check on April 4. On April 8, Mellon emailed Maraman asking him if he had received "Any news on the outback??"³⁴ In an email a few minutes later, Maraman told Mellon that the Wells Fargo branch manager, Tom Stuhlsatz ("Stuhlsatz"), instructed him to hold off submitting the expense report and to follow up with him in about a week, when he would learn what the branch's marketing budget would be.³⁵ On April 15, Maraman emailed Stuhlsatz asking if he could submit Mellon's expense report for the Outback Bowl, and attached copies of the invoice and the front and back of the \$3,800 check.³⁶

On April 17, 2016, Stuhlsatz informed Mellon that he would give her an out-of-pocket marketing budget of \$500 per quarter. He instructed her to have Maraman re-submit the Outback Bowl expense report and to charge \$1,000 of the \$3,800 reimbursement request to Concur against the marketing budget for the first and second quarters of 2016.³⁷

The next day, April 18, Mellon instructed Maraman to submit \$1,000 in expenses to Concur and the remaining \$2,800 to her FAEMS account, as Stuhlsatz had directed.³⁸ Maraman did so and included copies of the front and back of the \$3,800 check with both expense reports.³⁹ Mellon approved her \$2,800 expense submission a few minutes after Maraman entered it into FAEMS.⁴⁰ Mellon never told Maraman, or anyone else at Wells Fargo, that her check to the Outback Bowl had bounced.⁴¹

Stuhlsatz approved payment of the expenses on April 20.⁴² Wells Fargo transferred \$1,000 to Mellon's joint account from the Concur system on April 21.⁴³ The Firm also

³⁴ CX-12, at 1.

³⁵ CX-12, at 1.

³⁶ Tr. 185-86; CX-13.

³⁷ CX-14, at 2.

³⁸ Tr. 187-88, 191-93; CX-14, at 1.

³⁹ Tr. 190, 255-56; CX-18; CX-19; CX-20; CX-21. Even though Mellon's \$3,800 check to the Outback Bowl bounced, the monthly statement for the joint account included a copy of the check. *See* CX-34, at 31, 35; RX-16.

⁴⁰ Tr. 87; CX-17.

⁴¹ Tr. 183, 186, 190. Maraman testified that he assumed Mellon had paid the Outback Bowl the \$3,800 each time he submitted expense reports on her behalf. Tr. 183-84, 189-90, 194-95.

⁴² CX-17; CX-20.

⁴³ Tr. 91; CX-24, at 2; CX-34, at 39.

transferred \$2,800 from Mellon's FAEMS account to the joint account between April 25 and June 3.⁴⁴ Mellon was thus "reimbursed" \$3,800 for expenses she had not actually paid.

4. Mellon's Fourth Expense Report (July 2016)

On July 5, 2016, Mellon asked Maraman to submit an expense report to Concur for \$500 using her marketing expense allowance for the third quarter of the year and to cite the Outback Bowl as the expense.⁴⁵ On July 6, 2016, Maraman submitted a \$500 expense report to Concur attaching copies of the Outback Bowl invoice and the front and back of the \$3,800 check.⁴⁶ Stuhlsatz approved payment the same day.⁴⁷ The Firm transferred \$500 to Mellon's joint account on July 7.⁴⁸

Mellon testified that the \$500 reimbursement request for the Outback Bowl was an "error" because she "may not have been aware of the ... full allocation of the expense, that the [\$3,800] expense had been eaten up."⁴⁹ Mellon said Maraman was responsible for tracking all her expenses because "he held them in queue" and therefore was the one responsible for knowing whether the \$3,800 expense already had been submitted and paid by Wells Fargo.⁵⁰ When Mellon asked Maraman to submit the \$500 expense report, she knew that her check had bounced.⁵¹

Including the payment of \$500 in July 2016, Wells Fargo transferred \$4,300 to Mellon for the expenses she claimed to have incurred for attending the Outback Bowl.

5. RL Pays the Outback Bowl \$3,800 and Seeks Reimbursement from Mellon

In early May 2016, RL told Mellon that she was "on the hook" to the Outback Bowl because she had vouched for Mellon when she recommended her to the event. RL told Mellon

⁴⁴ Tr. 92-93, 290-91; CX-24, at 3; CX-34, at 39-40, 49. Wells Fargo reimbursed Mellon the \$2,800 in three payments because she did not have sufficient funds in her FAEMS account when she submitted the expense report. CX-24, at 2. Mellon used a portion of the \$3,800 Wells Fargo paid her for certain personal expenses, including utility bills. Tr. 94-97; CX-34, at 39-41, 48-51.

⁴⁵ Tr. 98-99; CX-15, at 2.

⁴⁶ Tr. 102-03, 193-94; CX-23.

⁴⁷ CX-22.

⁴⁸ CX-24, at 2; CX-34, at 59.

⁴⁹ Tr. 99. In her Answer, Mellon stated that the \$500 "was allocated in error to the Outback expense ... and the [expense] report should have been corrected." Ans. ¶ 51.

⁵⁰ Tr. 99-100. *See also* Tr. 148-49, 402-03. Maraman testified that he would have learned only that Mellon had been reimbursed \$1,000 from the branch through Concur. FAEMS was not designed to notify him if Mellon received payments from her FAEMS account. Tr. 193-94.

⁵¹ Tr. 101-02.

she was “holding a bill for \$3,800,” which she could not pay. RL asked Mellon, “Could you please let me know how I should handle this or if you’ve taken care of it another way?”⁵² Mellon responded, “It is being handled[,],” and she asked RL to have the Outback Bowl communicate with her.⁵³

In mid-July 2016, the Outback Bowl charged RL’s credit card \$3,800.⁵⁴ RL emailed Mellon that the Director of Sales’s job “was on the line” as a result of the missing payment and that RL’s relationship with the Outback Bowl had suffered “irreparable harm.” In her email, RL also stated, “I should not have been placed in this position.” RL warned Mellon that if she did not pay her within two weeks she would have to take legal action.⁵⁵

Within minutes, Mellon responded to RL’s email. She told RL to stop using her Firm email address to communicate with her because the Outback Bowl expense “ha[d] nothing to do with work” and Wells Fargo “did not provide [her] any support or marketing funds.” Mellon added, “I have enough on my plate I will do what I can when I can.”⁵⁶ Mellon never told RL that Wells Fargo had already paid her \$4,300 for the Outback Bowl expense reports.⁵⁷

On August 2, 2016, RL filed a civil complaint against Mellon in Hillsborough County, Florida, seeking repayment of the \$3,800 that she had paid to the Outback Bowl on Mellon’s behalf.⁵⁸

6. Wells Fargo Learns of the False Expense Reports and Mellon Pays the Outback Bowl

Wells Fargo initiated an internal investigation into Mellon’s expense reports on September 19, 2016.⁵⁹ By October 2016, Wells Fargo concluded that Mellon had submitted false

⁵² CX-27, at 2.

⁵³ CX-27, at 1.

⁵⁴ Tr. 226-27.

⁵⁵ CX-28, at 2.

⁵⁶ CX-28, at 1. Mellon acknowledged at the hearing that one reason she asked RL not to use her Firm email account was that she was afraid that the Firm would learn that she owed the Outback Bowl money, noting that she “had lots of vultures [at Wells Fargo] circling around” her. Tr. 142-43.

⁵⁷ Tr. 225.

⁵⁸ Tr. 229-30; CX-30. RL contacted Wells Fargo’s compliance office to report that she had filed a civil complaint against Mellon. The Firm assigned another registered representative to her account. Tr. 241.

On July 22, 2016, Mellon filed a bankruptcy petition under Chapter 13, which she said was intended to prevent a pending foreclosure on her family’s home. Tr. 129; CX-32; RX-2, at 3-14. She reported liabilities totaling nearly \$2 million, including more than \$500,000 owed to the Internal Revenue Service (“IRS”). CX-33, at 1-24. Mellon’s BrokerCheck Report disclosed a civil judgment and IRS tax liens of nearly \$500,000 recorded between 2011 and 2015. RX-1, at 13-15. Mellon’s bankruptcy petition was dismissed on February 15, 2017. RX-1, at 12.

⁵⁹ CX-2, at 6; RX-5.

expense reports. Firm compliance personnel determined that Mellon had submitted at least three expense reports seeking reimbursement of \$3,800 using the same check. Because Mellon used the Outback Bowl invoice and the same check for all of her expense reports, the Firm concluded that she sought and received \$500 more than the amount of the invoice.⁶⁰ Wells Fargo terminated Mellon on December 7, 2016.

On December 16, 2016, Mellon paid the Outback Bowl \$3,800 with a credit card. The Outback Bowl in turn reimbursed RL.⁶¹ Mellon has not repaid Wells Fargo the \$500 she received in July 2016.⁶²

7. Mellon’s Testimony about the Expense Reports and Wells Fargo

Mellon denied that she knowingly submitted false expense reports, which she said resulted from “errors.” In her Answer, Mellon stated that her “actions were not intentional and option[s] to correct errors [were] never presented within [the] system OR [with] management.”⁶³ According to Mellon, she had other business expenses besides the Outback Bowl that she could have submitted to FAEMS and Concur for reimbursement. She added that the “total amount of business expenses incurred in 2016 more than exceeded the FAEMS[] account ... AND the miserly \$2000 branch support.”⁶⁴ Mellon also blamed her assistant, Maraman, who she claimed did not track and properly allocate her expenses.

Mellon claimed that a “completely toxic”⁶⁵ work environment prevented her from fixing the “errors” in the expense reports she submitted. “I made one error, [using] one check,” she said.⁶⁶ According to Mellon, “[b]ecause of the environment in which I worked, I did not feel comfortable with going to [Stuhlsatz, the branch manager] and saying, How do we fix this?”⁶⁷

Mellon testified that Wells Fargo fostered a negative work environment by engaging in “injurious or ... inflictive behavior” and “harassing behavior” towards her throughout her

⁶⁰ CX-24, at 2.

⁶¹ Compl. ¶ 29; Ans. ¶ 29; Tr. 231; CX-25; RX-4, at 13. The Outback Bowl refunded RL her \$3,800 in January 2017, a month after Mellon paid the Outback Bowl with a credit card. RL carried the expense on her credit card and paid interest on the outstanding balance for six months—from July 2016 to January 2017. Tr. 231-32.

⁶² Tr. 293.

⁶³ Ans. ¶ 52.

⁶⁴ Ans. at 4-5. *See also* Ans. ¶ 45 (“MANY additional expenses incurred to which reimbursements could have been allocated[.]”). At the hearing, Mellon repeated this defense. She testified that she had other business expenses “in queue” which she could have submitted—or later did submit—for reimbursement. Tr. 393. According to Mellon’s 2016 FAEMS account, the Firm reimbursed her \$20,000 in business expenses before her termination in December 2016. RX-19; RX-19A.

⁶⁵ Ans. at 5.

⁶⁶ Tr. 401.

⁶⁷ Tr. 401.

employment with the Firm.⁶⁸ Mellon specifically cited an April 2015 formal written warning from Stuhlsatz for engaging in “unprofessional and inappropriate behavior and conduct” when she yelled at Firm sales assistants in front of other employees and clients.⁶⁹ Mellon also testified that Wells Fargo unreasonably investigated her in 2015 for not disclosing tax liens recorded in 1991, 2000, and 2005, while she was registered with another broker-dealer.⁷⁰ Wells Fargo, according to Mellon, was responsible for failing to report her July 2016 bankruptcy petition on her Uniform Application for Securities Industry Registration or Transfer (“Form U4”) even though she used the Firm’s internal process to disclose the event. This caused her to formally dispute the information in her BrokerCheck Report.⁷¹

Mellon also claims that the Firm improperly caused the disclosure of two customer complaints on her Form U4, even though she had done nothing improper. Mellon filed arbitration claims against Wells Fargo in 2017 with FINRA’s Office of Dispute Resolution, which resulted in the expungement of references in the Central Registration Depository (“CRD”) to the customer complaints.⁷² Mellon asserts that the Firm’s mishandling of the customer complaints and its CRD entries are “further evidence of the piling on and retaliatory behavior of [Wells Fargo] management.”⁷³

As further evidence of the alleged mistreatment against her, Mellon points out that her \$25,000 bonus in March 2016 was late because of Wells Fargo’s delay in processing supporting paperwork.⁷⁴ The delay, she claims, “creat[ed] disruption of [her] personal finances and work environment.”⁷⁵ Had the delay not occurred, Mellon implies, the check she mailed to the Outback Bowl in mid-March 2016 would not have bounced, and her April 2016 expense reports would not have been false.

⁶⁸ Tr. 386.

⁶⁹ RX-11, at 1-2; RX-12, at 1-2. Mellon explained that the yelling incident involved her urging sales assistants to be more responsive to customer demands. Because she disagreed with the written warning, she did not sign it. Tr. 155-58. Mellon received similar written warnings in 2013 and 2014 for allegedly unprofessional behavior towards Firm employees. *See* RX-11, at 6, 14-15. In September 2015, Stuhlsatz gave Mellon a written warning for dating a document after a customer had signed it. Mellon disputed the charge. *See* RX-12, at 14-15.

⁷⁰ Tr. 149-51, 163-64; RX-10, at 1-5, 8-12; RX-12, at 4-13. According to Mellon, her dispute with the Firm over disclosing liens demonstrated the difficult environment she had to work in. This “created a wall” between her and Stuhlsatz, Mellon said, such that she was unable “to reach out to him when [she] realized an error had occurred” with the expense reports. Tr. 151.

⁷¹ RX-2, at 1-2. Mellon testified that she learned of this error during Wells Fargo’s internal investigation into her expense reports. Tr. 383-84.

⁷² Ans. at 5; RX-6; RX-7. *See also* RX-12, at 18-27.

⁷³ Tr. 386. *See also* Tr. 167-68.

⁷⁴ Tr. 388-89.

⁷⁵ Ans. at 5.

D. FINRA Rule 8210 Requests for Information

1. FINRA Requests Information from Mellon

On January 5, 2018, as part of the investigation into Mellon's expense reports, FINRA staff sent Mellon a letter pursuant to FINRA Rule 8210 requesting that she provide information about the Outback-related expense reports. The letter asked her to provide copies of her "personal bank account statements to evidence payment" of the \$3,800 Outback Bowl expense. The staff also asked Mellon to include "a copy of documentation to support the mode of payment such as cancelled checks, wire transfer, etc."⁷⁶

The staff also asked that Mellon provide a list of checking and savings accounts at the Bank of Tampa and other financial institutions in which she held an interest during the period from January 1 to October 31, 2016, and to produce copies of account statements and cancelled checks for the same period. The staff gave Mellon instructions in the event that she encountered obstacles in getting the requested documents. If Mellon could not get the requested documents from the bank, she should provide copies of her correspondence with the bank, all documents that the bank did produce to her, and "a detailed written statement describing [her] undertaking to obtain the documents."⁷⁷ If the bank denied Mellon access to the records, she should provide evidence of the bank's denial.⁷⁸

FINRA's letter also warned Mellon about the possible consequences of not complying with FINRA Rule 8210:

Under FINRA Rule 8210, you are obligated to respond to this request fully, promptly, and without qualification. You are also obligated to supplement or correct any response that you later learn to have been incomplete or inaccurate. If you withhold any responsive document or information, you must specifically identify what you are withholding and state the basis for your doing so. Any failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry.⁷⁹

2. Mellon Provides False and Misleading Information to FINRA

Mellon received the January 5 Rule 8210 letter via email and immediately forwarded it to the Bank of Tampa commercial banking officer. In her email, Mellon told the bank, "I need your help. Either a letter deny[ing] the documents or the docs."⁸⁰ In a subsequent email later in the

⁷⁶ CX-35, at 1.

⁷⁷ CX-35, at 1.

⁷⁸ CX-35, at 1.

⁷⁹ CX-35, at 2.

⁸⁰ CX-40, at 3-4.

day, she asked, “Wouldn’t it be illegal for [FINRA] to demand [the information] since it is a joint account and [my husband] would not want our laundry aired? [W]ould not that be an appropriate answer by Bank?”⁸¹

Mellon responded to FINRA’s Rule 8210 request by email on January 12, 2018. She provided a copy of the receipt from the Outback Bowl confirming her payment of \$3,800 by credit card in December 2016, but she did not provide copies of monthly bank statements, an explanation of the steps she took to try to get the statements, or correspondence she had with the Bank of Tampa. Rather, Mellon told FINRA that because she did not use a check to pay the Outback Bowl, “the banking document requests seem a bit broad of scope.”⁸² The bank statements were unavailable, Mellon said in her email, because “[she] no longer [had] online access, nor ... copies of statements.”⁸³ Mellon provided no evidence of her efforts to obtain the documents FINRA requested, even though the staff had given her instructions to do so.

On January 17, 2018, the staff sent Mellon a follow-up letter pursuant to Rule 8210.⁸⁴ In the letter, the staff told Mellon she had not adequately responded to the January 5 request for information because she did not produce copies of her credit card statements and other items Enforcement had specifically requested. The letter also informed Mellon that the Bank of Tampa had confirmed to FINRA staff that just one joint bank account holder could authorize the release of bank statements.⁸⁵ FINRA’s investigator also orally told Mellon that the bank would provide account documents to one of the joint account’s owners.⁸⁶

Mellon responded the same day by email, telling the staff that because the Bank of Tampa joint account was closed, she had no online access to copies of the statements. She tried to recover the documents from her “cloud accounts,” she said, but had no success, even after talking to Apple representatives about retrieving the documents.⁸⁷ According to Mellon, her husband told her “in no uncertain terms that the information was not to be shared, that it was tantamount to an invasion of privacy.”⁸⁸ After receiving Mellon’s emailed response, the staff

⁸¹ CX-40, at 4.

⁸² Tr. 109-11, 259-62; CX-36, at 1; RX-4.

⁸³ CX-36, at 1.

⁸⁴ The letter repeated the warning that if Mellon failed to produce the requested information, she risked sanctions, which could include a bar. CX-37, at 1. Mellon responded, “I am aware of my obligations to [FINRA] and I am aware of my rights, as well.” CX-38, at 2.

⁸⁵ CX-37, at 1.

⁸⁶ Tr. 114, 267, 425.

⁸⁷ CX-38, at 1. By September 2016, Mellon and her husband had closed the joint account at Bank of Tampa and opened a new account at another financial institution. Tr. 276; CX-24, at 2.

⁸⁸ CX-38, at 1.

asked her if she intended to produce the requested documents, including the bank and credit card statements and cancelled checks. Mellon responded, “I have provided all I can produce.”⁸⁹

On January 18, 2018, FINRA staff asked the Bank of Tampa to provide a letter stating whether it would provide Mellon copies of statements for the joint account and detailing communications it had with her about obtaining account statements.⁹⁰ The same day, the bank’s commercial banking officer wrote to FINRA that the bank would provide either account holder of the joint account with copies of bank statements and canceled checks. Therefore, according to the bank, if Mellon asked for “any documentation” about her accounts, it “would provide her with any/all information requested.” It added that the bank “ha[d] not received any requests for account information” from Mellon.⁹¹ The commercial banking officer wrote that Mellon wanted a letter from the bank stating that it could not produce the statements FINRA requested. In response, according to the bank’s letter, the commercial banking officer told Mellon that she should consult an attorney.⁹²

At the hearing, Mellon admitted that the bank had told her that she could in fact obtain copies of statements for the joint account. But, according to Mellon, she did not ask the bank for the statements because her husband asked her not to.⁹³ The bank never refused to provide Mellon with the account statements.⁹⁴ In her Answer, Mellon stated that her husband and an attorney deemed FINRA’s request to be “inappropriate and an over step [sic] of privacy laws.”⁹⁵

According to FINRA’s investigator, the staff sought copies of Mellon’s bank and credit card statements in anticipation of taking her on-the-record testimony (“OTR”). The records would evidence, the investigator testified, whether Wells Fargo transferred \$4,300 to Mellon and would show what happened to Mellon’s \$3,800 check. FINRA did not receive the statements for the joint account until after Mellon’s OTR, which took place in early February 2018.⁹⁶

⁸⁹ CX-38, at 1.

⁹⁰ CX-39.

⁹¹ CX-40, at 3. *See also* Tr. 264-65, 273. According to the bank, it retains account records for five years. CX-40, at 3.

⁹² CX-40, at 3. Mellon testified that she asked the Bank of Tampa not to produce the statements because her husband did not want to provide them to FINRA. Tr. 123-24.

⁹³ Tr. 112-13.

⁹⁴ Tr. 124-25.

⁹⁵ Ans. at 4. Because she did not have access to her bank records, Mellon stated that she would have to pay for copies of the statements if she requested them from the bank. *Id.*

⁹⁶ Tr. 265, 275, 292-93. After the OTR, Mellon provided FINRA with a letter authorizing the Bank of Tampa to produce the documents to FINRA. Tr. 274-75, 400. In her Answer, Mellon stated that FINRA staff “strong armed/threatened” her to produce bank statements “against [her] will.” Ans. ¶ 40.

III. Conclusions of Law

A. Mellon Violated FINRA Rule 2010 by Converting \$4,300 from Wells Fargo (Cause One)

Cause one of the Complaint charges that Mellon violated FINRA Rule 2010 by converting \$4,300 from Wells Fargo—\$2,800 of which came from her FAEMS account and \$1,500 from Concur—specifically, the branch office’s discretionary business expense fund.

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”⁹⁷ The Rule is intended to enable FINRA to regulate the ethical standards of its members and “encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”⁹⁸ An associated person violates Rule 2010 when “the misconduct reflects on the associated person’s ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people’s money.”⁹⁹

FINRA’s Sanction Guidelines (“Guidelines”) define conversion as the “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.”¹⁰⁰ The Securities and Exchange Commission (“SEC”) has repeatedly stated that conversion violates FINRA Rule 2010 because it is a fundamentally dishonest act that reflects negatively on a person’s ability to comply with regulatory requirements. It also raises concerns that the person is a risk to investors, firms, and the integrity of the securities markets.¹⁰¹ Conversion also demonstrates, the SEC has concluded, that an associated person is unable “to observe the high standards of commercial honor required of registered persons.”¹⁰²

The Panel considered and rejects Mellon’s chief argument that, because she had incurred other business expenses, which offset the amount she was reimbursed for the Outback Bowl, she did not receive more than she was entitled to. The other business expenses, she claims, exceeded the amount of her \$20,000 FAEMS account and the \$2,000 branch allowance.¹⁰³ She also argues

⁹⁷ Pursuant to FINRA Rule 0140, FINRA Rule 2010 also applies to persons associated with a member.

⁹⁸ *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)).

⁹⁹ *Dep’t of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *20 (NAC Jan. 13, 2017) (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002)).

¹⁰⁰ FINRA Sanction Guidelines at 36 n.2 (2019), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

¹⁰¹ *Dep’t of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *13 (NAC July 16, 2015), *aff’d*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173 (Mar. 29, 2016).

¹⁰² *Grivas*, 2016 SEC LEXIS 1173, at *2-3.

¹⁰³ See *Dep’t of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *12 & n.13 (Bd. of Governors May 9, 2014) (rejecting respondent’s defense that she had other legitimate reimbursable expenses and

that money from the FAEMS account actually belonged to her because it was funded with contributions from her Wells Fargo compensation. However, an employee forfeits unused FAEMS funds at the end of the year. Even if the Panel were to credit this argument, Mellon also obtained \$1,500 of the \$4,300 that Wells Fargo paid her from the Concur system, which was funded directly by the branch, not Mellon's compensation. And even if Mellon incurred other reimbursable expenses, she submitted false reimbursement requests for an expense she did not incur, and she obtained money to which she was not entitled.¹⁰⁴

Mellon also argues that she made an “administrative error” involving an “over allocation of an expense,” which “clearly should have been allowed to be corrected internally,”¹⁰⁵ and that she did not act with intent. The Panel disagrees. Mellon acted intentionally when she submitted each of the expense reports. There is no evidence that the reimbursements resulted from the “mis-allocation of expenses” or “administrative errors”¹⁰⁶ caused by Concur, FAEMS, Maraman, or anyone else at Wells Fargo. Mellon made a deliberate decision to deceive Wells Fargo. She knowingly submitted an expense report in January 2016 using a check she had not sent to the Outback Bowl. She again acted deliberately when she submitted two separate expense reports in April 2016—one to Concur (for \$1,000) and one to FAEMS (for \$2,800)—even though she knew that her check to the Outback Bowl had bounced. She acted intentionally in July 2016 when she asked Maraman to allocate the \$500 quarterly branch allowance to the Outback Bowl, an expense she knew she had not paid.

The Panel also rejects Mellon's argument that the Firm was intent on getting rid of her, which created an environment of “ill will and toxicity” that prevented her from fixing the expense report “errors.”¹⁰⁷ Based on the evidence presented at the hearing, Wells Fargo was engaged in appropriate supervision of Mellon. In any event, any possible friction between Mellon and Wells Fargo does not excuse her deliberately submitting false expense reports.

The Panel finds that Mellon converted \$4,300 from Wells Fargo, in violation of FINRA Rule 2010. Her conduct violated the high standards of commercial honor and just and equitable principles of trade by which an associated person must abide.

thus did not profit from submitting false expense reports), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

¹⁰⁴ See *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *19-22 (NAC Oct. 9, 2009) (finding that by submitting false expense reports for a trip he did not take, respondent converted firm money), *aff'd*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *remanded*, 718 F.3d 904 (D.C. Cir. 2013), *remanded*, Exchange Act Release No. 70632, 2013 SEC LEXIS 3133 (Oct. 8, 2013), *aff'd*, No. 2006006705601r, 2015 FINRA Discip. LEXIS 49 (NAC Mar. 16, 2015), *aff'd*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176 (Oct. 8, 2015), *petition for review denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017), *remanded*, SEC Admin. Proceeding No. 3-13678r (Dec. 5, 2017).

¹⁰⁵ Mellon's Pre-Hearing Brief at 1.

¹⁰⁶ Ans. at 4.

¹⁰⁷ Mellon's Pre-Hearing Brief at 1.

B. Mellon Violated FINRA Rules 4511 and 2010 by Creating False Expense Reports and Submitting Them to Wells Fargo (Causes Two and Three)

Cause two charges that Mellon violated FINRA Rule 2010 by directing her assistant to submit four false expense reports on her behalf between January 27 and July 6, 2016. The expense reports were false because Mellon represented to the Firm that she had paid the Outback Bowl when she knew she had not. In January 2016, she used a photocopy of a check to support her request for reimbursement even though she had not sent the check to the Outback Bowl. In April 2016, she re-submitted the check to the Firm for reimbursement, even though she knew it had just bounced. In July 2016, she sought reimbursement for \$500 more than the Outback Bowl invoice, again using the same check.¹⁰⁸ It is well established that submitting false expense reports to a firm violates FINRA Rule 2010.¹⁰⁹ The Panel therefore finds that Mellon violated FINRA Rule 2010, as alleged in cause two.

Cause three alleges that by submitting four false expense reports Mellon caused the Firm to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.¹¹⁰ FINRA Rule 4511(a) requires that brokers “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3(a) require that a broker-dealer make and keep current certain books and records relating to its business. More specifically, Exchange Act Rule 17a-3(a)(2) requires broker-dealers to maintain current “[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”¹¹¹ The books and records provisions include “the requirement that the records be accurate, which applies ‘regardless of whether the information itself is mandated.’”¹¹²

Because Mellon had not paid the Outback Bowl and her check had bounced, she knew that the four expense reports were false. She nonetheless deliberately submitted the expense reports as part of her scheme to convert funds from Wells Fargo. By submitting the false expense reports to Wells Fargo, Mellon caused the documents to become Firm records. The Panel finds

¹⁰⁸ Compl. ¶¶ 50-51.

¹⁰⁹ *Dep’t of Enforcement v. Leopold*, No. 2007011489301, 2012 FINRA Discip. LEXIS 2, at *23-25 (NAC Feb. 24, 2012) (respondent violated former NASD Rule 2110 by submitting false expense reports (for which he was not reimbursed) using fictitious hotel invoices and forged signatures of registered representatives and false verification letters); *Dep’t of Enforcement v. McCartney*, No. 2010023719601, 2012 FINRA Discip. LEXIS 60, at *7-8 (NAC Dec. 10, 2012) (respondent violated NASD Rule 2110 by submitting a false expense report, false receipt, false verification letter, and falsified check to obtain reimbursement to which he was not entitled).

¹¹⁰ Compl. ¶¶ 57-58.

¹¹¹ 17 C.F.R. § 240.17a-3(a)(2).

¹¹² *Eric J. Brown*, Exchange Act Release No. 66469, 2012 SEC LEXIS 636, at *32 (Feb. 27, 2012) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 51 S.E.C. 892, 901 (1993)), *aff’d sub nom. Collins v. SEC*, 736 F.3d 521 (D.C. Cir. 2013), *reh’g denied*, No. 12-1241, 2014 U.S. App. LEXIS 1223 (D.C. Cir. Jan. 22, 2014).

that because Mellon's false expense reports caused Wells Fargo to maintain inaccurate books and records, she violated FINRA Rules 4511 and 2010,¹¹³ as alleged in cause three.

C. Mellon Violated FINRA Rules 8210 and 2010 by Providing False and Misleading Information to FINRA (Cause Four)

Cause four of the Complaint charges Mellon with giving FINRA staff false information during the investigation into her expense reports, in violation of FINRA Rules 8210 and 2010. The Complaint alleges that Mellon falsely told the staff that she was unable to provide copies of bank statements and cancelled checks when she knew that the Bank of Tampa would provide copies upon request. It further alleges that Mellon misled the staff by saying that when she asked the bank for her account records, the bank instead told her to consult an attorney. In fact, according to the Complaint, Mellon had asked the Bank of Tampa to tell her that FINRA's request was unlawful.¹¹⁴

FINRA Rule 8210 empowers FINRA, in the conduct of an investigation, to require a member or an associated person to provide information in writing or orally and requires members and registered persons to respond completely and truthfully. Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information from its members. An associated person's obligation to comply with Rule 8210 requests for information is unequivocal. "The rule is at the heart of the self-regulatory system for the securities industry."¹¹⁵

Providing false information to FINRA in response to a Rule 8210 request violates both Rule 8210 and Rule 2010.¹¹⁶ Providing false or misleading information to FINRA in the course of an examination or investigation "can conceal wrongdoing" and therefore "subvert[s] [FINRA's] ability to perform its regulatory function and protect the public interest."¹¹⁷ "Associated persons therefore must cooperate fully in providing ... information and may not take

¹¹³ *Dep't of Enforcement v. Dakota Sec. Int'l, Inc.*, No. 2016047565702, 2019 FINRA Discip. LEXIS 11, at *29 (NAC Mar. 18, 2019) (citing *Dep't of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *38 (NAC July 28, 2011)), *appeal docketed*, SEC Admin. Proceeding No. 3-19138 (Apr. 5, 2019). A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010. *See Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *64 (NAC July 20, 2017) (a violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010). Proof of scienter is not required to find a books and records violation. *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *48-50 (May 27, 2015).

¹¹⁴ Compl. ¶¶ 60-62.

¹¹⁵ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F.App'x 692 (2nd Cir. 2009), *cert. denied*, 559 U.S. 1102 (2010).

¹¹⁶ *See CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *29-30 (Jan. 30, 2009). Providing false or misleading information to FINRA during an investigation constitutes an independent violation of FINRA Rule 2010, separate from a violation of Rule 8210; *Dep't of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *41 (NAC Dec. 17, 2015) (citing *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 n.26 (NAC Oct. 10, 2007)).

¹¹⁷ *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *32 (Aug. 22, 2008) (quoting *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006)).

it upon themselves to determine whether the information FINRA has requested is material.”¹¹⁸ The SEC has determined that “[d]elay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest.”¹¹⁹

Mellon knew that producing copies of statements from the joint account would reveal that she had not paid the Outback Bowl before Wells Fargo paid her \$4,300. She also knew that the Bank of Tampa would produce the statements for her if she asked for them. Because she knowingly gave FINRA false and misleading information about the availability of the bank statements, Mellon violated FINRA Rules 8210 and 2010.¹²⁰

IV. Sanctions

In determining the appropriate sanctions for Mellon’s misconduct, the Panel considered the Sanction Guidelines, including the General Principles Applicable to All Sanction Determinations and the Principal Considerations in Determining Sanctions.¹²¹ We also considered all relevant facts and circumstances, including the seriousness of the misconduct, any aggravating and mitigating factors, and the risk of future harm Mellon poses to the investing public.

¹¹⁸ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012) (citing *CMG Inst’l Trading, LLC*, 2009 SEC LEXIS 215, at *21 (stating that associated persons “may not ignore NASD inquiries ... nor take it upon themselves to determine whether information is material to an NASD investigation of their conduct”).

¹¹⁹ *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12-13 (Apr. 11, 2008), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹²⁰ Mellon also asserted that she based her decision not to produce the bank statements upon the advice of counsel. She claims that an attorney told her that under the circumstances FINRA’s request for copies of statements for the joint account violated privacy laws. Ans. at 4. Mellon also asserted this defense at the hearing, claiming that her attorney told her that FINRA needed to obtain a subpoena before she would be obligated to produce bank records. Tr. 117-18. Aside from her testimony, Mellon presented no evidence to corroborate her advice of counsel defense. She did not raise the advice of counsel defense when she responded to the staff’s requests for information. For the Panel to find that Mellon relied on the advice of counsel, she would have to prove that she made full and complete disclosure to competent legal counsel familiar with FINRA Rules and then reasonably relied on the advice. *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *52 (Sept. 13, 2010) (“The advice must be based on full and complete disclosure, and the respondent asserting reliance must produce ‘actual advice from an actual lawyer.’”) (citing *Berger*, 2008 SEC LEXIS 3141, at *40). Mellon failed to establish the advice of counsel defense. Furthermore, the FINRA Rule 8210 letters the staff sent Mellon placed her on notice that a failure to produce requested information could result in sanctions.

¹²¹ Guidelines at 2-8.

A. Conversion (Cause One)

The Guidelines state that a bar is standard for conversion “regardless of [the] amount converted.”¹²² The SEC has concluded that “conversion is antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money.”¹²³ A bar “reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry.”¹²⁴ Consistent with the Guidelines, the Panel concludes that a bar is the appropriate sanction.

No mitigating circumstances exist that would warrant any sanction less than a bar. Instead, the Panel is troubled by many aggravating factors. Mellon repeatedly tried to conceal her actions from Wells Fargo. She also caused RL to pay the Outback Bowl even though Mellon had already been reimbursed by Wells Fargo.¹²⁵ Mellon submitted four false expense reports over a period of six months.¹²⁶ She has not acknowledged her misconduct, choosing instead to blame others, including her assistant, for supposed administrative failings.¹²⁷ She downplays her actions, noting that the “amount of the error is not one that changed [her] life style.”¹²⁸ Mellon construes the problem as a clerical error that could easily have been rectified by re-allocating the expenses had the negative atmosphere in the office not prevented her from approaching her superiors. The Panel rejects her arguments and determines that Mellon acted deliberately.¹²⁹

The Guidelines also direct adjudicators to consider whether Mellon has demonstrated that her termination by Wells Fargo “qualifies for any mitigative value, keeping in mind the goals of

¹²² Guidelines at 36. The Guidelines do not recommend imposing a fine for conversion because a bar is standard. Guidelines at 36.

¹²³ *Olson*, 2015 SEC LEXIS 3629 at *9 & n.16 (citing *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012) (Conversion “is extremely serious and patently antithetical to the high standards of commercial honor and just and equitable principles of trade that underpin the self-regulation of the securities markets.”)).

¹²⁴ *Ortiz*, 2008 SEC LEXIS 2401, at *31-32.

¹²⁵ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 10) (whether respondent attempted to conceal his or her misconduct from the member firm with which he or she is/was associated).

¹²⁶ Guidelines at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9) (whether the respondent engaged in numerous acts and/or a pattern of misconduct) (whether the respondent engaged in the misconduct over an extended period of time).

¹²⁷ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 2) (whether an individual respondent accepted responsibility for and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm).

¹²⁸ Mellon’s Pre-Hearing Brief at 1.

¹²⁹ Guidelines at 8 (Principal Considerations in Determining Sanctions, No. 13) (whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence).

investor protection and maintaining high standards of business conduct.”¹³⁰ Mellon has the burden to prove that her termination “has materially reduced the likelihood of misconduct in the future.”¹³¹ Her termination does not overcome the Panel’s determination that her misconduct calls for a bar, the standard sanction for conversion under the Guidelines.

The Panel does not find mitigating the fact that Mellon ultimately paid the Outback Bowl in December 2016. Under the Guidelines, an effort to remedy the misconduct is mitigating only when a respondent acts prior to detection.¹³² Wells Fargo uncovered Mellon’s misconduct in October 2016, then terminated her employment on December 7, 2016, and she still had not paid the Outback Bowl. Even after RL filed her lawsuit, Mellon did not pay the debt for another four months.

Accordingly, the Hearing Panel bars Mellon from associating with any member firm in any capacity for converting \$4,300 from Wells Fargo, in violation of FINRA Rule 2010, as alleged in cause one.

B. Filing False Expense Reports and Causing Wells Fargo to Maintain Inaccurate Books and Records (Causes Two and Three)

The Guidelines state that, in certain instances, it may be appropriate to aggregate violations for purposes of imposing sanctions.¹³³ The Panel finds it appropriate to assess a unitary sanction for the misconduct alleged in causes two and three because they both relate to Mellon’s submission of false expense reports to Wells Fargo.¹³⁴

The Guidelines do not specifically address violations for submitting falsified documents to a firm. When the Guidelines do not provide specific guidance, adjudicators are encouraged to look to the guidelines for analogous violations.¹³⁵ To determine the appropriate sanctions for submitting false expense reports, the Panel considered the guideline for falsification of records¹³⁶ in violation of FINRA Rule 2010, together with the guideline for recordkeeping violations¹³⁷ of FINRA Rules 4511 and 2010. The guideline for falsification of records instructs adjudicators to

¹³⁰ Guidelines at 5 (General Principles Applicable to All Sanction Determinations, No. 7).

¹³¹ Guidelines at 5 (General Principles Applicable to All Sanction Determinations, No. 7).

¹³² Guidelines at 7.

¹³³ Guidelines at 4.

¹³⁴ See *Dep’t of Enforcement v. Taylor*, No. 20070094468, 2011 FINRA Discip. LEXIS 17, at *21-26 (NAC Aug. 5, 2011) (applying a single sanction for providing firm false information and causing firm to maintain inaccurate books and records).

¹³⁵ See Guidelines at 1. See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *42 (June 14, 2013) (noting that “[t]he Guidelines state that, where there is no specific guideline for a violation, it is appropriate to consider those [guidelines] for analogous misconduct”) (citations omitted).

¹³⁶ Guidelines at 37.

¹³⁷ Guidelines at 29.

consider a fine of \$5,000 to \$155,000 if the falsification is done without authorization in the absence of other violations or customer harm. When a respondent falsifies a document causing customer harm or if the misconduct is accompanied by significant aggravating factors, a bar should be considered standard.¹³⁸ The guideline for recordkeeping violations instructs adjudicators to consider a fine of \$10,000 to \$155,000 where aggravating factors predominate and a higher fine where significant aggravating factors predominate. The guideline also recommends a suspension of up to two years or a bar where aggravating factors predominate.¹³⁹

The guidelines for recordkeeping violations and falsification of records recommend that the Panel consider the nature and materiality of the inaccurate or missing information and the nature of the falsified documents. Other relevant considerations include the nature, proportion, and size of the records at issue, and whether the respondent entered or omitted the inaccurate or missing information intentionally, recklessly, or as the result of negligence.¹⁴⁰ Here, Mellon created false expense reports for her personal monetary gain during a period that her family was experiencing financial problems. The false reports deceived her Firm and facilitated her conversion of funds. The false reports did not involve a single, isolated act; she filed four false expense reports over a six-month period, demonstrating a pattern of behavior.¹⁴¹ The Panel therefore finds that the underlying nature of the false records is an aggravating factor because Wells Fargo relied on Mellon to submit accurate records in order to approve payments to her. The Panel finds that Mellon acted intentionally when she submitted the false expense reports.¹⁴²

The Panel finds that by submitting false expense reports, Mellon engaged in egregious misconduct. The Panel concludes that it is necessary to bar Mellon from associating with any member firm in any capacity for falsifying Firm records, in violation of FINRA Rule 2010, and causing Wells Fargo to maintain false books and records, in violation of FINRA Rules 4511 and 2010, as alleged in causes two and three.

C. Providing False Information in Response to a FINRA Rule 8210 Request (Cause Four)

For failing to respond truthfully to requests for information under Rule 8210, the Guidelines recommend a fine of \$25,000 to \$77,000. Failing to provide truthful responses to requests for information is just as serious as failing to respond in any manner, and, in the absence

¹³⁸ Guidelines at 37.

¹³⁹ Guidelines at 29.

¹⁴⁰ Guidelines at 29, 37.

¹⁴¹ Guidelines at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9) (whether the respondent engaged in numerous acts and/or a pattern of misconduct) (whether the respondent engaged in the misconduct over an extended period of time).

¹⁴² Guidelines at 29.

of mitigating factors, a bar is the standard sanction for an individual who has failed to respond.¹⁴³ Where mitigation exists, the Guidelines recommend that adjudicators consider suspending the individual in any or all capacities for up to two years.¹⁴⁴

In determining the appropriate sanction for a failure to respond or to respond truthfully to a staff request for information made pursuant to FINRA Rule 8210, the Guidelines identify as a principal consideration the importance of the information requested viewed from FINRA's perspective.¹⁴⁵ In this case, Mellon intentionally provided false answers about her ability to obtain copies of her joint bank records. She did so because she knew that the documents would reveal that she had not paid the Outback Bowl when she submitted expense reimbursement requests to Wells Fargo. Whether she had paid the amount she owed was essential to FINRA's investigation of possible conversion of money from Wells Fargo. Her false answers impeded FINRA's investigation and required that FINRA staff engage in considerable effort to obtain the documents.

A majority of the Panel finds that Mellon's lack of veracity in her responses to FINRA staff warrants a bar. The Panel majority therefore imposes a bar from associating with any member firm in any capacity for Mellon's violations of FINRA Rules 8210 and 2010, as alleged in cause four.¹⁴⁶

V. Order

The Panel and the Panel majority impose three separate bars against Respondent Nancy Kimball Mellon. The Panel bars Mellon from associating with any FINRA member firm in any capacity for converting \$4,300 from Wells Fargo, in violation of FINRA Rule 2010, as alleged in cause one. The Panel also bars Mellon from associating with any FINRA member firm in any capacity for submitting false expense reports and causing Wells Fargo to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010, as alleged in causes two and

¹⁴³ See, e.g., *Ortiz*, 2008 SEC LEXIS 2401, at *32-33 (citing *Rooms*, 58 S.E.C. at 229) (“[T]he failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry [A] bar is an appropriate remedy.”); *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015) (“The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate.”).

¹⁴⁴ Guidelines at 33.

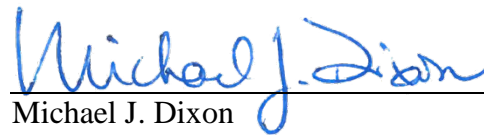
¹⁴⁵ Guidelines at 33.

¹⁴⁶ One member of the Panel dissents from the majority's determination to impose a bar for Mellon's violation of FINRA Rules 8210 and 2010, as alleged in cause four. The Panel member finds it mitigating that Mellon ultimately gave FINRA staff her written permission to obtain the requested records from the Bank of Tampa. Therefore, the more appropriate sanction, the dissenting Panelist finds, is the one the Guidelines provide for a failure to respond in a timely manner to requests for information. For failing to respond in a timely manner, the Guidelines tell adjudicators to consider a fine between \$2,500 and \$39,000 and to suspend an individual in any or all capacities for up to two years. Guidelines at 33. After considering all the circumstances, the dissenting Panelist finds it appropriately remedial to impose a sanction at the lower end of the ranges suggested by the Guidelines: a \$2,500 fine and a six-month suspension from associating with any member firm in any capacity.

three. Finally, the Panel majority bars Mellon from associating with any member firm in any capacity for providing false information to FINRA, in violation of FINRA Rules 8210 and 2010, as alleged in cause four.

Mellon is ordered to pay the hearing costs of \$4,613.94, consisting of a \$750 administrative fee and \$3,863.94 for the cost of the transcript. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

The bars shall become effective immediately if this Decision becomes FINRA's final action in this disciplinary proceeding.¹⁴⁷



Michael J. Dixon
Hearing Officer
For the Hearing Panel

Copies to: Nancy Kimball Mellon (via email, overnight courier, and first-class mail)
Kathryn M. Wilson, Esq. (via email and first-class mail)
John F. Guild, Esq. (via email)
Tino A. Lisella, Esq. (via email)
David B. Klafter, Esq. (via email)
Lara Thyagarajan, Esq. (via email)

¹⁴⁷ The Hearing Panel considered and rejected without discussion all other arguments by the parties.