NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. AURANGZEB RASHID PIRZADA (CRD #868883) Lockwood, CA, Respondent.	Disciplinary Proceeding No. C01020027 **Hearing Panel Decision** Hearing Officer— SW Dated: December 15, 2003

The Hearing Panel barred Respondent from associating with any member firm in any capacity and ordered Respondent to pay restitution to Ms. CC for violating Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, NASD Conduct Rules 2120 and 2110, or, alternatively, for violating Conduct Rule 2110, by omitting material information when Respondent recommended that Ms. CC sell securities in her 401(k) and IRA accounts and transfer the proceeds to him.

The Hearing Panel also fined Respondent $50,000 for violating NASD Conduct Rule 2110 and IM-1000-1, as alleged in counts one and two of the Complaint, by (i) failing to disclose his bankruptcy petitions, unsatisfied judgments, and civil lawsuits on a Form U-4, and (ii) failing to file a Form U-4 Amendment to disclose a subsequently filed lawsuit. The Hearing Panel found that Respondent's initial failure to disclose material information regarding his bankruptcy petitions, unsatisfied judgments, and civil lawsuits on his Form U-4 was willful within the meaning of Section 15(b)(4)(A) of the Securities Exchange Act of 1934.

Appearances

David A. Watson, Esq., and Lewis Taylor Egan, Esq., San Francisco, California, appeared on behalf of the Department of Enforcement.

Aurangzeb Rashid Pirzada appeared on his own behalf.

DECISION

I. Introduction

A. Complaint and Answer

On December 24, 2002, the Department of Enforcement ("Enforcement") filed a three-count Complaint against Respondent Aurangzeb Rashid Pirzada (the "Respondent"). Count one of the Complaint alleges that Respondent willfully made misrepresentations and omissions on the Form U-4 that he executed on July 15, 1998 to become registered with The Sun-noor Corporation ("Sunnoor"), in violation of NASD Conduct Rule 2110 and IM-1000-1. Count two of the Complaint alleges that Respondent willfully failed to amend his 1998 Form U-4, between May 31, 2000 and February 13, 2002, to include information that Ms. CC had initiated an investment-related lawsuit against him, in violation of Conduct Rule 2110 and IM-1000-1. Count three of the Complaint alleges that Respondent committed fraud in connection with his recommendation that Ms. CC sell her securities and transfer the proceeds to him, in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

Respondent filed an answer to the Complaint on January 21, 2003. In response to counts one and two of the Complaint, Respondent admitted that he failed to complete accurately the 1998 Form U-4 and failed to file an amendment to the 1998 Form U-4, but he argued that his failures were not willful, but honest mistakes.

In response to count three of the Complaint, Respondent emphatically denied that he committed fraud, arguing that Ms. CC was not his customer and that he did not sell securities to Ms. CC. Respondent claimed that his receipt of $76,265.02 from Ms. CC's

IRA account was a personal loan from Ms. CC to him. Respondent argued that he had not repaid Ms. CC's loan because Ms. CC rejected his offers to repay the loan in an effort to obtain more than the $76,265.02 plus interest to which she had agreed.

B. The Hearing

The Parties presented evidence to a Hearing Panel on April 29 and 30, 2003, in San Francisco, California.[1] The Hearing Panel consisted of two current members of the District 1 Committee and the Hearing Officer. At the Hearing, Enforcement presented four witnesses: (1) Respondent; (2) the complaining witness, Ms. CC; and (3) two NASD staff members, Daryl Cruz and Debra Pohlson. The Hearing Officer accepted the exhibits labeled CX-1--CX-21 offered by Enforcement. The Hearing Officer also accepted the exhibits labeled RX-1--RX-31 offered by Respondent, with the exception of Exhibits RX-27A and RX-28A. Post-hearing, the Hearing Officer accepted the declarations offered by Enforcement and Respondent.

II. Discussion

A. Jurisdiction

Article V, Section 4 of the NASD's By-Laws creates a two-year period of retained jurisdiction over former registered persons, covering misconduct occurring before the person's registration terminated. On February 13, 2002, Respondent's registrations as a general securities principal, general securities representative, and financial and operations principal of Sunnoor were terminated.[2] (CX-1, p. 3).

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[1] References to the testimony set forth in the transcript of the April 29, 2003 Hearing will be designated as "Vol. I Tr. p.", and the transcript of the second day of the Hearing on April 30, 2003 will be designated as "Vol. II Tr. p." References to the exhibits presented by Respondent will be designated as "RX-," and references to the exhibits presented by Enforcement will be designated as "CX-."

[2] Sunnoor became a member of NASD on March 30, 1999. (Vol. I Tr. p. 51). On February 13, 2002, Sunnoor's NASD membership was cancelled for failure to pay fees. (Id.).

Enforcement filed the three-count Complaint on December 24, 2002, within two years of the February 13, 2002 termination of Respondent's registration with an NASD member firm, and the Complaint alleges misconduct occurring before Respondent's registration terminated.[3] Accordingly, NASD has jurisdiction over Respondent.

B. Filing a False Form U-4 and Failing to File a Form U-4 Amendment as Required

1. Respondent Failed to Disclose Bankruptcy Petitions, Unsatisfied Judgments, and Two Civil Lawsuits on his 1998 Form U-4

Count one of the Complaint alleges that Respondent willfully made misrepresentations and omissions on the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that he executed on July 15, 1998 to become registered with Sunnoor, in violation of NASD Conduct Rule 2110 and IM-1000-1.[4]

Question 22L on the 1998 Form U-4 asked, "Within the past 10 years have you, or based upon events that occurred while you exercised control over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?" (CX-2, p. 3).

On November 2, 1992, Respondent filed a Chapter 7 bankruptcy petition in the Northern District of California. (CX-3, p. 2). On July 8, 1997, Respondent filed a Chapter 11 bankruptcy petition in the Central District of California. (CX-3).

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[3] Respondent testified that he filed a BDW to withdraw Sunnoor from NASD membership on January 11, 2002. (Vol. I Tr. pp. 105-106; RX-25). Under Article IV, Section 5 of the NASD's By-Laws, a member's resignation "shall not take effect until 30 days after receipt thereof by NASD and until all indebtedness due the NASD from such member shall have been paid in full . . ." Even if Sunnoor resigned its membership effective January 11, 2002, the Complaint was timely filed within two years of the January 11, 2002 withdrawal.

[4] Respondent filed the 1998 Form U-4 with NASD on July 28, 1998, while Sunnoor's BD application was pending. (CX-8, p. 1). On March 30, 1999, concurrent with Sunnoor becoming a member of NASD, NASD approved Respondent's registration as a general securities principal, a general securities representative, and a financial operations principal with Sunnoor. (Vol I Tr. p. 51; CX-1, p. 3).

Nevertheless, Respondent answered "no" to Question 22L on his 1998 Form U-4. (CX-2, p. 3). Respondent explained that he answered "no" because he misread Question 22L as asking whether Sunnoor ever filed a bankruptcy petition. (Vol. I Tr. p. 98). Respondent also testified that because he believed the question was ambiguous he contacted someone at NASD who gave him incorrect information before he completed Sunnoor's Form BD and his Form U-4. (Vol. II Tr. pp. 22-23). Respondent also testified as to other instances in which he contacted regulatory agencies before completing a form to establish his practice of making inquiries with the proper authorities. (Vol. II Tr. pp. 23-26, 35).

Question 22K of the 1998 Form U-4 asked, "Do you have any unsatisfied judgments or liens against you?" (CX-2, p. 3). Respondent's Chapter 11 bankruptcy petition disclosed six unsatisfied judgments, which remained pending as of July 15, 1998. (CX-4, pp. 4-5). Nevertheless, Respondent answered "no" to Question 22K.[5] (CX-2, p. 3).

Question 22H(1)(a) of the 1998 Form U-4 asked, "Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which is still pending?" (CX-2, p. 3).

The 1997 bankruptcy filing disclosed that two individuals, Ms. R and Mr. F, had filed civil lawsuits against Respondent alleging fraud, which were still pending. (CX-5; CX-6). On December 1, 1995, Ms. R filed a lawsuit regarding her February 1, 1991

[5] The Bankruptcy Court did not issue a final decree terminating Respondent's bankruptcy until March 27, 2003. (RX-21).

agreement to purchase 10,000 shares of stock in A.R. Pirzada Securities, Inc. ("A.R. Pirzada"), a predecessor securities firm owned by Respondent. (CX-5). On January 26, 1996, Mr. F filed a cross-complaint against Respondent alleging breach of contract, breach of fair dealing, fraud, imposition of constructive trust, and intentional infliction of emotional distress concerning Mr. F's investment in A.R. Pirzada. (CX-6).

Mr. Cruz, the NASD investigator, testified that a "sales practice" means any securities-related transaction. (Vol. I Tr. p. 88-89). The instructions to the Form U-4 state that "investment-related" pertains to securities, commodities, banking, insurance, or real estate (including but not limited to acting or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank or savings association).

Nevertheless, Respondent answered "no" to Question 22H(1)(a). (CX-2, p. 3). Respondent testified that the civil lawsuits filed by Ms. R and Mr. F were disputes with his stockholders in A.R. Pirzada. (Vol. I Tr. p. 101). In Respondent's view, the lawsuits were not sales practice lawsuits within the meaning of Question 22H of the Form U-4, in part, because the shares of stock of A.R. Pirzada had been sold as exempt securities. (Vol. I Tr. p. 102).

Respondent admitted that he "may have made a mistake or two here and there" in completing the Form U-4. (Vol. II Tr. p. 24). However, he denied that any mistake was "deliberate" or "calculating." (Id.).

2. Respondent Failed to file a Form U-4 Amendment as Required to Disclose Ms. CC's Lawsuit

Article V, Section 2(c) of the NASD By-laws provides that every application for registration filed with NASD shall be kept current at all times by supplementary

amendments, via electronic process or such other process as NASD may prescribe to the original application. Such amendment to the application shall be filed with NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment. Accordingly, the Form U-4 explicitly provides that applicants are under a continuing obligation to amend and update information required by the Form U-4 as changes occur.

As discussed above, Question 22H(1)(a) of the 1998 Form U-4 asked "Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which is still pending?" (CX-2, p. 3).

On May 30, 2000, Ms. CC filed a civil lawsuit against Respondent, alleging that he had engaged in fraud. (CX-7). In a June 10, 2000 letter, Respondent wrote the NASD staff regarding Ms. CC's lawsuit. (Vol. II Tr. pp. 13-14). However, there is no record of Respondent filing a Form U-4 Amendment with NASD after the May 30, 2000 civil lawsuit. (Vol. I Tr. pp. 55-56; CX-8).

Mr. Cruz testified that at Respondent's November 9, 2000 on-the-record interview, Respondent stated that he would amend his Form U-4. (Vol. I Tr. pp. 57-58). Respondent admitted that he failed to file an amendment to his Form U-4. (Vol. II Tr. p. 122). Respondent testified that after the November 9, 2000 on-the-record interview with the NASD staff, he attempted to file a Form U-4 Amendment on December 19, 2001, but when it failed to be accepted, he took no further steps to file the Form U-4 Amendment. (Vol. II Tr. pp. 121-122).

3. Violations of Conduct Rule 2110 and IM-1000-1

The SEC has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade to which every person associated with any NASD member is held.[6] IM-1000-1 provides that "[t]he filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade. . ."

The evidence is undisputed, and Respondent admits, that he failed to disclose the two bankruptcy petitions, the unsatisfied liens, and the investment related litigation on his 1998 Form U-4. The Form U-4's questions clearly called for disclosure of the two bankruptcy petitions, the unsatisfied liens, and the investment related litigation. Accordingly, Respondent executed and filed a Form U-4 that contained material misleading information, in violation of NASD Conduct Rule 2110 and IM-1000-1, as alleged in count one of the Complaint.

With respect to count two of the Complaint, the evidence is also undisputed, and Respondent admits, that he failed to file a Form U-4 Amendment to disclose the lawsuit filed by Ms. CC. Respondent's failure to file a Form U-4 Amendment also violated NASD Conduct Rule 2110 and IM-1000-1.

[6] Robert E. Kauffman, Exchange Act Rel. No. 33219 (Nov. 18, 1993), aff'd, Robert E. Kauffman v. S.E.C., 40 F.3d 1240 (3rd Cir. 1994).

4. Respondent's Execution of his 1998 Form U-4 was Willful

Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact which is required to be stated" in that application is statutorily disqualified from participating in the securities industry. The respondent does not have to intend to violate a specific rule or law; rather, the Hearing Panel must determine "whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper." The term "willfully" requires proof that the respondent acted intentionally in the sense that he was aware of what he was doing.[7]

Respondent argued both that he relied on inaccurate information that he was given by NASD when he contacted NASD before completing the Form U-4, and that he simply made honest mistakes in completing the Form U-4.

The Form U-4 and its instructions clearly designate Respondent as the "applicant" and clearly call for the information that Respondent omitted. In addition, the Hearing Panel finds that, in view of Respondent's experience, Respondent should have known that he was the applicant on the Form U-4, and should have known that his bankruptcy petitions, the unsatisfied judgments, and the civil lawsuits needed to be disclosed. When Respondent completed the 1998 Form U-4, he had been in the securities industry for nineteen years, a highly regulated industry that emphasizes the importance of accurately

[7] Christopher LaPorte, Exchange Act Rel. No. 39,171, 1997 SEC LEXIS 2058 at *8 (Sept. 30, 1997) and Arthur Lipper Corp. v. S.E.C., 547 F.2d 171, 180 (2d Cir. 1976).

completing applications.[8] (CX-8, p. 2). Accordingly, the Hearing Panel finds that Respondent's failure to provide correct material information on three separate questions on his 1998 Form U-4 was willful.

Because the Hearing Panel found that Respondent's filing of the original 1998 Form U-4 was willful, it was not necessary to determine whether Respondent's failure to file a Form U-4 Amendment was also willful.

C. Material Misrepresentations and Omissions

Count three of the Complaint alleges that Respondent committed fraud in connection with his inducing Ms. CC to sell securities in her 401(k) account and in her IRA account, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

1. Respondent's Recommendation that Ms. CC sell her Securities and Transfer the Funds to Respondent

On March 20, 2000, Respondent contacted Sanderling Ventures ("Sanderling"), a biomedical venture capital company, to discuss the possibility of Sanderling financing Pirzada Cosmetics and Aromatherapy, LLC ("Pirzada Cosmetics"). (CX-9, p. 1; Vol. I Tr. pp. 115-116). Ms. CC was the executive assistant to Mr. FM, a general partner at Sanderling, and answered Respondent's telephone call. (Id.)

After their initial contact, Ms. CC advised Respondent that she was seeking new employment. (Vol. I Tr. p. 121). Ms. CC told Respondent that she had a sales and marketing background. (Id.). On March 28, 2000, Respondent executed a letter of intent on behalf of Pirzada Cosmetics to employ Ms. CC. (Vol. I Tr. p. 122; CX-9, p. 68).

[8] Respondent initially joined the securities industry on July 27, 1979, when he joined Paine, Webber, Jackson & Curtis Incorporated. (CX-8, p. 2).

Respondent incorporated Pirzada Cosmetics to market the health benefits of a plant known as "Blue Curls." (Vol. I Tr. pp. 25-26).

Ms. CC testified that, in a subsequent conversation, Respondent suggested that she transfer her retirement funds to an IRA account that he would manage. (CX-9, p. 6). Ms. CC's retirement funds were in a 401(k) account managed by Fidelity Investments Institutional Services Company ("Fidelity"). (CX-9, pp. 4-5). Respondent advised Ms. CC that he could manage her 401(k) funds better than Fidelity. (Id.). Respondent admitted that he suggested that Ms. CC sell the shares of Applied Materials, Inc. ("Applied Materials") in her 401(k) account. (Vol. I Tr. p. 32-33).

On April 12, 2000, on Respondent's recommendation, Ms. CC sold 431.151 shares of Applied Materials for $35,513.91 in her 401(k) account, and purchased shares of the Fidelity Retirement Government Money Market ("Fidelity Money Market") fund. (Vol. II Tr. pp. 56-57; CX-9, pp. 70, 73). In addition, on April 12, 2000, Ms. CC sold 40.377 shares of the Fidelity Equity Income fund for $2,102.03 and purchased additional shares of the Fidelity Money Market fund. (CX-9, p. 74).

On April 13, 2000, Ms. CC terminated her 401(k) account and transferred the assets of her account to an IRA account in her name at Fidelity. (CX-9). The transfer included: (i) $37,672.32 in cash from the sale of shares of the Fidelity Money Market fund; (ii) 147.106 shares of the Fidelity Magellan fund; and (iii) 674 shares of stock of Applied Materials. (CX-9, p. 76).

On April 18, 2000, Ms. CC authorized the sale of 400 shares of Applied Materials in her IRA account for total proceeds of $38,607.70. (CX-9, p. 77). On the April 24,

2000 settlement date, Ms. CC had in her IRA account cash proceeds of $76,280.02 and 147.106 shares of the Fidelity Magellan fund. (CX-9, pp. 83-84).

On April 24, 2000, Respondent accompanied Ms. CC to Fidelity's office and provided the account number to transfer her $76,265.02 from Ms. CC's Fidelity IRA account to the bank account of Pirzada Cosmetics at Community Bank.[9] (Vol. II Tr. pp. 102-103; RX-4). Respondent admitted that he counseled Ms. CC to sell her securities in her 401(k) and IRA accounts, and anticipated that she would then have funds available to loan to him. (Vol. 1 Tr. p. 32).

Ms. CC testified that Respondent telephoned her at work repeatedly to recommend that she transfer her 401(k) retirement account to him so that he could manage it on her behalf. (CX-9, p. 7). Ms. CC testified that she reluctantly transferred her funds to Respondent with the expectation that Respondent would manage her funds in an IRA account at Sunnoor. (Vol. I Tr. pp. 128, 133). Ms. CC stated that she had thought she could trust Respondent to manage her money because he was a licensed investment banker and she was going to work for him. (CX-9, p. 7). Ms. CC also stated that she told Respondent she would allow him to manage part of her funds for a couple of months to see how Respondent's recommendations performed and if the performance was unacceptable, she would transfer the funds back to Fidelity. (Id.).

Respondent denied that he had agreed to manage Ms. CC's funds. (Vol. II Tr. pp. 57-59). Respondent testified that initially Ms. CC was going to invest in Pirzada Cosmetics but ultimately decided to loan the money directly to Respondent. (Id.). The

[9] Before the transfer of $76,265.02 to Pirzada Cosmetics' account at Community Bank, the account had a balance of $.04. (CX-10, p. 1; CX-11, p. 1).

Hearing Panel found Ms. CC's explanation that she intended for Respondent, a licensed broker, to manage the majority of her life savings in an IRA account after knowing him for approximately 30 days more credible than Respondent's explanation that Ms. CC initially wished to invest the majority of her life savings in a high-risk company that had no cash and then decided to loan the funds to Respondent.

Both Respondent and Ms. CC testified that Respondent did not disclose to Ms. CC that he was in bankruptcy. (Vol. I Tr. p. 137; Vol. II, Tr. pp. 115, 117). At the Hearing, Respondent admitted that in order to repay Ms. CC her money in 60 days, consistent with his explanation that Ms. CC agreed to loan him the funds for 60 days, his bankruptcy would have to be discharged. (Id.).

Subsequently, on April 28, 2000, Ms. CC drove to King City, California and met with Respondent. (CX-9, pp. 14-15). At the April 28, 2000 meeting, Respondent told Ms. CC that he intended to use the money for personal expenses, including a deposit to his clearing firm.[10] (Vol. I Tr. pp. 142, 228). Ms. CC requested that Respondent return her money.[11] (Id.).

Respondent refused to return her money and indicated that he would return it in 60 days.[12] In a May 3, 2000 letter, Respondent acknowledged that Ms. CC had requested that

[10] On April 27, 2000, Respondent wrote a $10,007.50 cashier's check on Pirzada Cosmetics' Community Bank account to Emmett A. Larkin Company, Inc. ("Emmett Larkin"), the clearing agent for Sunnoor, Respondent's broker-dealer. (CX-10, p. 1; CX-1, p. 41).

[11] Respondent admitted that Ms. CC requested that he return her money about four days after she had authorized the money to be wired to his account. (CX-9, p. 89).

[12] At the April 28, 2000 meeting, Ms. CC signed a "Memorandum of Understanding and Agreement." (RX-2). The terms of the "Memorandum of Understating and Agreement" stated that Ms. CC would invest $77,000 (sic) for the duration of 60 days, secured by $100,000 worth of Series A Preferred Stock of Pirzada Cosmetics, which Respondent promised to redeem at 12% interest. (Id.). Respondent also gave Ms. CC a post-dated check in the amount of $2,000 drawn on the Pirzada Cosmetics' account in which Ms. CC's funds had been deposited. (RX-3). Ms. CC testified that she executed the document in a

Respondent return her money.[13] (CX-9, p. 89). To date, Respondent has not returned Ms. CC's funds.[14] (Vol. I Tr. p. 146).

2. Respondent's Conduct Constituted Fraud

The Complaint alleges that Respondent's conduct violated Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Rule 2120. Section 10(b) of the Exchange Act[15] makes it unlawful "to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention" of the SEC rules and regulations. SEC Rule 10b-5 provides in part that "[i]t shall be unlawful for any person, directly or indirectly, . . . (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading." Conduct Rule 2120, NASD's anti-fraud rule, provides that no member shall effect any transaction in, or induce the purchase or sale of any security, by means of any manipulative, deceptive, or fraudulent device.[16]

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misguided attempt to create written documentation that Respondent had her funds. (Vol. II Tr. pp. 228-229). The Hearing Panel found Ms. CC's testimony in this regard to be credible.

[13] On Friday, May 5, 2000, Respondent transferred an additional $40,000 from Pirzada Cosmetics' Community Bank account to Pirzada Cosmetics' account at Sunnoor's clearing agent, Emmett Larkin (CX-21, p. 1).

[14] Rather than repay Ms. CC, Respondent sued Ms. CC for breach of written contract, conversion, and slander. (RX-10; RX-10A). Respondent testified that he had to pay his creditors the full amount owed rather than the 80 cents on the dollar that they had originally agreed because of Ms. CC's actions. (Vol. II Tr. pp. 173-174).

[15] 15 U.S.C. §78(j)(b).

[16] Prime Investors, Inc., Exchange Act Release No. 38487, 1997 SEC LEXIS 761, at *24 (Apr. 8, 1997). (making material misstatements of fact in connection with a sale of a security is a violation of Conduct Rule 2120).

In order to find a violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rule 2120, there must be a showing that: (1) misrepresentations and/or omissions were made; (2) the misrepresentations and/or omissions were material; (3) the misrepresentations and/or omissions were made with requisite intent, i.e., scienter;[17] and (4) the misrepresentations and/or omissions were made in connection with the purchase or sale of securities.[18]

In connection with the recommended sale of the securities in her 401(k) and IRA accounts, based on the testimony of Ms. CC, the Hearing Panel finds that Respondent represented to Ms. CC that he would manage the proceeds in an account for Ms. CC at Sunnoor. The Hearing Panel also finds that Respondent told Ms. CC that the recommended sale of securities and subsequent transfer of funds were to fund her account at Sunnoor. These statements were false.

Respondent misrepresented his intended use of the funds and, in touting his expertise as a financial advisor, he omitted to disclose his bankruptcy. The misrepresentations and omissions were material.[19] Ms. CC would not have authorized the sale of the shares of Applied Materials and Fidelity Money Market funds, if she had known (1) that the money was to be used for the personal expenses of Respondent, or (2) despite Respondent's alleged financial expertise, he was in pending bankruptcy. Respondent

[17] See Aaron v. SEC, 446 U.S. 680, 686-87, n. 5 (1980); Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

[18] For Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder, the transactions must also involve interstate commerce or the mails, or a national securities exchange. Respondent used a means and instrumentality of interstate commerce when he communicated with Ms. CC via telephone. See SEC v. Hasho, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992), 1992 U.S. Dist. LEXIS 1322 at **148-149 (S.D.N.Y. Feb. 14, 1992).

[19] It is well established that "an omission or misstatement is material if a substantial likelihood exists that a reasonable investor would find the omitted or misstated fact significant in deciding whether to buy or sell a security and on what terms to invest in the securities." Basic, Inc. v. Levinson, 485 U.S. 224, 230-32 (1988) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)).

made the misrepresentations and omissions with scienter.[20] Respondent intentionally failed to tell Ms. CC of his pending bankruptcy, and he misrepresented his intended use of the funds until after he had possession of her funds.

Contrary to Respondent's argument that there was no fraud because he did not sell a security to Ms. CC, the misrepresentations and omissions were made in connection with a sale of securities in Ms. CC's 401(k) and IRA accounts.[21]

Consequently, the Hearing Panel finds that Respondent's conduct constituted fraud, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rule 2120.

3. Even Assuming the Truth of Respondent's Explanation, Respondent's Conduct Constituted Unethical Conduct in Violation of NASD Conduct Rule 2110

Respondent claimed that Ms. CC loaned him money in connection with her employment at his new corporate entity, and that he offered to repay the loan when she decided not to take the job. Respondent further claimed that he had not

[20] Scienter is established by a showing that a respondent acted intentionally or with severe recklessness. Severe recklessness is limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it. See Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067 (5th Cir. 1994), 1994 U.S. App. LEXIS 3326, at *14 (5th Cir. Feb. 24, 1994).

[21] In SEC v. Zanford, 535 U.S. 813 (2002), a stockbroker was alleged to have sold his customer's securities and used the proceeds for his own benefit, without the customer's knowledge or consent. The stockbroker argued that his fraud lacked the requisite connection with the purchase or sale of a security because the sales of securities were merely incidental to a fraud that involved absconding with the proceeds of the sales. In Zanford, the Supreme Court stated, "While the statute must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of §10(b), neither the SEC nor this Court has ever held that there must be a misrepresentation about the value of a particular security in order to run afoul of the Act." The Supreme Court stated that the securities sales and the broker's fraudulent acts were not independent events, but, in fact, coincided with each other because each sale was made to further the broker's fraudulent scheme.

repaid Ms. CC because she sued him in an attempt to gain access to his considerable assets at the time.[22]

NASD Conduct Rule 2110 states, in its entirety, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." Conduct Rule 2110 "is not limited to rules of legal conduct but rather . . . it states a broad ethical principle."[23] Consequently, other types of violations, such as failures to honor obligations imposed by private contracts, are viewed as violations of Conduct Rule 2110 if the surrounding facts and circumstances indicate that the conduct was unethical.

The Rule's language requires that two tests be met: (1) the misconduct occurred "in the conduct of" the respondent's business; and (2) the misconduct contravened high standards of commercial honor or violated just and equitable principles of trade. Respondent admitted that one of the reasons he needed to borrow funds was to enable his brokerage business to meet the minimum requirements of his clearing broker.[24] With respect to contravening high standards of commercial honor, the test is whether the representative's misconduct "reflects directly on [his] ability to comply with regulatory

[22] At the time of his bankruptcy filing, Respondent owned real estate initially valued at $778,000; but a portion of the real estate was sold for $925,000. (CX-4, p. 2; RX-8). Respondent testified that it was $600,000 Chapter 11 bankruptcy proceeding, and he paid out $1,161,000 to creditors. (Vol. II Tr. p. 81).

[23] In re Timothy L. Burkes, 51 S.E.C. 356 (1993), aff'd mem., Burkes v. SEC, 29 F.3d 630 (9th Cir. July 24, 1994).

[24] Respondent testified that he "really wanted to proceed with [his] stock brokerage business." (Vol. II Tr. p. 56). Respondent used approximately $10,000 of Ms. CC's funds to make a deposit with Emmett Larkin on behalf of Sunnoor. (CX-11, p. 41; Vol I Tr. pp. 66-67). Sunnoor needed the $10,000 to fund the initial deposit that it was required to have to establish a clearing arrangement. (Vol. I Tr. pp. 66-67). Respondent used $40,000 to establish and trade in a securities account for Pirzada Cosmetics. (CX-21, p. 1).

requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."[25]

Respondent's solicitation of a loan from Ms. CC without disclosing that he was currently in bankruptcy, and would not have the funds to repay the loan until the bankruptcy was completed, is sufficient to support a finding that Respondent's conduct failed to meet the high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110. Respondent argued that Ms. CC had the opportunity to ask any questions that she wanted, but the Hearing Panel finds that Respondent had an affirmative ethical obligation to disclose material information concerning his ability to repay the loan.

The Hearing Panel finds that Respondent's misconduct occurred in the conduct of his business and unquestionably called into doubt his ability to fulfill his fiduciary responsibilities in handling other people's money. Consequently, the Hearing Panel finds that Respondent's conduct constituted unethical business related conduct and violated NASD Conduct Rule 2110.

III. Sanctions

A. Misrepresentations and Omissions

For intentional or reckless misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine ranging from $10,000 to $100,000, and a suspension for a period of 10 business days to two years, or in egregious cases, a bar from association with any NASD member.[26] The NASD Sanction Guidelines also recommend

[25] James A. Goetz, Exchange Act Rel. No. 39796 (Mar. 25, 1998).

[26] NASD Sanction Guidelines, p. 96 (2001).

that adjudicators order restitution where an identifiable person has suffered a quantifiable loss as a result of a respondent's misconduct.[27]

Enforcement argued, and the Hearing Panel finds, that Respondent's misconduct was egregious. Respondent's misconduct was intentional, as he knew or should have known that the omission of the information concerning his pending bankruptcy was material and should have been disclosed. Respondent's willingness to acquire a sum of money through questionable means indicates a troubling disregard for basic principles of ethics and honesty. Because of Respondent's continued failure to accept responsibility for his misconduct and his continued failure to repay Ms. CC her funds, the Hearing Panel finds that a bar is necessary "to protect the investing public."[28]

Accordingly, the Hearing Panel accepts Enforcement's recommendation, bars Respondent, and orders Respondent to pay $76,265.02 plus interest from April 24, 2000 as restitution to Ms. CC.

B. False Form U-4s

For filing a false, misleading, and inaccurate Form U-4, the NASD Sanction Guidelines recommend a fine ranging from $2,500 to $50,000, as well as the consideration of a 5 to 30 business-day suspension in all capacities.[29] In egregious cases, such as those involving habitual misconduct, the Guidelines suggest a longer suspension of up to two years, and possibly even a bar.[30]

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[27] Id. at 6.

[28] Id. at 3 (stating that one of NASD's responsibilities in imposing sanctions is "to protect the investing public").

[29] Id. at 77.

[30] Id. at 78.

A Form U-4 is fundamental to the business and integrity of the securities industry. It is "used by all the self-regulatory organizations, including the NASD, state regulators, and broker-dealers to monitor and determine the fitness of securities professionals,"[31] and "serves as a vital screening device for hiring firms and the NASD against individuals with 'suspect history.'"[32] "The candor and forthrightness of applicants is critical to the effectiveness of this screening process."[33] This is far more than a mere technical violation: "[a] material misrepresentation on a Form U-4 is a serious offense."[34]

In this case, Enforcement requested that the Hearing Panel fine Respondent $25,000 for count one of the Complaint, and an additional $25,000 for count two of the Complaint.

Finding that Respondent's conduct reflected irresponsibility with respect to the Form U-4 requirements, which are indispensable to the regulatory surveillance of registered individuals and the protection of investors, the Hearing Panel decided to accept Enforcement's recommendation. Accordingly, the Hearing Panel fines Respondent $25,000 for count one of the Complaint, and an additional $25,000 for count two of the Complaint. In light of the bar, however, the fines will be due and payable when and if Respondent seeks to return to the securities industry.

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[31] In re Rosario R. Ruggiero, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

[32] District Business Conduct Committee v. Prewitt, No. C07970022, 1998 NASD Discip. LEXIS 37, at *8 (NAC Aug. 17, 1998). See also, e.g., In re Thomas R. Alton, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995).

[33] Alton, 1995 SEC LEXIS 1975, at *4. See also, e.g., District Business Conduct Committee v. Perez, No. C10950077, 1996 NASD Discip. LEXIS 51, at *7 (Nov. 12, 1996) ("Full and accurate disclosures on a Form U-4 are critical to the securities industry because member firms must be able to assess properly whether an individual should be employed, and, if so, subject to enhanced supervision.").

[34] Alton, 1995 SEC LEXIS 1975, at *4.

IV. Order

Respondent Pirzada is barred from association with any NASD member firm in any capacity for committing fraud, or in the alternative, for engaging in unethical conduct as alleged in count three of the Complaint. Respondent is also directed to pay restitution to Ms. CC in the amount of $76,265.02, plus interest from April 24, 2000 calculated in accordance with the rate set forth in Section 6621 of the Internal Revenue Code (26 U.S.C. §6621(a)(2)).

In addition, Respondent Pirzada is fined $50,000 (due and payable when and if Respondent seeks to return to the securities industry) for filing a false Form U-4 with NASD and for failing to amend his Form U-4 in violation of NASD Conduct Rule 2110. Respondent is ordered to pay costs in the total amount of $3,179, which include an administrative fee of $750 and hearing transcript costs of $2,429.

The restitution and sanction shall become effective on a date set by NASD but not earlier than 30 days after the date that this Decision becomes the final disciplinary action of the NASD. The bar will become effective immediately upon this Decision becoming the final disciplinary action of NASD.[35]

HEARING PANEL

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By: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
December 15, 2003

[35] The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Copies to:

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