BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Matthew R. Logan Braintree, MA Respondent.	DECISION Complaint No. 2019063570502 Dated: June 2, 2022

Respondent acted unethically by using an impostor to cheat on the FINRA Regulatory Element and several other continuing education courses. Held, findings and sanction affirmed.

Appearances

For the Complainant: Megan P. Davis, Esq., Meghan Ferguson, Esq., and Robert Kennedy, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jeremy L. Bartell, Esq.

Decision

Matthew Logan appeals a June 29, 2021 decision in which a Hearing Panel found that he used an impostor to complete the FINRA Regulatory Element and three other continuing education courses, in violation of FINRA Rule 2010. For this misconduct, the Hearing Panel barred Logan.

Logan does not dispute that he violated FINRA Rule 2010. Instead, he contends that the bar imposed by the Hearing Panel is excessive. After an independent review, we conclude that a bar is the appropriate sanction considering the dishonest nature of Logan's misconduct, his complete disregard for FINRA's rules, and several aggravating factors. In addition, we reject Logan's argument that a purported misunderstanding by a Hearing Panelist undermined the fairness of his hearing. Accordingly, we affirm the Hearing Panel's findings and bar Logan from associating with any FINRA member in any capacity.

I. Background

Logan entered the securities industry in 2007. Between October 2010 and January 2019, he associated with Hornor, Townsend & Kent LLC ("HTK") as a general securities representative and as an investment company and variable contracts products representative. During this same period, Logan was employed as a life insurance sales agent and sales manager by HTK's parent company, Penn Mutual Life Insurance Company ("Penn Mutual").[1] Logan holds several insurance licenses and, during the relevant period, he held FINRA Series 6, 7, and 63 registrations. He is not currently associated with a FINRA member.

II. Facts

The facts of this case are largely undisputed. Between October 2017 and October 2018, Logan asked the administrative assistant in his office ("the Assistant") to complete four continuing education courses on his behalf. These courses included the FINRA Regulatory Element, which is a periodic compliance training required for registered persons to maintain an active registration with FINRA. *See* FINRA Rule 1240(a). Logan admits that he used an impostor to complete the courses, and that this conduct violated FINRA Rule 2010. We recount Logan's misconduct below to provide a basis for our discussion addressing the sanction imposed.

A. Logan's Career at Penn Mutual and HTK

Logan began his employment with Penn Mutual as a life insurance sales agent and, in 2013, he was promoted to the position of sales manager. As a sales manager, Logan recruited and trained life insurance sales agents. He estimated that he often worked 60 hours per week to meet the company's sales goals for his team, which increased every year.

Although Logan associated with HTK during his employment at Penn Mutual, Penn Mutual did not require him to do so. Had Logan's FINRA registrations become inactive, it would not have impacted his employment with Penn Mutual. Most of Logan's income was generated by his life insurance work with Penn Mutual, with commissions from HTK generating approximately $5,000 per year in income.

While employed with Penn Mutual, Logan took courses for the purposes of earning the Certified Financial Planner and Chartered Life Underwriter designations. He completed one of these courses during the relevant period. None of these courses were required by Penn Mutual, HTK, or FINRA.

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[1] When Logan was promoted to sales manager in 2013, he worked with Penn Mutual's greater Boston agency, Concord Wealth Management. For purposes of this decision, any references to "Penn Mutual" refer to both Penn Mutual and Concord Wealth Management.

B. Logan Directs the Assistant to Complete Three Non-FINRA Continuing Education Courses on His Behalf

In October 2017, Penn Mutual required Logan to complete a company-sponsored ethics continuing education course ("Ethics Course"). On October 27, 2017, Penn Mutual sent Logan an email reminding him that the deadline to complete the course was that day. Logan directed the Assistant to take the course for him by forwarding the email to her, stating "[W]e need this done today." The Assistant completed the course for him by logging into Penn Mutual's online training portal using Logan's credentials.

In May 2018, Logan again directed the Assistant to complete a continuing education course for him after he received emails from Penn Mutual indicating he should take a course entitled "HTK Processing Checks and Securities Training" ("HTK Training"). Logan forwarded an email reminder about the course to the Assistant, asking "[I]s this completed?" She replied, "Not yet will complete today." The Assistant completed the course for Logan by using his credentials to log into HTK's online training portal.[2]

In October 2018, Logan asked the Assistant to complete an anti-money laundering continuing education course for him. The training was provided by the Life Insurance and Market Research Association ("LIMRA") and was required for Logan to sell certain life insurance products. The Assistant took the training for Logan by logging onto LIMRA's online training portal with Logan's credentials.

C. Logan Directs the Assistant to Complete the FINRA Regulatory Element on His Behalf

i. The FINRA Regulatory Element

Logan was required to take the FINRA Regulatory Element by November 23, 2018. The Regulatory Element is a course created and administered by FINRA that focuses on compliance, regulatory, ethical, and sales practice standards.[3] Registered individuals are required to complete this course within 120 days of the second anniversary of their initial registration date, and every three years thereafter.[4] A registered person must demonstrate proficiency to complete the

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[2] Logan was not required to take the HTK Training, but he believed that he was required to do so because emails he received indicated that he must complete the course.

[3] FINRA, *Registration, Exams & CE*, *Continuing Education: Overview*, https://www.finra.org/registration-exams-ce/continuing-education (last visited June 1, 2022).

[4] FINRA Rules 1240(a)(1), (5). The Commission has approved a rule change providing that all registered individuals will be required to complete the Regulatory Element on an annual basis effective January 1, 2023. *Order Approving a Proposed Rule Change to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)*, 86 Fed. Reg. 53358 (Sept. 21, 2021); *see also FINRA Regulatory Notice 21-41*, 2021 FINRA

[Footnote continued next page]

course, and the failure to timely complete the course will result in the individual's registration being deemed inactive.[5] As a result, the registered person must cease all activities that require registration. *See* FINRA Rule 1240(a)(2).

In 2015, Logan took the Regulatory Element at a testing center, where he complied with identification and security protocols and was monitored as he completed the training. Later that year, FINRA amended its rules to provide for web-based delivery of the Regulatory Element.[6] FINRA announced this rule change to its members and associated persons, noting that a bar is the recommended sanction for cheating on the Regulatory Element.[7]

ii. Logan Directs the Assistant to Impersonate Him on the FINRA Regulatory Element

Logan received emails from HTK's compliance department reminding him of the requirement to take the Regulatory Element by November 23, 2018. Logan received such an email on September 24, 2018, with the subject line "Second Notice – FINRA Regulatory Element Continuing Education." The email explained that the Regulatory Element is required by FINRA, that the course is administered online (and not in a testing center), and that Logan's failure to timely complete the course would cause his registration to become inactive. Logan forwarded the email to Penn Mutual's licensing director, asking "Do I have to schedule [an appointment] or do I just hop online anytime to take it? And where do I go online to take it?" The licensing director responded, "Go online before 11/23/2018. See the BLUE CE link below." After receiving this response, Logan forwarded the email chain to the Assistant.

On October 24, 2018, Logan received an email from HTK's compliance department with the subject line "Third Notice – FINRA Regulatory Element Continuing Education." Like the

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LEXIS 58 (Nov. 2021) (providing details concerning certain changes to FINRA's continuing education and registration rules).

5 FINRA Rule 1240(a)(2).

6 *Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements* (hereinafter "*Approval Order for Web-based Delivery*"), 80 Fed. Reg. 47018 (July 31, 2015); FINRA Rule 1240(a)(6).

7 *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22 at *5 & n.9 (Aug. 2015) ("For instance, for cheating on the Regulatory Element, FINRA's Sanction Guidelines recommend a bar.").

prior reminder, this email advised that the FINRA Regulatory Element is no longer administered at testing centers and, instead, is offered online. Logan forwarded the email to the Assistant, stating "Let's discuss today." The Assistant responded, "I have been working on this in between my work but I'm almost done." On October 30, 2018, the Assistant completed the Regulatory Element on Logan's behalf by using Logan's credentials to log in to FINRA's CE Online System.

After the Assistant completed Logan's Regulatory Element training, Logan received an email from FINRA with the subject line "Continuing Education Regulatory Element Completion." The email included Logan's completion certificate, which Logan forwarded to the Assistant for printing. It was Logan's understanding that the Assistant would provide the certificate to HTK's compliance department as proof that Logan had completed the course himself.

D. Logan Lies About His Misconduct to Penn Mutual's Investigator

During a routine email review in November 2018, HTK's supervision department discovered emails indicating that Logan had asked the Assistant to complete continuing education courses on his behalf. HTK brought the emails to the attention of Ricardo Núñez, the head of Penn Mutual's special investigations unit. After reviewing the emails and records of the Assistant's online activity, Núñez arranged to interview separately Logan and the Assistant.[8]

Núñez first interviewed the Assistant. The Assistant admitted that she took an anti-money laundering course on Logan's behalf but denied taking the Regulatory Element and other continuing education courses on Logan's behalf. Instead, the Assistant stated that she would sign Logan into online training portals on her computer and then bring her computer to him so he could more easily complete continuing education courses between meetings.

In his interview with Núñez, Logan stated that the Assistant may have completed an anti-money laundering course for him but denied asking the Assistant to complete the Regulatory Element and other continuing education requirements on his behalf. Logan falsely told Núñez that he would ask the Assistant to "initiate training" for him. Logan explained that "initiate training" meant that the Assistant would sign him into online training portals on her computer so that he could complete continuing education courses from that computer. Núñez read aloud to Logan the emails between him and the Assistant concerning the Regulatory Element. In response, Logan again denied that he asked the Assistant to complete this course for him.

Penn Mutual terminated the employment of both Logan and the Assistant in January 2019. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed with FINRA, HTK disclosed that Logan's employment was terminated because he instructed the

[8] Núñez testified that his office would have scheduled the interviews with Logan and the Assistant a day or two in advance. Logan testified that his interview was scheduled in advance, but he did not specify how far in advance.

Assistant to "complete his required [R]egulatory [E]lement and other continuing education requirements."

E. FINRA Investigates Logan's Misconduct

FINRA investigated Logan's misconduct after HTK filed the Form U5. In response to a FINRA Rule 8210 request, Logan admitted that he had instructed the Assistant to complete continuing education courses on his behalf. This was the first time Logan admitted his misconduct.

III. Procedural History

A. FINRA's Department of Enforcement Commences a Disciplinary Proceeding

FINRA's Department of Enforcement ("Enforcement") commenced a disciplinary proceeding against Logan on October 7, 2020, when it filed a single-cause complaint alleging that he used an impostor to cheat on the FINRA Regulatory Element and three other continuing education courses, in violation of FINRA Rule 2010. In his answer, Logan conceded that he violated FINRA Rule 2010 and requested a hearing on the issue of sanctions.

A Hearing Panel conducted a hearing, during which Penn Mutual's investigator (Núñez) and Logan testified. Logan admitted that he asked the Assistant to complete continuing education courses for him. He stated that professional and personal stress led him to "recklessly" forward continuing education emails to the Assistant without reading past the subject lines. According to Logan, he did not "have time to distinguish" between the Regulatory Element and other courses and did not realize that the Regulatory Element was one of the courses he forwarded to the Assistant. Logan also testified that he was unaware the Regulatory Element is now administered online and would have been more mindful if he had realized that this was the same training he took at a testing center in 2015.

Logan also addressed his interview with Penn Mutual's investigator, stating "I was evasive with Mr. Núñez." He admitted that, despite his stress level during the relevant period, he did not ask to be excused from any work duties or for additional time to complete his continuing education requirements.

B. The Hearing Panel Issues a Decision Barring Logan

The Hearing Panel issued a June 29, 2021 decision barring Logan for his FINRA Rule 2010 violation. The Hearing Panel applied the Guidelines for using an impostor to cheat on the Regulatory Element, which provide that a bar is standard. The Hearing Panel concluded that a bar is appropriate considering several aggravating factors, including Logan's year-long pattern of cheating. The Hearing Panel also found aggravating Logan's attempt to deceive Penn Mutual about his misconduct, noting that he lied to Penn Mutual's investigator. In addition, the Hearing Panel found it aggravating that Logan did not accept responsibility for his misconduct until FINRA launched its investigation and that, even at the hearing, he minimized the seriousness of

the lie he told to Penn Mutual's investigator. Logan timely appealed pursuant to FINRA Rule 9311.

IV. Discussion

A. Logan Violated FINRA Rule 2010

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."[9] The rule covers a broad range of unethical conduct, "encompass[ing] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security." *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002). In addition, the rule "applies 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." *Manoff*, 55 S.E.C. at 1162.

Cheating on a continuing education course "negatively reflects on an associated person's ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public." *Dep't of Enf't v. Holloway*, Complaint No. 2016050025401, 2019 FINRA Discip. LEXIS 21, at *43 (FINRA Hearing Panel decision Apr. 11, 2019) (finding that the respondent violated FINRA Rule 2010 by cheating on continuing education courses required to maintain a state license); *see also Dep't of Enf't v. Kennedy*, Complaint No. 20090192761-05, 2012 FINRA Discip. LEXIS 18, at *7 (FINRA Hearing Panel decision Apr. 17, 2012) (finding that the respondent violated FINRA Rule 2010 by cheating on the Firm Element). It is undisputed that Logan used an impostor to cheat on FINRA's Regulatory Element, as well as two courses administered by Penn Mutual and one course administered by LIMRA. By cheating on the Regulatory Element, Logan demonstrated an inability to comply with FINRA's rules, which require periodic completion of that course for an individual's registration to remain active. FINRA Rule 1240(a)(1)-(2). And, regardless of whether Logan was required to take the other continuing education courses, his decisions to use an impostor to complete them were unethical and cast doubt on his ability to comply with regulatory requirements. *See Manoff*, 55 S.E.C. at 1162; *Holloway*, 2019 FINRA Discip. LEXIS 21 at *43; *see also Ronald H.V. Justiss*, 52 S.E.C. 746, 750 (1996) (observing, in the context of a case involving cheating on a qualification exam, that cheating "flouts the ethical standards to which members of this industry must adhere"). Accordingly, Logan violated FINRA Rule 2010 when he directed the Assistant to complete the Regulatory Element and three other continuing education courses on his behalf.

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[9] FINRA Rule 0140 provides that FINRA rules apply with equal force to member firms and associated persons. Thus, an associated person violates FINRA Rule 2010 when he or she engages in unethical conduct.

B. Logan Has Not Demonstrated that a Purported Misunderstanding by a Hearing Panelist Undermined the Fairness of the Disciplinary Proceeding

Although Logan does not dispute that his misconduct violated FINRA Rule 2010, he argues that a misunderstanding by a Hearing Panelist undermined the fairness of the disciplinary proceeding.[10] He contends that a question posed by the panelist demonstrates that the panelist mistakenly believed that he asked the Assistant to impersonate him at a testing center. Logan reasons that the panelist must not have paid attention during the hearing and, therefore, was incompetent to participate in the Hearing Panel's decision. For several reasons, we reject Logan's argument.

Having carefully reviewed the entire record, including the exchange in question, we conclude that there is no evidence that a misunderstanding was the basis for the Hearing Panel's decision. To demonstrate that the alleged misunderstanding warrants a remand or other remedy, Logan must show that it caused prejudice. *See Thomas P. Reynolds Sec.*, *Ltd.*, 50 S.E.C. 721, 726-27 (1991) (rejecting the applicants' objections to the composition of the Hearing Panel, in part because they did not demonstrate prejudice); *cf. Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 253 (4th Cir. 2015) (noting the generally applicable rule that "[r]eversal on account of error is not automatic but requires a showing of prejudice"). Considering that the Hearing Panel's decision was based on a correct understanding of the facts, Logan has fallen short of making this showing.

Moreover, we do not agree that the question Logan points to demonstrates that the panelist misunderstood the evidence. The relevant portion of the hearing transcript includes an exchange prompting Logan to make the following clarification to his testimony:

> Logan: I was confusing the online CE courses. Again, in the couple hundred emails [] I was getting per day [], I was recklessly forwarding emails. And I saw FINRA CE, I forwarded the email to [the Assistant]. And [I] understood that was an online course . . . I was certainly not asking her to go to a testing center.

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[10] Based on the alleged misunderstanding, Logan contends that the hearing did not comport with due process. It is well settled that the Due Process Clause does not apply to FINRA because it is not a state actor. *Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *19 n.19 (Mar. 26, 2010). Regardless, Logan received a fair disciplinary procedure under the Exchange Act, as he was able to present evidence in his defense and the Hearing Panel's decision was based on the evidence received at the hearing. *See* 15 U.S.C. § 78o-3(b)(8); FINRA Rule 9261(b) (providing that a party "shall be entitled to be heard" if a hearing is held); *cf. Robert D. Potts*, 53 S.E.C. 187, 209 (1997) (rejecting the respondent's argument that the administrative law judge prejudged the outcome where the judge's conclusion that the respondent engaged in misconduct was based on the evidence), *aff'd*, 151 F.3d 810 (8th Cir. 1998).

The Hearing Panelist acknowledged Logan's clarification, stating "Thank you for that clarity." To the extent Logan's counsel believed that further clarification was needed, counsel could have taken steps to make that clarification for the record. *Cf. Blair v. CBE Grp. Inc.*, No. 13-00134-MMA, 2015 U.S. Dist. LEXIS 67920, at *26 (S.D. Cal. May 26, 2015) (explaining that asking clarifying questions of a client is a "major part of counsel's role" at a deposition).

Finally, Logan asserts that the NAC should remand this case for a new hearing due to the alleged misunderstanding, if it will not reduce the sanction imposed. Even assuming the misunderstanding occurred (and we do not conclude that it did), neither remedy would be appropriate. We review the record de novo and impose sanctions under the framework of the Sanction Guidelines by analyzing the violation and any aggravating and mitigating circumstances. *Dep't of Enf't v. Geary*, Complaint No. 20090204658, 2016 FINRA Discip. LEXIS 31, at *43 (FINRA NAC July 20, 2016) (noting that the NAC's de novo standard of review applies to sanctions), *aff'd*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995 (Mar. 28, 2017), *aff'd*, 727 F. App'x 504 (10th Cir. 2018). As discussed in detail below, we conclude that a bar is the appropriate sanction considering Logan's pattern of repeated dishonesty and several aggravating factors. Therefore, even if Logan had identified a misunderstanding by the panelist, there would be no basis for us to remand for a new hearing or reduce the sanction imposed by the Hearing Panel.[11]

V. Sanctions

For Logan's misconduct, the Hearing Panel barred him from associating with any FINRA member in any capacity. After independent consideration, we conclude that a bar is appropriate and affirm the Hearing Panel's sanction.

A. The Hearing Panel Did Not Determine Whether Logan Specifically Intended to Cheat on the Regulatory Element

With respect to sanctions, the parties dispute whether Logan specifically intended to cheat on the Regulatory Element. In particular, the parties dispute whether Logan was aware that he was forwarding the Regulatory Element (and not a firm course) to the Assistant for completion. Logan asserts that, for the purpose of sanctions, he should be treated like an

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[11] We also observe that Logan could have raised his objection to the Hearing Panelist's continued participation in the proceeding when he was before the Office of Hearing Officers but did not do so. We expect litigants to raise objections to the composition of the Hearing Panel when they are before the Office of Hearing Officers. *See Davis v. Cities Serv. Oil Co.*, 420 F.2d 1278, 1282 (10th Cir. 1970) (explaining that parties should promptly assert arguments for disqualification and not "await[] the outcome before taking action"); *Dep't of Enf't v. Weinstock*, Complaint No. 2010022601501, 2016 FINRA Discip. LEXIS 34, at *32-33 (FINRA NAC July 21, 2016) (it was "incumbent on [the respondent] to raise the issue of bias" at his disciplinary hearing when he argued that a hearing panelist's bias was evident during the hearing).

individual who cheated only on firm courses because he did not realize he was asking the Assistant to complete the Regulatory Element.

Enforcement argues that the Hearing Panel made an implicit credibility finding rejecting Logan's testimony that he did not realize the Regulatory Element was one of the courses he forwarded to the Assistant. In support of its argument, Enforcement relies on the following language from the Hearing Panel's decision:

> [Logan] acted intentionally when he directed the Assistant to take the Regulatory Element and three different continuing education courses for him. Logan adopted a calculated method of avoiding his duty as a member of the securities industry to take required continuing education training.

Having carefully reviewed the Hearing Panel's entire decision, we conclude that it does not include a determination as to whether Logan specifically intended to cheat on the Regulatory Element. Rather, the language cited by Enforcement is best read as a finding that Logan intentionally engaged in a pattern of forwarding continuing education courses to the Assistant to take on his behalf. The Hearing Panel did not make a credibility finding concerning Logan's testimony that he was unaware one of the courses he forwarded to the Assistant was the Regulatory Element, and we do not make one as part of our review. *See Dep't of Enf't v. Butler*, Complaint No. 2012032950101, 2015 FINRA Discip. LEXIS 35, at *17-18 (FINRA NAC Sept. 25, 2015) (explaining that, although the NAC conducts de novo review of the Hearing Panel's decision, "credibility determinations of an initial fact-finder. . . are entitled to considerable weight and deference").

Nevertheless, for the reasons discussed below, we conclude that a bar is the appropriate sanction even assuming Logan did not realize he was forwarding the Regulatory Element to the Assistant for completion. Because we conclude that a bar is appropriate even assuming Logan's credibility on this point, we may resolve this appeal without a credibility finding addressing this aspect of Logan's testimony.[12]

B. A Bar Is Appropriate Considering the Nature of the Misconduct and the Aggravating Factors

After independent consideration of the nature of Logan's misconduct, the aggravating factors, and the FINRA Sanction Guidelines,[13] we affirm the bar imposed by the Hearing Panel.

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[12] For the same reason, we reject Logan's argument that the Hearing Panel's decision is deficient because it failed to address whether he specifically intended to cheat on the Regulatory Element.

[13] *FINRA Sanction Guidelines* (2021), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]

The Guidelines for Cheating or Using an Impostor in the Regulatory Element of Continuing Education provide that a bar is standard.[14] We recognize that the Guidelines are not absolute.[15] We base our sanction primarily on the aggravating factors that permeate this case—factors that result directly from Logan's actions. We conclude that a bar is appropriate for several reasons. The nature of Logan's conduct was dishonest and involved repeated decisions to use an impostor to cheat on continuing education courses. *See Holloway*, 2019 FINRA Discip. LEXIS 21, at *57 (observing that the respondent's use of an impostor to cheat on a state continuing education course involved dishonesty); *Kennedy*, 2012 FINRA Discip. LEXIS 18, at *10 (making the same observation when the respondent cheated on the Firm Element). Such dishonesty has no place in the securities industry, where the integrity of FINRA members and associated persons is of paramount importance. *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *29 (Aug. 22, 2008) ("The public interest demands honesty from associated persons of NASD members; anything less is unacceptable.").

Logan also demonstrated a troubling disregard for FINRA's rules. As a registered representative for more than 11 years, Logan should have been familiar with his periodic obligation to complete the Regulatory Element—which was required to keep his FINRA registration active. *See* FINRA Rules 0140(a), 1240(a)(1)-(2); *Dep't of Enf't v. Elgart*, Complaint No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *21 (FINRA NAC Mar. 16, 2017) (a "registered representative is presumed to know and abide by FINRA Rules"), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *aff'd*, 750 F. App'x 821 (11th Cir. 2018). Yet, he testified that he could not distinguish the Regulatory Element from other courses and did not have time to keep track of FINRA's continuing education requirements. Although we do not doubt that Logan struggled with competing demands on his time, his complete inattention to his obligations as a member of the securities industry is troubling. Considering Logan's disregard for these obligations—and the dishonest means he used to avoid them—a bar is appropriate. *See Kennedy*, 2012 FINRA Discip. LEXIS 18, at *10 (explaining that the respondent's cheating on the Firm Element "evidence[d] [] a complete disregard for FINRA's rules").

We further observe that aggravating factors predominate in this case. Logan's repeated cheating was a pattern of dishonest misconduct in which he continually involved the Assistant.[16]

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[14] *Guidelines*, at 40. While the Guidelines contemplate that a lesser sanction might be imposed, they specify that this would be warranted "only in cases of unauthorized possession that do not rise to the level of cheating." This is not such a case.

[15] *Guidelines*, at 1 (Overview) (explaining that the Guidelines "are not intended to be absolute").

[16] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 8) (whether the respondent engaged in a pattern of misconduct); *cf. Kennedy*, 2012 FINRA Discip. LEXIS 18, at *10 (explaining that the respondent's attempt to assist another registered person in cheating aggravated his misconduct).

When Penn Mutual investigated Logan's misconduct, he lied to the investigator, Núñez.[17] Logan's attempt to obstruct Penn Mutual's internal investigation cannot be tolerated, as such misconduct prevents a firm from properly supervising its associated persons. *Dep't of Enf't v. Doni*, Complaint No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *49 (FINRA NAC Dec. 21, 2017) (explaining that the respondent impeded his firm's investigation into misconduct when he deleted a relevant file); *see also Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *33 (Dec. 19, 2008) ("Assuring proper supervision is a critical component of broker-dealer operations.").

In addition, Logan has persisted in refusing to take full responsibility for his misconduct. Even after Núñez confronted Logan with the emails between him and the Assistant, Logan did not acknowledge his misconduct to Penn Mutual. Indeed, Logan did not admit that he cheated until FINRA questioned him during its investigation.[18] And, Logan minimized his misconduct at the hearing. For example, rather than simply admitting that he lied to Penn Mutual's investigator, Logan stated that he "was evasive with Mr. Núñez." Logan continues to minimize his culpability on appeal, shifting blame to Penn Mutual (for imposing demanding sales goals) and to FINRA (for moving to online administration for the Regulatory Element which, in his view, caused the course to appear to be less important). Logan's reluctance to accept responsibility further aggravates his misconduct. *See Robert Tretiak,* 56 S.E.C. 209, 234 (2003) (observing that the applicant's argument that his misconduct was excusable "indicate[s] [] that he fails to appreciate the seriousness of his misconduct and his own responsibility"); *Dep't of Enf't v. Evansen*, Complaint No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *55 (FINRA NAC June 3, 2014) (finding it aggravating that the respondent persisted in failing to accept responsibility for his misconduct, instead shifting blame to others), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (Jul. 27, 2015).

In sum, we conclude that a bar serves the interest of investor protection considering Logan's repeated dishonesty, his disregard for FINRA's rules, and several aggravating factors—including his attempt to deceive Penn Mutual. *John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *7 (Aug. 3, 2019) ("A FINRA bar may be imposed, not as punishment, but as a means of protecting investors."), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020).

C. Logan's Arguments Are Unpersuasive

Logan contends that a bar is excessive considering factors that, in his view, mitigate his misconduct. For the reasons below, we have determined that none of these arguments are persuasive.

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[17] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 10) (whether the respondent attempted to conceal his misconduct or mislead his member firm).

[18] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2) (whether the respondent acknowledged his misconduct prior to detection and intervention).

Logan argues that his misconduct is mitigated by professional and personal stress, as he was overwhelmed with demands at work and at home during the relevant period. Although a personal problem such as stress may mitigate misconduct in certain circumstances, such a problem may be mitigating only where it explains the misconduct. *See John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015) (distinguishing between conduct attributable to an "unthinking reaction" to stress and repeated deception), *pet. for review denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017), *aff'd*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216 (Aug. 23, 2019), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020).

Stress does not explain Logan's repeated decisions to cheat, nor does it explain his premeditated attempt to deceive Penn Mutual. *See id.* And, even if stress could explain Logan's misconduct (which it cannot), the record provides little support for this explanation. As the Hearing Panel observed, Logan did not ask Penn Mutual for more time to complete the continuing education courses, nor did he ask to be excused from any work duties. To the contrary, Logan continued his efforts to earn Certified Financial Planner and Chartered Life Underwriter designations by taking at least one non-mandatory course during the relevant period. While Logan's effort in this respect generally would be commendable, his decision to voluntarily add to the demands on his time undermines his assertion that his cheating on required courses was mitigated by time constraints.[19]

Logan also argues that a bar is unwarranted because the Regulatory Element is now administered in an online environment, where registered persons are not monitored or subject to other protocol found at testing centers. According to Logan, this change caused the Regulatory Element to be indistinguishable from other continuing education courses, creating a "trap for the unwary."[20] To the extent Logan seeks to shift responsibility for his misconduct to FINRA, his

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[19] We also observe that Logan's misconduct began before some of the circumstances causing his stress at home. Logan testified that his second son was born with health problems in December 2017, and that this circumstance contributed to the stress leading to his misconduct. Yet, Logan's pattern of misconduct began in October 2017, when he forwarded the Ethics Course to the Assistant for completion.

[20] In support of this argument, Logan cites to a FINRA blog post discussing FINRA's decision to offer remote administration for qualification examinations due to the COVID-19 pandemic. *See* Jessica Hopper, *Working on the Front Lines of Investor Protection - Test Cheaters Beware*, FINRA Media Center (Sept. 14, 2020), https://www.finra.org/media-center/blog/working-front-lines-investor-protection-test-cheaters-beware (last visited June 1, 2022). The blog post states that Enforcement will, in most cases, seek to bar those who cheat on such examinations in the remote environment. According to Logan, this warning demonstrates that online administration lures registered persons into complacency.

Logan's reliance on FINRA's blog post is misplaced. The post does not address FINRA's move to online administration for the Regulatory Element (which occurred years earlier) and, in any event, registered persons are presumed to know what FINRA's rules require

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argument lacks merit. *See Goldberg*, 2012 SEC LEXIS 762, at *18 n.20. Moreover, Logan received at least constructive notice that FINRA changed its rules to provide for online administration of the Regulatory Element when FINRA announced this change to its members and associated persons.[21] Even if Logan was not actually aware of the change, his ignorance is not mitigating because, as a registered person, he was responsible for staying abreast of such developments. *See* FINRA Rule 0140(a); *Elgart*, 2017 FINRA Discip. LEXIS 9, at *21.

Contrary to Logan's assertions, the standard sanction of a bar for cheating on the Regulatory Element is not merely a vestige of the course's former administration at testing centers. FINRA reiterated that a bar is the standard sanction for cheating on the Regulatory Element in its notice announcing the move to web-based administration for the course.[22] Indeed, online administration of continuing education courses highlights the need to rely on the honesty of registered persons.[23] Logan's argument that the online context mitigates his dishonesty reflects a continued failure to appreciate that the "highest ethical standards prevail in every facet of the securities industry." *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *86 (May 16, 2014), *pet. granted in part on other grounds*, 793 F.3d 147 (D.C. Cir. 2015).

We also reject Logan's argument that a bar is unwarranted because he was a life insurance sales agent with a small securities business—and not, for example, a principal at a broker-dealer. A respondent's extensive industry experience or supervisory role may be aggravating in some cases, but the absence of such factors is not mitigating. *See Harry Friedman*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *29-31 & n.29 (May 13, 2011). And, regardless of the size of Logan's securities business, he was obligated to comply with the rules and standards applicable to the industry to remain registered and earn income through HTK. *See* FINRA Rule 0140(a); *Elgart*, 2017 FINRA Discip. LEXIS 9, at *21. As

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regardless of whether they receive warnings or reminders. *See Elgart*, 2017 FINRA Discip. LEXIS 9, at *21. Moreover, Logan cannot shift blame to FINRA for his cheating on the Regulatory Element. *See James Lee Goldberg*, Exchange Act Release No. 66549, 2012 SEC LEXIS 762, at *18 n.20 (Mar. 9, 2012) (rejecting the applicant's attempt to blame FINRA for his continuing education deficiency).

[21] *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22 (Aug. 2015); *see also Approval Order for Web-based Delivery*, 80 Fed. Reg. 47018.

[22] *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22, at *5 n.9 (Aug. 2015); *see also Approval Order for Web-based Delivery*, 80 Fed. Reg. 47018, 47020 n.22.

[23] *See Approval Order for Web-based Delivery*, 80 Fed. Reg. 47018, 47020 n.22 (explaining that the Commission "expects both FINRA and its member firms to take appropriate measures to avoid any abuse that could be associated with Web-based delivery of [continuing education]").

discussed above, Logan's repeated decisions to use an impostor to cheat—and his attempt to deceive Penn Mutual about his cheating—is dishonest conduct that cannot be tolerated, regardless of the extent of his securities business. *See Ortiz*, 2008 SEC LEXIS 2401, at *29.

For several reasons, we reject Logan's remaining argument: that, because he did not realize he was cheating on the Regulatory Element, he should be treated like someone who cheated solely on firm courses. According to Logan, a lesser sanction is warranted when a respondent cheats on firm courses, as opposed to the Regulatory Element. In support of his argument, Logan refers to Letters of Acceptance, Waiver, and Consent ("AWCs") imposing lesser sanctions on individuals who cheated on the Firm Element.[24]

As an initial matter, treating Logan like someone who cheated solely on firm courses would be contrary to fact, as Logan undisputedly cheated on the Regulatory Element.[25] Moreover, FINRA has imposed a bar as the sanction for cheating on the Firm Element and other continuing education courses, analogizing such misconduct to cheating on the Regulatory Element. *See Holloway*, 2019 FINRA Discip. LEXIS 21, at *56 (applying the Guideline for cheating on the Regulatory Element when the respondent used an impostor to complete a state continuing education course); *Kennedy*, 2012 FINRA Discip. LEXIS 18, at *9 (applying the Guideline for cheating on the Regulatory Element when the respondent cheated on the Firm Element). Thus, even if Logan had cheated solely on firm courses (which is not the case), this would not necessarily demonstrate that a lesser sanction is warranted.

In addition, Logan's reliance on AWCs imposing lesser sanctions for those who cheated on the Firm Element is misplaced. Comparisons to sanctions in settled cases are inappropriate, as "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings justify imposing lower sanctions in negotiating a settlement." *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *43 (Mar. 31, 2016); *see also Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *34 (Apr. 3, 2020) ("We have observed repeatedly that comparisons to sanctions in settled cases are inappropriate.") Moreover, "the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings." *Kimberley Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *39 (Feb. 7, 2020), *aff'd*, 989 F.3d 4 (D.C. Cir. 2021). For the reasons discussed herein, we conclude that a bar is warranted under the facts and circumstances of this

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[24] The Firm Element of the FINRA CE Program requires broker-dealers to establish a formal training program to keep covered registered persons up to date on job- and product-related subjects. FINRA Rule 1240(b); FINRA, *Registration, Exams, & CE*, *Continuing Education: Firm Element*, https://www.finra.org/registration-exams-ce/continuing-education (last visited June 1, 2022). The Ethics Course, HTK Training, and anti-money laundering courses were not part of HTK's Firm Element.

[25] Logan does not argue that the Guidelines for cheating on the Regulatory Element do not apply. Rather, he appears to argue that his lack of awareness that he was cheating on the Regulatory Element is a mitigating factor. For the reasons discussed herein, we do not agree.

case. We therefore affirm the sanction imposed by the Hearing Panel.

IV. Conclusion

For using an impostor to cheat on the Regulatory Element and other continuing education courses, Logan is barred from associating with any FINRA member in any capacity. Logan is also ordered to pay $2,466.10 in hearing costs and $1,966.77 in appellate costs. The bar will become effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary