

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of	
Department of Enforcement,	<u>DECISION</u>
Complainant,	Complaint No. C8A030089
vs.	Dated: October 11, 2005
Joseph Rogala Glen Ellyn, IL,	
Respondent.	

Respondent affixed a customer's signature to an authorization letter without authority; created and distributed sales literature without prior written approval; used misleading sales literature that failed to identify the variable products offered and to disclose material facts related to the products; and provided false and misleading documents to NASD. Held, Hearing Panel's findings affirmed and sanctions modified.

APPEARANCES

For the Complainant: Leo F. Orenstein, Esq., Department of Enforcement, NASD

For the Respondent: Joseph Rogala, Pro Se

DECISION

Joseph Rogala ("Rogala") appeals this matter pursuant to NASD Procedural Rule 9311. The Hearing Panel found that Rogala: (1) affixed a customer's signature to a letter without the customer's authority in violation of NASD Conduct Rule 2110; (2) created and distributed unapproved and misleading illustrations of variable annuities in violation of Conduct Rules 2210 and 2110 and Interpretative Material ("IM") 2210-2; and (3) provided NASD with false and misleading documents in violation of Procedural Rule 8210 and Conduct Rule 2110. The Hearing Panel barred Rogala in all capacities for affixing a customer's signature without authority and imposed a separate bar in all capacities for providing false and misleading documents to NASD. After a complete review of the record, we affirm the Hearing Panel's findings of violations and affirm the imposition of the bars. We also find that a fine of \$15,000 for the sales literature violations is appropriate, but, due to the imposition of the bars, we decline to impose a fine.

I. Background

A. Rogala's Employment History

Rogala first registered with a member firm in 1990 as an investment company and variable contracts limited representative. Rogala left the securities industry in 1993. In 1998, Rogala began working for New York Life Insurance Company ("NY Life") as an insurance agent. Rogala joined NY Life's broker-dealer subsidiary, NY Life Securities Inc. ("NY Life Securities"), in 1999 as an investment company and variable contracts limited representative. NY Life Securities terminated Rogala in January 2002 for submitting documents containing signatures that were not genuine. Rogala is currently an insurance agent for the Rogala Insurance Group and is not registered with NASD.

B. Procedural History

The Department of Enforcement ("Enforcement") filed a three-cause complaint against Rogala on December 5, 2003. Cause one of the complaint alleged that Rogala affixed a customer's name to a letter of instruction without written authority. Cause two of the complaint alleged that Rogala created and distributed to customers variable annuity illustrations that were misleading and failed to identify clearly the products offered and to disclose material facts. Cause two further alleged that Rogala failed to obtain supervisory approval prior to using the illustrations. Cause three of the complaint alleged that Rogala provided NASD with false and misleading documentation during NASD's investigation. Rogala generally denied these allegations.

On October 11, 2004, a Hearing Panel found Rogala liable for the three causes alleged in the complaint.¹ Rogala appealed the Hearing Panel's decision. Rogala did not make a timely request for oral argument before the National Adjudicatory Council ("NAC") subcommittee ("Subcommittee") empanelled to consider this appeal.² The case was thus considered on the basis of the written record.

¹ The Hearing Panel found Rogala liable for all of the allegations in causes one and three of the complaint. In cause two, the Hearing Panel found violations of Conduct Rules 2110, 2210(b), 2210(d)(1)(A), 2210(d)(1)(B), and IM-2210-2 and no violation of Conduct Rules 2210(c) or 2210(d)(2)(N).

² On November 15, 2004, NASD acknowledged, in a letter to the parties, receipt of Rogala's appeal. NASD's letter stated that if neither party requested oral argument, the NAC could consider the case on the basis of the written record. The letter also provided a copy of NASD Procedural Rule 9341, which states that a party seeking oral argument must make its written request within 15 days after service of the NAC's notice of review. Rogala did not request oral argument within this 15-day period. In a letter dated April 7, 2005, however, Rogala stated that he was not aware of the fact that he could request oral argument. The Subcommittee

II. Facts

A. Rogala's Involvement with Customer BP

Customer BP met with Rogala in 2001 to discuss purchasing a life insurance policy. BP told Rogala that he was obtaining quotes from other insurance companies in addition to NY Life. According to Rogala, BP completed an insurance application and signed a policy illustration dated July 9, 2001.³ Rogala told BP that to receive coverage while his application was pending, BP had to pay the first month's premium, provide a voided blank check, and complete a form for automatic monthly withdrawals from his checking account ("check-o-matic"). BP paid the initial premium with a personal check, completed the check-o-matic form, and provided a voided blank check. BP believed that providing authorization for check-o-matic was required by NY Life when obtaining a policy. BP expressed to Rogala, however, that NY Life was to make no withdrawals from BP's checking account through check-o-matic. Sometime thereafter, NY Life withdrew funds from BP's checking account through check-o-matic.

On August 23, 2001, BP contacted NY Life. Without Rogala's knowledge, BP requested that NY Life make no further withdrawals from his checking account and terminated NY Life's authorization to withdraw funds. Because BP cancelled the check-o-matic authorization, NY Life reversed several thousand dollars of Rogala's commissions for BP's policy.⁴ Tom O'Grady ("O'Grady"), Rogala's sales manager, testified that upon learning that NY Life had reversed his commissions, Rogala called him every day for one week and left voice mail messages threatening to resign and "take the rest of the staff with him" if his commissions for BP's policy were not reinstated. NY Life, without O'Grady's or Todd Foster's ("Foster") knowledge, restored Rogala's commissions the following week. NY Life's service center in Atlanta informed Foster that it received a letter dated August 28, 2001, purportedly from BP, authorizing NY Life to

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determined that Rogala's statement was a request for oral argument, found that his request was untimely, and therefore denied it. We adopt the Subcommittee's finding as our own.

³ Rogala states that he met with BP around May 17, 2001, but dated the illustration July 9, 2001.

⁴ The director of operations for NY Life in Chicago, Todd Foster, testified that an agent is credited with commissions based on payment of one year's premium for policies written that utilized the check-o-matic method of payment. NY Life paid the commission when it approved the policy. If a customer cancelled the policy within the year or terminated the check-o-matic authorization, NY Life reversed the agent's unearned commissions for the remaining portion of the year. BP purchased a policy with a \$1 million death benefit and an annual premium of \$7,300. Rogala would have received \$3,660 in commissions because BP completed the check-o-matic authorization.

reinstate check-o-matic. Foster, however, was suspicious of the letter because Rogala had indicated earlier that BP was traveling abroad and was unreachable.

In fact, BP had not requested reinstatement of check-o-matic. While BP did not testify at the hearing below, he provided written statements to NY Life. In a November 27, 2001 letter to NY Life, BP stated that on August 23, 2001, he orally requested that NY Life make no further automatic withdrawals from his checking account, but his instructions subsequently were reversed without his consent. BP later informed NY Life that he had never seen or signed the August 28, 2001 authorization letter. As a result of Rogala's misconduct, NY Life reimbursed BP for the premiums withdrawn without his consent, cancelled the policy, and terminated Rogala's employment.

During the proceedings below, Rogala admitted that he created the August 28, 2001 letter and photocopied BP's signature from another document onto the authorization form. Rogala asserted, however, that BP was aware of what he had done and that Foster and O'Grady had directed him to prepare the letter in this manner. Foster and O'Grady denied Rogala's allegations. Foster and O'Grady testified that NY Life's policies and procedures prohibited an employee from signing a document for a customer or photocopying a customer's signature for such purposes.⁵

B. Rogala's Use of Variable Annuity Illustrations

Rogala testified before the Hearing Panel that he provided customers with illustrations projecting potential rates of return when he solicited variable annuity purchases. Rogala produced these illustrations through a computer program known as Vorton Financial Tools ("Vorton"). Enforcement attached to its complaint copies of the illustrations that Rogala used in his presentations to customers.⁶

Before the Hearing Panel, Rogala examined the illustrations and testified that he produced them and gave them to clients interested in purchasing variable annuities. Rogala stated that through these illustrations he quoted customers rates of return ranging from 3-4% to 15-16%. Rogala admitted that the illustrations did not identify or describe the variable product offered or disclose the costs or risks of the investment.⁷ He stated that he provided the required disclosures when he delivered the product, but not at the time when he presented customers with the illustrations.

⁵ The Hearing Panel below found Rogala not credible and believed the testimony of Foster and O'Grady.

⁶ Enforcement did not seek to introduce the illustrations at the hearing. Rogala had received copies of the illustrations, however, when served with the complaint.

⁷ The illustrations are presented in tabular form and appear to show an initial investment amount, an investment term, total value of investment, and an interest rate percentage.

According to Rogala, NY Life provided Vorton to him and either O'Grady or another NY Life employee installed it on Rogala's computer. O'Grady testified, however, that he was unaware that Rogala was using Vorton and had not authorized its use. O'Grady further testified that while NY Life had software available to agents that prepared illustrations for variable annuities, Vorton was not included in the approved software.

C. Rogala Provided False and Misleading Information to NASD

During the course of NASD's investigation, Rogala provided to NASD four letters printed on NY Life letterhead and purportedly signed by O'Grady. The first letter, dated July 7, 2001, ostensibly advised agents that Vorton had been installed on NY Life computers and had been approved for use.⁸ Rogala testified that he asked O'Grady to write this letter after a NY Life compliance employee began contacting customers who received illustrations from Rogala, and Rogala wanted to ease his own concerns about using the Vorton illustrations. Rogala further testified that O'Grady wrote and signed the letter and left a copy in Rogala's office. Rogala later changed his testimony, claiming that he wrote the letter and gave it to O'Grady to sign, but that he never saw the original letter with O'Grady's signature or saw O'Grady sign the letter.

The second letter, dated September 28, 2001, stated that O'Grady accepted full responsibility for certain unspecified unethical practices that occurred in the Chicago NY Life office and that this letter would serve to "exonerate" Rogala in an insurance investigation.⁹

⁸ With exception of the bracketed material, the text of the July 7, 2001 letter appears exactly as follows:

I am writing this letter on behalf of Joe Rogala Lutcf:s request. We have a new marketing tool in the Greater Chicago Office called Vorton technology. I have advised by agents this is an approved tool to show people various returns on all variable annuity prospects. Since we cannot provide an illustration such as on the life products and fixed annuities. I have all my agents using this, including [JY, FR] & others. This has been installed on New York Life:s community computers in the training room & all agents can access this. Joe has shown his concern of this, since he has been an agent for over 25 years & he wants to be assured that our compliance department & [SB] has approved this. If you have any questions please contact me at [. . .].

⁹ With exception of the bracketed material, an excerpt of the text from the September 28, 2001 letter addressed to Rogala appears exactly as follows:

I am writing this letter in regards to you wanting to resign from New York Life Insurance Company. I as your manager, take full responsibility for the unethical things that go around the Greater

[Footnote continued on next page]

Rogala testified that he believed that O'Grady wrote this letter, but he could not recall the details surrounding its drafting.¹⁰ Later in his testimony, Rogala admitted that he "could have" written the letter himself, and further that he had not witnessed O'Grady sign the letter or received the original copy of the letter.

Rogala provided two additional letters to NASD that were dated February 28, 2000, and addressed to Rogala.¹¹ These two letters contained the identical signature block found in the July 7, 2001 and September 28, 2001 letters. Rogala testified that he could not recall whether he drafted the two February 2000 letters for O'Grady and that he had not received the original copies of these two letters.

O'Grady testified that he had not written or directed Rogala to write the four letters. He also denied signing the letters. O'Grady further testified that the information contained in the letters was inaccurate.

III. Discussion

A. Forgery of a Customer's Signature

The first cause in the complaint alleged, and the Hearing Panel found, that Rogala affixed BP's name onto the August 28, 2001 letter that authorized automatic premium withdrawals from BP's checking account without BP's knowledge and consent in violation of Conduct Rule 2110. NASD's disciplinary authority under Conduct Rule 2110 is "broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security."¹² *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996); *see also Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) ("Although [respondent's] wrongdoing in this instance [forging signatures on insurance applications to obtain commissions] did not involve securities, . . . NASD could justifiably conclude that on another occasion it might."). The rule is violated when a respondent engages in unethical conduct. *See Dep't of Enforcement v.*

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Chicago Office. [. . .] I promise you that if you do not resign, if there are any problems with any of you cases personally. This letter will exonerate you from any Insurance investigation. [. . .]

¹⁰ In his answer, Rogala stated that he wrote the July 7 and September 28, 2001 letters, but that the signatures were O'Grady's.

¹¹ Enforcement did not specifically identify the two February 2000 letters in its complaint. Rogala, however, submitted them to NASD in November 2003.

¹² Conduct Rule 2110 provides that "every member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 115 extends NASD rule requirements to persons associated with a member.

Davenport, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003). It is well settled that the act of forgery is unethical conduct that violates Conduct Rule 2110. *See Donald M. Bickerstaff*, 52 S.E.C. 232, 235-36 (1995) (concluding that Bickerstaff forged a customer's signature on two insurance documents in violation of NASD rule requiring high standards of commercial honor); *see also Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *13 (NAC Dec. 21, 2004) (finding forgery unethical business-related conduct in violation of Rule 2110).

Rogala's story regarding the August 28, 2001 letter changed throughout the course of the proceedings below. Initially, in his Wells response, Rogala stated that BP asked him to reinstate the check-o-matic feature for him because BP was traveling. Rogala asserted that Foster "told [him] how to do this" and that he "did what New York Life asked [him] to do to get this [policy] back on check-o-matic." Subsequently, in his answer, Rogala stated that he never saw BP's signature on the letter and accused O'Grady and Foster of affixing it. At the hearing, Rogala admitted to preparing the August 28, 2001 letter and to photocopying BP's signature from another document onto the letter. Rogala argued, however, that O'Grady and Foster had instructed him to forge BP's signature—a charge that O'Grady and Foster vehemently denied—and that BP had agreed to reinstate check-o-matic.

The Hearing Panel found that Rogala was not credible and found no reason to doubt the truthfulness of O'Grady and Foster. We will not disturb those findings here. *See Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *17-18 (Feb. 10, 2004) (stressing that deference is given to initial decision maker's credibility determination based on "hearing the witnesses' testimony and observing their demeanor").

We find that the record supports by a preponderance of the evidence that Rogala was the individual responsible for affixing BP's name onto the August 28, 2001 letter of instruction and that BP did not give Rogala authority to do so. Rogala admitted at the hearing below that he created the August 28, 2001 letter of instruction and affixed BP's signature onto that letter. In addition, BP expressly stated in a November 27, 2001 letter to NY Life that no deductions were to be made from his checking account and that he gave his agent a check for one month's premium with the understanding that NY Life would make no withdrawals from his account. BP informed NY Life that his instructions were reversed without his consent and that he had never seen or signed the authorization letter. We therefore affirm the Hearing Panel's findings that Rogala violated Conduct Rule 2110.

B. Communications with the Public

Enforcement alleged in cause two of the complaint that Rogala violated Conduct Rules 2210 and 2110 and IM-2210-2 by failing to follow NASD's rules pertaining to communications with the public when he provided potential customers with variable annuity illustrations. For the reasons set forth below, we affirm the Hearing Panel's findings that Rogala violated Conduct Rules 2210 and 2110 and IM-2210-2.

Conduct Rule 2210(a) defines sales literature that does not constitute an advertisement as "any written or electronic communication . . . distributed or made generally available to

customers or the public."¹³ Rogala admitted at the hearing that he prepared the illustrations and presented them to potential customers when soliciting their business. We find that the illustrations therefore fall within the definition of sales literature.

Pursuant to Conduct Rule 2210(b), Rogala was required to obtain written approval from a NY Life registered principal prior to using the illustrations. Rogala admitted before the Hearing Panel that he did not obtain such written approval. He asserted, however, that O'Grady tacitly approved the illustrations because O'Grady knew that Rogala and other NY Life agents were using Vorton—claims that O'Grady denied. Even if true, Rogala's assertions are insufficient to meet the requirements of Conduct Rule 2210(b). It is undisputed that Rogala obtained no written approval for the Vorton illustrations as required by the rule. Accordingly, we affirm the Hearing Panel's finding that Rogala violated Conduct Rule 2210(b).

Conduct Rule 2210(d)(1) prohibits a member from making any false, exaggerated, unwarranted, or misleading statements in its communications with the public. All public communications must be based upon the principles of fair dealing and good faith, provide a sound basis for evaluating the facts discussed, and not omit material facts or qualifications that would cause the communication to be misleading in light of this context. Conduct Rule 2210(d)(1). IM-2210-2, which provides additional standards applicable to variable annuity and variable life insurance sales literature, requires that communications clearly identify the variable product offered as either a life insurance policy or an annuity.

It is undisputed that the illustrations at issue in this case failed to identify the product offered. The illustrations were also misleading and provided no sound basis for evaluating an investment in a variable product. Rogala conceded that the illustrations were silent regarding investment risks, tax implications and costs. Finally, Rogala admitted that the illustrations contained no disclaimers to balance the hypothetical interest rates presented. As the Commission has held, sales literature that fails to present a balanced statement of an investment's benefits and risks is misleading. *See Excel Fin., Inc.*, 53 S.E.C. 303, 311-12 (1997) (holding that sales literature distributed to customers that failed to explain investment's speculative nature, including tax consequences, the lack of liquidity and the potential fluctuations of value was misleading and violated NASD's advertising rules); *see also Robert Wallace*, 53 S.E.C. 989, 994 (1998) (offering investment with 42% potential rate of return without disclosing risks of investment was

¹³ NASD amended Conduct Rule 2210 effective on November 3, 2003. This decision references the subsections, language, and requirements of Rule 2210 as they existed prior to the November 2003 amendments.

Conduct Rule 2210(a)(1) defines an advertisement as material "published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories, . . . electronic or other public media."

misleading). We therefore find that Rogala violated Conduct Rules 2210(d)(1) and 2110 and IM-2210-2 by presenting misleading illustrations to customers.¹⁴

In sum, we find that Rogala failed to obtain written approval from NY Life in advance of presenting the illustrations to customers in violation of Conduct Rules 2210(b) and 2110.¹⁵ We also find that the illustrations were misleading and failed to identify the product offered or to provide necessary risk and cost disclosures associated with the investment in violation of Conduct Rules 2210(d)(1) and 2110 and IM-2210-2.

C. Submission of False and Misleading Documents to NASD

Cause three of the complaint alleged that Rogala provided false and misleading documents to NASD during its investigation in violation of Procedural Rule 8210 and Conduct Rule 2110. The Hearing Panel concluded that the evidence supported these allegations, and we affirm that finding.

Procedural Rule 8210 requires persons associated with a member to provide information orally, in writing, or electronically in response to requests from NASD staff in connection with an investigation or examination. It is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to NASD in connection with an examination or investigation. *See John Montelbano*, Exchange Act Rel. No. 47227, 2003 SEC LEXIS 153, at *36-38 (Jan. 22, 2003) (upholding NASD's finding that respondents violated Procedural Rule 8210 by giving false testimony during an on-the-record interview); *Dist. Bus. Conduct Comm. v. Doshi*, Complaint No. C10960047, 1999 NASD Discip. LEXIS 6, at *5-6

¹⁴ The complaint also alleged that the illustrations were not submitted to NASD for review and approval at least 10 days prior to use. *See* NASD Conduct Rule 2210(c) (requiring prior NASD approval of sales literature pertaining to variable annuities). The record contains no evidence to substantiate the allegation that Rogala failed to submit the illustrations to NASD for prior approval in violation of NASD's rules. We therefore conclude that the evidence is insufficient to find that Rogala violated Conduct Rule 2210(c).

Enforcement further alleged that Rogala violated Conduct Rule 2210(d)(2)(N), which prohibits predictions or projections of investment results in communications with the public. As we noted, the illustrations were not offered into evidence at the hearing. Rogala, however, admitted in his hearing testimony that he presented the illustrations that listed potential rates of return ranging from 3-4% to 15-16%. Based upon the record before us, however, we cannot determine by a preponderance of the evidence that the illustrations contained specific projections or predictions. We therefore conclude that the evidence is insufficient to find that the illustrations violated Conduct Rule 2210(d)(2)(N).

¹⁵ A violation of NASD's advertising rules is also a violation of Conduct Rule 2110. *Pacific On-Line Trading & Sec., Inc.*, Exchange Act Rel. No. 48473, 2003 SEC LEXIS 2164, at *13 (Sept. 10, 2003).

(NAC Jan. 20, 1999) (finding that respondent violated Rules 8210 and 2110 when he denied to staff during on-the-record interview that voice on customer's tape recording was his but later recanted). Providing false or misleading information to NASD also is conduct inconsistent with just and equitable principles of trade under Conduct Rule 2110. *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996) (holding that respondent engaged in conduct contrary to just and equitable principles of trade when he provided false and misleading information to NASD), *aff'd*, 112 F.3d 516 (9th Cir. 1997). Rule 8210 is a "key element in the NASD's efforts to police its members." *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993). Thus, providing false and misleading information subverts NASD's ability to carry out its regulatory functions.

After reviewing the four letters purportedly authored and signed by O'Grady that Rogala submitted to NASD, we find blatant evidence of forgery. The signature block on each of the four letters is identical and includes the same areas of discoloration, which most likely comes from a photocopy. In addition, we find credible O'Grady's testimony that he did not write or sign letters that Rogala submitted to NASD claiming to be from him.

Rogala's version of events shifted throughout these proceedings. Ultimately, however, he admitted that he wrote the July 7, 2001 letter and that he "could have" written the September 28, 2001 letter, but maintained that O'Grady signed the letters. The Hearing Panel found that Rogala's contradictory and unbelievable testimony about the letters coupled with his inability to produce original copies of the letters undermined his credibility. We agree with the Hearing Panel that Rogala was not credible. *See Dane S. Faber*, 2004 SEC LEXIS 277, at *17-18.

O'Grady credibly testified that he did not author or sign these letters and that the letters' content was inaccurate. O'Grady highlighted for the Hearing Panel the formatting and textual inconsistencies contained within the letters. O'Grady noted that the font and the size of the signature line were identical in all four letters, but that these attributes were not always consistent with the bodies of the letters. In addition, the signature block margins were outside of the margins of the body text in three of the letters. O'Grady testified that he believed that the signatures used in the four letters were identical and that a photocopy of his signature had been affixed to each letter. O'Grady also identified style oddities present in the letters that were incongruent with O'Grady's writing style. The letters used a colon in the place of an apostrophe and an ampersand instead of the word "and."

We find that the evidence amply supports a finding that Rogala created self-serving false documents and affixed O'Grady's signature onto these documents in an effort to mislead NASD in the course of its investigation. Accordingly, we affirm the Hearing Panel's finding that Rogala violated Procedural Rule 8210 and Conduct Rule 2110 by submitting false and misleading documents to NASD.

IV. Sanctions

The Hearing Panel barred Rogala from associating with any member for the forgery violation and independently barred him for providing false and misleading information to NASD. In light of the bars, the Hearing Panel declined to sanction Rogala for the communications with the public violations. We affirm the Hearing Panel's imposition of the

bars. We conclude, however, that the communications with the public violations were egregious and deserving of a \$15,000 fine, but decline to impose the fine as a result of the bars. We affirm the assessed costs.

A. Forgery

The NASD Sanction Guidelines ("Guidelines") for forgery recommend a fine of \$5,000 to \$100,000 and, in cases in which mitigating factors exist, a suspension for up to two years.¹⁶ In egregious cases, the Guidelines recommend consideration of a bar.¹⁷ The Guidelines also list the following specific considerations for determining sanctions for a forgery violation: (1) the nature of the documents forged; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority to make a writing on behalf of another.¹⁸ We find that these considerations do not weigh in Rogala's favor, that there are no facts in mitigation, and that the forgery at issue here was egregious.

We find that the nature of the forged document is highly aggravating. Rogala affixed BP's signature onto a letter authorizing reinstatement of automatic premium withdrawals from BP's checking account. Rogala created and submitted the forged document to allow for reinstatement of his reversed commissions on BP's policy. Rogala argues in favor of mitigation that NY Life has targeted him despite having trained other agents to forge signatures. The record does not support Rogala's assertion. Even if true, Rogala's claim does not mitigate the severity of his misconduct. *See Charles E. Kautz*, 52 S.E.C. 730, 733, 736 (1996) (holding that firm approval of falsification of documents does not mitigate sanctions).

We also find that Rogala's misconduct was intentional.¹⁹ The record makes clear that Rogala was highly agitated by the lost commissions, and he threatened daily to resign unless his commissions were reinstated. Further, there is no question that BP did not authorize Rogala or anyone at NY Life to affix his signature onto any document. Indeed, BP gave explicit instructions that he wanted no funds withdrawn through the check-o-matic debit feature— instructions that Rogala surreptitiously circumvented for his own pecuniary gain.²⁰ Standing alone, this violation supports barring Rogala from association with any NASD member.

¹⁶ Sanction Guidelines (2001 ed.) at 43 (Forgery And/Or Falsification Of Records).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See id.* at 10.

²⁰ *See id.* (providing that misconduct that results in the potential for monetary gain bears on sanctions).

B. Communications with the Public

While the Guidelines do not provide recommended sanctions specific to failing to obtain supervisor approval of sales literature, the Guidelines for failing to comply with rule standards and the use of misleading communications with the public are applicable.²¹ For failing to comply with rule standards or the inadvertent use of misleading communications, the Guidelines suggest a fine of \$1,000 to \$20,000.²² If the use of the misleading communications is intentional or reckless, the Guidelines suggest a fine of \$10,000 to \$100,000 and a suspension of the responsible individual for up to two years.²³

Rogala argues that NY Life knew of his use of Vorton and provided it to him. He contends that NASD should not sanction him for what NY Life approved. We do not credit Rogala's assertion. We find that Rogala's use of the misleading communications and his failure to seek supervisory approval were not inadvertent, but intentional. Rogala submitted the July 7, 2001 letter, purportedly from O'Grady, authorizing Rogala to use Vorton in preparing variable annuity illustrations for customers. As we have discussed, Rogala created this letter without the knowledge or approval of O'Grady, and its contents are false. We conclude that Rogala created this letter in an effort to conceal and mitigate his misconduct. We consider aggravating factors that Rogala attempted to conceal information from and to mislead NASD by providing inaccurate documentary evidence.²⁴

For these reasons, we fine Rogala \$15,000 for his violations of NASD's advertising rules.

C. Submitting False and Misleading Documents to NASD

The Guidelines for failing to respond truthfully suggest that, absent mitigating factors, a bar should be standard.²⁵ *See also Dep't of Enforcement v. Walker*, Complaint No. C10970141, 2000 NASD Discip. LEXIS 2, at *31 (NAC Apr. 20, 2000) (finding untruthful responses tantamount to complete failure to respond and warranting a bar). Here, we find that Rogala's submission of false and misleading documents is an egregious violation, and we do not find any facts in mitigation. We thus determine that a bar is appropriate.

²¹ *Id.* at 87-89 & n.2 (Communications With The Public—Failing To Comply With Rule Standards Or Use Of Misleading Communications).

²² *Id.* at 88.

²³ *Id.* at 89.

²⁴ *See id.* at 9-10.

²⁵ *Id.* at 39 (Failure To Respond Or Failure To Respond Truthfully, Completely, Or Timely To Requests Made Pursuant To NASD Procedural Rule 8210).

Rogala made an intentional and deliberate decision to falsify documents submitted to NASD during the course of its investigation in an attempt to conceal his misconduct.²⁶ Falsifying documents in an effort to minimize one's own responsibility is the antithesis of upholding high standards of commercial honor. *See Dist. Bus. Conduct Comm. v. Pelaez*, Complaint No. C07960003, 1997 NASD Discip. LEXIS 34, at *13-14 (NBCC May 22, 1997); *see also Rita Delaney*, 48 S.E.C. 886, 890 (1987) (affirming bar where applicant deliberately falsified firm records to conceal activities from NASD during its investigation). Moreover, Rogala's ultimate admission that he wrote the July 7, 2001 letter—but his insistence that O'Grady signed this and the other letters—demonstrates Rogala's untruthfulness in addition to his forgeries. We therefore find that Rogala's subterfuge reflects directly on his ability to deal responsibly with the public and warrants a bar.

V. Conclusion

We affirm the Hearing Panel's findings that Rogala affixed a customer's signature to a letter of instruction without authority; created and distributed misleading sales literature for which he failed to obtain prior written approval from NY Life; and submitted false and misleading documents to NASD. Accordingly, for his forgery violation, we impose a bar in all capacities. We impose a separate bar in all capacities for submitting false and misleading documents to NASD. For the communications with the public violations, we find that a \$15,000 fine is appropriate. Due to the imposition of the bars, however, we decline to impose the fine. Rogala is also ordered to pay hearing costs of \$2,359.74. The bars will be effective immediately upon service of this decision.²⁷

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President
and Corporate Secretary

²⁶ When confronted with the forged documents during the hearing below, Rogala continued to deny that he falsified these documents.

²⁷ We also have considered and reject without discussion all other arguments of the parties.