BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Ahmed Gadelkareem, Brooklyn, NY, Respondent.	DECISION Complaint No. 2014040968501 Dated: March 23, 2017

Registered representative engaged in abusive, intimidating, threatening, and harassing communications and conduct towards individuals associated with his former member firm. Held, findings modified and sanction affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., David C. Pollack, Esq., David Monachino, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro se

Decision

Respondent Ahmed Gadelkareem appeals a May 2, 2016 Hearing Panel decision. The Hearing Panel barred Gadelkareem for his harassing and threatening conduct after he was terminated by Blackbook Capital, LLC ("Blackbook"). The Hearing Panel found that Gadelkareem "embarked on an extended campaign of repeated phone calls, email communications, and other harassing and threatening conduct directed towards individuals at [Blackbook]." The Hearing Panel found that Gadelkareem's conduct violated FINRA Rules 5240 and 2010 and barred him from associating with a FINRA member in any capacity.

On appeal, Gadelkareem largely admits the underlying misconduct, but he argues that the bar is too severe a sanction given what he claims as mitigating factors, including the absence of customer harm and his claimed medical condition. After an independent review of the record, we modify the Hearing Panel's findings of violation and affirm the sanction as discussed below.

I. Facts

A. Background

Gadelkareem entered the securities industry in 1997 as a general securities representative. Over the next 19 years, Gadelkareem was associated with 19 different firms, including Blackbook from July 2013 to April 2014. Gadelkareem was discharged from two member firms prior to joining Blackbook, including one discharge for his failure to follow management instructions. Gadelkareem also voluntarily left another firm because "he no longer wanted to be employed as a result of a disagreement with management." Gadelkareem is not currently associated with any FINRA member firm.

Several witnesses testified at the hearing that Gadelkareem often argued or had disputes with coworkers at Blackbook, and he was generally a disruptive and aggressive presence in the office. Gadelkareem was described in testimony as unpredictable, argumentative, and someone who often lost his temper when he did not get what he wanted.

B. Gadelkareem Engages in Abusive and Threatening Communications and Conduct Towards Blackbook Associated Persons

On April 2, 2014, Gadelkareem argued with a Blackbook receptionist at the office, who subsequently filed a written complaint with Blackbook against Gadelkareem. Blackbook personnel asked Gadelkareem to leave the office that day, and he was terminated effective April 7, 2014. Blackbook filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), which stated that Gadelkareem "was terminated for repeatedly engaging in unprofessional conduct in the workplace, including without limitation, threatening and abusive interaction with female employees."

After his termination, Gadelkareem embarked on a campaign of abusive, harassing, and threatening communications directed to Blackbook employees. Gadelkareem's behavior was directed primarily against DH, another Blackbook registered representative, and FO, Blackbook's majority owner and president, both of whom Gadelkareem appeared to blame for his termination and subsequent dispute with Blackbook. Gadelkareem's conduct included numerous telephone calls, emails, and texts, many of which contained vulgar language and threats. Gadelkareem's complaints, in part, concerned his claim that Blackbook was preventing him from retrieving his personal belongings from the office and Blackbook's decision to withhold his last commission check.

On April 9, 2014, Gadelkareem left a voicemail for DH, in which he made a number of vulgar remarks about DH's mother. The next day, Gadelkareem sent numerous emails to RW, another Blackbook owner, accusing DH of unauthorized trading, drug use, and fraternizing with a female employee at Blackbook. He also wrote to RW complaining about FO, who he pointed out was "Nigerian (Nigerian Scam)" and who he accused of "stealing" another registered representative's paycheck. On April 12, Gadelkareem left DH three more voicemail messages, again mentioning DH's mother in a suggestive manner and taunting him with requests to call him back. During the same period, Gadelkareem also repeatedly called and texted FO.

On April 11, 2014, FO emailed Gadelkareem, informing him of the disclosure Blackbook intended to make on his Form U5, inviting Gadelkareem to contact him or another Blackbook employee to arrange to pick up his personal belongings, and asking Gadelkareem to cease his constant calls and text messages to FO and RW. The email also informed Gadelkareem that Blackbook was withholding his last paycheck as allowed under the terms of his employment agreement to offset a claim Blackbook intended to file against him, and warned Gadelkareem that the firm would file harassment charges if he did not cease his harassing behavior. Gadelkareem responded with an email accusing FO of stealing and a "Nigerian scam" and stating that he would continue to contact RW unless RW told him to stop. FO responded by again inviting Gadelkareem to contact someone to make arrangements to collect his personal belongings.

Over the next few days, Gadelkareem continued contacting Blackbook employees. He wrote to FO, accusing Blackbook employees of being criminals and bullying his client into staying with the firm. He repeatedly called another Blackbook employee about his personal belongings, even though that person told him to send his movers to pick up his belongings, which had been packed for him. He also continued repeatedly calling, emailing, and texting DH, who emailed Gadelkareem to stop his harassment.

On April 16, 2014, Gadelkareem forwarded to DH and RW emails to FINRA staff in which Gadelkareem made accusations against Blackbook. In the email to DH, Gadelkareem threatened, "Settlement . . . , my money 100% payout and my stuff or I will keep going ! ! ! !" Later he wrote to DH again, "Every small thing, my phone charger, my calculator . . . . . Every thing . . . ." To RW, he threatened, "Settlement , Or you want me to continue [sic] . . . ." Later that day, MU, an attorney for Blackbook and DH, wrote to the FINRA staff who had received the emails. MU explained that Gadelkareem had been terminated, had harassed and threatened staff at Blackbook, and forwarded their emails to Blackbook representatives for the purpose of pressuring the firm to comply with his demands. That same day, MU also sent Gadelkareem a letter advising him that he had misappropriated client records in violation of his employment agreement and providing formal, written notice demanding that he cease his harassing communications to Blackbook employees. Gadelkareem responded with emails to MU threatening to contact the attorney general and by reporting MU to the New York City Bar Association.

Gadelkareem was undeterred by repeated requests to stop his harassing communications with Blackbook. On April 23, 2014, Gadelkareem forwarded to DH an email which purported to be sent to him from a "Steven Mc Mellon [sic]," a "Principle [sic] Examiner" at FINRA. The email from McMellon said

> Mr. Kareem, I have Cc'd Mr. David Gilbert at the FBI on this email. You are 100% right , [DH] did a lot of fraudulent deals , I believe an order of arrest will be issued soon to get him down here .[sic]

In his forwarding email to DH, Gadelkareem wrote, "Run run run." In fact, there was no FINRA employee by the name of Steven McMellon. Gadelkareem fabricated this email in order to intimidate DH and force Blackbook to capitulate to his demands. MU wrote to FINRA staff reporting Gadelkareem's fabrication.

During the following weeks, Gadelkareem's harassing conduct continued. He forwarded the fake McMellon email to others, continued his harassing texts and calls, and filed police reports and a number of lawsuits against Blackbook. He started making harassing communications directed to DH's brother, claiming DH and MU would go to jail. Gadelkareem contacted MU pretending to be a New York City police officer. He also assumed another false identity in communications with a Bloomberg reporter, claiming that FO and Blackbook were defrauding customers and that FINRA and the FBI were investigating. Gadelkareem also made unfounded allegations about Blackbook to customers and business partners, causing Blackbook to lose a deal with a client.

II. Procedural History

On April 13, 2015, the Department of Enforcement ("Enforcement") filed a one-cause complaint against Gadelkareem for sending multiple abusive, harassing, and threatening communications to persons associated with his former member firm, Blackbook, in violation of FINRA Rules 5240 and 2010. The complaint alleged that Gadelkareem embarked on this course of conduct in retaliation for his termination by Blackbook and to force Blackbook to settle his claims with respect to commissions the firm withheld. A two-day hearing was held.

Gadelkareem's harassing conduct continued during the proceedings below. Gadelkareem made a throat cutting motion to DH as he sat down to testify at the hearing. He also filed numerous unfounded complaints against Enforcement and served fabricated subpoenas on witnesses after being instructed repeatedly by Enforcement and the Hearing Officer that such subpoenas were not permitted in FINRA proceedings. Gadelkareem's conduct during the hearing was often aggressive and disruptive.

Following the hearing, the Hearing Panel found that Gadelkareem violated FINRA rules as alleged and rejected his defenses that his misconduct was caused by a "toxic" work environment and his medical condition. The Hearing Panel found that his misconduct was egregious and imposed a bar in all capacities. This appeal followed.[1]

[1] On December 6, 2016, Gadelkareem submitted to the subcommittee of the National Adjudicatory Council ("NAC") a filing requesting that it cancel oral argument and indicating that he wanted the subcommittee to decide his appeal on the papers. Gadelkareem also made arguments in this filing about the merits of the appeal and attached several documents including a letter from his former attorney expressing an opinion on the sanction imposed by FINRA, a letter from the Social Security Administration denying his disability claim, and a copy of a settlement agreement between Gadelkareem and Blackbook. Enforcement filed a motion to strike the proffered evidence.

[Footnote continued on next page]

III. Discussion

On appeal, Gadelkareem largely admits his underlying misconduct, but argues that the sanction imposed is excessive. For the reasons discussed below, we agree with the Hearing Panel that Gadelkareem's conduct violated FINRA Rule 2010. We find, however, that FINRA Rule 5240 does not apply to Gadelkareem's misconduct and thus reverse this finding of violation.

A. Gadelkareem's Conduct Violates the Ethical Standards of FINRA Rule 2010

FINRA Rule 2010 is a broad ethical rule which requires members and associated persons to conduct their business in accordance with "high standards of commercial honor and just and equitable principles of trade."[2] FINRA Rule 2010 encompasses all unethical, business-related conduct, even if that conduct is not in connection with a securities transaction. *See Dep't of Enforcement v. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. of Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015); *see also Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (affirming the finding that an associated person violated just and equitable principles of trade by misappropriating funds from a political organization for which he served as the treasurer). Misconduct in connection with an associated person's relationship with his employer constitutes business-related conduct to which the rule applies. *See, e.g.*, *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *23 (June 14, 2013) (finding that, for

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FINRA Rule 9346 limits the submission of new evidence on appeal to "extraordinary circumstances" where there is (1) "good cause" for failing to introduce the evidence at the hearing and (2) the evidence "is material to the proceeding." *See Dep't of Enforcement v. KCD Fin., Inc.*, Complaint No. 2011025851501, 2016 FINRA Discip. LEXIS 38, at *83 (FINRA NAC Aug. 3, 2016), *appeal docketed*, Exchange Act Release No. 78900, 2016 SEC LEXIS 3586 (Sept. 21, 2016). The Subcommittee found that Gadelkareem did not meet this standard, and it denied Gadelkareem's request to introduce the proffered evidence. The NAC adopts the Subcommittee's findings and order. The documents submitted are not relevant to the violation or sanction here. It has long been FINRA's position that documents related to settlements are not relevant to disciplinary proceedings. *See Dep't of Enforcement v. Paratore*, Complaint No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *13 n.9 (FINRA NAC Mar. 7, 2008). Moreover, the opinion of Gadelkareem's lawyer about the appropriate sanction for his misconduct is irrelevant, as is his eligibility for disability payments. Finally, while the arguments contained in Gadelkareem's submission constitute an unauthorized surreply, those arguments are duplicative of those in his Notice of Appeal, and they are addressed in this decision.

[2] FINRA Rule 2010 applies to associated persons based on FINRA Rule 0140(a), which provides that associated persons "shall have the same duties and obligations as a member."

purposes of Rule 2010's predecessor rule, a registered representative's business included his relationship with his employer); *Dep't of Enforcement v. Foran*, Complaint No. C8A990017, 2000 NASD Discip. LEXIS 8, at *13 (NASD NAC Sept. 1, 2000) (stating that "[a] registered person's 'business' includes his business relationship with his employer").

It is well established that harassing and abusive conduct violates the broad ethical principle encompassed in FINRA Rule 2010. *See Stephen B. Carlson*, 53 S.E.C. 1017, 1021 (1998) (finding that an associated person's use of "threatening, coercive, and intimidating tactics" violated ethical standards); *Jay Frederick Keaton*, 50 S.E.C. 1128, 1134-35 (1992) (finding that an associated person's use of "abusive misconduct," including threats, violated high standards of commercial honor and just and equitable principles of trade); *Dep't of Enforcement v. McCrudden*, Complaint No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *25 (FINRA NAC Oct. 15, 2010) (finding that an associated person's use of harassment and intimidation with respect to a Form U5 disclosure violated NASD Rule 2110).

McCrudden, one of our prior cases, is particularly instructive. In that case, McCrudden embarked on an email campaign, which included harassing and intimidating employees of his former firm to coerce his firm into falsely reporting on his Form U5 that he voluntarily terminated his employment. *McCrudden*, 2010 FINRA Discip LEXIS 25, at *18-22. Like Gadelkareem's conduct here, McCrudden's conduct included threatening negative publicity and legal action and disparaging the firm to third parties, including business partners. *Id.* In that case, the NAC found that McCrudden's conduct violated NASD Rule 2110, the predecessor to FINRA Rule 2010. *Id.* at 39.

We agree with the Hearing Panel that Gadelkareem "engaged in an extended course of improper actions," which violated FINRA Rule 2010. Gadelkareem's misconduct included repeated harassing communications to DH, FO, RW, and other Blackbook employees, containing vulgar language and threats. Gadelkareem also made unfounded allegations of fraud against Blackbook and its employees to Blackbook's customers, the press, and other third parties. He filed repeated complaints against Blackbook with the police, filed lawsuits which he admitted were intended to harass, and filed a complaint with the New York City Bar Association against Blackbook's attorney. Gadelkareem falsified an email from a fictitious FINRA examiner to further intimidate Blackbook. As Gadelkareem himself admitted, his campaign of harassment was intended to force a settlement with Blackbook of his claim for commissions.

Accordingly, we find that Gadelkareem's misconduct violated FINRA Rule 2010.

B. FINRA Rule 5240 Does Not Apply to Gadelkareem's Misconduct

Unlike the Hearing Panel, we find that Gadelkareem's misconduct does not violate FINRA Rule 5240. We accordingly reverse this finding.

FINRA Rule 5240, the "Anti-Intimidation/Coordination" rule, provides that

> (a) No member or person associated with a member shall:
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> (1) coordinate the prices (including quotes), trades or trade reports of such member with any other member or person associated with a member, or any other person;
>
> (2) direct or request another member to alter prices (including a quotation); or
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> (3) engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person.

Subsection (b) of FINRA Rule 5240 goes on to enumerate activities related to pricing which, if otherwise lawful, do not violate the rule.

Gadelkareem argues that FINRA Rule 5240 applies to intimidating and harassing conduct with respect to manipulating market prices and does not apply to his misconduct here. Enforcement argues that the language of FINRA Rule 5240 is clear, that the three subparts of Rule 5240(a) are disparate obligations, and that FINRA Rule 5240(a)(3) applies to all intimidating and harassing misconduct regardless of whether it was in connection with manipulative and anticompetitive conduct. We disagree with Enforcement's broad reading of the rule.

Subsection (a)(3) to FINRA Rule 5240 is within a rule aimed at price manipulation and anticompetitive behavior, which supports that it is meant to prohibit intimidating and harassing conduct in connection with pricing. An examination of the history of FINRA Rule 5240 confirms this reading.

In 2009, the SEC issued an order approving the adoption of NASD IM-2110-5 as FINRA Rule 5240 in the FINRA consolidated rulebook "without material change."[3] NASD IM-2110-5 was adopted in 1997 as a part of certain undertakings to which the NASD agreed as part of an SEC order imposing remedial sanctions.[4] Those undertakings were the result of an SEC

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[3] *See Order Approving Proposed Rule Change to Adopt FINRA Rule 5240 (Anti-Intimidation / Coordination) in the Consolidated FINRA Rulebook*, Exchange Act Release No. 59335, 2009 SEC LEXIS 248, at *1 (Feb. 2, 2009).

[4] *See Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Interpretation of NASD Conduct Rule 2110 regarding Anti-Intimidation/Coordination Activities of Member Firms and Persons Associated with Member Firms*, Exchange Release No. 38845, 1997 SEC LEXIS 1497, at *1 (July 17, 1997).

investigation and resulting institution of administrative proceedings against NASD concerning anticompetitive pricing practices for NASDAQ stocks.[5] The SEC investigation revealed that NASDAQ market makers had agreed to certain conventions to coordinate price quotations, and that these conventions were enforced through harassment and intimidation.[6] In response, NASD proposed NASD IM-2110-5, which would, among other things, "discipline market makers who harass other market makers" for engaging in competitive behavior.[7]

In describing and interpreting NASD IM-2110-5, the SEC discussed each of the three general areas of prohibited conduct that would later become subsections (a), (b), and (c) of FINRA Rule 5240.[8] With respect to the prohibition on intimidating or harassing conduct, the SEC explained:

> The third part of the interpretation relates to conduct that threatens, harasses, coerces, intimidates or otherwise attempts to improperly influence another member *in a manner that interferes with or impedes the forces of competition among member firms* in the NASDAQ market. This part of the prohibition is intended to reach conduct that goes beyond legitimate bargaining among member firms. (Emphasis added.)

We find that the proscription against harassing conduct in FINRA Rule 5240 applies to conduct in connection with coordinating prices, harassing those who refuse to coordinate quotations, and other anticompetitive behavior. Accordingly, Rule 5240 does not apply to Gadelkareem's conduct here, and we dismiss this segment of the findings of violation.

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5 *See Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding NASD and the NASDAQ Market*, Exchange Act Release No. 37542, 1996 SEC LEXIS 2121 (Aug. 1996). A copy of the full report pursuant to Exchange Act Section 21(a) ("21(a) Report") can be found at https://www.sec.gov/litigation/investreport/nd21a-report.txt.

6 *See 21(a) Report*, 1996 SEC LEXIS 2121, at *3; *see also id.* at 2 ("Market makers that failed to follow these conventions were sometimes subjected to harassment and an unwillingness to trade by other market makers who were attempting to enforce compliance with the conventions.").

7 *See Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Interpretation of NASD Conduct Rule 2110 regarding Anti-Intimidation/Coordination Activities of Member Firms and Persons Associated with Member Firms*, 1997 SEC LEXIS 1497, at *2-3 (internal quotations omitted).

8 *See id.* at *4-6.

IV. Sanctions

On appeal, Gadelkareem argues that the sanction of a bar imposed by the Hearing Panel is too severe because: (1) there was no harm to investors; (2) his alleged medical condition and the "toxic" work environment at Blackbook caused his misconduct; and (3) his lack of disciplinary history is mitigating. For the reasons discussed below, we reject Gadelkareem's arguments and find that a bar is an appropriately remedial sanction for his egregious misconduct.

A. A Bar Is Appropriate for Gadelkareem's Egregious Misconduct

In determining the appropriate sanction for Gadelkareem's misconduct, we considered FINRA's Sanction Guidelines ("Guidelines"),[9] including the Principal Considerations in Determining Sanctions ("Principal Considerations"). Because there are no specific Guidelines addressing the FINRA Rule 2010 violation here, we look primarily to the Principal Considerations.

We agree with the Hearing Panel that Gadelkareem's misconduct was egregious, and that the presence of numerous aggravating factors support the imposition of a bar. Gadelkareem's harassing communications were threatening, hostile, and vulgar. His misconduct was intentional, included numerous communications over a period of weeks, and caused Blackbook to lose a client.[10] Gadelkareem continued his conduct even after he was repeatedly warned that it was harassment. Gadelkareem's conduct was intended to force a settlement resulting in personal financial gain to him.[11] His falsification of emails and impersonation of a police officer and FINRA investigator were intended to conceal his misconduct.[12] We find Gadelkareem's misconduct in impersonating a FINRA investigator and falsifying an email from this fictitious person to advance and conceal his misconduct particularly troubling and aggravating here. Throughout the proceedings, Gadelkareem failed to take responsibility for his misconduct and, while on appeal he appears to acknowledge that his conduct was wrongful, he still blames Blackbook for inciting him with what he calls a "toxic" work environment.[13]

We, like the Hearing Panel, also are troubled by Gadelkareem's conduct during FINRA's investigation and the hearing and find this conduct further aggravating. First, Gadelkareem served subpoenas on witnesses even after repeatedly being told, including by the Hearing

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[9] *See FINRA Sanction Guidelines* (2016), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

[10] *Id.* at 6-7 (Principal Considerations, Nos. 8, 9, 11, 13).

[11] *Id.* at 7 (Principal Considerations, No. 17).

[12] *Id.* at 6 (Principal Considerations, No. 10).

[13] *Id.* at 6 (Principal Considerations, No. 2).

Officer, that this was not allowed. This conduct is aggravating for purposes of sanctions. *See DBCC v. Connolly*, Complaint No. PHL-731, 1991 NASD Discip. LEXIS 35, at *23 (NASD Bd. of Governors Mar. 12, 1991).

Even more troubling is Gadelkareem's submission of false documents as evidence at the hearing. The Hearing Panel found that Gadelkareem forwarded a fictitious email from a nonexistent FINRA investigator to several people. At the hearing, FINRA's expert credibly testified that based on an examination of the email and its related metadata, it was virtually impossible for it to have been sent by anyone other than Gadelkareem. Rather than admit his earlier deception, however, Gadelkareem concocted a story at the hearing accusing DH of stealing his iPad, hacking into his Wi-Fi, and sending the email to set him up. In support of his story, Gadelkareem offered into evidence an email purporting to be from AOL claiming that his email had been hacked and not under his control during the relevant time period. Enforcement, however, submitted a letter from AOL confirming that this email was fraudulent and not from AOL. The Hearing Panel found that Gadelkareem's evidence was falsified, and we agree.

Gadelkareem's attempt to submit false and misleading evidence demonstrates his inability to abide by FINRA rules and strongly supports the imposition of a bar. *See, e.g., Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *56 (May 27, 2015) (finding that intentionally submitting false documents to mislead FINRA is an aggravating factor). It is well settled that "[p]roviding false and misleading information . . . subverts FINRA's ability to carry out its regulatory function and protect the public interest." *See Dep't of Enforcement v. Ortiz*, Complaint No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 (FINRA NAC Oct. 10, 2007).

B. Gadelkareem's Claimed Medical Condition Is Not Mitigating

Gadelkareem presented evidence of his medical condition and his doctor testified at the hearing. On appeal, he argues that his condition and the fact that he is now under the care of a doctor is mitigating. Gadelkareem's argument is unavailing.

A medical condition can mitigate a sanction where the respondent has presented evidence that it interfered with his ability to comply with FINRA rules. *See Paul David Pack*, 51 S.E.C. 1279, 1283 (1994) (allowing mitigation where the respondent introduced uncontroverted medical evidence that respondent's misconduct was the result of his medical condition, including clinical depression and a chronic sleep disorder); *DBCC v. Nelson*, Complaint No. C9A920030, 1996 NASD Discip. LEXIS 17, at *9, 15 (NASD NBCC Mar. 8, 1996) (finding mitigating circumstances where the respondent failed to respond to FINRA's information requests, and respondent was hospitalized or bedridden with chronic fatigue syndrome). In general, however, medical problems do not mitigate violations of FINRA rules and proving mitigation based on a medical condition is a difficult burden to overcome. *See Dep't of Enforcement v. Saad*, Complaint No. 2006006705601R, 2015 FINRA Discip. LEXIS 49, at *9-11 (FINRA NAC Mar. 16, 2015), *aff'd* Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *1 (Oct. 8, 2015). Gadelkareem has not met this burden here.

Significantly, Gadelkareem's doctor testified that he was not treating Gadelkareem during the relevant period and could not attest to his condition at the time. Accordingly, there is no evidence of Gadelkareem's inability to comply with FINRA rules at the time of his misconduct due to medical reasons. To the contrary, rather than mitigate his misconduct, the evidence presented by Gadelkareem's doctor further supports that he is not fit to serve as a securities industry professional and should be barred. The doctor testified that Gadelkareem has a history of missing appointments and not taking his medication. Further undermining Gadelkareem's claim that we should consider his medical condition as mitigating is his conduct during the hearing, which included aggressive and disruptive behavior and the submission of falsified evidence at a time when he claims his condition was being treated.[14]

C. Gadelkareem's Other Claims of Mitigation Fail

Gadelkareem's other arguments for mitigation are similarly unavailing. It is well established that the lack of customer harm is not mitigating. *See William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *40 (Mar. 31, 2016); *Dep't of Enforcement v. Harari*, Complaint No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *38 (FINRA NAC Mar. 9, 2015). Moreover, customer harm is not relevant to the violation here which involved harassment of Gadelkareem's former firm, and there is evidence that Gadelkareem caused harm to his firm by causing them to lose a client.

Gadelkareem makes a related argument that FINRA's disciplinary action here and the sanction imposed is not appropriate because the misconduct alleged concerned an employment dispute that was subsequently settled by Gadelkareem and Blackbook. The fact that Gadelkareem and Blackbook settled their claims, however, is not relevant to FINRA's interest is pursuing a disciplinary action for violation of its rules.

Gadelkareem also argues that a bar is excessive in light of his lack of disciplinary history. A respondent's absence of prior disciplinary history is not a mitigating factor. *See John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *64 n.77 (Nov. 12, 2010), *aff'd*, 449 F. App'x 886 (11th Cir. 2011); *see also Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (stating that the absence of disciplinary history is not mitigating because "an associated person should not be rewarded for acting in accordance with his duties as a securities professional"). The fact that Gadelkareem may have previously complied with FINRA rules, does not excuse his serious violation here. Moreover, there is ample evidence in the record of Gadelkareem's past aggressive and harassing behavior in the workplace. The record reflects that rather than being aberrant, Gadelkareem's conduct is part of a longstanding pattern of behavior that continued during the hearing. Rather than mitigating the sanction, this evidence of a pattern of similar misbehavior is a further aggravating factor. *See McCrudden*, 2010 FINRA Discip. LEXIS 25, at *26 (finding that

[14] For these same reasons, we agree that, to the extent Gadelkareem's seeking medical treatment can be considered a "subsequent corrective measure," it is not sufficiently mitigating to overcome the myriad aggravating factors. *See Guidelines*, at 6 (Principal Considerations, No. 3).

evidence of similar aggressive and abusive behavior with a prior employer was an aggravating factor).

We have no confidence in Gadelkareem's future ability to control his behavior, and we believe he poses a danger to the industry and the investing public. For these reasons, the sanction of a bar is appropriately remedial.

V. Conclusion

Gadelkareem engaged in a campaign of abusive, intimidating, threatening, and harassing communications and other conduct towards his former firm and its associated persons, in violation of FINRA Rule 2010. For this misconduct, Gadelkareem in barred from associating with any member firm in all capacities, effective upon service of this decision. We also affirm the Hearing Panel's order that Gadelkareem pay $5,649.78 in hearing.

On behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary