

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD A. MCGUIRE
(CRD No. 4637028),

Respondent.

Disciplinary Proceeding
No. 20110273503

Hearing Officer – RLP

**EXTENDED HEARING PANEL
DECISION**

November 3, 2014

For converting funds of a former customer in violation of FINRA Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity and ordered to pay restitution to the former customer’s estate in the amount of \$95,000, plus interest. For forging or causing to be forged his former customer’s signatures on two purported loan agreements in violation of Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity. The Extended Hearing Panel also concludes that Respondent: (1) engaged in outside business activities without providing written notice to his employer firms in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010; (2) failed to notify his employer firms about brokerage accounts he maintained at other firms and also failed to notify the other firms about his association with his employers in violation of NASD Rule 3050 and FINRA Rule 2010; and (3) willfully failed to disclose liens on his Form U4 in violation of FINRA Rules 1122 and 2010. No sanctions are imposed for these violations in light of the bars imposed for conversion and forgery, although Respondent is subject to statutory disqualification for his willful failure to disclose the liens. Respondent also is ordered to pay costs.

Appearances

Richard Chin, Esq., Josefina Martinez, Esq., and Gino Ercolino, Esq., New York, NY, for the Department of Enforcement.

Randy Zelin, Esq., New York, NY, for Respondent Richard A. McGuire.

DECISION

I. Introduction

In 2011, Respondent Richard A. McGuire was associated with Ameritas Investment Corp. as an investment company products and variable contracts limited representative (“IR”). In April, Ameritas’ Chief Compliance Officer (“CCO”) contacted FINRA to report concerns that McGuire may have converted a former customer’s funds.¹ FINRA staff began an investigation, which led to the commencement of this proceeding on May 9, 2013.

For the reasons set forth below, the Extended Hearing Panel concludes that, as alleged in the complaint’s first cause of action, McGuire converted \$95,000 from former customer MP in violation of FINRA Rule 2010. The Hearing Panel also concludes that, as the second cause charges, McGuire forged or caused to be forged MP’s signatures on two purported loan agreements in violation of Rule 2010. The Hearing Panel further concludes that, as alleged in the third cause, McGuire failed to provide proper notice to his broker-dealer employers of outside business activities in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010. The Hearing Panel also sustains the allegations of the fourth cause that McGuire failed to provide proper notice to broker-dealer firms of outside brokerage accounts in violation of NASD Rule 3050 and FINRA Rule 2010. Finally, the Hearing Panel concludes that, as charged in the fifth cause, McGuire willfully failed to disclose unsatisfied tax liens on his Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of Article V, Section 2 of FINRA’s By-Laws and FINRA Rules 1122 and 2010.²

¹ Hearing Transcript (“Tr.”) 547-548, 588-589 (Heilman), 739-740 (Vincent). In this decision, the terms “employer,” “employee,” “employ,” “employed,” and “employment” include independent contractor relationships.

² FINRA has jurisdiction over this proceeding because, at the time the complaint was filed, McGuire was associated with and registered with FINRA through a FINRA member firm. Complainant’s Exhibit (“CX”) 1, at 11.

The Hearing Panel bars McGuire for conversion of MP's funds and for forgery of her signature. By this misconduct, McGuire has demonstrated that his continued participation in the securities industry poses an unacceptable risk of harm to customers. In light of these bars, the Hearing Panel imposes no sanctions for McGuire's remaining violations.

II. Findings of Fact

A. McGuire Entered the Securities Industry in 2003, Then Became Involved in Outside Business Activities, But Failed To Notify His Employer Firms.

In 2003, McGuire joined New England Securities, registering with NASD as an IR. McGuire left the firm in June 2005 and thereafter was associated with, and registered with NASD and later FINRA as an IR through, the following member firms:

MML Investors Services, Inc. ("MML")	July 2005 — December 2007
TFS Securities, Inc. ("TFS")	May 2008 — December 2009
Ameritas Investment Corp. ("Ameritas")	December 2009 — April 2011
Investacorp, Inc. ("Investacorp")	June 2011 — December 2012 ³

Beginning in 2006, McGuire became involved in three business activities outside the scope of his relationship with his employers but failed to provide some or all of his employers with required written notice of those activities.

1. Revolutionary Asset Management

In March 2006, McGuire incorporated Revolutionary Asset Management ("RAM") as a New York limited liability company. According to McGuire, RAM was an entity through which he "provided and billed for consulting and marketing services to companies in the financial advising, insurance-brokerage, and mortgage-brokerage industries."⁴ From the time he incorporated RAM through 2010, McGuire actively participated in, earned income from, and

³ See CX-1, at 5-7, 18; Tr. 561-562 (Heilman), 1003-1004 (Morton), 1075-1076 (Case), 1270, 1318 (Plasencia).

⁴ CX-18, at 3; see CX-17; Tr. 821-823 (Vincent), 1710 (McGuire).

was the sole and managing member of the business.⁵ McGuire's contrary assertions notwithstanding,⁶ he continued to be affiliated with RAM and to earn income as a result of that affiliation through at least September 2011. Bank statements show RAM's receipt of business-related income through September 2011, and, as of March 2013, New York Department of State, Division of Corporations' website described RAM as an active business and listed McGuire's residential address as RAM's address for mailing of process.⁷

From March 2006 through April 2011, during his associations with MML, TFS, and Ameritas, McGuire failed to provide written notice of his affiliation with RAM,⁸ despite the requirements of applicable rules and each firm's: (i) policies and procedures requiring that employees provide written notice of proposed outside business activities to designated firm personnel for review and approval; (ii) onboarding agreements, orientations, or annual compliance meetings notifying representatives of their obligations regarding outside business activities; and (iii) requirements that representatives annually fill out compliance questionnaires or attestations that asked about outside business activities or reminded representatives of their obligation to update outside business activity disclosure, or both.⁹

⁵ CX-17; CX-18, at 3; CX-19, at 4; CX-20, at 5; CX-21, at 4; CX-22, at 4; CX-23, at 4; CX-77; CX-78; Tr. 828-832 (Vincent), 1710-1711, 1724-1729, 1748-1754 (McGuire).

⁶ *E.g.*, Tr. 1469, 1470, 1768 (McGuire); *see* CX-33, at 5.

⁷ CX-17; CX-24, at 1, 7, 11, 15, 21 (*e.g.*, Ameriguard ACH payments); Tr. 822-823 (Vincent), 1714, 1755-1766, 1909 (McGuire).

⁸ Tr. 595-596 (Heilman), 818-821 (Vincent), 1033 (Morton), 1100-1101 (Case); CX-30, at 2-3; CX-31, at 2; CX-32, at 2-3. We reject McGuire's assertions that the loss or destruction of McGuire's producer file maintained by his supervisor at MML casts doubt on MML's statements that he did not provide written notification of his RAM-related activities (*see* Tr. 1039, 1049 (Morton)). MML's home office files remained intact (*see* CX-30, at 2; Tr. 1059 (Morton)), forms ultimately were processed and reviewed at the home office (Tr. 1028-1029 (Morton)), and a search of the home office file, as well as an email search, did not yield any written request from McGuire to engage in outside business with RAM.

⁹ Tr. 554-555, 563, 621-624, 627-630, 640-642, 649 (Heilman), 1020-1026, 1028-1030, 1058 (Morton), 1080-1081, 1084-1097, 1104-1105 (Case); CX-34, at 1, 4; CX-46, at 2; CX-63, at 1, 3, 4; CX-64, at 5; CX-65, at 2 (3220); CX-86.

McGuire sought employment with Investacorp in May 2011. Ultimately, the firm conditioned his employment on his cessation of outside business activities other than fixed insurance sales.¹⁰ McGuire consequently supplied the firm with a June 2, 2011 letter committing to “immediately stop any ‘outside business’” and representing that the “only outside business [he would] be conducting [was] fixed insurance sales.”¹¹ But McGuire continued to receive income as a result of his affiliation with RAM and failed to disclose that outside business activity on the Form U4 he signed and dated June 9, 2011.¹² Indeed, McGuire never provided written notice to Investacorp of his affiliation with RAM.¹³

2. Freedom Mortgage Corporation

Freedom Mortgage Corporation is a residential mortgage lender and servicer. In May 2006, McGuire became a branch manager for the company, responsible for managing the origination of residential mortgage loans and supervising and developing branch personnel, among other things.¹⁴ In 2006 and 2007, Freedom Mortgage paid McGuire and RAM compensation totaling more than \$242,000.¹⁵

¹⁰ Tr. 1270, 1282 (Plasencia).

¹¹ CX-38, at 4; Tr. 1284-1285 (Plasencia).

¹² See *supra* n.7; CX-57, at 11, 15; Tr. 1294-1295 (Plasencia). We are unable to determine who filled out much of CX-57, a handwritten version of the initial Form U4 Investacorp electronically filed on McGuire’s behalf on June 20, 2011. On its face, CX-57 bears more than one person’s handwriting and at least some of that handwriting is not McGuire’s. For his part, although McGuire testified that much of CX-57 was filled out accurately (see Tr. 1630-1650) and although he stated that CX-57 bears his signatures (Tr. 1630-1631), he also testified that CX-57 differed from what he sent in (Tr. 1624-1625 (McGuire)). He claimed, for example, that he answered “yes” and not “no” (as does CX-57, at 14) to the question about liens, among others. Tr. 1628-1629, 1642, 1645, 1655 (McGuire).

¹³ Tr. 1319 (Plasencia), 1768 (McGuire); see CX-33, at 3; Tr. 837-839 (Vincent). Investacorp required representatives wishing to engage in outside businesses to request in writing preapproval from home office personnel. CX-66, at 2-3; Tr. 1299-1301 (Plasencia).

¹⁴ CX-35, at 1, 2; see Tr. 1434 (McGuire). Despite a discrepancy in McGuire’s employment agreement (*compare* CX-35, at 1 *with* CX-35, at 17), we conclude that it was executed in 2006. See RX-20, at 5.

¹⁵ CX-27; CX-28; Tr. 848-850 (Vincent). With a colleague’s help (see *infra* n.28), McGuire notified TFS and Ameritas about his outside business with Freedom Mortgage. Respondent’s Exhibit (“RX”) 16, at 3, 8; RX-20, at 5.

From May 2006 through December 2007, McGuire was associated with MML. Again, although MML required representatives to notify designated personnel about outside business activities and obtain prior written approval to engage in such activities, McGuire did not notify MML in writing and secure its approval before managing the Freedom Mortgage branch.¹⁶

3. SSU Consultants Inc.

When McGuire sought employment with Ameritas in late 2009, he made a written request to the firm to engage in outside business activity with SSU Consultants Inc. The request described SSU's business as "credit repair, loan modifications, debt settle[ment]," identified McGuire as SSU's "President/CEO," and described his "current" role as "[manager] for credit counseling."¹⁷ Around the same time, McGuire listed SSU as his employer in an application for an online brokerage account.¹⁸ In addition, Forms 1099 show that McGuire received more than \$31,000 from SSU in 2009.¹⁹ Although McGuire has falsely denied working for SSU,²⁰ McGuire's affiliation with SSU began no later than December 2009 and continued through his joining Investacorp on June 20, 2011, just two weeks after he signed email correspondence as "Richard A. McGuire SSU Consultants President/CEO."²¹ Indeed, as of March 2013, the New York Department of State website described SSU as an active business, identified McGuire as SSU's CEO, and listed McGuire's residence as SSU's principal executive office.²²

¹⁶ CX-36, at 1; Tr. 851-853 (Vincent), 1039 (Morton); *see supra* n.9. We thus do not credit McGuire's uncorroborated testimony that he submitted a written request to engage in Freedom Mortgage-related activities to his supervisor and the firm's compliance department. Tr. 1729-1730 (McGuire).

¹⁷ RX-16, at 7; Tr. 326-327 (Napolitano), 1447 (McGuire).

¹⁸ CX-47; Tr. 883 (Vincent); *see infra* pp. 25-27.

¹⁹ CX-29; Tr. 855-857 (Vincent), 1743-1744 (McGuire).

²⁰ Tr. 1777-1778 (McGuire).

²¹ CX-1, at 5; CX-39; CX-58, at 1; Tr. 862-864 (Vincent), 1770-1775 (McGuire). The record does not adequately establish an earlier affiliation with SSU and, therefore, the allegation that McGuire violated FINRA rules by not informing MML of SSU-related activities is not sustained.

²² CX-37; Tr. 854-855, 864 (Vincent), 1741-1743 (McGuire).

McGuire was affiliated with SSU while he was associated with TFS, Ameritas, and Investacorp. While he sought and received approval from Ameritas for his SSU-related activities, he failed to provide any notice of his SSU affiliation to TFS and Investacorp,²³ despite their written notification and prior approval requirements. Indeed, McGuire's SSU affiliation continued through his association with Investacorp despite his representation that he would stop any outside business other than fixed insurance sales.

B. In 2009 and 2010, MP Gave McGuire Checks Payable to RAM To Purchase an Investment; McGuire Used the Funds for Personal Purposes Instead and Forged or Caused To Be Forged MP's Signature on Two Purported Loan Agreements.

In 2009 and 2010, McGuire's former customer, MP, gave him checks totaling \$95,000 payable to RAM. McGuire used the proceeds to pay personal and business expenses. MP and McGuire have given different accounts of the circumstances surrounding the checks. For the reasons set forth below, we credit MP's account, reject McGuire's, and conclude that MP understood that her funds would be used to purchase an annuity-like investment and, therefore, McGuire's use of her funds was wrongful. We also arrive at the interrelated conclusions that MP did not, as McGuire claims, loan McGuire \$95,000 or sign any loan agreements, and, therefore, MP's signatures on purported loan agreements were forged.

1. By 2006, McGuire Established a Relationship with MP.

In early 2006, MP was a 55-year-old artist who had been self-employed for more than a decade. She was single, had no children, and lived alone near McGuire. MP had already met McGuire when, in March 2006, she opened a brokerage account at MML with McGuire as the assigned representative. MP's new account form listed her net worth (excluding her residence) as \$1.75 million and her liquid assets as \$650,000. Her wealth derived primarily from inherited

²³ CX-40, at 1; Tr. 1100-1101 (Case), 1319-1320 (Plasencia). We thus do not credit McGuire's uncorroborated testimony (Tr. 1744 (McGuire)) that he submitted written notification to TFS.

real estate holdings. MP's exposure to the securities markets was limited and she was looking for and needed guidance.²⁴

MP purchased a variable annuity through McGuire but surrendered it in early 2008 after she opened a new account at TFS.²⁵ At the time, McGuire was not registered with any FINRA member firm. He therefore introduced MP to a colleague, Gregory Napolitano, who had been associated with New England Securities and MML at roughly the same time as McGuire and had moved to TFS in May 2007.²⁶ Shortly after MP met Napolitano, she opened her account at TFS and purchased a variable annuity.²⁷ Over the next three years, Napolitano maintained a relationship with MP, while both he and McGuire worked for TFS, Freedom Mortgage, Independent Financial Solutions (an insurance agency Napolitano owned), and later Ameritas.²⁸

By 2008, McGuire and MP had become close friends and through the years of their acquaintance, McGuire helped MP with a variety of matters, including her investments and financial situation in general.²⁹ For example, around 2007, MP became scared to spend money and, thereafter, "would always remind [McGuire] to tell her not to be afraid to spend money."³⁰ So, in handwritten notes to MP, McGuire encouraged MP to spend her funds. In one note, for

²⁴ CX-15, at 1, 3; Tr. 92-93, 97-98, 344-346 (Napolitano), 749-752, 921-922 (Vincent), 1017-1019 (Morton), 1343-1349 (McGuire).

²⁵ CX-15, at 3; CX-30, at 3-4; CX-31, at 2; Tr. 95 (Napolitano), 752 (Vincent), 1051-1053 (Morton), 1077-1078 (Case), 1361-1362 (McGuire).

²⁶ Tr. 89, 92, 342-343 (Napolitano), 923 (Vincent), 1367-1370 (McGuire). Napolitano and McGuire met while they were both selling life insurance through New England Financial and securities through New England Securities. Tr. 80, 235 (Napolitano), 1430 (McGuire). Thereafter, they both went to work for MML and MassMutual. Tr. 1002-1003 (Morton). McGuire then followed Napolitano to TFS and, later, Ameritas. Tr. 76-77, 81, 250 (Napolitano), 1438, 1450-1451 (McGuire).

²⁷ CX-31, at 2; Tr. 1077-1078 (Case).

²⁸ Tr. 84, 89, 93, 95, 159-161, 251-254 (Napolitano). When McGuire joined TFS and Ameritas, Napolitano assisted him with filling out and submitting paperwork, such as outside business activity requests. Tr. 77, 201-202, 207-208, 227-229, 262, 331 (Napolitano); *e.g.*, RX-16, at 1-3, 6-8; RX-20.

²⁹ *E.g.*, Tr. 96, 100, 346-347 (Napolitano), 920 (Vincent), 1362-1363, 1421-1426 (McGuire).

³⁰ Tr. 1428 (McGuire); Tr. 1532-1533 (McGuire).

example, he wrote, “As of Statements 8/1/07 showing you have \$1,165,000 in Mass Mutual + ING = 170,000 = \$1,335,000. It’s ok to spend some money!”³¹ McGuire and MP thus maintained their relationship even after Napolitano became MP’s registered representative.³²

2. In 2009 and 2010, MP Gave McGuire Checks Payable to RAM that He Used for Personal Purposes.

In November 2009 and again in November 2010, MP signed checks made out to RAM—one for \$60,000, dated November 3, 2009, and another for \$35,000, dated November 5, 2010.³³ McGuire endorsed both checks, deposited them in RAM’s bank account on November 5, 2009, and November 8, 2010, respectively, and used the proceeds to benefit himself and his business.³⁴ RAM’s bank statements for November 7 through December 31, 2009, show, for example, \$4,600 in transfers to McGuire’s wife and \$17,500 in transfers to McGuire’s checking account.³⁵

MP and McGuire have related different and largely contradictory accounts of the circumstances surrounding the writing of the checks.

a. MP Stated that She Understood that the Checks Would Be Used To Purchase and Increase an Investment in an Annuity-Like Product.

According to MP, in November 2009, McGuire recommended that she invest in RAM. McGuire told her that her investment would be similar to annuities she had previously purchased. MP agreed to invest and gave McGuire a blank check he made payable to RAM in the amount of \$60,000. He also included a notation on the memo line that read “investment.” MP then signed the check and gave it to McGuire. MP did not sign any other documents related

³¹ CX-5, at 2; *see* Tr. 788-790 (Vincent), 1425-1427 (McGuire).

³² *See, e.g.*, Tr. 96 (Napolitano), 1365-1367 (McGuire).

³³ CX-10; CX-12.

³⁴ CX-10; CX-11, at 32; CX-12; CX-13, at 43; Tr. 1564-1566 (McGuire); *see* Tr. 597-598, 600-601 (Heilman), 795, 797-798, 805 (Vincent), 1558-1561, 1585-1586 (McGuire). RAM’s bank account balance was less than \$6,000 before the \$60,000 deposit and just over \$1,000 before the \$35,000 deposit. CX-11, at 32; CX-13, at 43.

³⁵ CX-11, at 34-36, 38; Tr. 802-803 (Vincent), 1573-1575 (McGuire).

to her investment and was not provided with any documents concerning the investment. Then, around one year later, McGuire recommended that MP make another investment in RAM. MP agreed and gave McGuire a second check she made payable to RAM in the amount of \$35,000. As before, MP did not sign or receive any documents related to her RAM investment.

Because MP died before the hearing took place,³⁶ her version of events was conveyed by the testimony of three witnesses—Napolitano, Ameritas' CCO Cheryl Heilman, and Brian Vincent, a FINRA investigator—who all spoke with MP in 2011. Their testimony was corroborated by contemporaneous notes, a recording of one of the conversations, and correspondence written by MP in April 2011. In our view, the consistency of this evidence, considered as a whole, provides powerful corroboration, not only of each witness' account of what MP said to that witness, but also of MP's version of events in the first instance.

i. Napolitano's Conversations with MP

On April 15, 2011, MP called Napolitano twice, stating that she had been trying to reach McGuire for weeks, asking Napolitano to contact McGuire, explaining that McGuire historically had helped her “figure out where to take money from to pay [her] property taxes,” and noting that she had a question about her “account for Revolutionary Asset Management.”³⁷ Although Napolitano expressed concern that MP might be confused because RAM was McGuire's company (not an entity with which she would maintain an account), he suggested that MP call him back after she checked her records and met with McGuire.³⁸

On April 18, MP again called Napolitano, stating that she had two cancelled checks that said “Revolutionary Asset Management” and that one of the checks had “investment” written on

³⁶ MP died on December 15, 2011. *See* CX-2.

³⁷ Tr. 102 (Napolitano); Tr. 100-102, 354-358, 475-476, 512 (Napolitano).

³⁸ Tr. 102-103 (Napolitano). As Napolitano's testimony demonstrates, MP learned for the first time during this conversation that RAM was McGuire's company. *See also* CX-14, at 1; Tr. 581-582 (Heilman).

it. She also stated that she had never received a statement from RAM. Napolitano responded that he did not know what to say and that MP should speak with McGuire.³⁹ Later that day, MP recounted to Napolitano more fully the circumstances surrounding the checks—that McGuire had approached her in November 2009 and said he had “a great idea for an investment for [her]” that was similar to an annuity but more liquid. She believed it sounded like a good idea.⁴⁰ Because she did not know how to spell Revolutionary Asset Management, she asked McGuire to fill out the check and then she signed it.⁴¹ Around one year later, according to MP, McGuire told her that her investment was doing well but that it could do better if she increased her stake. She agreed and wrote out the second check.⁴² When Napolitano asked MP whether she had signed or received any documentation of her investment, MP said “no.” She also denied giving McGuire the money as a gift or as a loan.⁴³

The next day, after MP left him a message stating that McGuire had come to her home and “explained everything,” Napolitano called MP. MP recounted that McGuire had shown her what looked like a typical account statement that named RAM, McGuire, and MP, and that

³⁹ Tr. 103-106, 112, 512 (Napolitano).

⁴⁰ Tr. 108, 162, 169, 512 (Napolitano).

⁴¹ MP also told Napolitano, Heilman, and Vincent that she went to her bank to move funds for her investment into her checking account, and was informed by a banker that a \$16,000 penalty would be involved and that the withdrawal would not be in her best interest. McGuire then came to the bank and, when the banker asked what was being done with the money, McGuire responded that it was none of the banker’s business. Tr. 162-164 (Napolitano); *see also* Tr. 108-109 (Napolitano); Tr. 584-585 (Heilman), 985-987 (Vincent). Because this aspect of MP’s account raises more questions than it answers (concerning, among other matters, what MP was seeking to liquidate and what she told the banker about her RAM investment (*see, e.g.*, Tr. 679-680 (Heilman), 986-987 (Vincent))), we are unable to make any findings about this aspect of MP’s account of events and, therefore, it has no bearing on our decision. It neither supports MP’s credibility, as Enforcement appears to contend, nor undermines it, as McGuire contends.

⁴² Tr. 109-110 (Napolitano).

⁴³ Tr. 110-111, 139-140, 165, 169-170, 496-497 (Napolitano). Napolitano recorded this conversation and five that followed. *See* Tr. 105-107, 161 (Napolitano). One attack on Napolitano’s credibility rests on his failure to inform FINRA about the recordings during informal interviews or to timely provide them to FINRA in response to a Rule 8210 request. *E.g.*, Tr. 937-938 (Vincent); *see* Hearing Officer Exhibit (“HO”) 2. Napolitano’s failures to mention and turn over the recordings on a timely basis do not cause us to question the truth of his testimony concerning his conversations with MP, given the other evidence corroborating that testimony.

showed that \$95,000 was in the account. She further stated that when she told McGuire she wanted to close the account, he told her that there would be surrender charges and, therefore, it would be better to wait. When Napolitano asked whether McGuire left a copy of the statement with MP, MP told him that, although she requested it, McGuire did not.⁴⁴

ii. Heilman's and Napolitano's Conversations with MP

At the time of MP's and Napolitano's conversations, McGuire and Napolitano were associated with Ameritas. Concerned that something might be "out of place," Napolitano called Ameritas CCO Heilman, and in two conversations recounted what MP had related to him through April 19.⁴⁵ Heilman then called MP, who, according to Heilman's testimony and contemporaneous notes,⁴⁶ communicated a version of events that was materially in accord with what MP had reported to Napolitano about the checks, why she called Napolitano, and what happened when she met with McGuire on April 19.

During the ensuing days, Napolitano and Heilman each had various—and separate—conversations with MP.⁴⁷ The conversations were not coordinated between Napolitano and Heilman, although Napolitano kept Heilman informed of his interactions with MP and McGuire, and MP told Napolitano about interactions she had with Heilman and McGuire, among others.⁴⁸

⁴⁴ Tr. 115-119, 177-178 (Napolitano).

⁴⁵ Tr. 118, 119, 121, 414-415 (Napolitano), 547-548, 565-569 (Heilman). In all material regards, Heilman's notes of these conversations were consistent with Napolitano's recollection of his conversations with MP through April 19. *Compare* CX-67 *with supra* pp. 10-12.

⁴⁶ CX-14, at 1-2; Tr. 579-583, 585-586, 710-712 (Heilman).

⁴⁷ Napolitano spoke with MP five times between April 15 and April 19, and at least six more times between April 21 and April 28. Tr. 512-514 (Napolitano). Heilman conversed with MP at least six times between April 20 and April 27. *See* CX-14; Tr. 579-587, 590-594, 711 (Heilman). Heilman testified that MP's answers to Heilman's questions "made sense," and that MP was "very forthcoming." Tr. 596-597 (Heilman). Napolitano testified that MP's answers were responsive to his questions and that her account of events was consistent over the course of their many conversations. Tr. 138 (Napolitano).

⁴⁸ Tr. 122-124, 126-128, 140 (Napolitano).

MP reiterated her desire to close her “account,” and related that, after she again requested McGuire to return her investment during a phone conversation, he terminated the call.⁴⁹

Around this time, Heilman contacted FINRA and the FBI to inform them of what she had learned from MP.⁵⁰ Thereafter, MP communicated with FBI personnel and, at their suggestion, wrote a letter to McGuire dated April 26, 2011. MP wrote that she did not have an address or telephone number for RAM, and had never received “a copy of the contract or even one statement,” or “anything in print, [or] on paper” about RAM. She further noted that she had repeatedly asked for the return of her money and was now making that request in writing.⁵¹ MP sent the letter to McGuire via certified mail and never received anything in return.⁵²

On April 27, Heilman called McGuire and informed him that his registration was terminated for failure to follow policies and procedures regarding his RAM-related outside business activities.⁵³ Later that day, Heilman informed MP of the termination.⁵⁴ Thereafter, MP informed Napolitano and Heilman that the FBI had instructed her not to have further conversations with them.⁵⁵

⁴⁹ CX-14, at 4; *see* CX-82A, at 8:5-8:13; Tr. 124, 127 (Napolitano), 592 (Heilman).

⁵⁰ Tr. 587-588 (Heilman), 739 (Vincent); *see infra* pp. 19-20.

⁵¹ CX-4; CX-3, at 6; Tr. 760-761, 771-773 (Vincent).

⁵² Tr. 130 (Napolitano), 773-774 (Vincent).

⁵³ CX-68; Tr. 611-614 (Heilman); *see* CX-1, at 18; Tr. 748-749 (Vincent). McGuire was not terminated for conversion or criminally prosecuted. We reject McGuire’s assertion that this is evidence that he did not engage in conversion.

⁵⁴ CX-14, at 5; Tr. 593 (Heilman). Heilman also notified Napolitano about McGuire’s termination. Tr. 195-196, (Napolitano), 619-620 (Heilman). After McGuire talked with Heilman, he too called Napolitano. Tr. 149-153, 195-198 (Napolitano). Although Napolitano did not fully disclose to McGuire the circumstances surrounding McGuire’s termination, that does not, as McGuire contends, undermine Napolitano’s credibility.

⁵⁵ Tr. 135-136 (Napolitano), 593-594 (Heilman).

iii. Vincent's Conversation with MP

About four months later, in September 2011, FINRA investigator Brian Vincent visited MP, who again gave an account of the events surrounding her checks to RAM that, in all salient respects, was consistent with what she had already told Napolitano and Heilman.⁵⁶ When Vincent asked whether she had signed any documents in connection with her investment, MP said she signed nothing besides the checks and that she received no documentation of her investment.⁵⁷ When Vincent asked whether she had ever loaned money to McGuire, MP stated that she had not, that she was not aware of McGuire's financial situation, and that McGuire had never tried to borrow money from her. And when Vincent showed MP copies of the purported loan agreements McGuire had supplied to FINRA—which McGuire claims document loans MP made to him—MP stated that she had never seen nor signed them.⁵⁸ Although MP threw all information regarding her finances into boxes she kept at home, Vincent's search of those boxes yielded nothing with RAM's name on it.⁵⁹

⁵⁶ CX-3, at 3-6; Tr. 741, 749-750, 753-760, 791-793 (Vincent).

⁵⁷ Tr. 754-755 (Vincent). When Vincent showed MP a copy of the \$60,000 check, MP explained that McGuire filled out the entirety of the check, including the "investment" notation, and she signed it. Tr. 756, 762-763 (Vincent). Vincent also showed MP a copy of the \$35,000 check and she stated that she completed it at McGuire's direction. Tr. 765 (Vincent).

⁵⁸ CX-3, at 5, 7, 8; Tr. 752-753, 761, 776-779, 944, 947-948, 950 (Vincent). Vincent testified repeatedly that, on inquiry, MP stated that she had neither seen nor signed the loan documents. His notes similarly state that MP maintained that she had "never seen [either] loan doc[ument] before" and that she "did not sign" either document. Twice, on cross-examination, Vincent testified that he asked MP whether the signature on the first loan agreement was hers and she answered "no." Tr. 948, 951 (Vincent). Vincent did not state that MP scrutinized the signatures on the agreements and thereafter maintained that the handwriting was not hers, however, and, after reviewing his testimony on this issue as a whole, we believe he was simply repeating what he had said before – that MP said she had neither seen nor signed the agreements. Therefore, we conclude that MP said nothing that would rule out the transposing of her signatures onto the purported loan agreements.

⁵⁹ Tr. 784-785, 2001 (Vincent), 1422 (McGuire). As did Napolitano and Heilman, Vincent testified that MP was coherent, understood his questions, and answered all of them. Tr. 753 (Vincent).

b. According to McGuire, MP Loaned Him the Money and Signed Agreements Documenting the Loans.

According to McGuire, MP intended the checks not as a means to purchase an investment product, such as an annuity, but as “investments” in McGuire himself, in keeping with their relationship.⁶⁰ McGuire described MP as an “eccentric” woman who relied on him exclusively and inordinately.⁶¹ He testified that MP often said that he was her “life savior” and that, by 2008, he “was almost like walking on egg shells, feeling like if something happened to me, she would – she’d be done.”⁶² According to McGuire, MP often called him on a daily basis, and met with him “at least biweekly” seeking his assistance on matters financial and personal.⁶³ McGuire further asserted that his relationship with MP was “like family”—that MP “continuously brought up the idea of . . . putting me in her will.”⁶⁴

In 2009 and 2010, McGuire was in financial difficulty.⁶⁵ According to McGuire, after he informed MP about his situation, she repeatedly offered to give him money. But, claiming he was loath to accept a gift from MP, McGuire allegedly refused her offers.⁶⁶ He testified that later, after MP again offered to give him money at a time when he was in a “bad situation” and “really needed the money,” he told MP he “would be okay if [they] did it as a loan.”⁶⁷ According to McGuire, the 2009 check for \$60,000 was that loan.

⁶⁰ See, e.g., Tr. 1375-1376, 1386, 1404-1405, 1559-1560 (McGuire).

⁶¹ See, e.g., Tr. 1365-1366, 1816, 1819 (McGuire).

⁶² Tr. 1365 (McGuire).

⁶³ Tr. 1366 (McGuire).

⁶⁴ Tr. 1504, 1903 (McGuire); see Tr. 1374-1375, 1384, 1855-1856 (McGuire).

⁶⁵ See Tr. 1375-1378, 1488-1489, 1525-1527, 1529-1531, 1807 (McGuire).

⁶⁶ Tr. 1374-1378, 1502, 1506 (McGuire).

⁶⁷ Tr. 1377-1378; see Tr. 1502-1503, 1506 (McGuire).

McGuire's assertions about the 2010 check for \$35,000 are similar. McGuire testified that, in November 2010, after he thanked MP for the loan she had extended a year earlier, MP "asked [him] how much more [he] needed, . . . and again, . . . she offered to do it as a gift."⁶⁸ MP "again brought up the fact that she had nobody else she wanted to leave the money to and [asked] if I would take her to an attorney to have her will changed." Again, McGuire claims, he said "no," but added that he could use another loan to help get himself and his family "back on track." According to McGuire, MP's \$35,000 check was that loan.⁶⁹

In support of his contention that MP loaned him \$95,000, McGuire produced to FINRA's investigator and introduced at the hearing copies of two purported loan agreements, dated November 1, 2009, and November 1, 2010, respectively. Each agreement bears a signature reading "[MP]" and each identifies MP as the "lender" and RAM as the "borrower." The 2009 loan agreement documents a loan of \$60,000 at 5% interest per year to be repaid in 120 monthly installments beginning November 2011 and ending in October 2021. The November 2010 agreement documents a loan of \$35,000 at 4% interest per year to be repaid in 120 monthly installments beginning November 2012 and ending in October 2022.⁷⁰ According to McGuire, he created the loan agreements from a software program that offered "legal letters and things of that nature." He also testified that he was with MP when she signed the agreements and saw her sign them.⁷¹ McGuire testified further that MP and he signed duplicate originals of each

⁶⁸ Tr. 1393 (McGuire).

⁶⁹ Tr. 1393-1395 (McGuire). McGuire attempted to explain away MP's 2011 conversations with Heilman, Napolitano, and Vincent in which she denied loaning McGuire money, by claiming, in essence, that others influenced MP's version of events, that she was irrational, that he reminded her that she had loaned the money to him, and that he offered to make advance payments on the loans in May 2011. Tr. 1406-1411, 1414 (McGuire). We do not credit this testimony.

⁷⁰ CX-6; CX-7; *see* Tr. 775-778 (Vincent).

⁷¹ Tr. 1380-1381, 1395-1396 (McGuire).

agreement, and that each of them retained one set of originals. In addition, he testified that he undertook to and did mail MP additional copies.⁷²

To bolster his assertions about the agreements, McGuire testified that he told Napolitano about them.⁷³ He claimed that he called Napolitano on the day he received the first check, informed Napolitano that he had it, and later showed Napolitano copies of the check and loan agreement. McGuire testified further that, in connection with the second loan, Napolitano “agreed that the loan agreement[was] okay,” but advised McGuire not to write out the check and not to include the “investment” notation on it.⁷⁴ During his on-the-record testimony, however, when asked whether he told Napolitano about loans, McGuire stated that he could not recall and when later asked, “So you didn’t tell anybody” about the loans, McGuire answered “No.”⁷⁵ We find that McGuire did not tell Napolitano about the loans.

McGuire also offered expert testimony and an expert report in support of his contention that MP signed the loan agreements. The expert opined that there was “evidence to suggest” that the signatures on the agreements were MP’s. He arrived at this “qualified opinion” by comparing the signatures on the loan documents to 44 “known” signatures of MP provided to him by McGuire and his counsel.⁷⁶ According to the expert, there were nine characteristics that, while not present in all signatures, tended to appear repeatedly.⁷⁷ Therefore, he concluded that it is “likely that the person who wrote the known writing did write the questioned writing.”⁷⁸

⁷² Tr. 1542-1545, 1858-1860 (McGuire).

⁷³ Tr. 1403-1405 (McGuire). Napolitano credibly contradicted this testimony. Tr. 2016-2020 (Napolitano).

⁷⁴ Tr. 1873 (McGuire); *see* Tr. 1403-1405, 1871-1876 (McGuire).

⁷⁵ Tr. 1557 (McGuire); *see* Tr. 1546-1547 (McGuire).

⁷⁶ RX-1; Tr. 1972-1973, 1983-1984 (Picciocchi). The expert acknowledged that he had no independent knowledge of who signed the documents containing the “known” signatures. Tr. 1974 (Picciocchi).

⁷⁷ *See* Tr. 1950-1967 (Picciocchi).

⁷⁸ Tr. 1938 (Picciocchi).

3. McGuire's Use of MP's Funds Was Unauthorized and Her Signatures on the Purported Loan Agreements Were Forged.

For the following five reasons, the Hearing Panel credits MP's version of events, rejects McGuire's, and concludes that MP understood that she was purchasing an annuity-like investment and not, as McGuire contends, loaning him money. McGuire thus converted MP's funds. For the same and similar reasons, we also conclude that MP did not sign loan agreements and, therefore, that her signatures were forged.

a. McGuire Points to Nothing that Undermines the Trustworthiness of MP's Account of the Circumstances Surrounding the Checks.

As stated above, we find the consistent and corroborated testimony and evidence concerning MP's 2011 conversations to be reliable and, in turn, consider MP's version of events as recounted in those conversations also to be trustworthy.⁷⁹

McGuire nevertheless attacks MP's account by arguing that Napolitano influenced her to misunderstand and misstate events. McGuire theorizes that, given his close relationship with Napolitano, Napolitano was concerned he might be implicated in conduct that contravened his firm's policies and procedures—*i.e.*, McGuire's borrowing money from MP. According to McGuire, Napolitano therefore undertook to distance himself from McGuire, thereby instilling in MP an unwarranted fear and mistrust of McGuire. The record, however, does not support that theory. Napolitano did not know about any loans and, more importantly, the instances of “distancing” McGuire points to do not warrant a conclusion that Napolitano influenced MP to

⁷⁹ While McGuire objected to the admission of much of this evidence as hearsay, hearsay is admissible in FINRA proceedings, particularly when, as here, factors establishing its reliability and probative value are present. *John Montelbano*, 56 S.E.C. 76, 89-90 (2003) (citing *Charles D. Tom*, 50 S.E.C. 1142, 1145 (1992)); *Dep't of Enforcement v. Sears*, No. C07050042, 2007 FINRA Discip. LEXIS 1, at *13-14 (NAC Sept. 24, 2007), *aff'd in part*, *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521 (July 1, 2008).

misstate the circumstances surrounding her investment or that Napolitano testified untruthfully about what MP told him about those circumstances.

McGuire emphasizes, for example, that, during one of MP's and Napolitano's conversations, Napolitano told MP that RAM was not real and did not exist.⁸⁰ In context, however, Napolitano was referring to the fact that RAM was not an investment issuer, and there is no reason to believe MP understood the statements differently.⁸¹ McGuire also underscores that Napolitano failed to inform MP of the full extent of his business dealings with McGuire. But that does not demonstrate that Napolitano was attempting to or did influence MP to make unfounded accusations about McGuire. Similarly, that Napolitano cautioned MP against trusting McGuire after MP recounted the circumstances surrounding her RAM investment, and that he later characterized McGuire as untrustworthy and his conduct as improper shows only that, over the course of their conversations, Napolitano expressed justifiable concerns about MP's situation and McGuire's actions.⁸² Moreover, while McGuire stresses that Napolitano told MP not to mention to McGuire her conversations with Napolitano and others because "who knows what his response is going to be,"⁸³ Napolitano did not plant concern where none previously existed.⁸⁴

McGuire also attacks Heilman's credibility, apparently contending that she, like Napolitano, influenced MP to misunderstand her dealings with McGuire. McGuire's attack

⁸⁰ See, e.g., Tr. 371-372, 448, 451-452 (Napolitano); see also CX-82A, at 17:8-17:12. CX-82 is a disc containing a recording of a conversation Napolitano had with MP on April 25, 2011. It is the best evidence of what was said during the conversation. Citations are to a transcript of the recording—CX-82A—for ease of reference.

⁸¹ See Tr. 448-449, 452-453 (Napolitano); CX-82A, at 13:18-15:14; see also, e.g., Tr. 586 (Heilman).

⁸² E.g., CX-82A, at 21:19-22:8.

⁸³ CX-82A, at 16:08-16:14.

⁸⁴ Tr. 382, 387-388, 392, 483-484 (Napolitano). Finally, McGuire mistakenly contends that Napolitano influenced how MP expressed and resolved her concerns about her investment by, in one conversation, instructing MP what to write in the letter to McGuire requesting the return of her money. CX-82A, at 13:02-13:17. But Napolitano did not issue instructions. He merely restated what MP had repeatedly related in earlier conversations—that she wanted to close her RAM "account" and withdraw the entirety of her investment.

centers on an April 21, 2011 letter Heilman sent to the FBI. The letter stated that it had come to Ameritas' attention that McGuire may have converted a customer's funds, that the firm was "aware of only this one situation," but that "[Ameritas was] not naïve enough to think that it ends there. There are probably more."⁸⁵ McGuire asserts that Heilman's willingness to cast aspersions on him, particularly to speculate that he had stolen from persons other than MP, undermines her credibility. As further evidence of Heilman's alleged rush to judgment, McGuire emphasized that she formed the opinion that he had stolen MP's money without talking to him.⁸⁶

In our view, by April 21, Heilman had ample basis to conclude that McGuire had converted MP's money, particularly considering Heilman's position as Ameritas' CCO and her many years as a compliance professional. Moreover, we see nothing in her correspondence with the FBI that causes us to disbelieve her testimony and notes about her conversations with MP, and nothing that would lead us to conclude that she influenced MP to misstate or misunderstand events.⁸⁷

b. The "Investment" Notation on One of the Checks Corroborates MP's Account and Undermines McGuire's Account.

In addition to crediting Heilman's, Napolitano's, and Vincent's testimony showing that MP conveyed a consistent and trustworthy account of her dealings with McGuire, we ground our

⁸⁵ CX-72, at 1.

⁸⁶ Tr. 682-683 (Heilman).

⁸⁷ Furthermore, that Heilman may not have known all facts possibly bearing on a determination whether McGuire stole MP's money (*e.g.*, Tr. 691-692 (Heilman)) simply underscores why Ameritas terminated McGuire for failing to report his RAM-related activities (*see supra* p. 13), rather than for conversion. As Ameritas explained to FINRA, the firm lacked "pure" proof of conversion after an investigation hampered by, among other things, McGuire's failure to respond to an information request. CX-32, at 5; Tr. 713-715 (Heilman). The differences between the FBI letter and the documentation of McGuire's termination are not "backtracking" that should cause us to conclude "summarily that Rich McGuire . . . has not committed a conversion" (Tr. 2123) but the natural outgrowth of the roles Heilman undertook—in one instance as a referrer of a matter to a federal law enforcement agency and in the other instance as the person responsible for investigating multiple matters of concern and determining how best to respond on behalf of her employer.

determination to credit that account over McGuire's on four other bases. One is the strong documentary support provided by the notation "investment" on the \$60,000 check. The notation is significant not simply because it appears on the \$60,000 check, but also because checks MP wrote for annuities she purchased when McGuire served as her registered representative also bore that notation on the memo line.⁸⁸

Indeed, McGuire's assertions about the reasons that MP asked him to write "investment" on the \$60,000 check reinforce our credibility determination. According to McGuire, the notation reflected that MP "was investing in me, and she would constantly say that she was investing in me, Rich McGuire, because she believed that I would get through this rough time, and investing in me was an investment."⁸⁹ While McGuire and MP may have been good friends, McGuire's descriptions of MP's regard for him do not persuade us that she loaned him money. We do not believe that a woman who was afraid to spend money and needed repeated reassurance about her financial situation would, as McGuire claims: have offered to lend him at least one hundred thousand dollars; not have cared whether he repaid the loan; or have given him one million dollars if he needed it.⁹⁰

c. The Inconsistencies in McGuire's Story Undermine Its Believability.

Another basis for our credibility determination is that McGuire's version of events manifests numerous material inconsistencies.⁹¹ For example, during the hearing, McGuire responded to a question concerning why the loan documents were dated days before MP's

⁸⁸ RX-1, at 21, 23; Tr. 764-765 (Vincent), 1801-1806 (McGuire); *see* Tr. 1361 (McGuire).

⁸⁹ Tr. 1559-1560 (McGuire).

⁹⁰ Tr. 1404, 1901, 1903 (McGuire); *see supra* pp. 8-9.

⁹¹ McGuire has lied or prevaricated about other matters over the course of the investigation and hearing including, as discussed elsewhere: being the victim of identity theft; informing Napolitano of the alleged loans; supplying written notification of outside business activities to his employers; having no affiliation with SSU; and being unable to supply his experts with originals of the purported loan documents.

checks to RAM by stating that the “check wasn’t necessarily signed at the same time as the loan agreement,” and that the loan agreements were not necessarily signed on the day they were dated.⁹² But during his investigative testimony, McGuire answered “yes” when asked whether MP gave him the \$60,000 check “at the same time that you signed the agreement?”⁹³

McGuire’s response to questions regarding how much time elapsed between the time he agreed to accept a loan and the time he went about downloading and creating the first loan agreement also lays bare inconsistencies in his story. McGuire testified that he could not recall whether a day, a week, or a month went by and, although he was willing to concede that he downloaded the agreement within a year of agreeing to accept a loan, he claimed he could not recall more specifically than that.⁹⁴ But McGuire also testified that he agreed to accept a loan when he “really needed” the money and was in a “bad situation,” and stated that the \$60,000 check was signed within days of the execution of the loan agreements.⁹⁵ Under these circumstances, McGuire’s claims of forgetting whether it took days or months to obtain the money are implausible.

d. MP’s Denials of Making Loans or Signing Loan Agreements Further Undermine McGuire’s Testimony and Support a Conclusion that Her Signatures on the Alleged Loan Agreements Were Forged.

MP’s statements that she did not make loans or sign loan agreements provide another basis for our determination to reject McGuire’s version of events and also lead us to conclude that MP’s signatures on purported loan agreements were forged. We arrive at that conclusion

⁹² Tr. 1397-1400 (McGuire).

⁹³ Tr. 1539-1540 (McGuire).

⁹⁴ Tr. 1507 (McGuire); *see* Tr. 1853-1857 (McGuire).

⁹⁵ Tr. 1377, 1538-1539 (McGuire).

notwithstanding the “qualified” opinion of McGuire’s expert that the signatures on the agreements were MP’s.

As an initial matter, we note that the opinion was qualified “due to limitations associated with the very wide range of variation in [MP’s known writing] samples and the limited quantity of samples on or about the dates of the questioned writings.”⁹⁶ Indeed, two critical samples were not supplied to the expert—the \$60,000 and \$35,000 checks. The expert’s consequent failure to compare the signatures on those checks to those on the allegedly corresponding loan agreements significantly undermines his opinion’s reliability. As the expert’s opinion reflects, a person’s handwriting can evolve over time. Therefore, as the expert testified, when authenticating signatures, it is preferable to compare questioned signatures to contemporaneous signatures.⁹⁷

McGuire’s failure, despite the expert’s request, to supply or otherwise make available to the expert originals of the loan agreements or, indeed, any original document bearing MP’s signature provides another basis for questioning the opinion’s reliability specifically and McGuire’s version of events generally.⁹⁸ Thus, for example, when asked why he was not able to supply original loan agreements to the expert, McGuire testified that he believed that he gave his originals to FINRA or his lawyer in connection with a Rule 8210 request.⁹⁹ But Vincent did not receive originals and they were not contained in the investigative file.¹⁰⁰ And nothing in the record shows why, if McGuire gave his attorney the originals, they could not have been made available to the expert. We therefore conclude that McGuire lied about why original agreements

⁹⁶ RX-1, at 3.

⁹⁷ RX-1, at 2; Tr. 1976-1978, 1980 (Picciochi). The signatures on the checks are very different in appearance from those on the allegedly corresponding loan documents.

⁹⁸ See Tr. 1937, 1975-1976 (Picciochi).

⁹⁹ Tr. 1998 (McGuire).

¹⁰⁰ Tr. 1999-2000 (Vincent).

were not made available. Because McGuire did not provide his expert with the originals, the expert could not rule out the possibility that MP's signatures had been transposed onto the loan documents.¹⁰¹ The expert's opinion thus does not lead us to find that MP signed loan agreements, or, by extension, loaned money to McGuire.

To the contrary, MP's consistent disavowal of making any loans to McGuire provides an important basis for disbelieving McGuire's version of events, and for concluding, in particular, that McGuire forged or caused to be forged MP's signatures on the purported loan agreements. As set forth above, MP consistently denied loaning money to McGuire and maintained that she had neither previously seen the agreements nor signed them. Indeed, she told Vincent that she was not aware of McGuire's financial situation, had never asked about it, and that McGuire never asked to borrow money from her. Her denials were corroborated by the absence of loan agreements among her financial records. Thus, although McGuire testified that he left originals of both agreements with MP and also mailed her copies, Vincent's search of MP's financial records failed to unearth any loan documents. Given that MP retained relatively inconsequential documents pertaining to her finances, such as McGuire's notes exhorting her not to be afraid to spend money, MP would likely have retained copies of loan agreements if she had extended loans to McGuire.

e. Subsequent Events Corroborate MP's Account of the Checks.

Finally, the events of 2011 also corroborate MP's account of her earlier interactions with McGuire. These events, particularly MP's written request for the return of her money, strongly support our conclusion that MP understood, based on what McGuire told her, that she was investing her money in RAM, not loaning money to or "investing" in McGuire. Conversely,

¹⁰¹ Tr. 1991-1994 (Picciochi). The expert testified that he saw no evidence of cutting and pasting but could not rule it out without the originals.

McGuire's subsequent actions belie much of his testimony. For example, although he claimed he offered to pay a substantial portion of the loans during May 2011, he never made any such payment. He attempted to justify his inaction on MP's failure to return his calls, but he never explained why he would have needed to talk with MP before mailing a payment, for example. Indeed, when asked why he did not at least begin to repay the first loan as scheduled in November 2011, McGuire blamed FINRA, stating that he asked FINRA staff whether he should be repaying the loan and "they said it's not their responsibility to answer that. And I didn't know how to handle it."¹⁰²

C. McGuire Failed To Provide Proper Notification of Two Outside Brokerage Accounts.

As stated, Ameritas terminated McGuire's employment on April 27, 2011. According to the Uniform Termination Notice for Securities Industry Registration (Form U5), McGuire was discharged for "failure to follow policy and procedures in regard to reporting outside business activities." Later, Ameritas amended the Form U5 to notify FINRA that the firm had learned that McGuire had established a brokerage account without disclosing to the broker-dealer holding the account that he was a registered representative with Ameritas.¹⁰³ In fact, McGuire failed to inform three of his FINRA-registered broker-dealer employers of the existence of two brokerage accounts held away from those employers and likewise failed to inform the broker-dealers holding his accounts of his association with his employers.

1. The E*Trade Account

On December 7, 2009, while he was employed at TFS, McGuire opened an individual brokerage account in his own name at E*Trade Financial. In the online account application,

¹⁰² Tr. 1811-1812, 1885 (McGuire).

¹⁰³ CX-1, at 21; Tr. 726 (Heilman).

McGuire falsely answered “No” to the question: “Employer a broker/dealer?” Although the account remained open until February 2010, McGuire never notified E*Trade that he was associated with a broker-dealer—TFS (through December 21, 2009), and Ameritas (from December 11, 2009, and thereafter).¹⁰⁴ In addition, as McGuire admitted, he never notified either employer that he had opened or was maintaining the account,¹⁰⁵ despite their requirements that registered representatives: provide prompt written notification of accounts established prior to associating with the firm; obtain prior written approval from the firm’s compliance department to establish outside brokerage accounts; and fill out annual compliance questionnaires inquiring about outside brokerage accounts.¹⁰⁶

During his on-the-record testimony, McGuire claimed ignorance of the E*Trade account, asserting that it resulted from identity theft.¹⁰⁷ His testimony was false as evidenced by a recording of an inbound call to E*Trade in which “CCI [Customer called in] to get wire instructions.”¹⁰⁸ On that recording, McGuire is clearly heard inquiring about wiring funds to the account. During the hearing, although he conceded that the voice on the recording “definitely sounds like me,” McGuire maintained that he did not recall filling out an application to open the account. He also emphasized that the account was never funded and that no trades ever took place in the account.¹⁰⁹ But, as RAM’s bank statements demonstrate, McGuire twice attempted to fund the account. First, he attempted to wire \$1,500 to the E*Trade account on December 7,

¹⁰⁴ CX-1, at 5-6; CX-47; CX-48; CX-49, at 1; Tr. 883-887, 890 (Vincent) Tr. 1187-1194, 1226-1230 (Walsh); *see* Tr. 1782-1785 (McGuire). McGuire became registered with Ameritas without resigning from TFS. Upon learning this, TFS personnel contacted McGuire and amended his termination date from December 31 to December 21, 2009. CX-31, at 1; Tr. 1076, 1113-1116 (Case).

¹⁰⁵ Tr. 1744, 1755 (McGuire); *see* Tr. 621 (Heilman), 1109 (Case); *see also* CX-31, at 2; CX-32, at 3.

¹⁰⁶ CX-64, at 2, 6; CX-65, at 9-10 (6247-6248); Tr. 555-556, 624-625 (Heilman), 1101-1109 (Case).

¹⁰⁷ *See* Tr. 890-891 (Vincent).

¹⁰⁸ CX-50; *see* CX-52; CX-52A; Tr. 1201-1207 (Walsh).

¹⁰⁹ Tr. 1790 (McGuire); Tr. 1463-1464, 1782-1783 (McGuire).

2009, and then, on December 8, 2009, he attempted to wire \$2,000. Neither transfer succeeded, however. Although the record is silent as to why the first attempt failed, the second wire was reversed because there was no customer name provided.¹¹⁰

2. The Buckman Account

On January 13, 2011, while he was employed at Ameritas, McGuire opened a brokerage account in RAM's name at Buckman, Buckman & Reid, Inc. In filling out the new account form, McGuire left blank the check boxes calling for him to disclose whether he was "affiliated with, or employed by, a stock exchange or member firm or either an exchange, FINRA, or a municipal securities Broker/Dealer."¹¹¹ From January through June 2011, McGuire bought and sold penny stocks in the account, which remained open until September 2011.¹¹²

McGuire was associated with Ameritas when he opened the account and with Investacorp while the account remained open. As stated, Ameritas required its representatives to obtain prior approval from the firm's compliance department to open an outside brokerage account. Investacorp required representatives to notify the firm in writing of existing brokerage accounts promptly on becoming associated.¹¹³ McGuire failed, however, to notify either firm of the existence of the Buckman account and also failed to notify Buckman of his association with Ameritas or Investacorp.¹¹⁴

¹¹⁰ CX-11, at 35, 36, 38; CX-51; Tr. 884-885 (Vincent), 1208-1209, 1220-1225 (Walsh), 1786-1790 (McGuire).

¹¹¹ CX-42; Tr. 893 (Vincent), 1159-1164 (Heath).

¹¹² CX-43; CX-73, at 1; Tr. 895 (Vincent), 1166-1168 (Heath). In June 2011, McGuire sold the account's holdings and transferred the proceeds to RAM's bank account. Tr. 1168 (Heath); *see* CX-43, at 33-35; CX-39. However, a debit balance resulted and, therefore, the account remained open until September 2011. Tr. 1168 (Heath); CX-43, at 34; CX-45, at 1.

¹¹³ CX-66, at 11; Tr. 1304-1305 (Plasencia).

¹¹⁴ *See, e.g.*, CX-73, at 3; CX-86, at 2 (6552); Tr. 605-609, 644-645, 724-725 (Heilman), 1320 (Plasencia); CX-33, at 3. Buckman was not informed of McGuire's association with a FINRA member firm until FINRA alerted the firm during an examination. Tr. 1168-1169 (Heath).

McGuire gave testimony about the Buckman account that we do not credit. First, we do not believe that McGuire was uncertain about how to fill out the Buckman form—given that he was “in between broker-dealers or in the process of possibly leaving a broker-dealer” and “may not be sticking with the [securities] business.” Nor do we believe that he contacted Buckman, mentioned his uncertainty, and was told that he should fill out the form to the best of his ability, send it in, and then the person he spoke with would “speak to a supervisor, figure it out and get back to [him].”¹¹⁵ This testimony is unworthy of credence because, among other things, in January 2011, when McGuire opened the account, he was not between broker-dealers or in the process of leaving one. Instead, he was employed by Ameritas, had been employed by Ameritas for more than one year, and remained employed by Ameritas until he was discharged four months later.

Second, we do not credit McGuire’s claims that he informed Ameritas about the account. McGuire testified and recounted in writing that he orally informed Ameritas compliance personnel that he would be trading penny stocks and intended to open the Buckman account in order to do so. He claimed that he was told that, once he opened the account, he had 30 days to notify the firm in writing. According to McGuire, he completed a written notification and sent it to Napolitano, presumably within the 30-day window, but nevertheless was terminated within the window for failure to disclose the account.¹¹⁶ Given that Ameritas’ policies and procedures required registered representatives to obtain prior approval to establish outside brokerage accounts, we do not believe that anyone in Ameritas’ compliance department would have advised McGuire that he had 30 days after opening the account to provide the firm with written

¹¹⁵ Tr. 1460-1461 (McGuire). According to McGuire, Buckman did not “get back with him” but simply opened the account. Tr. 1461-1462 (McGuire).

¹¹⁶ Tr. 1458-1459, 1462 (McGuire); RX-12; *see* Tr. 1285-1287 (Plasencia).

notification. Instead, we conclude that the firm had no notice of the account until April 2011, when Napolitano received and forwarded to Heilman correspondence from Buckman notifying Ameritas of the account.¹¹⁷

D. McGuire Did Not Disclose Liens on His Form U4.

During 2010, two state tax warrants and one federal tax lien were filed against McGuire and his property. One New York State tax warrant was filed on May 20, 2010, in the amount of \$445, and another was filed on September 16, 2010, in the amount of \$1,256. The federal tax lien was filed on May 4, 2010, in the amount of \$21,167.¹¹⁸ McGuire became aware of these liens sometime before May 5, 2011.¹¹⁹

In May 2011, McGuire was seeking employment with Investacorp. As a condition to his employment, Investacorp required McGuire to satisfy the liens.¹²⁰ Although all three 2010 tax liens were unsatisfied when McGuire signed his Form U4,¹²¹ question 14M concerning whether an applicant has “any unsatisfied judgments or liens against you?” was answered “no.”¹²² Only after reviewing this and other disclosures did Investacorp determine to hire McGuire.¹²³ Thereafter, on June 27, 2011, July 18, 2011, October 31, 2011, and August 8, 2012, Investacorp

¹¹⁷ CX-73; Tr. 142-143, 147-148 (Napolitano), 605-609 (Heilman). We thus do not credit McGuire’s claims that he gave Napolitano notice of the account. *See* Tr. 2020-2021 (Napolitano).

¹¹⁸ CX-54, at 18-20; Tr. 869-870 (Vincent), 1478-1479, 1610, 1807 (McGuire).

¹¹⁹ *See* CX-55, at 4 (4793); Tr. 1466-1467 (McGuire).

¹²⁰ Tr. 1283 (Plasencia). McGuire denied that he was told to satisfy the liens. Tr. 1898-1899 (McGuire).

¹²¹ The state tax warrants remained in effect until May 25, 2012. CX-54, at 19. The federal tax lien remained in effect as of a 2013 a LexisNexis printout. CX-54, at 1, 19-20. McGuire admitted that he did not pay off the indebtedness before he joined Investacorp. Tr. 1468-1469 (McGuire).

¹²² CX-57, at 14. As stated, McGuire claims that he answered “yes” to the question. *See supra* n.12.

¹²³ Tr. 1296-1298 (Plasencia).

filed amendments to McGuire's Form U4 on his behalf. In each instance, question 14M was answered "no."¹²⁴

III. CONCLUSIONS OF LAW

A. McGuire Violated FINRA Rule 2010 by Converting MP's Funds.

Conversion is the "wrongful exercise of dominion over the personal property of another."¹²⁵ FINRA's Sanction Guidelines similarly define conversion as "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."¹²⁶ Thus, when a person intentionally takes and uses another person's property for his own benefit without authority, he engages in conversion.¹²⁷ Conversion is conduct patently inconsistent with the high standards of commercial honor and just and equitable principles of trade that FINRA seeks to promote, and therefore violates FINRA Rule 2010.¹²⁸

McGuire's exclusive challenge to liability is factual: he contends that MP agreed to and did loan him \$95,000 and that, under the terms of the loan agreements, he was not obligated to begin repaying even the first loan when MP sought the return of her funds. As set forth above, however, we reject McGuire's account of events in favor of MP's and conclude that, by representing that MP would be investing in an annuity-like product, McGuire persuaded MP to write checks to RAM totaling \$95,000. Then, contrary to his representations and without MP's

¹²⁴ CX-59, at 12; CX-60, at 12; CX-61, at 12; CX-62, at 13; Tr. 879-880 (Vincent).

¹²⁵ *E.g.*, *Dep't of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (NAC Mar.7, 2008).

¹²⁶ *See* FINRA Sanction Guidelines, at 36 (2013), *available at* www.finra.org/sanctionguidelines; *see Dep't of Enforcement v. Smith*, No. 2011029152401, 2014 FINRA Discip. LEXIS 2, at *12-13 (NAC Feb. 21, 2014).

¹²⁷ *See, e.g.*, *Joseph H. O'Brien II*, 51 S.E.C. 1112 (1994) (president of broker-dealer converted customer funds by withdrawing them from a customer's account without authorization).

¹²⁸ *Dep't of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *8-10 (Bd. of Governors May 9, 2014), *appeal docketed*, No. 3-15916 (SEC June 9, 2014).

authorization, McGuire instead used her funds to pay his own personal and business expenses. Thereafter, when MP sought the return of her funds, McGuire fabricated another story—about a withdrawal penalty—to conceal his unwillingness or inability to return her funds.

The Hearing Panel concludes that McGuire violated FINRA Rule 2010 by converting MP's funds.

B. McGuire Violated FINRA Rule 2010 by Forging or Causing To Be Forged MP's Signature on Purported Loan Agreements.

It is well established that signing another person's name to documents without permission or authority constitutes forgery, and that forgery is inconsistent with just and equitable principles of trade registered representatives are bound to observe under FINRA Rule 2010.¹²⁹

Transferring a signature from one document to another without authority also constitutes forgery¹³⁰ and is likewise inconsistent with the requirements of FINRA Rule 2010.

MP did not sign the loan agreements McGuire supplied to FINRA. As she told Vincent, she had never before seen the loan agreements, much less signed them. We credit her statements, notwithstanding the expert's opinion that there is evidence to suggest that the signatures on the agreements were made by MP. To be sure, the signatures might have been made by MP but, if they were, they were transferred from another document.

Because MP did not sign the purported loan documents, we conclude that McGuire forged or caused to be forged MP's signature on those documents in violation of Rule 2010.

¹²⁹ *Dep't of Enforcement v. Kirlin Sec., Inc.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *57 (NAC Feb. 25, 2009), *aff'd in pertinent part*, *Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168 (Dec. 10, 2009).

¹³⁰ *See Opals on Ice Lingerie v. Bodylines Inc.*, 320 F.3d 362, 370 (2d Cir. 2003).

C. McGuire Violated NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010 by Failing To Provide Notice of Three Outside Business Activities.

From July 2005, when McGuire joined MML, through December 14, 2010, when McGuire was associated with Ameritas, NASD Rule 3030 stated that “[n]o person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.”¹³¹ The rule further specified that the notice must be in the form required by the member.

On December 15, 2010, NASD Rule 3030 was superseded by FINRA Rule 3270. In most pertinent respects, Rule 3270 operates in the same manner as did NASD Rule 3030.¹³² Rule 3270 provides in part:

“No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

From March 2006 and through McGuire’s employment with Investacorp, RAM was a business in which McGuire actively participated, through which he earned or expected to earn compensation, or with which he was affiliated as the sole and managing member. Further, from May 2006 through December 2007, McGuire worked as a branch manager for Freedom Mortgage and received compensation as a result of his employment. And from late 2009 and

¹³¹ On December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010. On December 15, 2010, NASD Rule 3030 was superseded by FINRA Rule 3270. All four of these rules govern aspects of this charge.

¹³² The principal difference between Rule 3270 and its predecessor is that NASD Rule 3030 called for “prompt” written notice of outside business activities while Rule 3270 requires “prior” written notice. *See* SR-FINRA-2009-042, *Proposed Rule Change to Adopt FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the Consolidated FINRA Rulebook; Text of Proposed Rule Change*, at 5-6, available at <http://www.finra.org/Industry/Regulation/RuleFilings>.

through his employment with Investacorp, McGuire was affiliated with SSU as its president and CEO. None of these business activities fell within the scope of his relationships with his employer brokerage firms.

Accordingly, McGuire violated Rule 3030 by failing to: notify MML, TFS, and Ameritas (through December 14, 2010) in writing of his RAM-related activities, positions, and compensation; provide written notice to MML of his employment with and receipt of compensation from Freedom Mortgage; and notify TFS in writing of his SSU-related activities and positions. McGuire's continuing failure, after December 14, 2010, to provide written notice to Ameritas of his RAM-related activities, positions, and compensation and his failure to provide written notice to Investacorp of his RAM-related positions and compensation, as well as his positions at SSU, violated Rule 3270. His violations of NASD Rule 3030 through December 14, 2008, were also violations of NASD Rule 2110.¹³³ Thereafter, his violations of NASD Rule 3030 and, later, FINRA Rule 3270 also were violations of FINRA Rule 2010.

McGuire's defenses are unavailing. First, to the extent that he has countered charges of nondisclosure by testifying that he did in fact provide proper written requests to his employers, we have rejected his testimony.¹³⁴ Second, we reject McGuire's contentions that he met the notification requirement because Mike Vesuvio, his supervisor at MML, and Napolitano, whom McGuire believed to be his supervisor at TFS and Ameritas, knew about his outside business

¹³³ See *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *17 & n.7 (NAC Dec.7, 2005).

¹³⁴ Although McGuire claims that it does not make sense that he would disclose some but not all of his outside business activities, the record reflects that, when he made disclosure, he did so by signing and filling out portions of forms Napolitano provided. Accordingly, the disclosure was not made because Napolitano did not initiate it.

activities.¹³⁵ Napolitano was not responsible for supervising McGuire’s securities business while McGuire was associated with Ameritas and Napolitano’s limited supervisory authority at TFS did not include the power to grant final approval for outside business activities.¹³⁶ Similarly, Vesuvio did not have final sign-off authority with respect to outside business activity requests.¹³⁷ Moreover, a supervisor’s knowledge of an outside business activity does not relieve a registered person of his responsibility to provide written notice to his employer in the format required by the firm.¹³⁸ Thus, even if we were to credit McGuire’s assertions that he understood that Napolitano would fill out “anything to do with [McGuire’s] broker-dealer” business and that McGuire disclosed all outside business activities to Napolitano,¹³⁹ that would not relieve McGuire of his own independent obligation to make a written request to engage in those activities. Third, we reject McGuire’s effort to excuse his misconduct by asserting that his employers failed to notify him about his obligations with regard to outside business activities. The record shows instead that each of his employers made known its policies and procedures to its representatives through a variety of means. In any event, ignorance of regulatory obligations is no defense to violative conduct.¹⁴⁰

¹³⁵ Vesuvio was aware of (and, indeed, had business dealings with) Freedom Mortgage and RAM. Tr. 1013, 1015-1016, 1033-1035 (Morton), 1434-1435, 1439 (McGuire). Napolitano was employed by Freedom Mortgage and had business dealings with RAM. Tr. 82-88, 268-269, 281 (Napolitano); *see* Tr. 1439, 1452-1453 (McGuire). By late 2009, Napolitano also was aware of McGuire’s relationship with SSU. Tr. 201-202 (Napolitano).

¹³⁶ Tr. 558-559 (Heilman), 1071-1073, 1138-1139 (Case); *see* Tr. 664 (Heilman).

¹³⁷ Tr. 1031-1032 (Morton).

¹³⁸ *E.g.*, *Dist. Bus. Conduct Comm. v. Merz*, No. C8A960094, 1998 NASD Discip. LEXIS 40, at *33, n.13 (NAC Nov. 11, 1998) (written notice must be made to member, not simply to any registered securities principal of the member); *Dep’t of Enforcement v. Dahmer*, No. C8A030086, 2005 NASD Discip. LEXIS 16, at *13-14 (OHO Feb. 17, 2005) (division and branch managers’ knowledge of outside business activities did not satisfy Rule 3030’s requirements that the firm receive prompt written notice in the form required by the member); *Dep’t of Enforcement v. Barrick*, No. C8A030034, 2004 NASD Discip. LEXIS 22, at *7 (OHO Apr. 26, 2004) (Rule 3030 “requires ‘prompt written, not oral, notification’” of outside business activity and “[t]here is no exception for verbal statements to supervisors.”).

¹³⁹ *E.g.*, Tr. 1444, 1448, 1457 (McGuire).

¹⁴⁰ *Charles E. Kautz*, 52 S.E.C. 730, 733 (1996).

Fourth, insofar as RAM is concerned, McGuire asserts that he was not obligated to report his RAM-related activities to Investacorp because RAM ceased doing business before he joined the firm. RAM's cessation of business, however, is not a defense because McGuire received compensation as a result of RAM's business activities after he joined Investacorp. McGuire's similar assertions regarding SSU also lack merit. Even if SSU had been inactive before McGuire joined Investacorp, McGuire continued to hold himself out as the business' president and CEO through June 2011 and continued to be identified as such on the New York Department of State's website through March 2013.

D. McGuire Violated NASD Rule 3050 and FINRA Rule 2010 by Failing To Disclose Two Outside Brokerage Accounts to His Employer Firms.

NASD Rule 3050(c) governs the disclosure obligations of associated persons who seek to open or maintain securities accounts at brokerage firms other than their employer broker-dealer.

It provides that:

A person associated with a member, prior to opening an account . . . with another member, shall notify both . . . [members] in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated.

The rule thus requires an associated person to notify his employer firm in writing about any accounts he maintains at another brokerage firm and to notify the other brokerage firm in writing about his association with his employer firm.¹⁴¹ A violation of NASD Rule 3050 constitutes a violation of FINRA Rule 2010.¹⁴²

Here, McGuire opened an account at E*Trade in December 2009 and, during the two months the account remained open, failed to notify his employers of the account or correct his

¹⁴¹ *Dep't of Enforcement v. Ng*, No. 2009019369302, 2013 FINRA Discip. LEXIS 6, at *17-18 (NAC Apr. 24, 2013).

¹⁴² *Ng*, 2013 FINRA Discip. LEXIS 6, at *17, n.11.

false representation to E*Trade that he was not employed by a broker-dealer. To the extent that McGuire contends that he was relieved of the notification requirements because he neither funded nor conducted any trading in the account, he is incorrect. Rule 3050(c) did not exempt McGuire from its requirements under these circumstances. Instead, it required McGuire to provide written notice to TFS and E*Trade “prior to opening [the] account” (on December 7) and to Ameritas and E*Trade “promptly after becoming associated” with Ameritas.

McGuire opened the brokerage account at Buckman in January 2011 and during the months that the account remained open, was associated with Ameritas and later Investacorp. He nevertheless failed to notify either firm in writing of the existence of the account and he failed to advise Buckman in writing of either association. McGuire failed to comply with Rule 3050 and his attempts to justify his noncompliance are without merit.

First, as stated above, McGuire claims that he failed to answer the question about his employment on the Buckman form because he was leaving or thinking of leaving the securities business. Even if we were to credit that testimony, and we do not, the form, like FINRA’s rule, called for written notification of current affiliation/association with a FINRA member. As McGuire knew, he was associated with Ameritas when he opened the account. Second, to the extent that McGuire urges that Buckman’s opening the account despite his failure to completely fill out the application somehow absolves him of liability, McGuire is mistaken. His compliance obligation was not dependent on Buckman’s actions. Finally, McGuire again blames Napolitano. But we have rejected as unworthy of credit McGuire’s claims that he sent Napolitano written notification of the account or otherwise informed him of the account.

Based on the foregoing, we conclude that, by failing to provide written notification of outside brokerage accounts to his employer firms and by failing to provide written notification of

his association with those employers to the broker-dealers holding his accounts, McGuire violated NASD Rule 3050 and FINRA Rule 2010.

E. McGuire Violated FINRA Rules 1122 and 2010 by Failing To Disclose Tax Liens on His Form U4.

The initial and four amended Form U4 filings Investacorp made on McGuire's behalf between June 20, 2011, and August 8, 2012, failed to disclose his federal tax lien on five occasions and his state tax warrants on four occasions.

Article V, Section 2 of FINRA's By-Laws requires that associated persons applying for registration with FINRA provide "such . . . reasonable information with respect to the applicant as [FINRA] may require" and further that applications "shall be kept current at all times by supplementary amendments . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 in turn prohibits associated persons from filing or failing to correct registration information that is incomplete or inaccurate so as to be misleading. These provisions give rise to a requirement that registered persons ensure that their Forms U4 contain accurate, up-to-date information. It follows, therefore, that filing a false or incomplete Form U4 or failing to timely amend a Form U4 violates FINRA Rule 1122.¹⁴³ Failing to timely and accurately disclose information on a Form U4 also contravenes Rule 2010.¹⁴⁴

Form U4 requires registered representatives to disclose any "unsatisfied judgments or liens." Here, it is undisputed that McGuire's initial Form U4 and four subsequent amendments failed to disclose federal and state tax liens then outstanding against McGuire and his property.

¹⁴³ *E.g., Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *16-17 (NAC Dec.12,2008) (addressing predecessor IM-1000-1), *aff'd*, *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

¹⁴⁴ *Mathis*, 2008 FINRA Discip. LEXIS 49, at *16-17 (addressing predecessor Rule 2110).

McGuire argues that he did not violate Rules 1122 and 2010 because he was not responsible for the inaccurate lien disclosure in the initial Form U4 and its amendments. We disagree.

Although the evidence does not establish who filled out much of the handwritten version of the initial Form U4 Investacorp submitted to FINRA on McGuire's behalf, McGuire signed both the handwritten and the electronic version of the Form U4.¹⁴⁵ As a consequence, he needed to ensure that the information contained in the form was accurate.¹⁴⁶ McGuire did not provide trustworthy evidence that, after he signed the form and without his knowledge, Investacorp personnel submitted to the firm's CCO and, ultimately, to FINRA a version of the Form U4 that introduced false information. Therefore, we conclude that McGuire violated Rules 1122 and 2010 in connection with the filing of the June 20, 2011 Form U4. We further conclude that, by not disclosing the outstanding federal lien and the state tax warrants that were outstanding when amendments were filed on June 27, 2011, July 18, 2011, October 31, 2011, and August 8, 2012, McGuire engaged in additional violations of FINRA Rules 1122 and 2010.

McGuire had an ongoing obligation to ensure the accuracy of information disclosed in his Form U4. Indeed, the fact that McGuire failed to avail himself of four opportunities to correct the initial disclosure leads us to conclude that McGuire's disclosure failures were willful.¹⁴⁷ The

¹⁴⁵ CX-57, at 15, 16; CX-58, at 14.

¹⁴⁶ E.g., *Dep't of Enforcement v. Amundsen*, No. 2010021916601, 2012 FINRA Discip. LEXIS 54, at *14, n.10 (NAC Sept. 20, 2012), *aff'd*, *Joseph S. Amundsen*, Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148 (Apr. 18, 2013); *Dep't of Enforcement v. Howard*, No. C11970032, 2000 NASD Discip. LEXIS 16, at *30-31 (NAC Nov. 16, 2000), *aff'd*, *Daniel Richard Howard*, 55 S.E.C. 1096 (2002), *petition for review denied*, *Howard v. SEC*, 77 F. App'x 2 (1st Cir. 2003).

¹⁴⁷ In so holding, we need not find that McGuire intended to violate FINRA's rules. Rather, we need only find that he knew what he was doing. See *Mathis*, 671 F.3d at 216-219 (respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens). Regardless of McGuire's assertion that he was unaware that the initial Form U4 failed to disclose the liens, McGuire has not explained why he failed to correct the form for more than one year and permitted the filing of four amendments that failed to disclose liens during that period.

information he failed to disclose was material both because it was reportable on the Form U4¹⁴⁸ and critical to assessing his fitness to work in the securities industry.¹⁴⁹ McGuire is therefore subject to statutory disqualification.¹⁵⁰

IV. Sanctions

A. Conversion

Conversion is “extremely serious and patently antithetical to the ‘high standards of commercial honor and just and equitable principles of trade’ that [FINRA] seeks to promote.”¹⁵¹ The Sanction Guidelines thus call for a bar for conversion “regardless of [the] amount converted.”¹⁵²

Here, there are no factors that mitigate and many that aggravate the severity of McGuire’s conversion. McGuire took \$95,000 from MP under false pretenses, used the money for his own purposes, and then, when MP requested the money back, refused to comply with her request.¹⁵³ Far from accepting responsibility for and acknowledging his misconduct,¹⁵⁴ McGuire

¹⁴⁸ See *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004).

¹⁴⁹ Applying the traditional materiality standard, a reasonable employer, regulator, or investor would have viewed the liens as altering the mix of information made available because liens “constitute[] serious financial problems critical to evaluating [a person’s] fitness to associate in the securities industry and the firm’s ability to assess his business judgment.” *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *32 (Nov. 9, 2012) (citing *Mathis*, 671 F.3d at 220).

¹⁵⁰ See Section 3(a)(39)(F) of the Securities Exchange Act of 1934; Article III, Section 4 of FINRA’s By-Laws; see also *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (NAC Dec. 18, 2009) (stating that willful omission of material information on Form U4 results in statutory disqualification).

¹⁵¹ See *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, *42 (Feb. 10, 2012) (quoting *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

¹⁵² FINRA Sanction Guidelines, at 36.

¹⁵³ See FINRA Sanction Guidelines, at 6, 7 (Principal Considerations 11, 17).

¹⁵⁴ See FINRA Sanction Guidelines, at 6 (Principal Consideration 2).

lied about what he did and manufactured fake loan agreements to support his lie. His use of those forged agreements in support of his defense aggravates the severity of his wrongdoing.¹⁵⁵

By his misconduct, McGuire has demonstrated that he is unfit to continue in the securities industry. He took advantage of an unsophisticated friend and former customer who trusted him and relied on him to provide assistance with matters both personal and financial. McGuire is barred for converting MP's funds.

The Sanction Guidelines also provide for restitution in appropriate cases. Restitution is a traditional remedy used to restore the *status quo ante* where a victim otherwise would unjustly suffer loss. Adjudicators may order restitution when an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct.¹⁵⁶ MP suffered a loss of \$95,000 as a result of McGuire's conversion. McGuire is ordered to pay \$95,000, plus interest, to MP's estate.

B. Forgery

The sanction guideline for forgery calls for a fine between \$5,000 and \$100,000 and a suspension of up to two years and, in egregious cases, a bar. The guideline-specific principal considerations in determining sanctions are: (1) the nature of the documents forged; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.¹⁵⁷

The guideline-specific considerations highlight the severity of McGuire's misconduct. McGuire forged or caused to be forged MP's signatures on loan agreements he generated and copied, supplied to FINRA, and used at the hearing in an effort to support his false assertions that MP loaned him money. Given the nature and use of the forged documents, McGuire knew

¹⁵⁵ See FINRA Sanction Guidelines, at 6, 7 (Principal Considerations 10, 12).

¹⁵⁶ FINRA Sanction Guidelines, at 4.

¹⁵⁷ FINRA Sanction Guidelines, at 37.

that he lacked authority to sign, or transpose MP's signature onto, those documents or cause another person to do so.

Again, by this misconduct, McGuire has demonstrated that his continuing participation in the securities industry would pose an unacceptable risk of harm to investors and others.

McGuire is barred for forging or causing to be forged MP's signature.

C. Outside Business Activities

The applicable sanction guideline recommends fines of \$2,500 to \$50,000 and suspensions of up to 30 business days. When the outside business activities involve aggravating conduct, a longer suspension is recommended, and in egregious cases, a bar should be considered. Pertinent guideline-specific principal considerations include: (i) whether the outside activity involved firm customers; (ii) the extent of injury to customers; (iii) the duration of the outside activity, number of customers, and dollar volume of sales; and (iv) whether the respondent misled his firm about the existence of the activity or concealed it from the firm.¹⁵⁸

The first and second guideline-specific considerations are aggravating insofar as McGuire's RAM-related activities are concerned. McGuire convinced MP, a former customer, to write checks to RAM as an investment when, in fact, he used MP's funds for his own purposes. Thereafter, although MP repeatedly requested the return of her funds, McGuire refused her requests—resulting in a \$95,000 loss. The third guideline-specific consideration is aggravating with respect to all three of McGuire's outside businesses. McGuire failed to notify four different employer firms of his RAM-related activities, compensation, and/or positions for more than six years. He worked for Freedom Mortgage for well over one year without notifying MML, and, during three years of affiliation with SSU, he notified only one of his three employer

¹⁵⁸ FINRA Sanction Guidelines, at 13.

firms about SSU. The final guideline-specific consideration also is aggravating. While he was aware that Investacorp had conditioned his employment on cessation of all outside business activities, other than fixed insurance, and while he affirmatively represented that he would “immediately stop any outside business,” he continued his affiliations with RAM and SSU.

Turning to other considerations, we note that, rather than accepting responsibility for his misconduct, McGuire attempts to foist that responsibility onto others, particularly Napolitano. That McGuire refuses to acknowledge that he himself was responsible for complying with regulatory requirements significantly aggravates his misconduct.¹⁵⁹ It also is aggravating that McGuire engaged in numerous acts of misconduct.¹⁶⁰ He failed to give notice of three different outside business activities—in one instance, involving RAM, failing to properly notify and seek permission from four different employers. Finally, we conclude that McGuire’s repeated misconduct was in deliberate disregard of his regulatory obligations. When he joined TFS and Ameritas, he signed outside business request activity forms that were submitted to the firms on his behalf. Thus, he must have known that he needed to notify employers and seek authorization to engage outside business activities. His repeated failure to do so was at least reckless.¹⁶¹

We consider this an egregious violation and therefore conclude that a \$25,000 fine and a suspension of one year are warranted. Given his deliberate disregard of his regulatory obligations, we also would order McGuire to requalify by examination as an investment company products and variable contracts limited representative. We will not impose these sanctions, however, in light of the bars imposed for other violations.

¹⁵⁹ *Dep’t of Enforcement v. Eplboim*, No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *44-45 (NAC May 14, 2014) (citations omitted). Accordingly, it is not mitigating that McGuire’s supervisors knew about his outside business activities.

¹⁶⁰ FINRA Sanction Guidelines, at 6 (Principal Consideration 8).

¹⁶¹ FINRA Sanction Guidelines, at 7 (Principal Consideration 13).

D. Outside Brokerage Accounts

The sanction guideline for violations of NASD Rule 3050 recommends fines of \$1,000 to \$25,000 and, in egregious cases, suspensions of up two years or a bar.¹⁶² While guideline-specific considerations are inapplicable here, certain general principles significantly aggravate the severity of McGuire's misconduct. First, McGuire's false testimony notwithstanding, McGuire did not give verbal notice to Ameritas that he would be opening an account at Buckman to trade in penny stocks. Instead, McGuire affirmatively misled Ameritas about his Buckman account¹⁶³ by answering "no" to the question in his November 2010 annual compliance questionnaire concerning whether he had an ownership interest in an outside brokerage account, certifying that he would notify the compliance department of any changes to the information he had provided in the questionnaire, and then failing to notify the compliance department of the Buckman account less than two months later.¹⁶⁴

Second, as to both of his brokerage accounts, the misconduct was repeated—McGuire failed to notify three separate employers (TFS, Ameritas, and Investacorp) of outside brokerage accounts, and two separate broker-dealers maintaining accounts (E*Trade and Buckman) of his association with FINRA-member firms.¹⁶⁵ In addition, his failure to notify the firms maintaining his accounts of his employment was deliberate: he misrepresented his employment on the E*Trade account opening form and failed to disclose it on the Buckman account opening form, despite being aware that the form called for the disclosure. Finally, just as he attempted to shift his responsibility to give notice of his outside business activities onto Napolitano, so too does he

¹⁶² FINRA Sanction Guidelines, at 16.

¹⁶³ FINRA Sanction Guidelines, at 6 (Principal Consideration 10).

¹⁶⁴ CX-86, at 2 (6557); Tr. 644-645, 649 (Heilman).

¹⁶⁵ FINRA Sanction Guidelines, at 6 (Principal Consideration 8). McGuire's contrary assertions notwithstanding, it is not mitigating that McGuire failed to answer the question on the Buckman form as opposed to marking the box stating that he was not employed by a FINRA member.

attempt to transfer his responsibility to report outside brokerage accounts onto Napolitano. Particularly because we have concluded that McGuire lied when he testified that he informed Napolitano about the Buckman account, we consider significantly aggravating his failure to appreciate that his regulatory obligations are his to satisfy.

Based on the foregoing, the Hearing Panel concludes that a \$5,000 fine, a three-month suspension, and an order that McGuire requalify as an investment company products and variable contracts limited representative would appropriately remedy McGuire's misconduct. Because we have barred McGuire for other misconduct, however, we will not impose these sanctions.

E. Failure to Disclose Tax Liens

The sanction guideline for filing a false or misleading Form U4 suggests fines for individuals of up to \$50,000 and suspensions of five to 30 business days or, in egregious cases, longer suspensions of up to two years or a bar. Guideline-specific considerations include the nature and significance of the information at issue and whether the failure to disclose resulted in a statutorily disqualified person becoming or remaining associated with a firm.¹⁶⁶

Of the guideline-specific considerations, the nature and significance of the false information is aggravating. Disclosure of tax liens alerts firms to financial pressures a representative may be experiencing, which in turn may warrant heightened supervision, and allows a representative's clients to assess whether obligations to tax authorities have a bearing on the confidence they repose in the representative. It also permits regulators to determine a representative's continuing fitness to participate in the securities industry in light of his financial

¹⁶⁶ FINRA Sanction Guidelines, at 69-70.

issues.¹⁶⁷ Here, Investacorp made hiring McGuire contingent on, among other things, the removal of state and federal tax liens. His failure to ensure the truthfulness of his disclosure thus deprived the firm of the opportunity to make an informed assessment about whether to employ him. Then, for more than one year, McGuire continued to shirk his responsibility to ensure the accuracy of his Form U4, permitting the filing of four inaccurate amendments. Indeed, that the violative conduct was repeated is significantly aggravating.

Although we conclude that a fine of \$10,000 and a one-year all-capacities suspension would appropriately remedy this violative conduct, we will not impose these sanctions in light of the bars we have already imposed for other misconduct.¹⁶⁸

V. ORDER

For converting funds of a former client in violation of FINRA Rule 2010, Richard A. McGuire is barred from associating with any FINRA member firm in any capacity. He is further ordered to pay MP's estate restitution in the amount of \$95,000 (along with interest on any unpaid balance, starting on November 8, 2010, until paid in full).¹⁶⁹ Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2).¹⁷⁰ For forging or causing signatures on purported loan agreements to be forged in violation of Rule 2010, McGuire is barred from associating with any FINRA member firm in any capacity. In view of these bars, sanctions are not imposed for McGuire's engaging in outside business activities without providing written notice to his

¹⁶⁷ See *Mathis*, 2009 SEC LEXIS 4376, at *29.

¹⁶⁸ The Extended Hearing Panel has considered and rejects without discussion all other arguments of the parties.

¹⁶⁹ MP is identified in the addendum to this decision, which is served only on the parties.

¹⁷⁰ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter. In the event that the beneficiaries of MP's estate cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate New York State escheat, unclaimed-property, or abandoned-property fund. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Enforcement no later than 90 days after the date when this decision becomes final.

employer firms in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010; failing to give member firms required notice of outside brokerage accounts in violation of NASD Rule 3050 and FINRA Rule 2010; and willfully failing to disclose liens on his Form U4 in violation of FINRA Rules 1122 and 2010. For willful failure to disclose the liens, McGuire is subject to statutory disqualification.

McGuire also is ordered to pay costs in the amount of \$16,500.03, which includes hearing transcript costs and an administrative fee of \$750. These 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.

If this decision becomes FINRA's final disciplinary action, McGuire's bars shall become effective immediately.

EXTENDED HEARING PANEL.

Rada Lynn Potts
Hearing Officer

Copies to:

Richard A. McGuire (*via overnight courier and first-class mail*)
Randy Zelin, Esq. (*via email and first-class mail*)
Josefina Martinez, Esq. (*via email and first-class mail*)
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