BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of Department of Enforcement, Complainant, vs. Dennis P. Cooper Ballwin, MO, Respondent.	DECISION Complaint No. C04050014 Dated: May 7, 2007

Registered principal forged the signature of another principal on customer documents. Held, findings and sanctions affirmed.

Appearances

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

For the Respondent: Firmin Puricelli, Esq.

DECISION

Pursuant to NASD Procedural Rule 9311(a), Dennis P. Cooper ("Cooper") appeals a February 10, 2006 Hearing Panel decision barring him from associating with any member firm in any capacity for forging the signature of another principal in violation of NASD Conduct Rule 2110. After a complete review of the record, we affirm the Hearing Panel's liability findings and its imposition of a bar.

I. Background

Cooper entered the securities industry in 1992 as an investment company products/variable contracts limited representative. Cooper is not currently registered with an NASD member. During the time of the alleged misconduct, Cooper was registered as an

investment company products/variable contracts limited representative and limited principal with Locust Street Securities, Inc. ("Locust Street") and, later, with ING Financial Partners, Inc. ("INGFP").

II. Factual and Procedural History

A. Facts

Brokerage Unlimited, Inc. ("BUI") is a distributor of insurance products to brokers and insurance professionals. BUI is owned by Israel Myers ("Myers") and Michael Tessler ("Tessler"). In or around 1996, BUI entered into the securities business to provide support to financial professionals that were also engaged in securities activity in addition to offering insurance products. At that time, BUI, which is not an NASD member, began operating as a branch office of Lifemark Securities, Inc. ("Lifemark").[1] BUI also has a small retail securities business.[2] Tessler registered with Lifemark as a general securities representative. Myers had been registered with NASD as a general securities representative since 1974, and he also registered as a general securities principal with Lifemark in 1997 to assume branch office manager responsibilities.

Cooper joined Lifemark in 1997. At the request of Myers and Tessler, Cooper registered as an investment company products/variable contracts limited principal in 2000 so that he could assume many of Myers's duties as branch manager. Myers testified that, when Cooper took over as branch manager, the expectation was that Cooper would spend all of his time performing supervisory work and that any personal securities business was to be conducted on Cooper's personal time. Myers supervised Cooper and was responsible for supervising any activity that fell outside of Cooper's limited registration.

In October 2002, BUI changed from operating as a branch office of Lifemark to a branch office of Locust Street.[3] As a result of this change, BUI was forced to obtain change-of-dealer forms and new Locust Street account forms from its approximately 2,300 existing customers. The change-of-dealer forms were used to inform third-party vendors (e.g., a mutual fund company holding a client's assets) of the change of the client's broker-dealer. The new account forms were used internally at Locust Street. Because many of BUI's accounts were limited to products that fell within Cooper's limited principal registration, Cooper had the authority to

---

[1] The record is silent regarding the precise corporate relationship between BUI and Lifemark. As used in this decision, "BUI" refers to the branch office from which Myers, Tessler, and Cooper worked.

[2] Tessler estimated that less than one percent of BUI's business involves retail accounts.

[3] On January 1, 2004, INGFP acquired Locust Street. Thus, from January 1, 2004, through May 25, 2004, Cooper was registered with INGFP as an investment company/variable contracts limited representative and as an investment company/variable contracts limited principal.

approve many, but not all, of these forms.[4] For example, accounts that were not within Cooper's limited registration had to be approved by Myers, and Cooper testified that he was not permitted to approve accounts for which he was listed as the representative and that neither Myers nor Cooper could approve one another's accounts. Myers testified that the process of moving all 2,300 accounts from Lifemark to Locust Street took several months to complete, and during that time, there was a large amount of paperwork being processed in the office.

In the process of transferring customer accounts from Lifemark to Locust Street, Cooper signed Myers's name to 64 customer account documents: 40 change-of-dealer forms and 24 Locust Street new account application forms. In addition, Cooper later signed Myers's name to a 529 plan new account form, an IRA account application, and a "New Representative OSJ Authorization Form." Of the 67 account documents in the record to which Cooper admits signing Myers's name, 66 list Cooper as the registered representative for the account. Although most of these 66 documents involved accounts on which Cooper was the existing representative, 11 documents involved orphan accounts that were being transferred to Cooper.[5]

In early 2004, customer JV initiated an arbitration action against Lifemark, and Lifemark requested that BUI produce any paperwork in its office in connection with JV's account. After looking for any of JV's files, Tessler and Myers concluded that the files for the representative who was responsible for JV's account had been sent to Lifemark previously when BUI joined Locust Street. Tessler and Myers each signed an affidavit responding that BUI had no documents to provide in response to the request. Subsequently, an attorney for Lifemark left a voicemail for Cooper making another request for documents concerning JV's account. Following this second request, Cooper provided Myers and Tessler with JV's file, which had been in Cooper's personal client files. Upon reviewing JV's file, Myers noted that account documents that he did not sign nonetheless bore what appeared to be his signature. After reviewing other customer files in response to this discovery, Myers discovered dozens of customer documents bearing a signature purporting to be his. Myers, however, had never signed them. When Tessler and Myers confronted Cooper with the documents, Cooper admitted signing Myers's name but asserted that Myers had permitted Cooper to sign his name to certain documents, an assertion that Myers denied. Cooper's employment with INGFP was terminated shortly thereafter.

---

[4] Myers testified that an overwhelming majority of the securities business that came to BUI was mutual fund and variable contract business, which fell within the scope of Cooper's limited registration.

[5] An "orphan account" is an account without an assigned representative. For example, if a registered representative left the firm or retired, that representative's accounts would be "orphan accounts" until they were reassigned to other representatives.

B. Procedural History

On July 13, 2004, NASD initiated an inquiry into Cooper's conduct as a result of the Uniform Termination Notice for Securities Industry Registration filed by INGFP. On April 25, 2005, the Department of Enforcement ("Enforcement") filed a one-cause complaint against Cooper alleging that he violated NASD Conduct Rule 2110 by forging Myers's name on 69 documents. Cooper stipulated that he signed Myers's name on 67 documents but denied that his actions constituted forgery.[6]

A one-day hearing was held on October 6, 2005. The Hearing Panel heard testimony from Cooper, Myers, Tessler, Joyce Miller (BUI's office manager) ("Miller"), and Boyd Atteberry (Cooper's then-current supervisor). The Hearing Panel issued its decision on February 10, 2006, finding that Cooper had committed forgery in violation of NASD Conduct Rule 2110. For the violations, the Hearing Panel barred Cooper from associating with any NASD member firm in any capacity. This appeal followed.

III. Discussion

Cooper admits that he signed Myers's name to 67 separate documents. Cooper claims, however, that these actions did not constitute forgery because Myers had granted Cooper authority to sign the documents on his behalf. After hearing the testimony of both Myers and Cooper—as well as Tessler and Miller—the Hearing Panel concluded that Cooper's claim was not credible. We affirm the Hearing Panel's conclusion.

There is no dispute that Cooper signed Myers's name on multiple documents over a period of 20 months. The issue before us is whether Cooper's actions violated NASD Conduct Rule 2110, which requires NASD members to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.[7] "Proof of scienter is not required to establish a violation of NASD Conduct Rule 2110." *Eliezer Gurfel*, 54 S.E.C. 56, 63 (1999).

Forgery is inconsistent with the requirements of Conduct Rule 2110 and "violates the high standards of commercial honor to which the NASD holds registered individuals." *Dist. Bus. Conduct Comm. v. Peters*, Complaint No. C02960024, 1998 NASD Discip. LEXIS 42, at *4-5 (NAC Nov. 13, 1998); *see Dep't of Enforcement v Grafenauer*, Complaint No. C8A030068, 2005 NASD Discip. LEXIS 29, at *7 (NAC May 17, 2005). If, however, Cooper had

---

[6] Of the other two documents, one document contained Cooper's own signature and the other included only an "I" or "J"—not a full signature. Enforcement withdrew the charges with respect to those two documents. Thus, Cooper was ultimately charged with forging Myers's name on a total of 67 documents.

[7] NASD Rule 0115 provides that all NASD rules apply to persons associated with a member and that such persons "have the same duties and obligations as a member" under the rules.

authorization from Myers to sign his name, there is no forgery. *See Donald M. Bickerstaff*, 52 S.E.C. 232, 235-36 (1995); *Peters*, 1998 NASD Discip. LEXIS 42, at *5. The burden to prove such authorization rests with Cooper. *See Peters*, 1998 NASD Discip. LEXIS 42, at *6. Cooper has failed to carry that burden.

During the hearing, Cooper testified that Myers authorized Cooper to sign Myers's name on change-of-dealer and new account forms if the INGFP home office had approved the transaction. Myers, however, categorically denied providing Cooper with any such authority. The Hearing Panel, which had the opportunity to hear the testimony and assess the witnesses' demeanor, concluded that Myers was credible and that Cooper was not.

The Hearing Panel's credibility determination is entitled to deference and can only be overturned by "substantial evidence." *Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *16 n.11 (NAC Dec. 21, 2004), *aff'd*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005). Without affirming each of the Hearing Panel's specific findings with respect to the credibility of the various witnesses, we affirm the Hearing Panel's credibility determinations. There is not substantial evidence in this case sufficient to overturn the Hearing Panel's credibility determinations, and several facts support the Hearing Panel's conclusion that Myers did not grant Cooper authority to sign his name. For example, Cooper signed Myers's name to documents other than change-of-dealer forms and Locust Street new account forms, including a 529 account application, an IRA application, and a New Representative OSJ Authorization Form. Moreover, two of these three documents were signed by Cooper in 2004, more than one year after the transfer from Lifemark to Locust Street. In addition, the Hearing Panel found that both Tessler and Miller testified credibly that neither Cooper nor Myers ever indicated that Myers had granted Cooper the authority to sign his name. In fact, Miller confirmed during her testimony at the hearing that her initial response to being asked whether Myers would grant Cooper the authority to sign his name was that "Izzy [Myers] would never do that." Cooper has offered nothing other than his own self-serving testimony to support his claim that he had authority to sign Myers's name.[8] The other testimony from Tessler, Myers, and Miller—and the fact that Cooper continued signing Myers's name to other documents well after the move to Locust Street had occurred—shed considerable doubt on Cooper's claim.

We affirm the Hearing Panel's finding that Cooper forged Myers's name on 67 documents in violation of Conduct Rule 2110.

---

[8] On appeal, Cooper sought leave to adduce additional evidence. The subcommittee of the NAC assigned to hear this appeal denied Cooper's motion in its entirety because Cooper failed to demonstrate good cause for failure to introduce the evidence below. *See* NASD Procedural Rule 9346(b). We adopt that ruling as our own.

IV. Sanctions

For violations of NASD Conduct Rule 2110 based on forgery, the NASD Sanction Guidelines ("Guidelines") recommend a fine of $5,000 to $100,000.[9] In egregious cases, adjudicators should consider a bar.[10] In cases where mitigating factors exist, the Guidelines instruct adjudicators to consider suspending the respondent in any or all capacities for up to two years.[11] There are two principal considerations in forgery cases: the nature of the documents forged and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.[12] The Hearing Panel concluded that there were no mitigating factors present and that Cooper's violations were egregious and warranted a bar. We affirm the Hearing Panel's conclusion.

Regarding the nature of the documents, 40 of the 67 forged signatures appear on change-of-dealer forms for customer accounts that were submitted to third-party vendors. Cooper argues that the principal's signature on the document was mostly ministerial and that the important signature (i.e., the customer's) was always valid. That Cooper only misrepresented to the third-party vendors the person who approved the transfer of the account and did not also forge a customer's signature is not mitigating. Although which principal's signature appears on the change-of-dealer forms may not have been critical in getting the forms processed, this misses the point. The appropriate question is the importance of the document at issue, and these documents were integral for the proper maintenance of the customers' accounts in that they informed the third-party vendors of the authorized brokerage firm for the account.

In addition to the change-of-dealer forms, the other documents to which Cooper signed Myers's name were 24 new account forms, a client account opening document for a 529 plan, and a "New Representative OSJ Authorization Form." New account opening forms, which document a customer's investment objectives and experience, are among the most important customer documents. Moreover, Cooper is listed as the registered representative on each of the 24 account forms. These, like the change-of-dealer forms, were important documents, and Cooper misrepresented the individual who had approved those forms.

Regarding the second consideration—whether the respondent had a good-faith, but mistaken, belief of express or implied authority—the Hearing Panel found that Cooper's

---

9 *NASD Sanction Guidelines* 39 (2006), http://www.nasd.com/web/groups/enforcement/Documents/enforcement/nasdw_011038.pdf [hereinafter *Guidelines*].

10 *Id.*

11 *Id.*; *see Dist. Bus. Conduct Comm. v. Greene*, Complaint No. C07970051, 1998 NASD Discip. LEXIS 49, at *7 (NAC July 1, 1998) (finding that, absent mitigation, "forgery warrants a bar").

12 *Guidelines*, at 39. These considerations are in addition to the Principal Considerations in Determining Sanctions that must be considered in every disciplinary case. *See id.* at 6-7.

testimony that he believed he was authorized to sign Myers's name was not credible. For the reasons discussed above, we defer to this finding. Thus, neither of the principal considerations for forgery cases weighs in Cooper's favor.

In addition to the two specific forgery considerations, we find two additional aggravating factors to be particularly relevant to this case. First is the sheer number of times Cooper signed Myers's name.[13] Cooper's conduct does not represent a one-time lapse of judgment or mistake; rather, Cooper improperly signed Myers's name to dozens of documents. *See Grafenauer*, 2005 NASD Discip. LEXIS 29, at *9-10. Second, as the Hearing Panel noted, Cooper's forgeries were not limited to the time period surrounding the switch from Lifemark to Locust Street in October 2002.[14] The day before Myers and Tessler discovered Cooper's misconduct—almost two years after the transition from Lifemark to Locust Street—Cooper signed Myers's name to a customer account application for a 529 plan.

In light of the aggravating factors present, we concur with the Hearing Panel that Cooper's conduct was egregious and warrants a bar.[15] Cooper's misconduct over such a long period of time and his willingness to misrepresent who signed documents on multiple occasions represents a stark departure from the standards to which securities professionals must be held. Cooper's conduct is particularly worrisome given his status as a registered principal. *See Dep't of Enforcement v. Duma*, Complaint No. C8A030099, 2005 NASD Discip. LEXIS 46, at *25 (NAC Oct. 27, 2005). Principals are those who are actively engaged in the management of a firm's investment banking or securities business, and they play an essential role in compliance by ensuring that NASD rules and the federal securities laws are followed. *See* NASD Membership and Registration Rule 1021; *Douglas Conrad Black*, 51 S.E.C. 791, 794 (1993) ("The registered principal is the person at a broker-dealer to whom the NASD looks to ensure compliance with the regulatory requirements."). To protect investors and prevent Cooper from similar misconduct in the future, we bar Cooper from associating with any member firm in any capacity. In addition, a bar will serve to deter others from engaging in similar misconduct and misrepresenting approval on customer documents. *See Mark F. Mizenko*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655, at *18-19 (Oct. 13, 2005) (barring respondent for forgery and noting that the bar "will serve to deter others in the industry who might otherwise engage in similar misconduct").

---

[13] *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 8) ("Whether the respondent engaged in numerous acts and/or a pattern of misconduct.").

[14] *Id.* (Principal Considerations in Determining Sanctions, No. 9) ("Whether the respondent engaged in the misconduct over an extended period of time.").

[15] Cooper argues that the lack of customer harm should be considered a mitigating factor. As a general rule, although harm to customers is an aggravating factor, an absence of customer harm is not mitigating. *See Mizenko*, 2004 NASD Discip. LEXIS 20, at *20; *Dep't of Enforcement v. Diffenbach*, Complaint No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 (NAC July 30, 2004), *aff'd in part*, Exchange Act Rel. No. 51467 (Apr. 1, 2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006). We see no reason to depart from that general rule here.

V. Conclusion

We affirm the Hearing Panel's finding that Dennis Cooper forged the signature of another principal on 67 documents. We also affirm the Hearing Panel's conclusion that Cooper's conduct was egregious and warrants a bar.

Accordingly, we bar Cooper from associating with any NASD member firm in any capacity. We also impose appeal costs of $1,452.15. The bar is effective upon service of this decision.[16]

On behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

[16] We have also considered and reject without discussion all other arguments advanced by the parties.