

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CAF000030
	:	
	:	Hearing Officer - JN
v.	:	
	:	
MANUEL M. BELLO	:	<b>AMENDED HEARING PANEL</b>
(CRD #1557140)	:	<b>DECISION<sup>1</sup></b>
	:	
Kinnelon, NJ,	:	August 27, 2001
	:	
	:	
Respondent.	:	

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**Registered representative failed to respond completely to staff requests for information, made pursuant to Rule 8210. As sanctions, he was barred in all capacities, subject to a condition that production of the requested documents would convert the bar into a 120-day suspension. Respondent was also ordered to re-qualify (if he is not barred) and to pay costs.**

**Appearances**

For the Complainant: David R. Sonnenberg, Jaya B. Gokhale, and Rory C. Flynn

For the Respondent: Robert Ouriel

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<sup>1</sup> As noted in Enforcement's August 27, 2001 Motion for Modification, the conditional sanction set out in the August 16, 2001 Decision inadvertently overlooked the fact that in addition to certain wire instructions, Respondent had also failed to produce certain bank account statements. This Amended Decision corrects the prior Decision by adding the requirement that he also produce such bank account statements in order to convert the imposed bar into a suspension.

## DECISION

### I. Introduction

The Department of Enforcement's Complaint, filed on July 14, 2000, alleged that Respondent Bello, while associated with Lloyd Wade Securities, Inc., a member firm, failed to respond completely to a staff request for information, made pursuant to Rule 8210. Bello answered and requested a hearing. By joint motion filed on December 4, 2000, Respondent stipulated to his liability as alleged in the Complaint, and the parties requested that the hearing be limited to the question of sanctions.

On May 11, 2001, a Hearing Panel, composed of two current members of the Association's District 9 Committee and a Hearing Officer employed by NASD Regulation, conducted the hearing in Philadelphia, Pennsylvania. Enforcement introduced fifteen exhibits and the testimony of a compliance examiner. Respondent testified on his own behalf.

### II. Factual Background

#### A. Enforcement's Case

The NASD Regulation staff was investigating Lloyd Wade Securities' participation in "suspicious trading activity and unusually high trading volume," involving two issuers (Tollycraft and NetBet) with which the firm had an investment banking relationship and in whose stocks it made a market (Tr. 31-32). The staff viewed these activities as potential violations of NASD rules and of the federal securities laws (Tr. 31). Mr. Bello, a General Securities Representative and General Securities Principal with Lloyd Wade, was co-owner of the firm's Office of Supervisory Jurisdiction in West Patterson, New Jersey, where the majority of the suspicious trades occurred (CX-15; Tr. 32). The investigators believed that Respondent was instrumental in bringing NetBet to Lloyd Wade; learned that his New Jersey office was "actively selling" NetBet

to its customers; and were examining the possibility that issuers were paying the firm for its market making and sales activities (Tr. 65-66, 70, 139).

In an effort to trace money coming into and going out of the firm, the staff, acting under Rule 8210, issued a request to Bello on June 7, 1999 for production of certain bank statements and wire instructions (CX-5; Tr. 34). The request sought production by June 21, as preliminary to an interview with Respondent. He produced nothing by June 21 and later explained at the June 25 interview that the delay was attributable to the bank, but that “I should have everything in short order” (Tr. 35; CX-4, p. 4).

The staff reiterated its June 7 request in a letter dated July 8 (CX-5). After continuing to receive nothing, the staff sent a “Wells” letter to Bello on August 13, 1999, stating that it was contemplating a disciplinary proceeding for his failure to produce the requested documents (CX-6). Respondent’s counsel replied, stating that he expected production to occur on September 15 (CX-7; Tr. 43-44).

On September 15, 1999, Bello gave the staff monthly statements for two of the six bank accounts used by his New Jersey office, but he submitted none of the requested wire instructions (Tr. 44-45). The investigator stated that “[t]he wire instructions were completely missing and there were monthly statements for four other accounts that were also completely missing” (Tr. 45). On September 20, the staff sent a letter demanding production of the missing wire instructions (CX-9). On September 27, Bello’s counsel replied, stating, for the first time, that he was unclear as to the meaning of “wire instructions” (Tr. 46-47). The staff’s letter of September 28 furnished additional details as to the request for those instructions (CX-10). On November 4, the staff wrote to Respondent’s counsel, referring to the continuing failure to respond fully to the original (June 7) request and demanding production of the missing account statements and wire

instructions (CX-11). By reply dated November 15, Bello's counsel advised that his client had requested the material from the banks and that their retrieval would take two to six weeks (CX-12).

On March 14, 2000, the staff received "another partial production" from Bello, consisting of monthly account statements for two more of the accounts (Tr. 50). Again the staff received none of the requested wire instructions (Id.). Thus, as of the date of the hearing, the staff had received "monthly statements for four out of the six accounts" but had "not received wire instructions from any of those six accounts" (Tr. 51). Through this partial production, the staff learned that over \$800,000 had been transferred into the accounts by wire, much of which came from Lloyd Wade. Another six or seven transfers, totaling \$50,000 to \$70,000, came from elsewhere (Tr. 55, 79, 123). Without the requested wire instructions, the staff was unable to determine the source of those transfers, which occurred during the time that Lloyd Wade had an investment banking relationship with NetBet, the issuer (Tr. 53-55, 70, 123, 140). The investigator testified that Bello's non-production "delayed our investigation by not having the information and it also prevented us from being able to learn the financial activity of the firm" (Id.).

B. Respondent's Testimony

Respondent testified extensively as to his actions and motivations. He denied having taken anything from the issuers for promoting their stock and said that the staff's pursuit of him and the pendency of this disciplinary proceeding have left him deeply in debt, out of the industry for over a year, and facing friction between himself, his wife, and their young children (Tr. 149, 152, 157, 159, 167, 178).

He repeatedly complained that he could never obtain assurance from the staff that turning over the documents would bring some kind of closure to the investigation (Tr. 152-153, 202, 204-205, 225). He believed that if he produced the documents, the NASD would go after something else in an effort to “bury” him (Tr. 209).

Bello further testified that some delay in producing the bank account statements was due to the fact that his bank was preoccupied with a merger (Tr. 161). After obtaining the account statements, which fully disclosed the existence of wire transfers, the bank looked at him “like I was crazy” when he asked for the wire instructions (Tr. 175). The bank told him as to the documents “they’re in some back warehouse, we have just merged and basically, all the wire instructions are on the statements, what more do they want?” (Tr. 190). He was reluctant to press the matter because the bank had already given him difficulty and he was concerned that demanding more from this small bank in a small neighborhood, where everyone knew everyone, might produce rumors (Tr. 162, 175). He also knew that he had given the staff the account statements, had highlighted the wire transfers, and insisted that he had nothing to hide (Tr. 164, 175).

When asked on cross-examination why he then did not simply turn over the documents, Bello said “[b]ecause one, there’s no foreseeable end to this, okay that’s number one. And number two, my bank is a local small bank and it’s a pain to get them, and I’ve provided all the wires and ... [the] transactions [were] in there” (Tr. 185). He re-stated the position, “I still have to go into my local bank, which was a little hole in the wall bank, and I’ve got to ask them and I’ve got to get them reproduced and it takes time and it’s a big pain, and number two, there’s no end. You guys can’t give me the reasonable end to this” (Tr. 186).

### III. Discussion

Enforcement contends that this case warrants a bar, or at least a two-year suspension (Tr. 229-230). Respondent urges a 30-day suspension, arguing that the instant proceeding has, as a practical matter, already forced him out of the securities industry for a year (Tr. 241).

At the outset, the Panel recognizes that Bello's misconduct was serious. "It is well settled that, in order for NASD to perform its self-regulatory functions effectively, NASD members and associated persons must cooperate fully with NASD requests for information." In re Joseph G. Chiulli, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112 (Jan. 28, 2000). As the Commission said in Richard J. Rouse, 51 S.E.C. 581, 588 (1993), cited in Chiulli, "[d]elay and neglect on the part of members and their associated persons undermine the ability of NASD to conduct investigations and thereby protect the public interest." The Association's ability to enforce "timely, complete, and truthful compliance with its investigatory requests" is of "crucial importance" (Department of Enforcement v. Respondent Firm 1, No. C8A990071, 2001 NASD Discip. LEXIS 6, at \*37 (April 19, 2001)).

Aggravating circumstances make Bello's incomplete production especially significant. He dragged out the process for months and then produced only part of the material. As of the hearing, nearly two years after the staff's original request, he had yet to produce the missing wire instructions and monthly bank statements for two accounts. These materials had potential significance in the context of the staff's investigation of possible illegal payoffs from issuers. Moreover, Bello's central excuse – that he would not produce the material unless the staff assured him that the investigation was over – flatly violates the doctrine that associated persons cannot impose conditions on compliance with the staff's Rule 8210 requests. See, e.g., In re

Sundra Escott-Russell, Exchange Act Rel. No. 43363, 2000 SEC LEXIS 2053, at \*11 (Sept. 27, 2000) and cases there cited (refusal to produce until receiving certain assurance from staff).

For these reasons, a bar is an appropriate sanction.

At the same time, the Panel finds certain mitigating considerations. First, there is no question that Bello made substantial production, reflecting possibly 50% of the material sought (Tr. 89). This submission of most of the requested bank account statements, including Respondent's highlighting of wire transfers, led the investigators to discover the source of over 90% of the money wired into the New Jersey office (Tr. 54-55).<sup>2</sup> In addition, Bello cooperated with the staff by appearing, as requested, for an on-the-record interview, where he answered all questions, was not argumentative, and claimed no privileges (Tr. 75-76). The staff's compliance examiner assumed that Respondent testified truthfully and knew of no failure by him to have responded truthfully (Tr. 75, 89). The wire instructions were neither Bello's documents nor were they under his control. They were bank records, and production ultimately turned on the bank's cooperation, which, according to him, was not entirely forthcoming. Finally, Respondent's insistence on "closure" before producing the documents stemmed from advice of counsel,<sup>3</sup> who apparently saw that demand as a bargaining point in an ultimately unsuccessful attempt to settle.

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<sup>2</sup> Respondent's counsel argued that because the partial production enabled the staff to trace over 90% of the transferred money, Bello, therefore turned over 90% of the requested material. The Panel finds this contention unpersuasive. First, counsel's conclusion does not follow from his premise. Moreover, the missing documents, whatever their percentage of the whole, may nonetheless be essential to the investigation.

<sup>3</sup> All of the staff's communications were made to and answered by Respondent's counsel; Bello referred to the attorney as the person who had many times articulated the "closure" position (Tr. 202); and the staff's compliance examiner, closely involved in the attempts to obtain the wire instructions, believed that Respondent had relied on the advice of counsel (Tr. 108).

Considering these mitigating circumstances,<sup>4</sup> the Panel believes that Bello should be given a final opportunity to submit the requested materials and that such submission should convert the bar to a suspension. Cf. Department of Enforcement v. Richard Stephen Levitov, 1999 NASD Discip. LEXIS 30, at \*21 (NAC, Nov. 1, 1999) (suspensions for refusals to appear for requested interviews would become bars, if respondents continued such failures). See also Goldstein, supra and Quiel, supra, imposing six-month and 30-day suspensions where respondents made incomplete responses to staff requests.

The Panel thus bars Bello in all capacities, subject, however, to the following conditions: the bar shall become a 120-day suspension in all capacities if, within 60 days of the date on which this Amended Decision becomes the Association's final disciplinary action, Respondent submits to the Department of Enforcement (1) monthly account statements from PNC Bank accounts \_\_\_\_\_ and \_\_\_\_\_ and (2) the requested wire instructions or a notarized letter from a bank officer, on bank stationery, representing that such records do not exist, or, for reasons spelled out in such letter, cannot be produced to him. Respondent shall also file a copy of any such submitted bank account statements and wire instructions or letter with the Office of Hearing Officers.

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<sup>4</sup> For cases dealing with mitigating factors in Rule 8210 violations, See, In re Joseph Patrick Hannan, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at \*11 (Sept. 14, 1998) (prior cooperation with staff mitigated subsequent refusal to appear); In re Robert A. Quiel, Exchange Act Rel. No. 39056, 1997 SEC LEXIS 1878 (Sept. 11, 1997) (that respondent gave testimony to the staff and made a partial response were factors favorable to him); Market Regulation Committee v. Victor H. Palma, Jr., 1997 NASD Discip. LEXIS 70, at \*12 (Dec. 1, 1997) ("we do find mitigation in the fact that Palma did respond to many of the Staff's requests. He also cooperated with the Staff by appearing for an interview"); Dist. Bus. Conduct Committee v. Michael Edgar Goldstein, 1997 NASD Discip. 50 at 24-26 (Aug. 28, 1997) (reliance on advice of counsel, though not a defense, was mitigating, as was respondent's provision of "substantial documents prior to the filing of the complaint"); Department of Enforcement v. Robert Fitzpatrick, 1999 NASD Discip. LEXIS 23, at \*19 (June 14, 1999) (that respondent "was not the person principally responsible for maintaining" the requested records was mitigating). Bello also urged that his lack of disciplinary history was mitigating. The Panel is prohibited from considering that factor. Department of Enforcement v. Mark S. Balbirer, 1999 NASD Discip. LEXIS 29 (Oct. 18, 1999).



If Bello makes a submission, Enforcement shall, within 60 days thereafter, certify to the Office of Hearing Officers that such submission does or does not comply with the above conditions. If the Department certifies such compliance, the 120-day suspension period shall run from the date on which Respondent made the submission.<sup>5</sup>

As a further sanction, the Panel provides that if Bello complies with the above conditions, he shall re-qualify for a Series 24 license. Respondent failed to appreciate the importance of his duty to respond to staff inquiries involving activities occurring under his supervision, and such a re-qualification requirement will impress upon him the significance of such responsibility.

Respondent is also ordered to pay a total of \$2,235 in costs, representing \$1,485 for the transcript and \$750 for the standard administrative fee.

#### **IV. Conclusion**

Respondent, Manuel Martin Bello violated NASD Rules 8210 and 2110 by failing to respond completely to the NASD Regulation staff's request for documents, made pursuant to Rule 8210.

As a sanction, he is barred from associating with any member in any capacity, subject to the conditions set out above. Compliance with such conditions will convert the bar into a 120-day suspension and create a requirement that Respondent re-qualify for a Series 24 license. Respondent shall also pay costs in the amount of \$2,235, consisting of \$1,485 for the transcript and \$750 for the standard administrative fee.

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<sup>5</sup> The above procedures are analogous to those required in Levitov, supra, where NAC provided that “[i]f either respondent appears as requested and fully and unconditionally testifies before the expiration of the one-year suspension, he must report in writing to the NAC ... that he has done so. At the end of the one-year suspension, if either respondent has not fully and unconditionally testified, DOE is ordered to report in writing to the NAC ... as to the status of DOE’s investigation and to provide an indication as to each respondent’s efforts to appear to testify” (at \*19).

The bar shall become effective immediately upon this Amended Decision becoming the final disciplinary action of the NASD. The costs shall become due on a date set by the Association, but not earlier than 30 days after this Amended Decision becomes the final disciplinary action of the Association. The Panel views this Amended Decision as final for purposes of appeal to or call for review by the National Adjudicatory Council.<sup>6</sup>

**HEARING PANEL**

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Jerome Nelson  
Hearing Officer

Dated: Washington, DC  
August 27, 2001

Copies to: Manuel M. Bello (via overnight and first class mail)  
Robert Ouriel, Esq. (via overnight and first class mail)  
David R. Sonnenberg, Esq. (via electronic and first class mail)  
Jaya B. Gokhalé, Esq. (via electronic and first class mail)  
Rory C. Flynn, Esq. (via electronic and first class mail)

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<sup>6</sup> We have 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.