**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**OFFICE OF HEARING OFFICERS**

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| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>JOSEPH R. BUTLER<br>(CRD No. 2447535),<br><br>Respondent. | Disciplinary Proceeding<br>No. 2012032950101<br><br>Hearing Officer–Andrew H. Perkins<br><br>**HEARING PANEL DECISION**<br><br>July 8, 2014 |

**Respondent is barred from associating with any FINRA member firm in any capacity for converting funds from a customer and submitting a false annuity beneficiary change request, in violation of FINRA Rule 2010. Respondent also is ordered to pay restitution and costs.**

**Appearances**

David F. Newman, Esq., and William A. St. Louis, Esq., for the Department of Enforcement, Complainant.

Todd K. Pounds, Esq., Fort Washington, Maryland, for Joseph R. Butler, Respondent.

**DECISION**

## I. INTRODUCTION

Respondent Joseph R. Butler is registered with the Financial Industry Regulatory Authority (FINRA) as an Investment Company and Variable Contracts Products Representative and was previously associated with FINRA member firm Woodbury Financial Services. He is currently registered with another firm. Woodbury discharged Butler after it investigated a complaint lodged by LW, one of Butler's customers. Woodbury found that Butler had violated its written supervisory procedures by failing to

disclose that he was a beneficiary on multiple non-family member customer accounts and that he controlled LW's bank accounts.

Woodbury notified FINRA of Butler's termination by filing a Uniform Termination Notice for Securities Industry Registration (Form U5). Upon receipt of the Form U5, FINRA staff opened an investigation into Butler's dealings with LW. The investigation revealed that Butler had (1) converted money from LW's bank accounts, (2) submitted a false form to have himself named as the primary beneficiary on LW's variable annuity policy, and (3) engaged in other unethical conduct by taking advantage of LW's declining mental health.

FINRA's Department of Enforcement initiated this disciplinary proceeding against Butler by filing a complaint with the Office of Hearing Officers in August 2013. The Complaint alleges that Butler (1) converted funds belonging to LW for his personal use; (2) engaged in unethical conduct by becoming a co-owner of LW's bank accounts and becoming named LW's Personal Representative and the primary beneficiary under LW's will, in violation of Woodbury's written supervisory procedures; and (3) completed and submitted an Annuity Beneficiary Change Request form that falsely stated he was LW's son and named him as the primary beneficiary on LW's variable annuity. After Butler answered the Complaint, Enforcement filed an Amended Complaint, alleging additional instances of conversion that Enforcement had discovered after it had filed the original complaint.[1]

Butler denied all wrongdoing. He contended that LW treated Butler as her "son" and that she authorized all of the withdrawals from her bank accounts. He further

[1] The First Amended Complaint filed on December 20, 2013, did not change the theories of the causes of action. Accordingly, the Hearing Officer did not require Butler to amend his Answer.

contended that he used some of the funds for LW's benefit. He also contended that LW directed Butler to designate himself as the primary beneficiary and Personal Representative under her will and that she directed Butler to refer to himself as her son on the Annuity Beneficiary Change Request form that Butler submitted to The Hartford on her behalf, designating Butler as the primary beneficiary of her annuity.

The Hearing Panel found Butler's testimony not credible and therefore rejected his defense that LW had authorized and approved all of the withdrawals he made from her bank accounts. The Hearing Panel concluded that Butler violated FINRA Rule 2010 by converting LW's funds and submitting a materially false Annuity Beneficiary Change Request to The Hartford that stated he was LW's son. For these violations, the Hearing Panel concluded that Butler should be barred from associating with any FINRA member firm in any capacity. The Hearing Panel dismissed the other charges in the First Amended Complaint for the reasons discussed below.

## II. FINDINGS OF FACT

### A. Respondent Joseph R. Butler

Butler went into the insurance industry in 1967 directly upon graduation from college.[2] He has had his own insurance agency, J.R. Butler & Associates, for approximately the past 35 years. In 1994, Butler associated with Woodbury where he was registered as an Investment Company and Variable Contracts Products Representative (Series 6) between June 1997 and August 2012.[3] Currently, Butler holds the same registration through another FINRA member firm.[4]

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[2] Hearing Transcript ("Tr.") 271.

[3] CX-1, at 3.

[4] *Id.* at 2.

### B. Butler's Relationship With LW

LW is Butler's neighbor, whom he has known for approximately 30 years. Her husband died in approximately 2005, and thereafter she lived by herself.[5] Her immediate family consists of two sisters. One sister lives in Maryland about 15 miles from LW; the other lives in Indiana. In June 2006, Butler and LW began to communicate often, and they soon became close friends.[6] Butler also began to assist LW with repairs and other matters that needed attention around the house.[7]

In November 2007, LW asked Butler to assist her with her finances. LW owned several certificates of deposit ("CDs"), and she wanted to use those funds to supplement her income. Butler recommended that she liquidate the CDs and use the proceeds to purchase a variable annuity policy.[8] LW agreed and purchased a $453,000 variable annuity from The Hartford.[9]

To purchase the variable annuity, Butler completed and submitted an application on LW's behalf.[10] The application reflects that LW was born in 1930 and was retired.[11] Butler stated her net worth at $900,000, consisting of $450,000 in cash, a $100,000 annuity, and personal property valued at $400,000.[12] Butler stated her annual income at $88,000. LW also owned her single family residence valued at approximately $250,000.[13]

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[5] Tr. 277-78.

[6] CX-3, at 1.

[7] *Id.*

[8] Tr. 278-79.

[9] *See* CX-4, at 19.

[10] CX-4.

[11] *Id.* at 7.

[12] *Id.* at 10.

[13] Tr. 177.

LW named her two granddaughters as equal beneficiaries of the variable annuity policy in the event of her death.[14]

After LW became Butler's customer in 2007, LW began depending on Butler for everything because she had no one else to assist her with day-to-day tasks.[15] According to Butler, she had him take her to "doctor's appointments, church, grocery store, lunch, dinner, and the beauty parlor."[16] Over the ensuing few years as her health began to decline, LW's dependency on him steadily increased to the extent that he brought it to both her doctor's and her family's attention.[17] Butler claimed, and there is some evidence corroborating his claim, that LW eventually came to refer to Butler as her "son" when speaking to him.[18]

As early as 2009, Butler observed that LW was exhibiting signs of memory loss and the onset of dementia. From his frequent visits to her home, Butler saw that she was not eating well, and he enrolled her in the Meals On Wheels senior nutrition program in June 2009.[19] On Thanksgiving Day in 2009, Butler became concerned when he could not reach her by telephone for several hours. Later that day, he learned that she had gotten lost on her way to the local grocery store.[20] In early 2010, Butler noticed minor damage to

[14] CX-4, at 1.

[15] CX-3, at 1.

[16] *Id.*

[17] *Id.* at 2.

[18] Her real son had died some years before 2006. *See* CX-3, at 1.

[19] CX-28. Butler applied for food assistance in November 2008 because she was forgetting to eat and would not cook for herself. *Id.*

[20] Tr. 235-36.

her automobile. When he asked her what happened, she reported that she had backed into her garage.[21] Butler believes that she ceased driving after the accident.

By 2010, Butler had become so concerned about LW's wellbeing that he started calling her three times a day to be sure that she was taking her medications.[22] He also devised a pill box, which he secured to her kitchen table with Velcro, in an effort to help her remember to take her daily medications.[23] And in late 2010 or early 2011, Butler disabled her gas stove to prevent her from injuring herself or damaging her home.[24] Thereafter, Butler occasionally cooked meals for her at her home.[25]

In December 2012, Butler took LW to her family doctor for a checkup. Butler was concerned about her memory loss, poor nutrition, and weight loss over the previous year. Her doctor told Butler that LW was suffering from dementia. Upon learning this, Butler asked the doctor what the "next step" should be.[26] Butler testified that her doctor said he would call Butler that evening, but he did not. Butler then tried to reach the doctor by telephone, but he was not successful. Frustrated by the doctor's lack of follow up, when LW complained about dizziness a week later, Butler made an appointment for her to see a doctor at Medical Group Management on January 6, 2012.[27]

[21] Tr. 234-38; CX-23, at 9.

[22] Tr. 238.

[23] Tr. 238.

[24] Tr. 241.

[25] CX-3, at 3.

[26] Tr. 252.

[27] Tr. 252-53; CX-3, at 3.

Butler gave Medical Group Management LW's medical history, which is reflected on her admission form.[28] Butler reported that LW was being monitored for dementia, and that he was concerned about her forgetfulness and nutrition. He told the medical staff that LW had been forgetting conversations and that she had to be reminded to take her medications. Butler also told the medical staff that he had arranged for Meals On Wheels. Butler further advised the medical staff that he had a healthcare proxy and that he would like to take the "next step."[29]

Following her evaluation at Medical Group Management, LW was admitted to the hospital. Upon her discharge from the hospital in February 2012, her doctor advised Butler that she could not live alone. Accordingly, Butler made arrangements to have her move to an assisted living facility.[30] Butler had the authority to make decisions on LW's behalf as her attorney-in-fact. But before Butler could finalize the assisted living arrangements, LW's family intervened and made alternate arrangements that would permit LW to live at her home.

### C. Butler's Control Of LW's Finances And Transfers Of Funds To Himself From Her Bank Accounts

#### 1. Butler Becomes A Joint Owner On LW's Bank Accounts

In 2009, when Butler realized that LW's mental and physical capabilities were waning, Butler took control of her bank accounts and financial affairs. On April 16, 2009, Butler had LW add him to her three accounts at Bank of America for the limited purpose

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[28] CX-29.

[29] *Id.*

[30] Tr. 303-04.

of enabling him to pay LW's bills.[31] At no point has Butler claimed that LW intended to give Butler the money in the accounts.

In late 2010 or January 2011, Butler instructed Bank of America to mail LW's monthly account statements to him at his home address rather than to LW.[32] Butler had the monthly statements mailed to him because LW misplaced her bills and could not reconcile her statements.[33]

### 2. Transfers To Butler From LW's Accounts

The same day Butler was added to LW's Bank of America accounts, $25,000 was transferred from her checking account to Butler's personal bank account.[34] Butler denied he requested the transfer.

Butler admitted however that he wrote a total of 14 checks on LW's checking and money market accounts between September 2009 and January 2012, totaling $111,300 that were payable either to him or cash, which he deposited into his personal bank account. Butler also wrote two checks to pay his income taxes. In June 2010, he wrote a check on LW's checking account payable to the United States Treasury in the sum of $18,846.18,[35] and, in April 2011, he wrote a check on her money market account payable to the Comptroller of Maryland in the sum of $10,262.[36]

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[31] Tr. 183-84, 260. At no time did Butler put any of his own money into any of LW's accounts. Tr. 186-87.

[32] Tr. 186; CX-9, at 7.

[33] CX-9, at 7. Butler further claimed that LW wanted him to scrutinize the statements closely because he believed one of LW's granddaughters had been using the account without LW's permission. *Id.* Butler testified at the hearing that the letter, Exhibit CX-9, written on his behalf by his attorney is accurate. Tr. 185.

[34] Tr. 260.

[35] CX-17.

[36] CX-16.

Butler wrote the following checks on LW's accounts, all of which he either cashed or deposited into his account:

| **Check No.** | **Account** | **Amount** | **Date** | **Payee** |
|---|---|---|---|---|
| 101 | Money Market | $15,550 | September 1, 2009 | Cash |
| 8911 | Checking | $6,000 | October 22, 2009 | Cash |
| 8961 | Checking | $12,750 | November 30, 2009 | Cash |
| 8962 | Checking | $12,000 | January 6, 2010 | Cash |
| 8963 | Checking | $12,000 | March 22, 2010 | Butler |
| 8964 | Checking | $10,000 | April 14, 2010 | Butler |
| 103 | Money Market | $6,500 | April 21, 2010 | Cash |
| 9090 | Checking | $12,000 | December 6, 2010 | Cash |
| 9121 | Checking | $3,000 | February 16, 2011 | Cash |
| 107 | Money Market | $2,000 | May 2, 2011 | Cash |
| 9142 | Checking | $7,000 | May 9, 2011 | Cash |
| 108 | Money Market | $4,000 | May 12, 2011 | Cash |
| 109 | Money Market | $5,000 | August 5, 2011 | Cash |
| 9143 | Checking | $3,500 | January 20, 2012 | Cash |
| **TOTAL** | | **$111,300** | | |

In addition to the foregoing checks, in January 2011, he electronically transferred $5,000 from LW's money market account to his personal bank account. Butler claimed that the purpose of the transfer was to "test" his ability to pay LW's bills electronically.[37]

[37] Tr. 195-96.

When questioned about why he concluded that he needed to transfer such a large sum to test the system, Butler responded, "I could have transferred much more than that but I just did 5,000 . … I don't know why I picked that amount."[38] Butler's inability or unwillingness to explain his actions further—including how he used the funds—led the Hearing Panel to conclude that Butler transferred the money to his account for his own benefit, not to test the bank's bill payment system, as he claimed.[39] The Hearing Panel further notes that he kept the funds, which he did not need to do if the sole purpose of the transfer was to test the bill payment system.

#### 3. Butler Lacked Receipts And Invoices For Cash Expenditures He Claimed He Made On LW's Behalf And Was Unable To State What He Did With Most Of The Cash

Butler claimed that he spent $31,000 of his own money to purchase the following goods and services for LW and that he reimbursed himself from LW's accounts:

| **Expenditures** | **Cost** |
| --- | --- |
| New Carpet | $4,800 |
| Flat screen television | $900 |
| New bed mattress set and comforter set | $3,200 |
| Trash dumpster rental (3 weeks) | $1,800 |
| Removal of snakes from home and put down traps | $2,400 |
| Furnace repair (2:30 a.m.) | $1,500 |
| Paint house front/steps/walkway and power wash garage doors and driveway | $1,100 |

[38] Tr. 196.

[39] Butler stated that some of the money was "probably" used for reimbursement of expenses, but he had no knowledge of what expenses. Tr. 196.

| **Expenditures** | **Cost** |
| --- | --- |
| Built small porch on back of house | $950 |
| Plumber (4 occasions) | $2,600 |
| Gutter repair | $250 |
| Landscaping | 3,500 |
| Electrician | $500 |
| Smoke and carbon monoxide detectors | $250 |
| Car insurance | $2,200 |
| Car repair | $850 |
| Taxes (stop tax sale) | $4,200 |
| **TOTAL** | **$31,000** |

Butler presented no evidence to support his contention that he made these expenditures on LW's behalf. Butler stated that he always paid in cash and that he had no receipts, invoices, or other evidence of these expenditures. Nor could he recall the names of the vendors or contractors.[40] Butler further testified that he made no effort to locate any of the suppliers to obtain evidence to support his claim that he purchased the listed goods and services for LW.[41] Butler explained in circular fashion that he did not try to locate any of the companies because "[i]t wasn't always a company," and he did not try to contact the individuals he hired because he "wouldn't know where they were."[42] Notwithstanding this testimony, he also asserted that he did not try to get any receipts

[40] *See* Tr. 190.

[41] *See* Tr. 189-90.

[42] Tr. 190.

after FINRA began its investigation because if he had gotten two or three receipts, FINRA staff would have asked for the other ones.[43] Butler made no effort to explain further.

In addition to Butler's inability to document any of the expenses, a witness directly contradicted his assertion that he had new carpeting installed at LW's home. An investigator hired by LW's court-appointed guardian testified that for a period she visited with LW in her home approximately twice a week beginning on July 29, 2013, the date she was hired.[44] On her visits she noticed that the carpeting was worn and soiled and that LW's guardian had the carpeting cleaned in December 2013.[45] She further testified that on her visits she saw no new carpeting in LW's home.[46]

The Hearing Panel credits the investigator's testimony. There would be no reason for the investigator to testify untruthfully about the condition of the carpeting, and it is likely that she would remember the condition of the carpeting because LW's guardian arranged to have it cleaned. Further, the investigator's testimony regarding this expense leads the Hearing Panel to doubt the truthfulness of Butler's testimony regarding the remaining undocumented expenses.

Apart from the lack of documentation regarding the listed expenses, Butler could not recall what he did with any of the remaining funds he withdrew from LW's accounts. For example, on September 1, 2009, he wrote a check to cash in the sum of $15,550,

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[43] Tr. 189.

[44] Tr. 379.

[45] Tr. 379-80.

[46] Tr. 380.

which he deposited into his personal checking account.[47] He testified that despite the large amount, he could not recall the specific purpose of the check or how he used the funds. All he could offer in response to questions about the withdrawal was that he reimbursed himself for unspecified expenses or LW told him "to treat [himself]" to some cash. When asked how much of it was his "treat," he answered: "Well, at that time more than likely there was some expenses that I had to pay for her. Whether it was 1,500 or 1,200 or 2,000 I don't know. But I told her I would write the check for $15,550. She said: Okay."[48] Butler offered no other explanation for the amount of the check. Butler similarly could not identify any specific expenses that corresponded to the other checks,[49] nor could he tie any of the check amounts to the list of expenses he claimed to have paid in cash on LW's behalf.

Butler attempted to explain his inability to account for the funds he took from LW by stating that in some instances LW told him to "treat" himself to some cash, which he did.[50] However, Butler could not identify which checks constituted or included a "treat."[51]

### D. Butler Becomes LW's Attorney-In-Fact, Personal Representative Under Her Last Will And Testament, And The Primary Beneficiary Of Her Estate

Less than two months after Butler became the joint owner on LW's bank accounts, Butler drove LW to meet with attorney Todd K. Pounds, Butler's attorney in

[47] CX-15, at 1.

[48] Tr. 199.

[49] *See* Tr. 190-99; 205-09.

[50] Tr. 193.

[51] Tr. 194.

this disciplinary proceeding, to have him prepare her Last Will and Testament.[52] Butler drove LW back to Mr. Pounds' office on June 9, 2011, for her to sign the Will.[53] At that time, LW also executed a Durable Power of Attorney that appointed Butler her attorney-in-fact, and a health care directive that authorized her sister and Butler to make health care decisions on LW's behalf.[54]

Under LW's Last Will and Testament, Butler would receive her personal residence and the vast bulk of the remainder of her estate apart from some small cash gifts to charity and her personal property.[55] LW left her personal property to her granddaughters. LW also designated Butler her Personal Representative under the terms of her Last Will and Testament.[56]

Butler did not tell or otherwise disclose to his firm that he was designated LW's attorney-in-fact and personal representative, or that he was the primary beneficiary of her estate under her Last Will and Testament.

### E. Butler Submitted A False Annuity Beneficiary Change Request Designating Him The Primary Beneficiary Of LW's Annuity Policy

In May 2011, Butler completed and submitted an Annuity Beneficiary Change Request to The Hartford.[57] In preparing the form on LW's behalf, Butler designated himself as the 90% beneficiary under the policy and falsely stated that he was LW's

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[52] Tr. 176-77, 293. Butler knew Mr. Pounds and made the appointment with him on LW's behalf. CX-23, at 14 (OTR Tr. 384).

[53] Tr. 293-94; CX-11.

[54] CX-9, at 29; CX10; CX-11.

[55] CX-11, at 2.

[56] No evidence was presented indicating that Mr. Pounds consulted with Butler regarding the content of LW's Last Will and Testament or the Durable Power of Attorney at any time before LW signed each document.

[57] CX-5.

son.[58] Although Butler intentionally misrepresented his relationship to LW, he nonetheless justified his action because LW called him her son.[59] Butler admittedly gave no thought to the fact that the form he completed and submitted was misleading.[60]

### F. Butler Was Not Credible

The disposition of this case rests heavily on Butler's credibility because by the time of the hearing LW was not competent to testify. In her absence, Butler testified that LW authorized all of his actions, including his withdrawal of funds from her bank accounts. Based on his claimed authorization, Butler argued that he could not be found to have converted any of her funds to his own use and benefit.

Butler testified at the hearing that the withdrawals he made from LW's bank accounts were either expenditures for her benefit or gifts to him. Butler further testified that LW was aware of and approved all of the withdrawals. However, Butler provided no documentation to support his assertions. Butler never obtained a receipt for any of the goods and services he claimed he procured for LW's benefit, nor could he name the companies or individuals he hired to perform work on LW's home or where he had purchased items for her benefit. And his claim at the hearing that many of the withdrawals were gifts is directly contradicted by his earlier sworn testimony.

The Hearing Panel finds that Butler's testimony lacks credibility. As discussed below, Butler's testimony is replete with inconsistencies and contradictions, and there is no evidence supporting his self-serving characterization of his use of LW's funds.

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[58] *Id.* at 2.

[59] Tr. 165.

[60] Tr. 166.

### 1. Butler's Newly Fabricated Claim That A Portion Of The Withdrawals Consisted Of Gifts

At the hearing, Butler claimed for the first time that most of the funds he took from LW's bank accounts were gifts. The Hearing Panel finds that Butler fabricated this story because he could not account for how he used LW's funds, including the additional checks Enforcement discovered after it initiated this disciplinary proceeding. Indeed, Butler's hearing testimony is directly contradicted by his earlier sworn testimony.

Early on in the investigation, FINRA staff asked Butler to account for the funds he had taken from LW's bank accounts. On June 21, 2012, the staff sent Butler a request for information and documents regarding his relationship with LW. The staff specifically requested copies of all bills and receipts for payments Butler made on LW's behalf. Butler's attorney provided a written response on July 10, 2012, stating that Butler did not have any receipts.[61] Thereafter, at an on-the-record interview ("OTR") on September 12, 2012, the staff questioned Butler about his lack of receipts and how he used the money he had taken out of LW's bank accounts. Butler unequivocally testified under oath that all of the money was used for her benefit—none was a gift.

Q. Have you ever done anything for [LW] that you were compensated for?

A. No.

Q. Did you ever have any kind of agreement where she said, you know, Hey, listen, for helping me out here's you know, take this out of the account –

A. No.

Q. -- for yourself?

A. No.

[61] CX-9, at 5.

Q. Did you ever have occasion to do that anyway?

A. No.

Q. She ever give you any gifts, monetary?

A. She did give me a monetary gift, how do I say it? She has given me a monetary gift.

Q. When did that start?

A. Start? I mean, not that it was something that happened all the time.

Q. How many times did it happen?

A. I don't know, couple of times. Maybe I took her to dinner and she says, Well, I'm going to buy gas, something to that effect, or I'm going to pay for dinner. But as far as cash money, no.

Q. So you never received any cash from her –

A. Cash, no.

Q. Let me finish. You never received any cash from her for services that you provided for her or just because she thought that you deserved a gift?

A. No.[62]

In direct contrast to Butler's OTR testimony, at the hearing he repeatedly claimed that most of the funds he withdrew from LW's bank accounts were gifts and that LW had repeatedly authorized him to "treat" himself to unlimited amounts of cash from her accounts.

In addition, Butler's assertion that LW gave him multiple, large gifts defies common sense. Butler offered absolutely no explanation for the amount, timing, or circumstances of the gifts. This is particularly troubling in light of the pattern of some of the withdrawals. For example, in May 2011 Butler withdrew $13,000 in ten days—$2,000 on May 2, $7,000 on May 9, and $4,000 on May 12. Butler offered no reason that LW would have made these gifts in this manner.

[62] CX-22, at 34 (OTR Tr. 219-20); CX-23, at 6 (OTR Tr. 348). Butler also testified at his OTR that he never kept any left-over cash for himself after he paid her bills in cash. *See* CX-22, at 36.

In summary, the Hearing Panel finds it not credible that Butler would have forgotten that he had received such sizeable and numerous gifts from LW. In addition, Butler testified forcefully and unequivocally at his OTR that he never received a cash gift of any kind from LW. Butler offered no explanation for the change in his sworn testimony. Accordingly, the Hearing Panel rejects Butler's claim that LW authorized him to "treat" himself to her cash. The Hearing Panel concludes that Butler fabricated the story about LW authorizing to him to withdraw money as gifts after he realized that LW would not be present at the hearing to contradict his claim.

### 2. Butler's Claim That He Believed LW Was Competent To Handle Her Financial Affairs Is Not Credible

Butler's assertion that he believes LW was competent to handle her financial affairs also lacks credibility. Butler's contemporaneous conduct and his statements during the investigation belie his claim. For example, Butler testified at the hearing that LW asked him to have her bank statements sent to Butler's home because he was on the accounts.[63] He specifically denied that he directed the bank to send him LW's account statements because he had noticed that she was starting to misplace bills.[64] Butler further emphasized that although he received the bank statements, he took them to LW monthly so that she could balance her checkbooks.[65] Butler stated that she continued to balance her checkbooks in this manner until either October or November 2011.[66]

Butler argues that this is an important factor for the panel to consider because it shows that LW was fully aware of and approved each check Butler wrote on her

[63] Tr. 186.

[64] Tr. 186.

[65] Tr. 320.

[66] Tr. 320.

accounts. However, during the investigation, Butler took the contrary position that he had directed Bank of America to send the statements for LW's checking account to his home "after [LW's] conduct evidenced the misplacement of her bills and her statements *and was not able to reconcile her statements*."[67] The Hearing Panel credits Butler's early explanation because it is consistent with Butler's other testimony during the investigation and the hearing regarding LW's memory loss and his concern about her forgetting to pay her bills in a timely manner.

Butler's self-serving testimony regarding LW's competency is also undercut by his account of the unauthorized charges he said he discovered on her credit cards upon assuming control of her finances. In his effort to demonstrate the assistance he provided LW to justify why she would have given him such large gifts, Butler recounted that one of LW's granddaughters had made many unauthorized charges on LW's credit cards over a long period.[68] In response to the investigation Woodbury undertook after it received LW's complaint letter, Butler wrote that he reviewed LW's credit card statements and found that she had unpaid balances of $14,000 and $19,000 on her two credit cards.[69] When Butler researched her credit card statements for 2008 and 2009,[70] he concluded that LW had not authorized most of the charges. Butler then had LW pay the outstanding balances and cancel both credit cards.[71] Butler introduced copies of some of LW's credit card statements and a copy of her check for $14,000 payable to Bank of America dated

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[67] CX-9, at 7 (Rule 8210 response letter dated July 10, 2012) (emphasis added).

[68] Tr. 311-12.

[69] *See* CX-3, at 2.

[70] *See* RX-17.

[71] CX-3, at 2.

April 1, 2009.[72] The foregoing discredits Butler's argument that he had no reason to question LW's competency before January 2012. The foregoing shows that Butler had direct knowledge of LW's vulnerability and limited ability to manage her finances as early as April 2009, which is the very time he had LW add him as an owner of her bank accounts.

Butler's awareness of LW's vulnerability and inability to manage her affairs is further evidenced by Butler's testimony regarding his observations and the steps he took to help LW. First, Butler testified that he had to rush to the county Department of Taxation to pay her past due real estate taxes to avoid her house being sold at auction four days later.[73] Butler stated that LW was not aware that her home was about to be sold at a tax foreclosure sale.[74] Second, Butler testified that he disabled her gas stove because he feared that she might injure herself.[75] Third, he observed in 2010 and 2011 that she often wore the same clothes repeatedly, which he understood was a sign of dementia.[76] Butler was concerned enough about this behavior that he brought it to her doctor's attention.[77] Fourth, as early as 2010, Butler noticed that LW was not paying her bills on time, and he found misplaced bills in different parts of her home.[78] Butler repeatedly emphasized that he took control of her finances because she could not manage to pay her bills in a timely manner.

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[72] RX-17.

[73] Tr. 221.

[74] Tr. 221.

[75] Tr. 241.

[76] CX-23, at 22 (OTR Tr. 413).

[77] *Id.*

[78] Tr. 237.

In summary, the Hearing Panel finds that Butler knew as early as 2009 that LW was suffering from diminished mental ability and was incapable of managing her financial affairs. Indeed, he admitted in his Rule 8210 response during the investigation that he took complete control of her bank accounts because she was not able to reconcile her bank statements. Accordingly, the Hearing Panel rejects Butler's assertions that he considered LW competent to authorize—and did authorize—the "treats" he took from her accounts between September 2009 and January 2012.[79]

## III. CONCLUSIONS OF LAW

### A. Conversion

Butler intentionally exploited his relationship with LW and converted to his own use a substantial sum of money from LW in violation of FINRA Rule 2010.

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[80] The rule reaches beyond ordinary legal requirements; it encompasses "a wide variety of conduct that may operate as an injustice to investors or other participants" in the securities markets.[81] "FINRA's authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently broad to encompass any unethical, business-related misconduct,

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[79] The Hearing Panel further notes that LW was diagnosed with advanced dementia by her family doctor on December 5, 2011. *See* CX-20, at 12-13. The fact that her symptoms were considered advanced in December 2011 supports the reasonable inference that Butler would have been aware of her diminished capacity months earlier, as shown by the other credible evidence in the record.

[80] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

[81] *Edward S. Brokaw*, Exchange Act Rel. No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013) (quoting *Daniel Joseph Alderman*, Exchange Act Release No. 35997, 52 SEC 366, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *petition denied*, 104 F.3d 285 (9th Cir. 1997)).

regardless of whether it involves a security."[82] "The analysis that is employed [under the rule] is a flexible evaluation of the surrounding circumstances with attention to the ethical nature of the conduct."[83] Rule 2010 "applies when the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money."[84]

FINRA Sanctions Guidelines state that "[c]onversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."[85] Generally, such conduct is "among the most grave violations committed by a registered representative … and is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets."[86]

Here, Butler took and improperly used LW's funds for his own benefit. It is undisputed that Butler wrote 15 checks on LW's accounts payable either to cash or himself, which he then deposited in his personal checking account. The total amount of those checks is $111,300. He also wrote two checks on her bank accounts to pay his income taxes in the total amount of $29,108.18. In addition, he effected two wire

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[82] *Dep't of Enforcement v. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Board May 9, 2014) (citing *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002)).

[83] *Dep't of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *15 (NASD NAC June 2, 2000) (discussing the scope of NASD Rule 2110, the exact predecessor to FINRA Rule 2010).

[84] *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

[85] *John Edward Mullins,* Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012) (quoting *FINRA Sanction Guidelines* 38 (2007)); *see also Olson*, 2014 FINRA Discip. LEXIS 7, at *9 n.7.

[86] *See Mullins,* 2012 SEC LEXIS 464, at *73 (internal citations omitted).

transfers of funds from LW's account to his personal account. The wire transfers totaled $30,000. In total, Butler withdrew $170,408.18 from LW's bank accounts. Butler acknowledges that all of these withdrawals were made, but he argues that LW orally authorized each of them and that he applied a portion of the funds to reimburse himself for expenses he incurred on her behalf. These arguments do not relieve him of liability.

First, Butler has not produced any evidence, other than his own testimony, to support his contentions that he used some of the funds to reimburse himself for expenses he incurred on LW's behalf and that she authorized him to take the balance as a gift, and it was his burden to do so.[87] To the contrary, there is evidence that controverts his statements. For example, the court-appointed guardian's investigator who visited LW's home testified unambiguously that the carpeting in LW's home had not been replaced recently.[88] Starting in July 2013 she went to the home twice a week and had ample opportunity to observe the condition of the carpeting. She reported that she noticed it was worn and soiled and that the guardian had it cleaned in December 2013. She saw no new carpeting in LW's home. Her testimony directly contradicts Butler's statement that he spent $4,800 on new carpet.[89] Butler's statement is further discredited by his inability to

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[87] *Id.* at *34 (holding that respondent had the burden of producing evidence in addition to his own testimony to support his defense that he had been granted oral permission to use his customer's gift certificates) (citing *Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at *64 (Dec. 10, 2009) ("[A]s we have stated previously, the applicant bears the burden of producing evidence to support his claimed defenses."); *Husky Trading LLC*, Exchange Act Rel. No. 60180 (June 26, 2009), 96 SEC Docket 18128, 18140 & n.31 ("Applicants had the burden going forward to establish any affirmative defense.") (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *Donald T. Sheldon*, 51 S.E.C. 59, 77 n.70 (1992), *aff'd*, 45 F.3d 1515 (11th Cir. 1995))).

[88] The investigator testified that the carpet cleaning company estimated that the carpets had not been cleaned in ten years. Tr. 380.

[89] CX-13, at 4. The Hearing Panel further notes that during his OTR on May 29, 2013, Butler repeatedly testified that the carpeting he had installed cost $2,400, not $4,800. *See* CX-23, at 5 (OTR Tr. 342).

identify where he purchased the carpet and who installed it. It is not credible that he would have absolutely no recollection of these facts if he had actually made such a significant purchase.

In addition, Butler's own testimony at his OTR on May 29, 2013, contradicts his claim that he paid $950 in cash to have a porch installed on the back of LW's house. At his OTR, Butler stated that LW paid the handyman by check and that he was therefore not reimbursed for this expense.[90] Such irreconcilable inconsistencies completely undermine Butler's credibility.

Second, Butler's contention that he could not recall the names of any of the vendors is not credible. For example, Butler testified at the hearing that he arranged to have LW's furnace repaired in the middle of the night after she called Butler to report she had no heat.[91] Butler stated that he did not get a receipt at the time and that he could not get receipts once the investigation started because he did not know how to locate any of the repairmen.[92] But during his OTR on May 29, 2013, Butler testified that when LW called him about the furnace repair, Butler called one of his clients to perform the repair.[93] Both accounts cannot be true. If Butler had one of his clients perform the work, through that relationship he would know how to find him to obtain a receipt or other evidence that he paid the client $1,500 in cash to repair the furnace.

The Hearing Panel also finds not credible Butler's testimony that he does not know where he had LW's automobile repaired or from which company he obtained her

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[90] CX-23, at 5 (OTR Tr. 341).

[91] *See* Tr. 285.

[92] Tr. 190.

[93] CX-23, at 5 (OTR Tr. 344).

automobile insurance policy. It is far more likely that if Butler had taken her automobile for repair or bought her automobile insurance, he would have used firms he knew and trusted. The Hearing Panel's conclusion is further supported by the fact that Butler himself was an insurance agent. Undoubtedly he would have developed trusted business relationships with insurance agents who sell property and casualty policies. But here also, Butler made no effort to explain these incongruities.

Third, other inconsistencies in Butler's own testimony undermine his contention that LW authorized him to help himself to cash gifts. The most significant is Butler's own sworn testimony during his OTR on September 12, 2012,[94] and again on May 29, 2013,[95] that LW never gave him any cash gifts. During the OTRs, Butler repeatedly confirmed that he did not receive any cash gifts from LW; yet, at the hearing he testified that he helped himself to approximately $111,000 in cash gifts from her bank accounts. In addition, Butler failed to mention these gifts at any other time during the investigation or in the Wells submission he made dated June 17, 2013. The Hearing Panel concludes that the only logical conclusion that can be drawn is that Butler fabricated the story about his authorization to "treat" himself to her cash after he realized that neither LW nor any of her relatives was scheduled to testify at the hearing. It is not possible that a financial advisor under investigation for stealing money from a client would forget to mention that he had received such substantial gifts over 28 months.

Circumstantial evidence in the record gives further support to the Hearing Panel's conclusion that Butler acted with the requisite intent to constitute conversion. For example, Butler's failure to maintain any records of how he used LW's money is

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[94] CX-22.

[95] CX-23.

compelling evidence that Butler did not regard himself as accountable for his actions and that he believed that he could misuse LW's funds with impunity. Moreover, Butler began withdrawing money for his own benefit after he realized that LW's health had declined and she was no longer capable of managing her affairs, and after he realized that there was no one else with sufficient knowledge to call him to account. Butler had concluded that none of LW's relatives was capable of or willing to look after LW, which further tends to show that Butler concluded that he was safe to engage in self-dealing.

Butler argues in his defense that the Hearing Panel should overlook his lack of records because when he made various cash expenditures for LW he did not expect to seek reimbursement. Butler claims that he spent his own money in the first instance out of friendship and because they thought of themselves as family. However, Butler's conduct in taking sums vastly in excess of the expenses he claimed tends to show that he lacked concern about documenting the expenses because he knew that LW would not require such documentation. He knew she was unable to track her bills, and he had the power to take what he wanted without her approval.[96]

Butler's further argument that he cannot be found to have caused any harm because her account balances increased despite the money he took is specious. In essence, Butler would have the Hearing Panel excuse his misconduct simply because he did not take more of her money. The defense is utterly without merit.

[96] *See* Tr. 268-69.

In conclusion, the Hearing Panel determines that Butler, with intent, converted to his own use LW's funds that he was not entitled or authorized to possess, in violation of FINRA Rule 2010.[97]

### B. Falsification of Annuity Beneficiary Change Request (Fifth Cause of Action)

FINRA Rule 2010 requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." A respondent violates these principles when he engages in unethical conduct,[98] such as the falsification of documents.[99] And, "the submission of false information on variable annuity applications is a violation of Rule 2110."[100]

In this case, Butler concedes that he filled out the Annuity Beneficiary Change Request with false information. He wrote that he is LW's son and then submitted the request to The Hartford, which approved the request and made Butler a 90% beneficiary of LW's policy. In truth, Butler is not related to LW.

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[97] Because Butler did not prove that he applied any of LW's funds for her benefit, the Hearing Panel does not reach the issue of whether he violated FINRA Rule 8210 by failing to maintain records of those expenditures, as alleged in the Third Cause of Action, which Enforcement asserted as an alternative to the conversion charge.

[98] *Dep't of Enforcement v. Pierce*, Complaint No. 2007010902501, 2013 FINRA Discip. 25, at *58 (FINRA NAC Oct. 1, 2013) (citing *Dep't of Enforcement v. Skiba*, Complaint No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (FINRA NAC Apr. 23, 2010)).

[99] *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *17 (Aug. 22, 2008). *See also Dep't of Enforcement v. Taylor*, Complaint No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22-23 (NASD NAC Feb. 27, 2007) ("Falsifying documents is a prime example of misconduct that adversely reflects on a person's ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade.").

[100] *Dep't of Enforcement v. Skiba*, 2010 FINRA Discip. LEXIS 6, at *13 (applying former NASD Rule 2110, which is now FINRA Rule 2010).

In his defense, Butler contends that LW told him to state on the Annuity Beneficiary Change Request that he is LW's son.[101] He argues that he did nothing wrong because he did nothing more than follow her instructions. However, even if it is true that LW instructed Butler to fill out the Annuity Beneficiary Change Request in the manner he did, this is not a valid defense. Butler had more than 40 years' experience as an insurance agent. He knew that he had a duty to truthfully fill out insurance applications and related documents, and he knew the significance of the information The Hartford required to process a beneficiary change request.

The Hartford was not interested in discovering that its agent and customer considered themselves like mother and son; The Hartford requested disclosure of their actual legal relationship, if any. Information such as this is used by insurance companies in connection with their due diligence reviews. In this case, had Butler truthfully indicated that he was not related to LW, The Hartford could have inquired into why an elderly widow would have changed the beneficiary from her grandchildren to her insurance agent. Such a change under these circumstances is a red flag of possible undue influence and fraud. Accordingly, Butler knew that The Hartford might not approve the request if he answered truthfully.

The Hearing Panel concludes that Butler intentionally falsified the Annuity Beneficiary Change Request to avoid questions being raised about LW designating him a

[101] Tr. 166.

90% beneficiary of her annuity, and he then submitted it to The Hartford for his benefit, thereby violating FINRA Rule 2010.[102]

### C. Violation of Woodbury's Supervisory Procedures (Fourth Cause of Action)

In the Fourth Cause of Action, Enforcement charged Butler with engaging in unethical conduct in violation of FINRA Rule 2010 by assuming "various roles in LW's affairs [that] were prohibited by WFS's supervisory procedures."[103] Specifically, Enforcement contends that Butler violated Woodbury's supervisory procedures by: (1) accepting and then failing to disclose to Woodbury that he had been appointed LW's attorney-in-fact and personal representative; (2) failing to disclose that he was designated the primary beneficiary of LW's annuity; (3) engaging in financial-related activities, such as writing checks, through the use of LW's power of attorney; and (4) becoming a joint tenant on LW's bank accounts. The Hearing Panel dismisses the Fourth Cause of Action. The evidence fails to establish that Woodbury's written supervisory procedures specifically prohibited the foregoing alleged violations.

Enforcement introduced copies of Woodbury's Financial Procedures Manual for Registered Representatives and Investment Advisor Representatives that were in effect during the period in question,[104] as well as copies of the annual compliance questionnaires

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[102] The Hearing Panel further concludes that Butler testified untruthfully by claiming that he submitted the Annuity Beneficiary Change Request to Woodbury, which approved the beneficiary change request before forwarding it to The Hartford. His testimony was directly contradicted by Amy Harbort, a compliance specialist with Woodbury. She testified that all insurance applications and related documents are submitted directly to The Hartford, and specifically that annuity beneficiary change requests do not go through Woodbury. *See* Tr. 126-27. Harbort further confirmed that Woodbury only performs suitability reviews for securities products. Tr. 128. With Butler's extensive experience with insurance products, and his long relationship with Woodbury, the Hearing Panel finds Butler's testimony not credible.

[103] *See* Compl. ¶ 50.

[104] CX-7, at 14-58.

Butler completed for 2010 and 2011 to prove that Butler violated Woodbury's policies.[105] However, Woodbury's written supervisory procedures did not specifically address the conduct at issue. Woodbury's supervisory procedures prohibit certain activities in relation to Woodbury securities accounts. For example, while the procedures prohibit a registered representative from becoming a joint tenant on an account, the prohibition does not address clients' bank accounts that are not tied to a Woodbury account. The same appears to be true of the prohibition against "acting" as a customer's personal representative. The questions on the annual compliance forms are even more limited in scope.[106] But in any event, Butler never "acted" as LW's personal representative under her Last Will and Testament. Nor is there any evidence that he used the power of attorney. Butler could write checks on LW's bank accounts because she had put him on the accounts.

For the foregoing reasons, the Hearing Panel dismisses the Fourth Cause of Action.

## IV. SANCTIONS

### A. Conversion

The Hearing Panel applies FINRA's Sanction Guidelines ("Guidelines") to determine the appropriate sanctions. "The Guideline for conversion is expressed in remarkably specific terms and instructs that adjudicators '[b]ar the respondent regardless

[105] CX-8.

[106] *See* CX-8, at 3. Statement 43 reads: "I understand I am prohibited from … acting as a Power of Attorney, … acting as executor, … [or] acting as a personal representative … on the Woodbury customer accounts …."

of [the] amount converted.'"[107] For the reasons discussed below, the Hearing Panel concludes that a bar is necessary and appropriate to protect investors. Butler took advantage of an elderly customer who was having difficulty managing her finances due to the onset of dementia. Realizing her vulnerability, Butler methodically took over her finances and then helped himself to her funds. Such misconduct renders him unfit for employment in the securities industry.[108]

There are many grave aggravating factors that bear on the Hearing Panel's sanctions determination. First, "[b]y intentionally taking funds to which [he] was not entitled, [Butler] exhibited flagrant dishonesty."[109] Butler exhibited further dishonesty by falsely claiming at the hearing that LW had approved each of the checks he deposited into his personal bank account. All of the credible evidence in the record—including Butler's own statements during the investigation—contradicts his assertion and supports the Hearing Panel's finding that Butler fabricated his testimony that LW told him he could "treat" himself to her cash.

Second, the Hearing Panel considered Butler's deceit in indicating that he was LW's son on the Annuity Beneficiary Change Request to substitute himself as the primary beneficiary of her annuity. While LW and Butler may have fondly referred to each other as mother and son, Butler knew that it was dishonest to indicate that he was related to LW. His willingness to submit false documentation for his benefit is extremely

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[107] *Olson*, 2014 FINRA Discip. LEXIS 7, at *11 (quoting *FINRA Sanction Guidelines* 36 (2011), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf).

[108] *Id.*

[109] *Id.* at *12 (citing *Guidelines* at 7 (Principal Considerations in Determining Sanctions, No. 13)).

troubling and raises fundamental questions about his ability to fulfill his fiduciary responsibilities in handling other people's money.

Third, Butler's misconduct resulted in his financial gain.[110] He took more than $170,400 from LW. He has not returned—or offered to return—any of the money.

Fourth, the timing of Butler's misconduct is aggravating, beginning as it did after Butler realized that LW's mental acuity had diminished and she was no longer able to manage her finances.[111]

The facts and circumstances of this case lead the Hearing Panel to conclude that barring Butler serves a remedial interest and protects the investing public.[112] In addition, the Hearing Panel concludes that imposition of a bar will serve to deter others who may be inclined to take advantage of their customers.[113] Therefore, the Hearing Panel bars Butler for his misconduct.

In addition, the Hearing Panel orders Butler to pay LW restitution in the principal amount of $173,408.18, plus interest calculated in accordance with the schedule attached to the decision.

### B. Falsification of Annuity Beneficiary Change Request

For Butler's submission of the false Annuity Beneficiary Change Request, the Hearing Panel considered the Guideline for forgery and/or falsification of records and

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[110] *See Guidelines* at 7 (Principal Considerations in Determining Sanctions, No. 17).

[111] *Cf. Mullins,* 2012 SEC LEXIS 464, at *75 (finding that the timing of respondent's misconduct was aggravating where it began after his victim was hospitalized).

[112] *See McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) ("[T]he purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers.").

[113] *Cf. Olson*, 2014 FINRA Discip. LEXIS 7, at *25 (imposing a bar for conversion of funds from respondent's firm by submitting a false expense report).

recordkeeping violations.[114] The Guideline for forgery and/or falsification of records recommends a fine of $5,000 to $100,000 and, if mitigating factors exist, a suspension of up to two years. In egregious cases, the Guideline allows for consideration of a bar. The Guideline also directs adjudicators to consider two principal considerations in determining sanctions—the nature of the document the respondent falsified and whether the respondent had a good faith belief of express or implied authority.[115]

The Hearing Panel considers this an egregious case that warrants a bar. This was not an isolated event or a case of mistaken authority. Rather, as with his conversion of LW's cash, Butler intentionally took advantage of LW who had trusted him to take care of her and her finances. Butler violated that trust. He seized each opportunity he could to enrich himself at her expense. In this instance, he knew that he fared a much higher chance that the change request would be approved by The Hartford if he falsely stated on the request form that he was related to LW. He also knew what he was doing was wrong. Nonetheless, he submitted the false document, making himself the 90% beneficiary of LW's annuity. This conduct calls into question his fitness to remain in the securities industry. On the other hand, the Hearing Panel finds no mitigating factors.

Moreover, the Hearing Panel assesses Butler's mistreatment of LW as a whole in judging the level of sanctions needed to protect investors. The Hearing Panel cannot overlook the pervasive nature of Butler's misconduct. Butler victimized LW for years. He started by inducing LW to add him to her bank accounts so that he could pay her bills, which she could not keep in order. He then tightened his control over her by having the account statements mailed to him, not to her, thereby limiting the possibility that anyone

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[114] *Guidelines* 37.

[115] *Id.*

would discover that he was taking money from the accounts. Next, he arranged for her to see his attorney to have a will and power of attorney prepared, again to his benefit. Although there is no direct evidence that he unduly influenced her to name him the beneficiary of her estate and her attorney-in-fact, the facts and circumstances strongly suggest that possibility. More importantly, with respect to his actions, Butler in any event admits that he took no action to have his name removed once he learned what she had done. And finally, he filled out the Annuity Beneficiary Change Request, falsely representing that he was her son. There is no question that these facts conclusively demonstrate his unfitness to remain in the securities industry. Accordingly, the Hearing Panel bars Butler for this misconduct as well.

## V. ORDER

Respondent Joseph R. Butler is barred from associating with any FINRA member firm in any capacity for converting customer funds and falsifying an Annuity Beneficiary Change Request, in violation of FINRA Rule 2010.

Butler is ordered to pay restitution to LW[116] in the principal sum of $170,408.18, plus interest calculated in accordance with the attached schedule. Butler shall pay restitution in full no later than 90 days after the date this decision becomes FINRA's final disciplinary action in this proceeding. In the event that LW cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of Maryland. Butler shall submit satisfactory proof of payment of restitution. Such proof shall be submitted to David F. Newman, Esq., FINRA Department of Enforcement, 1835 Market Street, Suite 1900,

[116] LW is identified in the Addendum to this Decision, which is served only on the parties.

Philadelphia, Pennsylvania 19103 either by letter that identifies the case name and number and includes a copy of the check, money order, or other method of payment or by e-mail, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org. no later than 120 days after the date this decision becomes FINRA's final disciplinary action in this proceeding.

In addition, Butler is ordered to pay costs in the amount of $4,135.79, which amount includes the hearing transcript fees and an administrative fee of $750.

If this decision becomes FINRA's final disciplinary action, the bars shall be effective upon service of this decision. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[117]

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Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Joseph R. Butler (by first-class mail)
Todd K. Pounds, Esq. (by first-class mail and email)
David F. Newman, Esq. (by first-class mail and email)
William A. St. Louis, Esq. (by email)
Jeffrey Pariser, Esq. (by email)

[117] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

**Restitution Interest Schedule**
**Department of Enforcement v. Butler, Proceeding No.** 2012032950101

Restitution interest shall be calculated at the rate established for the underpayment of income taxes in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the following loss dates, until paid:

| **Loss Amount** | **Date** |
|---|---|
| $25,000 | April 16, 2009 |
| $15,550 | September 1, 2009 |
| $6,000 | October 22, 2009 |
| $12,750 | November 30, 2009 |
| $12,000 | January 6, 2010 |
| $12,000 | March 22, 2010 |
| $10,000 | April 14, 2010 |
| $6,500 | April 21, 2010 |
| $18,846.18 | June 29, 2010 |
| $12,000 | December 6, 2010 |
| $5,000 | January 26, 2011 |
| $3,000 | February 16, 2011 |
| $10,262 | April 15, 2011 |
| $2,000 | May 2, 2011 |
| $7,000 | May 9, 2011 |
| $4,000 | May 12, 2011 |

| Loss Amount | Date |
| --- | --- |
| $5,000 | August 5, 2011 |
| $3,500 | January 20, 2012 |