

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C07980077
v.	:	
	:	
PIER LUCCARELLI	:	HEARING PANEL
(CRD #1902896),	:	DECISION
	:	
Fairfax, VA	:	
	:	Hearing Officer - DMF
and	:	
	:	
Reston, VA	:	April 9, 1999
	:	
Respondent.	:	

Digest

The Department of Enforcement filed a Complaint alleging that respondent Pier Luccarelli violated NASD Rule 2110 by falsely telling a customer that the value of two securities accounts as set forth in the customer's monthly statements was incorrect, and by misleading the customer as to the value of those accounts. Luccarelli submitted a response to the Complaint in which he did not contest the allegations in the Complaint, and waived his right to a hearing.

The Hearing Panel considered the charges based on Enforcement's written submission. Although Luccarelli had an opportunity to file a written submission, he did not do so. Enforcement's submission included statements written by Luccarelli in which he admitted that he intentionally misled his customer by telling him that the value set

forth in the customer's account statements was incorrect. Based on this evidence, the Hearing Panel found that Luccarelli violated Rule 2110, as alleged in the Complaint. The Hearing Panel ordered that Luccarelli be censured, suspended from associating with any member firm in any capacity for one year, and fined \$25,000.

Appearances

Gene E. Carasick, Regional Counsel, Atlanta, GA (Rory C. Flynn, Washington, DC, Of Counsel), for the Department of Enforcement.

Pier Luccarelli, pro se.

DECISION

Introduction

The Department of Enforcement filed its Complaint against respondent Pier Luccarelli on November 16, 1998. The Complaint charges that Luccarelli violated NASD Rule 2110 by falsely telling customer FH that the value of two securities accounts set forth in FH's monthly account statements was incorrect, and by misleading FH about the true value of those accounts. Luccarelli submitted a response to the Complaint stating that he waived his right to a hearing, and that he had "great remorse for the misjustice [sic] I have done for this client."

On December 21, 1998, the Hearing Officer issued an Order Directing Written Submissions in Place of Hearing. The Order directed Enforcement to file and serve a narrative statement of its case, as well as all evidence that Enforcement wished the Hearing Panel to consider, both as to liability and sanctions, on or before January 21, 1999. The Order further provided that Luccarelli might file and serve any opposition or

other response to Enforcement's submission on or before February 4, 1999. In accordance with the Order, Enforcement filed its Written Submission in Lieu of Hearing, including six exhibits (CX 1-6), on January 15, 1999. Luccarelli did not file any response to Enforcement's submission. Accordingly, the Hearing Panel considered this matter on the basis of the Complaint, Luccarelli's response, and Enforcement's submission.

Luccarelli's Violation of Rule 2110

Luccarelli was registered with NASD member firm Sunpoint Securities, Inc. from February 1995 until December 1997.¹ (CX 1 (CRD).) The facts are not in dispute, and are set forth in Luccarelli's own words in a handwritten statement that he furnished to the NASD during the investigation:

“FH contacted me in 1996 [and opened two Sunpoint accounts.] It was understood that both accounts were supposed to take advantage of short-term swings in the market, so the trading activity was more active than usual. ... [T]owards the end of 1996, [one of the accounts] suffered a substantial loss when a short position went the wrong direction. [FH] was aware of his balances after covering this position. Although the accounts were down, I told him we should continue to trade, that the market could come back in his direction.

“Although not pleased with the results so far, he didn't want to quit with a loss, so we continued. As with all clients, I felt bad he was losing, mostly on the one bad trade

¹ Because the misconduct occurred while Luccarelli was registered with Sunpoint and the Complaint was filed within two years after the effective date of the termination of Luccarelli's registration with Sunpoint, the NASD has jurisdiction over this proceeding, pursuant to Article V, Section 4 of the NASD's By-Laws.

that I felt particularly responsible for recommending to him. I became somewhat obsessed with trying to recover [FH's] money, especially when he informed me he had borrowed the money and couldn't really afford to take any losses.

“In subsequent conversations (early 1997) I misled him about the value of the accounts in hope we would continue to have a chance to regain the losses. He mentioned other investments he was considering (vending machines, trading futures). I realized I was acting in poor conduct, but for the only time in dealing with clients, I couldn't face him with the truth. My whole business was suffering; I thought I needed his business. I obviously let finances affect my judgment, which is the one thing a broker must never do and I am guilty of.

“In March 1997 (I believe) [FH] said he needed to liquidate one account to participate in some business venture. This is when he discovered the discrepancy in [that] account. He immediately spoke to [my supervisor] with these facts. [My supervisor] and I spoke to [FH] a few times after that to discuss resolving this matter and to arrange for the liquidation of the rest of his accounts. ...

“As a registered representative for almost 5 years, I always tried to serve my customers to the best of my ability, and uphold the integrity of the brokerage profession. I obviously failed miserably with [FH], but I ask for consideration based on the hundreds of other clients that I served and served well. Although I am currently not employed in the securities business, I feel privileged to hold my licenses and have the opportunity to use them in the future.” (CX 5 (May 10, 1998 letter from Luccarelli to the NASD).)

These facts, admitted by Luccarelli, are sufficient to establish the violation charged in the Complaint. Rule 2110 requires “high standards of commercial honor and

just and equitable principles of trade.” Luccarelli admits that he intentionally misled FH about the value of his accounts in order to retain FH as a customer. As Luccarelli recognizes, this conduct plainly violated the standards imposed by Rule 2110.

Accordingly, the Hearing Panel finds that Luccarelli violated Rule 2110, as alleged in the Complaint.

Sanctions

As sanctions, Enforcement recommends a one year suspension in all capacities and a \$10,000 fine. In recommending these sanctions, Enforcement points to “Luccarelli’s apparent remorse and his cooperation during the staff’s investigation.”

The NASD’s Sanction Guidelines recommend that, in cases involving intentional or reckless misrepresentations, adjudicators impose a fine of \$10,000 to \$100,000, as well as a suspension in any or all capacities for 10 business days to two years. The Guidelines also recommend that in egregious cases adjudicators consider barring the respondent.²

Setting aside the apologies and excuses, Luccarelli’s statement establishes the following sequence of events: FH opened two actively traded accounts; FH incurred substantial trading losses in one of the accounts based on Luccarelli’s recommendations; FH indicated he was thinking of moving his money into different kinds of investments, from which Luccarelli would not realize any financial benefit; Luccarelli felt he needed

² NASD Sanction Guidelines p. 80 (1998 ed.).

FH's business, because his other business was suffering, so Luccarelli deliberately misled FH in order to keep his business; and Luccarelli did not disclose the true value of the account to FH until FH tried to liquidate it.³

These facts justify very serious sanctions. The Hearing Panel agrees with Enforcement, however, that Luccarelli's later actions are mitigating factors. Once his misrepresentations came to light, Luccarelli admitted his guilt to the customer, his supervisor, and the NASD, and his statements suggest that he is truly remorseful. Therefore, although the Hearing Panel considered barring Luccarelli, it has concluded that the one year suspension in all capacities recommended by Enforcement, which is well above the minimum suspension recommended in the Guidelines, is appropriate to accomplish the NASD's remedial goals.

The Hearing Panel does not agree, however, that a \$10,000 fine, which is at the very bottom of the range recommended in the Guidelines, is adequate, considering the serious nature of Luccarelli's actions. Instead, the Hearing Panel has determined that a fine of \$25,000, which is well above the minimum amount recommended in the Guidelines, but well below the maximum, will reflect the seriousness of Luccarelli's misconduct, while also taking into account his remorse and cooperation.

Accordingly, respondent Pier Luccarelli is censured, suspended from associating with any member firm in any capacity for one year, and fined \$25,000. These sanctions

³ Enforcement's exhibits indicate that FH accepted a settlement payment of \$9,000, which represented half the losses in his account, because FH "accepted some responsibility in regards to his reluctance to question his month end statements and confirms." The record does not disclose whether the funds came from Luccarelli or his employer. (CX 2-3.) The record also fails to disclose the amount of any commissions that Luccarelli may have earned on FH's account or whether he retained any of those commissions after the settlement. Therefore, the Hearing Panel could not take these factors into account in setting sanctions.

shall become effective on a date set by the Association, but not before the expiration of 45 days from the date of this decision.⁴

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Dated: Washington, DC
June 2, 1999

Copies to:

Pier Luccarelli (via certified and first class mail)
Gene E. Carasick, Esq. (via first class mail)
Rory C. Flynn, Esq. (via first class mail)

⁴ The Hearing Panel considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.