

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Jeffrey D. Noard,
Menomonee Falls, WI,

Respondent.

DECISION

Complaint No. 2012034936101

Dated: May 12, 2017

Respondent's recommendation that a customer purchase an emerging growth company's renewable secured debentures lacked customer-specific suitability. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Robert D. H. Floyd, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Christopher P. Parrington, Esq., Andrew R. Shedlock, Esq.

Decision

In June 2012, Jeffrey Noard recommended that his customer, JD, an 82-year-old, retired, widow of limited means, purchase \$20,000 of renewable secured debentures from GWG Holdings, Inc., an "emerging growth company" that specializes in the life settlement business. The focus of this case is whether Noard's recommendation of the GWG debenture purchase to JD satisfied the standards for customer-specific suitability. In the proceedings below, the Hearing Panel determined that Noard's recommendation violated FINRA's suitability rule, and the Hearing Panel suspended Noard in all capacities for 10 business days and fined him \$2,500 for the violation. Noard appealed the Hearing Panel's decision. After an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

I. Factual Background

Noard has been in the securities industry for over 27 years. In October 1989, he entered the industry and registered as a general securities representative. Noard has been continuously registered with FINRA as a general securities representative since his initial registration.

During the period relevant to this case, Noard was registered as a general securities representative with Allied Beacon Partners, Inc. Noard joined Allied Beacon Partners in February 2011. In June 2013, Noard voluntarily terminated his association with Allied Beacon Partners to join his current employer.

A. JD

In June 2012, JD was an 82-year-old retired widow who lived next door to her adult children. She had been Noard's customer for more than 22 years. According to her Allied Beacon Partners' "Client Profile Form,"¹ JD had an annual income of \$40,000,² liquid net worth of \$40,000, estimated net worth (excluding residence) of \$150,000,³ and total holdings (or assets) of \$265,000.

The Client Profile Form detailed JD's holdings: \$2,000 in bonds, \$3,000 in annuities, \$10,000 in equities, \$50,000 in cash and equivalents, and \$200,000 in properties. Noard testified that, when he and JD completed the Client Profile Form, he estimated the value of JD's properties based on the "assumption" that JD owned two houses – the house that served as her personal residence and the house next door, where her adult children resided. In fact, JD did not own any real estate when she and Noard completed the Client Profile Form. She did not own her personal residence, and she had transferred the proximate property to her adult children several years earlier. At the hearing, Noard acknowledged that he did not ask JD about her property ownership when she and Noard completed the Client Profile Form. Nor did he ask her about it when she and Noard discussed the purchase of the GWG debentures.

The Client Profile Form outlined JD's financial experience, investment objectives, and risk tolerance. JD had no experience with "alternative investments" or private placements, and she planned to use her account proceeds to "[p]artially fund [her] retirement." JD's Client Profile Form stressed that JD's investment objective was "income," and her risk tolerance was "moderately conservative." The Client Profile Form defined the moderately conservative investor as an individual who is "willing to accept low risk to [his or her] initial principal, including low volatility, to seek a modest level of portfolio returns."⁴

¹ Allied Beacon Partners' Client Profile Form was "For Use with Alternative Investments Only." Allied Beacon Partners required Noard to submit the Client Profile Form on behalf of JD when JD purchased the GWG debentures because JD previously had not purchased any alternative investment through the firm.

² JD's annual income came from her social security benefits and a small pension from her husband.

³ JD's estimated net worth is comprised of JD's liquid net worth of \$40,000 and \$110,000 in other assets. The record does not disclose the assets that comprise the \$110,000.

⁴ JD's Client Profile Form contained a combination of computer-generated and handwritten entries. The computer-generated entries were prepopulated from Allied Beacon Partners' system. The handwritten entries came from Noard. JD's annual income, liquid net worth, and estimated net worth, for example, were computer-generated entries. The entries

B. GWG

GWG, which identifies as an “emerging growth company,”⁵ is a Delaware corporation headquartered in Minnesota. The company focuses on the life settlement business. As a participant in the market for life settlements, GWG, through its subsidiaries, purchases life insurance policies on the secondary market at a discount to the policies’ face values. Essentially, GWG borrows funds, buys life insurance policies from policyholders at a price greater than the policy’s cash surrender value (but lower than its face value), then pays the policyholder’s insurance premiums until the policyholder dies. After the policyholder’s death, GWG seeks to collect the death benefit. GWG generally earns a profit by collecting more money in death benefits than it pays to buy, finance, and service the insurance policies. When JD purchased the GWG debentures in mid-2012, GWG had a limited operating history and was operating at a net loss.⁶ In fact, at that time, nearly all of the insurance policies that GWG owned were purchased utilizing borrowed funds.

C. GWG’s Renewable Secured Debentures

In January 2012, GWG sought to raise capital by issuing “Renewable Secured Debentures.” The maturity dates of GWG’s debentures ranged from six months to seven years. The debentures paid interest at rates between 4.75 and 9.5 percent. GWG described the debentures as “illiquid,” “speculative,” and “involv[ing] a high degree of risk,” including the “risk of losing your entire investment.”

For example, in the offering’s prospectus, GWG disclosed that it had “chosen to finance [its] business almost entirely through the issuance of debt,” and that its “business model” relied on a “continued access to financing.”⁷ GWG also reported that its limited operating history, the

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under “holdings,” which included “properties,” primarily were handwritten entries. Noard testified that he dictated the handwritten entries to his assistant who, in turn, transcribed them to JD’s form. Noard was unable to state with certainty whether the handwritten entries were made before or after JD signed the Client Profile Form to purchase the GWG debentures. Noard, however, recalled that he personally downgraded JD’s risk tolerance from “moderate” to “moderately conservative.” Noard testified that he characterized JD’s risk tolerance as “low” or “conservative.” He explained, “[JD] doesn’t need the IRA, she’s got the income she needs, so she’s conservative moderate. Moderate conservative.”

⁵ GWG explained that, “[a]n emerging growth company may take advantage of certain reduced reporting requirements and is relieved of certain other significant requirements that are otherwise generally applicable to public companies.”

⁶ In 2010, GWG operated at a net loss of \$230,395. By 2011, GWG’s net losses totaled \$2.8 million.

⁷ GWG explained that it intended to use the offering’s proceeds to buy life insurance policies, cover operating expenses, and pay the principal and interest on the debentures and amounts owed under GWG’s subsidiary’s secured notes.

relatively new market for the purchase of life insurance policies on the secondary market, its assumptions about the valuation of the insurance policies, and the regulation of the insurance markets all presented risk factors for debenture purchasers. GWG emphasized that, “[a]n investment in our debentures is not suitable for all investors [t]he debentures are only suitable for persons with substantial financial resources and with no need for liquidity in this investment.”⁸

In response to these risk factors, GWG instituted “Suitability Standards” for individuals who purchased their debentures. GWG required that investors have either: “(i) a net worth (not including home, furnishings, and personal automobiles) of at least \$70,000 and an annual gross income of at least \$70,000, or (ii) a net worth (not including home, furnishings, and personal automobiles) of at least \$250,000.” GWG also required that any potential investor:

- (1) can reasonably benefit from an investment in us based on such investor’s overall investment objectives and portfolio structuring;
- (2) is able to bear the economic risk of the investment based on the prospective debenture holder’s overall financial situation; and
- (3) has apparent understanding of the fundamental risks of the investment, the risk that such investor may lose his or her entire investment, the lack of liquidity of the debentures, the qualifications of any advisor in our selling group who is recommending an investment in the debentures, and the tax consequences of the investment.

D. JD’s Purchase of GWG’s Renewable Secured Debentures

Noard learned of GWG in late-2010 from Allied Beacon Partners’ chief compliance officer. After hearing about the company, Noard conducted due diligence on GWG. He obtained information about GWG’s operations and business model, and he spoke to a number of GWG’s officers, including the company’s president. Based on what he learned, in early-2012, Noard began selling GWG’s investment products to some of his “wealthy clients.” Noard testified that he began recommending GWG’s products to his customers because they carried a “very good interest rate,” considering the risk.⁹

⁸ GWG stated that investors would not be able to access their principal investment prior to maturity except in cases of death, bankruptcy, or total disability.

⁹ Noard testified that 40 to 50 of his customers invested in GWG. At that time, Noard serviced 80 to 100 families, which represented 300 customer accounts. Noard also testified that his customer investments with GWG totaled \$7 to \$8 million of the \$85 to \$100 million that he managed.

On June 16, 2012, Noard met with JD and her son in Noard's office.¹⁰ JD had scheduled the meeting with Noard, so her son could discuss an unrelated transaction with Noard. During the course of the meeting, Noard recommended that JD's son invest in GWG's debentures. JD's son asked Noard whether his mother also should consider purchasing GWG's debentures. Noard testified that he responded, "[I]et's talk about it."

Noard testified that he, JD, and her son discussed JD's potential investment in GWG. Noard provided JD with a brief summary of the more positive aspects of GWG's business. Noard testified that he informed JD that GWG was a "maturing" company,¹¹ and that its portfolio of life insurance policies had increased from \$150 million to \$500 million. Noard presented JD with information about the average age of individuals who had sold their insurance policies to GWG, and he discussed GWG's bank debt with her. Noard touted his personal familiarity with GWG, and he told JD that he was in weekly contact with representatives of the company. He also told JD that he "had quite a bit of money invested" with GWG, he owned GWG's "six-month bonds for a long time," and that he had always received all interest owed. Noard summarized that he discussed "the general things that I talk about when I talk about the investments with clients."

Noard discussed the risks associated with JD's investment with GWG, but he limited his conversation to a discussion of the actuarial risks associated with GWG's insureds living longer than expected. Noard did not review GWG's prospectus for the debenture offering with JD, provide JD with any specific information concerning GWG's investment model, or discuss what would happen if JD needed access to her money before the debentures matured.¹²

On June 16, 2012, JD purchased two of GWG's debentures for a total of \$20,000. She invested \$10,000 in a six-month debenture and \$10,000 in a two-year debenture.¹³ JD renewed the six-month debenture, holding it for one year. JD redeemed the six-month debenture in June 2013, after the renewal period ended. She redeemed the two-year debenture when it matured in

¹⁰ Noard provided the only testimony concerning this meeting with JD and her son. JD testified at the hearing, but she stated that she was unable to recall any meetings or discussions with Noard about GWG or the company's debentures.

¹¹ Noard testified that he told JD that GWG was a "seed" company that had good potential "down the road."

¹² At the same time, Noard reassured JD that the life expectancy of the insureds in the portfolio was over 80 years, and that any actuarial risk would be lessened over time as the average life expectancy age decreased.

¹³ Noard's testimony concerning the timing of what occurred during (and after) his meeting with JD and her son is disjointed. It is unclear when JD signed Allied Beacon Partners' Client Profile Form, when Noard or his assistant made the handwritten notations to JD's Client Profile Form, or when JD signed GWG's subscription agreements to purchase the debentures. JD's Client Profile Form and two signed subscription agreements are each dated June 16, 2012, the day that Noard met with JD and her son in his office.

June 2014. JD received her principal investment plus interest when she redeemed the debentures. Noard testified that he earned between \$200 and \$250 in commissions for JD's purchase.

II. Procedural History

FINRA's Preliminary Investigations Unit examined several firms, including Allied Beacon Partners, to determine whether the firms' marketing of GWG's investments complied with FINRA's advertising rules. In connection with these examinations, FINRA's Preliminary Investigations Unit referred Noard's sales of GWG's debentures to JD to FINRA's Department of Enforcement for further investigation. After Enforcement concluded its investigation, it filed a one-cause complaint against Noard in November 2014, alleging that Noard had violated FINRA's suitability and ethical standards rules, NASD Rule 2310 and FINRA 2010.¹⁴ Specifically, Enforcement argued that Noard had violated FINRA's suitability rule because he recommended that JD purchase GWG's debentures, and his recommendation was not suitable for JD based on her financial situation, objectives, and needs.

A one-day hearing took place in Chicago, Illinois, in June 2015. Three witnesses testified at the hearing, including Noard, JD,¹⁵ and a FINRA examiner. The Hearing Panel issued its decision in July 2015, finding that Noard had violated FINRA's rules as alleged in the complaint. The Hearing Panel suspended Noard in all capacities for 10 business days and fined him \$2,500 for suitability violation. This appeal followed.

III. Discussion

The Hearing Panel determined that Noard violated NASD Rule 2310 and FINRA Rule 2010 because he failed to make an "independent, customer-specific suitability determination" when he recommended and sold GWG's renewable secured debentures to JD. We affirm the Hearing Panel's findings.

A. NASD Rule 2310

When recommending the purchase, sale, or exchange of any security, NASD Rule 2310 requires registered representatives, such as Noard, to "have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." NASD Rule 2310(a).¹⁶ The suitability rule includes two parts: reasonable-basis suitability and

¹⁴ We apply the rules in effect when the conduct occurred.

¹⁵ JD testified at the hearing via telephone.

¹⁶ NASD Rule 2310 has been superseded by FINRA Rule 2111, effective July 9, 2012. *See FINRA Regulatory Notice 11-25*, 2011 FINRA LEXIS 45, at *2-4 (May 2011). A violation of FINRA's suitability rule violates FINRA Rule 2010. *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *26 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

customer-specific suitability. Initially, a broker must have a reasonable basis to believe, after performing reasonable due diligence, that the recommendation could be suitable for some investors (reasonable-basis suitability). See *F.J. Kaufman & Co.*, 50 S.E.C. 164, 168 & n.16 (1989). A registered representative then must “assess[] whether the recommendation is suitable for the specific investor to whom the recommendation is directed (customer-specific suitability).” *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *38 (July 2, 2013) (internal quotations omitted). Suitability is judged prospectively, not retrospectively – “[t]he fact that [an] investment[] ultimately turned a profit does not make [it] suitable when made.” *Cody v. SEC*, 693 F.3d 251, 260 (1st Cir. 2012).

This case focuses on customer-specific suitability. To satisfy the requirements for customer-specific suitability, “a broker [must] make a customer-specific determination of suitability and . . . tailor his recommendations to the customer’s financial profile and investment objectives.” *Kaufman*, 50 S.E.C. at 168. Even if a broker understands the specific risks and explains them to a customer in making a recommendation, the customer’s understanding of the risks and acquiescence in following the recommendation does not “relieve [a broker] of his obligation to make reasonable recommendations.” *Jack H. Stein*, 56 S.E.C. 108, 116-17 (2003).

“A broker’s recommendations must be consistent with his customer’s best interests, financial situation, and needs, and he or she must abstain from making recommendations that are inconsistent with the customer’s financial situation.” *Dane S. Faber*, 57 S.E.C. 297, 310-11 (2004). This is particularly true when a broker is assessing whether a recommendation is suitable for senior investors. See *FINRA Regulatory Notice 07-43*, 2007 FINRA LEXIS 42, at *4 (Sept. 2007) (“Although the [suitability] rule does not explicitly refer to a customer’s age or life stage, both are important factors to consider in performing a suitability analysis And, depending on their particular circumstances, seniors and retirees may have less tolerance for certain types of risk than other investors.”).

B. Noard Made a Recommendation to JD

Before we reach the issue of the suitability of JD’s purchase of GWG’s debentures, we must examine whether Noard recommended the purchase to JD. Noard argues that JD’s son “assisted in making the initial GWG recommendation,” and that “the recommendation situation is muddled” because JD’s son was the one who suggested that the purchase of the GWG debentures might be a “good” investment for JD.

We find that Noard made a recommendation to JD. According to Noard’s testimony, when JD’s son inquired whether JD’s purchase of GWG’s debentures would be a good investment for his mother, Noard suggested that they discuss the matter. During the ensuing discussion, Noard, not JD’s son, provided JD with information concerning GWG and the company’s offering of debentures. Noard, not JD’s son, was the individual who had a history of interactions with GWG and had sold GWG’s investment products to some of his “wealthy clients.” Noard, not JD’s son, also was the one who had met with GWG’s personnel, including the company’s president, and had information about GWG and their products. Finally, Noard, not JD’s son, was the person who signed GWG’s subscription agreement as the financial advisor of record and collected commissions on the sales. Noard, as the registered representative

handling JD's account, was the individual responsible for understanding GWG's products. *See Dist. Bus. Conduct Comm. v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *18 (NASD NAC Jan. 28, 1999), *aff'd*, 54 S.E.C. 655, 662-63 (2000).¹⁷

The Hearing Panel credited Noard's testimony concerning what occurred during the meeting in his office with JD and her son. There is no basis to overturn the Hearing Panel's determination that Noard was a credible witness. *See Dep't of Enforcement v. Davidofsky*, Complaint No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *22 (FINRA NAC April 26, 2013) ("[C]redibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference and can be overcome only where the record contains substantial evidence for doing so."). Accordingly, as we examined Noard's explanation of the events that led to JD's purchase of GWG's debentures, we concluded that Noard's statements, standing alone, establish that he recommended that JD purchase the debentures at issue.

C. JD's Purchase of GWG's Debentures Was Not a Suitable Investment

We next determine whether Noard's recommendation was suitable for JD in light of her financial situation and needs. It was not. When Noard recommended that JD purchase GWG's debentures, JD was an 82-year-old retired widow. JD's annual income was \$40,000, and her liquid net worth was \$40,000. She planned to use her investment income to fund her retirement, and she needed access to her investment proceeds within three to five years. JD was a "moderately conservative" investor who was willing to accept low risk to obtain investment returns. Noard, over his 22 years of servicing JD's accounts, was familiar with JD, her assets, and her risk tolerance. As Noard observed, JD was a "conservative" investor whose willingness to accept risk was "low." Despite this familiarity, Noard recommended that JD utilize \$20,000 to purchase GWG's debentures. Noard's recommendation that JD purchase GWG's debentures was unsuitable based on JD's financial situation and needs and the illiquid and speculative nature of GWG's debentures.

First, GWG's debentures involved a high degree of risk, including the risk that an investor may lose his or her entire investment. When Noard recommended that JD invest in GWG, GWG had a limited operating history, was dependent on sustained access to financing to continue its operations, and was operating at a net loss. JD, on the other hand, was retired, widowed, had limited income, and did not have sufficient savings to sustain the loss of half of her liquid net worth. Generally, "risky investments are unsuitable recommendations for investors with relatively modest wealth and limited investment experience." *Cody*, 2011 SEC LEXIS 1862, at *36-37.

Second, JD's purchase of \$20,000 in GWG's debentures committed 50 percent of her liquid net worth to a single company, GWG. Such an overconcentration of JD's assets into a

¹⁷ At the hearing, when asked whether he recommended that JD invest \$20,000 in the GWG debentures, Noard responded, "Yes. After discussing with her son and daughter, we did that, yes." Enforcement continued, "So, . . . you made the recommendation?" Noard answered, "Yes, I did."

single enterprise heightened the risks associated with JD's investment in GWG and compounded the unsuitable nature of Noard's recommendation that she purchase the company's debentures. See *Faber*, 57 S.E.C. at 311 (a "high concentration of investments in one or a limited number of speculative securities is not suitable for investors seeking limited risk"); *James B. Chase*, 56 S.E.C. 149, 156-57 (2003) (respondent violated NASD's suitability rule by recommending that the customer purchase shares in a highly speculative unprofitable start-up company until her entire portfolio comprised the one investment); *Gordon Scott Venters*, 51 S.E.C. 292, 293 (1993) (respondent violated NASD's suitability rule by recommending that a 75-year-old widow with no more than \$35,000 net worth invest \$2,300 in a company that was losing money, had never paid a dividend, and whose prospects were speculative).

Finally, although our analysis of this case focuses on whether Noard satisfied FINRA's suitability rule, we note that JD did not meet the "minimum suitability standards" set out in GWG's offering documents. GWG required the purchasers of their debentures to have either: "(i) a net worth (not including home, furnishings, and personal automobiles) of at least \$70,000 and an annual gross income of at least \$70,000, or (ii) a net worth (not including home, furnishings, and personal automobiles) of at least \$250,000." JD's annual income was \$40,000, and her estimated net worth was \$150,000. Thus, based on GWG's own assessment of the minimum suitability requirements for purchasers of its debentures, the investment was not suitable for JD. Although a registered representative may not rely on an investment's suitability standards to satisfy his or her suitability obligation, at a minimum, the suitability standards put the representative on notice that the issuer has flagged the product as, for example, risky, illiquid, or complex, and the representative's analysis should account for this warning.

Noard's recommendation that JD purchase GWG's debentures was unsuitable because it was inconsistent with JD's risk tolerance and financial situation and needs. Accordingly, Noard failed to meet the standards for customer-specific suitability.

D. Noard Did Not Have Reasonable Grounds to Believe JD's Investment Was Suitable

Noard does not generally contest that his recommendation was unsuitable. Noard states, "I know the client inside and out, I made a mistake with this one like I said. It has kept me awake at night." Rather, Noard argues that he had *reasonable* grounds to believe that JD's purchase of GWG's debentures was a suitable investment in light of her financial situation. Noard's argument concerning the reasonableness of his recommendation rests on two bases.

First, Noard states that he mistakenly assumed that JD owned a second house when she purchased the debentures.¹⁸ Second, Noard asserts that JD had a "unique family situation" that provided her with sufficient financial support if she lost the entirety of her GWG investment. Neither argument absolves Noard of liability for the suitability violation.

¹⁸ The "second house" refers to the house next door to JD's personal residence, where her adult son resided with his family.

1. Noard's Mistaken Assumption that JD Owned a Second House Does Not Justify His Unsuitable Recommendation

Noard attempts to defend his unsuitable recommendation by arguing that he incorrectly assumed that JD owned a second house that was valued at \$200,000. Noard explains that, when he accounted for the second house, JD's assets totaled \$265,000, which he believed rendered JD's purchase of GWG's debentures a suitable investment for her. But Noard was the individual who added the second house's valuation to JD's Client Profile Form. And he did so based on his own incorrect and unverified assumptions about JD's property ownership.¹⁹ In fact, JD owned no property when she purchased GWG's debentures in June 2012. JD did not own her personal residence, and she had transferred the second house to her children years earlier.

Noard states that he had a "bevy of reasons to form the reasonable belief that [JD] was the outright owner of a second home and, thus, that [her] net worth would meet or eclipse the pertinent \$250,000 threshold [of GWG's minimum suitability standards]." He adds that, "neither [JD] nor anyone else in [her] family ever told [him] that [JD] did not have any ownership interest in the property." Noard's argument misses the point that it was his responsibility to know and evaluate this information.

Noard was not only incorrect about JD's ownership of the second house, but he was also incorrect about her ownership of her personal residence. JD did not own any property when Noard and JD completed the Client Profile Form and JD purchased GWG's debentures. Indeed, Noard's inaccurate assumptions about JD's assets and property ownership underscore the problems that may arise when registered representatives fail to verify their assumptions concerning a customer's financial situation. As the registered representative tasked with completing JD's suitability analysis, Noard had an obligation to ensure that he had reasonable grounds to believe that JD's purchase of GWG's debentures was a suitable investment for her. His inaccurate assumptions about JD's assets, including her property ownership, do not absolve him of liability for his unsuitable recommendation.

2. JD's "Unique Family Situation" Did Not Render GWG's Debentures a Suitable Investment

Noard argues that any assessment of the suitability of JD's purchase of GWG's debentures must examine JD's "unique family situation." Noard explains, "were something to go unexpectedly wrong with the GWG investments, [JD] would be harmed in no way, shape or form, as [her children] would always take care of [her]." The Hearing Panel aptly summarized Noard's position on this point: "[t]o Noard this made all the difference. Indeed, he testified that had [JD's] family lived elsewhere, such as a neighboring town, the GWG [d]ebentures would not have been a suitable investment." Noard's argument fails.

¹⁹ During his on-the-record testimony, Noard stated that JD owned several properties that were worth \$350,000 to \$400,000. At the hearing, Noard testified that he valued JD's second house at \$200,000, the figure that he input on JD's Client Profile Form. Noard never explained the inconsistency in these figures, and he never explained how he calculated the \$200,000 valuation for the second house.

Noard improperly based his suitability determination on the financial condition and resources of JD's family members, not JD alone. As the Commission has articulated, "the financial situations and investment objectives of [customers'] relatives [are] not relevant in evaluating" the suitability of a broker's recommendation. *David A. Gingras*, 50 S.E.C. 1286, 1290 (1992); *see also Timoleon Nicholaou*, 51 S.E.C. 1215, 1219 (1994) (explaining that, "suitability is properly determined on the basis of [the customer's] circumstances and objectives, not those of her mother").

Noard recommended that JD purchase two of GWG's debentures. Yet, when Noard made the recommendation, he failed to have a reasonable basis for his customer-specific suitability analysis. Noard also failed to inform JD of the risks associated with her purchase of GWG's debentures, satisfy himself that she understood the risks involved with the investment, and confirm that she was able to take on those risks. *See Chase*, 56 S.E.C. at 159. Noard failed to meet the standards necessary to satisfy customer-specific suitability, and he violated NASD Rule 2310 and FINRA Rule 2010.²⁰

IV. Sanctions

The Hearing Panel suspended Noard in all capacities for 10 business days and fined him \$2,500 for the suitability violation. We affirm the Hearing Panel's sanctions.

For cases involving unsuitable recommendations, FINRA's Sanction Guidelines advise adjudicators to consider a fine of \$2,500 to \$110,000 and a suspension of the individual in any or all capacities for a period of 10 business days to two years.²¹ Where aggravating factors

²⁰ On September 30, 2015, Noard filed a motion to introduce additional evidence. FINRA Rule 9346(b) provides that leave to introduce new evidence is an extraordinary remedy limited to instances where the evidence is material, and there was good cause for failing to introduce the evidence previously. Noard proposed to introduce a due diligence report related to GWG and the company's offering of debentures. Noard explained that he intended to offer the due diligence report to provide an assessment of the "risks, benefits, business structure, holdings, trajectory, and potential outcome of various types of GWG investments." Enforcement opposed Noard's motion to adduce.

The NAC Subcommittee empanelled to review this appeal examined Noard's proposed evidence and determined that the evidence was not material. Specifically, the NAC Subcommittee determined that the due diligence report would not add to the analysis of the debentures that JD actually had purchased. The NAC Subcommittee also found that Noard had failed to establish good cause for neglecting to introduce the due diligence report in the proceedings before the Hearing Panel. In fact, Enforcement had provided Noard's counsel with a copy of the due diligence report in January 2015, five months before the hearing occurred. Because Noard failed to establish the materiality of the additional evidence, and good cause for failing to introduce it in the proceedings below, the NAC Subcommittee denied Noard's motion to adduce. We adopt the NAC Subcommittee's ruling as our own.

²¹ *FINRA Sanction Guidelines* 93 (2016) (Suitability – Unsuitable Recommendations), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We

predominate the respondent's misconduct, the Guidelines recommend that adjudicators strongly consider barring the individual.²²

Here, while aggravating factors do not predominate, Noard's misconduct is accompanied by evidence of aggravating and mitigating circumstances. Noard recommended that his 82-year-old, financially unsophisticated, customer utilize assets comprising more than half of her liquid net worth and invest those funds with a single entity – GWG, an emerging growth company with a limited operating history and a history of operating at a net loss.²³ When Noard made the recommendation to JD, he disregarded many of the warnings detailed in GWG's offering documents and downplayed the risks associated with JD's investment in the company. Noard also confounded many of the suitability issues that plagued this case by making incorrect and unverified assumptions about JD, her assets, and her familial situation.

We are troubled with the evidence of aggravating circumstances surrounding Noard's suitability violation. But we are nevertheless mindful that our sanctions should be balanced, and we look to the record for evidence of mitigating circumstances. Noard points to the following factors as favoring mitigation: (1) JD suffered no harm; (2) JD remained his customer; (3) JD acquiesced in the transaction; and (4) JD did not complain about the investment. But none of these factors is mitigating. *See Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *68 (Nov. 15, 2013) (determining that, "the absence of . . . customer harm is not mitigating"); *Faber*, 57 S.E.C. at 310-11 (explaining that a customer's acquiescence to an unsuitable recommendation is not mitigating); *Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at *27 (Nov. 4, 2009) ("The fact that many of the customers . . . did not complain about the violations does not . . . mitigate [respondent's] misconduct."), *aff'd*, 416 F. App'x 95 (2d Cir. 2011).

Although the factors that Noard identified are not mitigating, the record supported the presence of other factors that weighed in Noard's favor. We note, for example, that Noard's misconduct stemmed from a misguided attempt to act in JD's best interests. In addition, although Noard's overall risk assessment of the GWG's debentures was faulty, Noard tried to limit JD's risk exposure by placing her in debentures with short terms to maturity. Finally, we consider that Noard sold GWG's investment products to 40 or 50 of his customers, but JD is the only customer whose purchase raised suitability concerns. Based on the record before us, we have determined that a suspension at the lower end of the recommended range for suitability

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also consulted the General Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, which adjudicators consult in every disciplinary case. *See id.* at 2-8.

²² *Id.* at 93.

²³ *See id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 18, 19) (considering the number, size, and character of the transactions and sophistication of the affected customer, respectively).

violations is appropriate. Consequently, we affirm the sanctions that the Hearing Panel imposed, suspend Noard in all capacities for 10 business days, and fine him \$2,500.

V. Conclusion

We affirm the Hearing Panel's findings that Noard made an unsuitable recommendation to JD, in violation of NASD Rule 2310 and FINRA Rule 2010. For the suitability violation, we suspend Noard in all capacities for 10 business days and fine him \$2,500. We also affirm the Hearing Panel's order that Noard pay costs of \$3,017.49, and we impose appeal costs of \$1,563.10.²⁴

On behalf of the National Adjudicatory Council,

Marcia Asquith,
Executive Vice President and Corporate
Secretary

²⁴ Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.