BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

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| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>Daniel W. Bukovcik<br>DeWitt, MI,<br><br>Respondent. | DECISION<br><br>Complaint No. C8A050055<br><br>Dated: July 25, 2007 |

**Respondent's signing of customer names to account documents violated NASD rules. Held, findings and sanctions modified.**

## Appearances

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

For the Respondent: Brian J. Masternak, Esq.

## Decision

We called this matter for review pursuant to NASD Procedural Rule 9312 to examine the level of sanctions imposed by the Hearing Panel in a decision dated July 12, 2006. The Hearing Panel found that Daniel W. Bukovcik ("Bukovcik") violated NASD Conduct Rule 2110 by affixing customer signatures to various account documents with only oral authorization from the customers. As to sanctions, the Hearing Panel fined Bukovcik $50,000, suspended him for 18 months in all capacities, and assessed costs. We affirm the Hearing Panel's finding that Bukovcik signed the names of customers on account documents but modify the finding regarding the number of customers and transactions involved. We also reduce the Hearing Panel's sanctions and affirm the Hearing Panel's imposition of costs.

### I. Background

Bukovcik first became registered in the securities industry in 1987 as an investment company products and variable contracts limited representative. In June 1991, Bukovcik associated with then-NASD member, Fortis Investors, Inc. in that same

capacity. That firm was acquired by Hartford Financial Services, Inc. ("Hartford") in 2001, and its name was changed to Woodbury Financial Services, Inc. ("Woodbury" or "the Firm"). Woodbury terminated Bukovcik in August 2006 due to the findings of violations as set forth in the Hearing Panel's July 12, 2006 decision. Bukovcik is not currently associated with a member firm.

II. Facts

On June 14, 2005, NASD filed a one-cause complaint, alleging that Bukovcik, from July 2002 through May 2003, affixed the signatures of 48 customers to 166 account documents, including the following: new account forms; client disclosure forms; enrollment forms; allocation forms; transfer forms; conditional receipt forms; and automatic pay agreements. Bukovcik filed an answer to the complaint stating that, while he did not have written authorization permitting him to sign documents for the involved customers, the customers gave their oral authorization for him to sign the documents listed on Exhibit A of the complaint, as verified by the customers' signed acknowledgements that Bukovcik included with his answer.

NASD commenced its investigation of Bukovcik after receiving notification from Woodbury, under NASD Conduct Rule 3070, that it had received a customer complaint against Bukovcik. The complaint stated that Bukovcik had forged customers' signatures on two documents that effected an IRA transfer.[1]

Woodbury commenced a broad investigation of many of Bukovcik's customers to determine whether Bukovcik previously had signed customers' names on Firm documents. A Woodbury investigator, Michael Daninger ("Daninger"), reviewed a sampling of approximately 20 Hartford IRAs that listed Bukovcik as the broker, and found that six or seven of those had client signatures that looked questionable. On June 6, 2003, Daninger called three of the customers whose signatures appeared to be suspicious and asked them if they had authorized someone else to sign the transfer paperwork on their behalf. Daninger testified that all three customers advised him that Bukovcik had signed the documents on their behalf. Daninger stated that two of the customers advised him that they had made arrangements for Bukovcik to sign the documents on their behalf. With respect to the third customer, Daninger stated that the customer advised him that it was "fine" for Bukovcik to sign the document on her behalf.

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[1] Although the customers, Mr. and Mrs. RW, acknowledged discussing with Bukovcik the possibility of transferring their Roth IRA to Hartford, they contended that he initiated the transfers on their behalf without advising them that he was doing so. On May 27, 2003, Bukovcik provided the Firm with a written response to Mr. and Mrs. RW's complaint in which he denied signing the IRA transfer documents. The Firm did not find that Bukovcik forged the signatures of customers Mr. and Mrs. RW. Moreover, the current case is not based on the allegations made by Mr. and Mrs. RW.

On June 9, 2003, Daninger and Michael Brennan ("Brennan"), Woodbury's chief compliance officer at the time of the events, convened a conference call during which they confronted Bukovcik about signing customers' names. Brennan testified that Bukovcik denied that he had signed documents for any customers. Brennan testified that he advised Bukovcik that three of his customers had indicated that he had signed Firm documents on their behalf and that it would be "prudent" for him "to take some time to think about his response and to send . . . a written response as soon as he could." On June 10, 2003, Bukovcik faxed a written response to Brennan without addressing whether he had ever signed documents on behalf of his clients. Instead, he explained that he operated an accounting and tax business, which was his "primary business and source of income," and that he also did "investments and a very little bit of life and health insurance [work] for [his] clients." Bukovcik further explained that "[i]n the course of doing a client's tax return sometimes they will want to rollover, transfer, or just invest money. If time allows and it is not a very complicated transaction we will fill out the proper documents and take care of it right then." Bukovcik closed the letter as follows: "I do whatever I can to help my clients in anyway (sic) [that] I can and to save them time, trouble, and money by not having to go to a big city to get [their] tax and investment needs taken care of."

Bukovcik faxed a follow-up response to Brennan on the same date as his previous letter (June 10, 2003) after Tom Walder ("Walder"), who was Bukovcik's supervisor, told Bukovcik that his prior written explanation about his business practices was not acceptable. Bukovcik admitted in his follow-up letter that he had signed documents for some customers as an accommodation.[2] Bukovcik also stated in the follow-up letter that he would no longer sign documents on behalf of customers "even if the client suggests this when they (sic) cannot make it in to meet in a reasonable time frame."

The "Representative's Procedures Manual[s]" for Woodbury and its predecessor, Fortis, expressly prohibited the signing of a client's name to documents. The record includes an acknowledgement that Bukovcik executed on March 2, 2001, stating that he received, read, and understood "the Fortis Registered Representative's Procedures Manual and Agent Code of Conduct." The record also includes an acknowledgement that

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[2] Bukovcik explained that he signed documents on behalf of customers as an accommodation to customers who had approved transactions:

> In the past with clients that I have known and had a relationship with for many years, through tax work or investment work, with their permission and approval [I] signed their name to paperwork if they need it done and cannot make it in to meet. My clients greatly appreciated the fact that they can trust me to do what is in their best interest and know that nothing bad will happen to them as long as they have me as their rep.

Bukovcik executed on April 2, 2002, stating that he received, read, and understood "the Woodbury Registered Representative's Procedures Manual and Agent Code of Conduct."

As a result of its investigation, Woodbury took disciplinary action against Bukovcik by fining him $2,500 and suspending him for 30 days. Woodbury also subjected Bukovcik to heightened supervision for one year, during which he was required to verify customer signatures on account documents and was subjected to quarterly office inspections. The heightened supervision agreement further required Bukovcik to provide the Firm with a list of all customers for which he had signed documents in the last year.

Bukovcik complied with the firm-imposed sanctions, including the requirement to provide to Woodbury a list of all customers for whom he had affixed signatures. In addition to the list, Woodbury required Bukovcik to obtain customer signatures on a "Client Signature Acknowledgement Form" ("Client Acknowledgement Form"), in which customers for whom Bukovcik had signed documents represented that Bukovcik had prior authority to sign documents on their behalf. Each Client Acknowledgement Form stated that Bukovcik "in the past may have signed some documentation for my Securities accounts, on my behalf, and with my authorization." The document also included an acknowledgement that the customer understood that due to Woodbury's policy Bukovcik "will not be allowed to perform this function in the future and that [the customer] must sign all necessary documentation." Each form was signed and dated by the customer and by Bukovcik. Brennan testified that Woodbury further required Bukovcik to obtain copies of photo identifications for the customers for whom he had signed documents as support for the Client Acknowledgement Forms.

Bukovcik also provided to NASD a list of customers that he claimed had authorized him to sign documents on their behalf and a list of documents that he had signed for each customer. Woodbury provided NASD with copies of the account documents identified by Bukovcik. Enforcement did not include in its complaint against Bukovcik the allegation that he signed or forged the names of Mr. and Mrs. RW on account documents.

## III. Discussion

We previously have found a registered representative's signing of a customer's name to a document related to a broker-dealer's business, without proper written authority, to be violative of Conduct Rule 2110 even without proof that the registered representative also lacked oral authority. *See Dep't of Enforcement v. Bendetsen*, Complaint No. C01020025, 2004 NASD Discip. LEXIS 13, at *17 (NAC Aug. 9, 2004) (finding that respondent's signing of customer's name to a margin agreement was unethical even assuming that the customer had asked the respondent to sign her name where respondent did not have written authority to do so, placed no notation on the agreement to indicate that he had signed on his customer's behalf, and did not advise his firm that he was signing the agreement for the customer).

Bukovcik claimed that he had authority from his customers to sign their names to the documents at issue. Even if the customers had given Bukovcik such authority,

however, Bukovcik knew or should have known that it was improper to sign customer names to firm documents because his Firm prohibited him from doing this and he had no written authorization to sign the documents at issue. *See Dist. Bus. Conduct Comm. v. Bradley*, Complaint No. C07920042, 1994 NASD Discip. LEXIS 187, at *8 (NBCC Oct. 31, 1994) ("We nonetheless find that signing names under any circumstances without proper written authority cannot be condoned in the securities industry."). Indeed, Woodbury and its predecessor firm, Fortis, had written prohibitions in their procedures manuals against registered representatives signing documents on behalf of customers. Bukovcik testified that he only "skimmed the [registered representative] manuals, knowing that he was not going to do anything to harm his customers, and that, therefore, he was not aware of the explicit prohibition until it was brought to his attention in 2003." This assertion, however, provides no support to Bukovcik, who was on notice of the Firm's prohibition against signing documents on behalf of customers because he signed the respective Fortis and Woodbury acknowledgement forms. By signing the forms, Bukovcik acknowledged that he had "received" Fortis's and Woodbury's procedures manuals and had "read the material and under[stood] the content" of the manuals.

Bukovcik's signing of Firm account documents on behalf of customers therefore violated the "broad ethical principle" embodied in Conduct Rule 2110, which provides that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." *Bendetsen*, 2004 NASD Discip. LEXIS 13, at *16. Thus, we uphold the Hearing Panel's finding of violation.[3]

## IV. Sanctions

In assessing sanctions, the Hearing Panel was guided by the NASD Sanction Guidelines ("Guidelines") for forgery and/or falsification of records, which recommend a fine in the range of $5,000 to $100,000.[4] In cases where mitigating factors exist, the Guidelines recommend considering suspending the respondent in any or all capacities for up to two years and, in egregious cases, barring the respondent. The Hearing Panel considered as aggravating factors the number of customers, the large number of documents signed by Bukovcik, the nature of the documents, and the lengthy period over which Bukovcik's misconduct occurred, in support of its decision to impose a $50,000 fine and an 18-month suspension against Bukovcik. We have not found that Bukovcik committed forgery or created falsified documents. Thus, we do not find the Guideline for

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[3] Although the complaint alleged, and the Hearing Panel found, that Bukovcik signed the names of 48 customers on 166 account documents, we find that the record supports a finding that Bukovcik signed the names of 44 customers on approximately 159 account documents.

[4] *NASD Sanction Guidelines* 39 (2006) (Forgery and/or Falsification of Records), http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf [hereinafter *Guidelines*].

forgery and/or falsification of records to apply to the misconduct at issue here and have not based our sanctions on it. Bukovcik violated both high standards of commercial honor and his firm's policy, but the record does not show that he acted without his customer's authority in signing their names to firm documents. We therefore focus our consideration of sanctions on the General Principles and Principal Considerations in the Guidelines.

One of those principles states that adjudicators may, when appropriate, aggregate or batch violations. Although such treatment generally should be used sparingly, we find it appropriate under the unique circumstances of this case.[5] For instance, Bukovcik's actions in signing a number of customers' signatures all flowed from his singular decision to accommodate those customers. The customers, moreover, orally authorized him to sign their names to the forms and effect any relevant transactions. In short, Bukovcik's singular decision to sign the customers' names—although misguided and a violation of NASD Rule 2110—was made in an attempt to assist, rather than harm, his customers.

In determining appropriately remedial sanctions, we also consider that the Firm, upon learning of the misconduct, promptly sanctioned Bukovcik by imposing on him a 30-day suspension, a $2,500 fine, and a requirement that he be subject to heightened supervision for a period of one year, during which he was required to verify customer signatures on account documents and undergo quarterly office inspections.[6] The supervision agreement also required Bukovcik to provide Woodbury with a list of all customers for which he had signed documents in the last year. The record demonstrates

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[5] The Guidelines state that the range of monetary sanctions in each case may be applied in the aggregate for similar types of violations rather than per individual violation. *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 4). Although the Guidelines are designed to permit the aggregation or batching of separately alleged violations, we find the general principle to be equally applicable to the situation here where Bukovcik's misconduct involved the signing of customer names on numerous Firm documents. We thus do not consider the number of documents that Bukovcik signed or the period over which he signed customer documents for purposes of assessing sanctions, as suggested by other parts of the Guidelines. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, Nos. 8 and 9) (recommending that adjudicators consider whether the respondent engaged in numerous acts and/or a pattern of misconduct and whether the respondent engaged in the misconduct over an extended period of time).

[6] The record shows that the heightened supervisory agreement was signed by Bukovcik and his supervisors in mid-July 2003, just one month after Bukovcik admitted in a letter to Brennan that, as an accommodation, he had signed documents for customers in the past with their permission and approval. The record indicates that the suspension began in August 2003.

that Bukovcik complied with these requirements. As we have stated before, "[w]e generally encourage firms to take the initiative, investigate and evaluate an episode of misconduct, and—in appropriate instances—impose a suspension on an employee." *Dep't of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 51, at *9 (Dec. 18, 2000). Here, the Firm imposed appropriate sanctions in a timely manner and Bukovcik immediately ceased the practice of signing documents on behalf of his customers once the Firm advised him that he was not permitted to do so.[7]

Bukovcik's violation, although by no means trivial, does not rise to a level requiring a hefty fine or lengthy suspension. This is especially true because the 30-day suspension, $2,500 fine and year-long heightened supervision that his Firm imposed appear to have impressed upon the contrite Bukovcik the importance of customers signing documents themselves.[8] In light of a number of mitigating factors—including, the lack of any customer harm, the customers' oral authorization of Bukovcik's actions, the Firm-imposed sanctions (with which he fully complied), his remorsefulness, and our finding that the misconduct stemmed from Bukovcik's single (albeit misguided) decision to accommodate his customers—we reduce, but do not completely eliminate, the sanctions imposed by the Hearing Panel below. We eliminate the 18-month suspension and $50,000 fine imposed by the Hearing Panel below, and instead order that Bukovcik be fined $10,000 and required to pay $2,937.99 for the costs of the Hearing Panel proceedings.[9] Under the unique circumstances of this case, we find such sanctions to be sufficiently remedial.[10] We note, however, that the absence of any of the mitigating

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[7] The Guidelines instruct adjudicators to consider whether a respondent's misconduct resulted in the potential for respondent's monetary gain. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 17). Although Bukovcik made commissions of $104,501.08 on customer transactions that resulted from the documents that Buckovcik signed on behalf of his customers, we do not view this fact as aggravating because the customers approved the transactions.

[8] We consider Bukovcik's compliance with the fairly weighty sanctions imposed by his Firm to be a significant factor (one that the Hearing Panel did not explicitly address) in our determination to reduce the sanctions in this case. Nonetheless, we are not stating that respondents in future cases will or should automatically receive credit for sanctions imposed by their firms. We only grant such credit when the circumstances are appropriate, as they are in this particular instance.

[9] The $10,000 fine and costs, even considering the Firm-imposed sanctions, are warranted because the customers, while providing Bukovcik oral consent to sign their names, nonetheless did not receive the benefits of actually reviewing the documents, some of which provided important disclosures.

[10] Bukovcik and Enforcement cite cases in support of their views regarding appropriate sanctions in this matter. The Commission has firmly established, however, "that the appropriate remedial action depends on the facts and circumstances of each

[Footnote continued on next page]

factors discussed above likely would have resulted in our imposition of more substantial sanctions.

V. Conclusion

For signing customer account documents in violation of Conduct Rule 2110, we fine Bukovcik $10,000.[11] We also affirm the $2,937.99 in costs assessed against Bukovcik by the Hearing Panel.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

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particular case, and cannot be precisely determined by comparison with action taken in other cases." *Pac. On-Line Trading & Sec., Inc.*, Exchange Act Rel. No. 48473, 2003 SEC LEXIS 2164, at *20 (Sept. 10, 2003); *see also Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973) ("The employment of a sanction within the authority of an administrative agency is thus not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases."). We therefore find the parties' arguments in this regard to be unpersuasive.

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

Pursuant to NASD Procedural Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.