

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C10980025
v.	:	
	:	
KORY E. GUGLIELMINETTI	:	HEARING PANEL
(CRD #2586727),	:	DECISION
	:	
Morganville, NJ	:	Hearing Officer - DMF
	:	
and	:	December 1, 1998
Staten Island, NY	:	
	:	
	:	
Respondent.	:	

Digest

The Department of Enforcement filed a Complaint alleging that respondent Kory E. Guglielminetti violated NASD Rules 2110 and 1070 by having an impostor take his Series 7 Qualifications Examination, and violated Rules 8210 and 2110 by failing to answer questions truthfully during an interview conducted by the NASD pursuant to Rule 8210. Guglielminetti filed an Answer denying the charges, and requested a hearing. The Hearing Panel found that Guglielminetti had committed the violations charged in the Complaint. As sanctions, the Hearing Panel imposed a censure (for both violations), a bar (for both violations), and a total fine of \$129,968.47 (\$79,968.47 for having an impostor take his Series 7 and \$50,000 for lying during his interview). The Hearing Panel also ordered Guglielminetti to pay costs in the amount of \$1186.40.

Appearances

Jay M. Lippman, Senior Regional Attorney, New York, NY (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, of counsel), for the Department of Enforcement.

Dan A. Druz, Manasquan, NJ, for respondent.

DECISION

Introduction

The Department of Enforcement filed its Complaint against respondent Kory E. Guglielminetti on July 20, 1998. The First Cause of Complaint charges that Guglielminetti cheated on his Series 7 Qualifications Examination by having an impostor take the Series 7 in his name, thereby violating NASD Rules 2110 and 1070. The Second Cause of Complaint charges that Guglielminetti violated Rules 8210 and 2110 by failing to respond truthfully to questions concerning his Series 7 posed by the NASD staff during an investigational interview conducted pursuant to Rule 8210. Guglielminetti filed an Answer in which he denied the charges.

A hearing on the charges was held on October 29, 1998, before a Hearing Panel composed of an NASD Hearing Officer, a current member of the District Committee for District 10, and a current member of the District Committee for District 3. During the hearing, Enforcement offered the testimony of seven witnesses and 48 Complainant's Exhibits (CX 1-40, 42, 42A, and 43-48).¹ Guglielminetti offered the testimony of two witnesses (including himself) and no Respondent's Exhibits.

Based on the evidence adduced at the hearing, the Hearing Panel finds that an

¹ Enforcement's Exhibits were admitted in evidence without objection. Tr. 183-84.

impostor, not Guglielminetti, took his Series 7 on September 7, 1995. The Hearing Panel also finds that Guglielminetti lied during his NASD interview when he claimed to have taken the Series 7. Accordingly, the Hearing Panel finds that the evidence sustained the charges in the Complaint. As sanctions for cheating on the Series 7, the Hearing Panel will impose a censure, a bar, and a fine of \$79,968.47 (which includes a base fine of \$50,000, together with \$29,968.47 which represents Guglielminetti's reported earnings in the securities industry after the impostor took the Series 7 on his behalf). As sanctions for lying at the interview, the Hearing Panel will impose a censure, a bar, and an additional fine of \$50,000. The Hearing Panel will also order Guglielminetti to pay costs in the amount of \$1186.40.

The Evidence

Guglielminetti first became registered with the NASD on September 8, 1995. He was registered with A.S. Goldman & Co., Inc., from September 1995 until April 1996. He was registered briefly with R.D. White & Co., Inc., and was registered with William Scott & Co. L.L.C. from April 1996 to April 1997. From April 1997 to August 1998, he was registered with Argent Securities, Inc., which subsequently changed its name to J.P. Turner & Company, L.L.C. He has not been registered since August 1998.²

Guglielminetti's registration was based on his having passed the Series 7 test on September 7, 1995. On that date, someone purporting to be Guglielminetti took and passed the Series 7 at the NASD testing facility in Roseland, New Jersey.³ Enforcement contended that an impostor, rather than Guglielminetti himself, took the Series 7.

² Tr. 13-19, 31-34; CX 1.

³ Tr. 35; CX 1, CX 44.

The Series 7 test was given on a single day in two sessions, with a break between the sessions. At the beginning of each session, each applicant was required to sign in. The applicant was required to note on the sign-in sheet the time he arrived to begin the session, sign the sheet, and present identification to the proctor. When the applicant left after completing the session, the applicant was required to note the time of his departure on the sign-in sheet.⁴ The sign-in sheet for September 7, 1995, showed that someone signed in as Guglielminetti for the first session at 8:46 a.m., presented “NJ 6/98” as identification, and signed out, having completed that session, at 9:43 a.m. Someone signed in as Guglielminetti for the second session at 10:20 a.m., presented “NJ 6/98” as identification, and signed out from the second session at 11:05 a.m.⁵

Enforcement offered the testimony of a handwriting expert, Gus Lesnevich, who testified that the signatures on the September 7, 1995, sign-in sheets were not Guglielminetti’s. Lesnevich based his opinion on a comparison of the “Questioned Signatures” on the sign-in sheet with a large number of “Known Signatures” that Guglielminetti admitted were his.⁶ Lesnevich offered a technical comparison to support his conclusion that the Questioned Signatures were not written by the same person who had written the Known Signatures.⁷ Lesnevich also testified, however, that it was readily

⁴ Tr. 84-94, 105-07.

⁵ Tr. 95-99; CX 9.

⁶ Stipulation; CX 8-36.

⁷ Tr. 153-60; CX 42, 42A.

apparent that the Questioned Signatures bore no resemblance to Guglielminetti's Known Signatures.⁸

In response, Guglielminetti testified that he had injured his hand playing baseball some time in August 1995, before he took the Series 7. He testified that on September 7, he was wearing an elastic bandage on his hand and some form of wrap on his wrist, and that the injury and the wrap affected his signature.⁹ Lesnevich, however, testified that such an injury would not explain the differences between the Questioned Signatures and the Known Signatures.¹⁰ In addition, one of the Known Signatures admitted by Guglielminetti was an endorsement on his paycheck on September 8, 1995. Lesnevich pointed out that the September 8 Known Signature was quite similar to all of the other Known Signatures and bore no resemblance to the Questioned Signatures.¹¹ Guglielminetti could not explain why the injury that he said altered his signature on September 7 did not affect it on September 8.¹²

Enforcement also offered the testimony of Ricky Lovett, one of the proctors of the September 7, 1995, Series 7.¹³ Lovett testified that the reference to "NJ 6/98" on the sign-in sheet signified that the applicant had submitted a New Jersey driver's license with

⁸ Tr. 158, 160.

⁹ Tr. 207-09.

¹⁰ Tr. 162-64, 167, 176-77, 181-83.

¹¹ Tr. 22-23, 154-55, 162-63, 166, 225; CX 36.

¹² Tr. 224-26.

¹³ Tr. 84.

an expiration date of June 1998 as identification.¹⁴ Guglielminetti admitted that he did not have a New Jersey driver's license when he took the Series 7.¹⁵ At the hearing, he testified that he used a New Jersey identification card, which resembles a driver's license, as identification at the Series 7.¹⁶ Lovett, however, stated that if such a form of identification had been used, the sign-in sheet would have reflected that with a different notation.¹⁷

Enforcement also pointed to the dramatic difference between Guglielminetti's performance on the Series 7 and his performance on the easier Series 63 test as evidence that Guglielminetti did not take the Series 7. Guglielminetti had never taken the Series 7 before September 7, 1995.¹⁸ Applicants are allowed three hours to complete each of the two Series 7 sessions, but the person who took the test as Guglielminetti completed the first session in 57 minutes and the second session in 45 minutes. That person scored 84 on the test, although the national average score was only 74.¹⁹ In short, the person who took the Series 7 appears to have been very knowledgeable. In contrast, Guglielminetti took the Series 63 five times before he passed it. He took it on September 22, 1995, two weeks after the Series 7, and failed, with a score of 46; took it again on October 13, 1995, and failed, with a score of 38; took it a third time on November 30, 1995, and failed, with

¹⁴ Tr. 95-99, 112-13. Lovett testified that he would not have been able to recognize a bogus license "if someone has a good one." Tr. 113.

¹⁵ Tr. 25, 234.

¹⁶ Tr. 205-06.

¹⁷ Tr. 109-10, 112-13, 117-18.

¹⁸ CX 1.

¹⁹ Tr. 142-44; CX 1, 9, 44.

a score of 60; and took it a fourth time on May 16, 1996, and failed, with a score of 58. Finally, on his fifth try, on July 15, 1996, Guglielminetti passed with a score of 78. For each of these tests, Guglielminetti took the full time allowed.²⁰

Guglielminetti's explanation for the difference between his performance on the Series 7 and Series 63 tests was that he studied for the Series 7 for several months before he took it, but did not study for the Series 63 because he did not view it as important. He testified that once he passed the Series 7, the firms he worked for allowed him to function as a registered person, even though he had not passed the Series 63 test.²¹ Guglielminetti could not explain, however, why he kept taking the Series 63, without success, if he did not believe it was important, and he admitted he knew it was unlawful for him to service clients in the various states without having passed the Series 63.²²

Finally, Enforcement pointed to a number of discrepancies between Guglielminetti's testimony during his interview taken in the course of the NASD's investigation and his testimony at the hearing. For example, Guglielminetti testified during the interview that he was one of the first to arrive at the test, but after seeing the sign-in sheet showing that the person who took the test in his name was one of the last to arrive, he testified at the hearing that he got lost on the way to the Series 7 and arrived late; he testified during the interview that he took a total of about 4 hours to take the Series 7, but after seeing the sign-in sheet showing he took less than two hours, he testified at the hearing that it took him about that long; and he testified repeatedly during the interview

²⁰ Tr. 36-40, 129-33, 238-39; CX 1, 10-14, 45-46.

²¹ Tr. 198-204.

²² Tr. 212-14.

that he used a New York driver's license as identification, but after the testimony and sign-in sheet indicated it was a New Jersey driver's license, he testified at the hearing that he had used a New Jersey identification card that looked like a driver's license.²³

Discussion

The evidence that Guglielminetti did not take the Series 7 on September 7, 1995, was very strong. Lesnevich was a well-qualified expert, and his testimony was convincing.²⁴ Even without his analysis, it was apparent that the Questioned Signatures on the September 7, 1995, sign-in sheets bore no resemblance to Guglielminetti's Known Signatures. Guglielminetti's explanation that the Questioned Signatures appeared different from his Known Signatures because of a baseball injury to his hand and wrist was unconvincing. The Hearing Panel credited Lesnevich's opinion that such an injury would not have affected Guglielminetti's signature in such a manner. Moreover, Guglielminetti could not explain how an injury could have drastically affected his signature on September 7, but not on the following day.²⁵

Similarly, the Hearing Panel credited Lovett's testimony regarding the identification presented by the person who appeared for the Series 7 test on September 7. The notation on the sign-in sheet for the first session regarding the identification offered

²³ Tr. 205-06, 227-36; CX 38.

²⁴ Lesnevich has been an examiner of questioned documents for 30 years and has an impressive resume. See District Business Conduct Committee for District No. 10 v. Lawrence P. Bruno, Complaint No. C10970007 (NAC July 8, 1998), crediting Lesnevich's testimony in a similar case.

²⁵ The only witness who testified for Guglielminetti, Albert Sheppard, offered support for Guglielminetti's testimony that he had been injured, but did not testify that the injury affected Guglielminetti's signature. Although the Hearing Panel did not find Sheppard's testimony entirely credible, it is unnecessary to resolve whether Guglielminetti injured his hand or wrist, because the Hearing Panel has found that such an injury would not explain the discrepancy between Guglielminetti's

by the applicant was made by another proctor whom Lovett had trained; the notation on the sign-in sheet for the second session was made by Lovett.²⁶ Both notations were consistent. Lovett's explanation of the meaning of the notations was clear and convincing. He explained that he and the other proctor were very careful and consistent about the notations they used because they knew that questions might arise, and he testified that they would have recognized a New Jersey identification card if it had been presented, and would have noted it differently.²⁷

Guglielminetti's Series 63 test results offer additional support for the charges in the Complaint. The Series 63 is an easier test than the Series 7. Only one hour is allotted for it and it covers a much narrower range of topics.²⁸ It is not impossible for a person to pass the Series 7 and fail the Series 63, but it is unusual for someone to pass the Series 7 with a very high score, and then to fail the Series 63 repeatedly with very low scores.²⁹ Guglielminetti's explanation – that he did not view the Series 63 as important – is not credible. He admitted he knew that he was required to pass the Series 63, and he took the Series 63 three times during the 10 weeks after he passed the Series 7. The clear implication from this is that Guglielminetti wanted to pass the Series 63, but was unable to do so. While Guglielminetti's difficulties with the Series 63 would not, by itself, establish that he was not the person who took the Series 7 on September 7, it is consistent with the other evidence that an impostor took that test.

signatures on the Series 7 sign-in sheet and his Known Signatures, particularly his signature on September 8.

²⁶ Tr. 96-99, 105-06.

²⁷ Tr. 102, 109-10.

²⁸ Tr. 144-45.

Some of the discrepancies between Guglielminetti's interview testimony and the evidence at the hearing could be attributable to the passage of time. He could have forgotten the time he arrived, or exactly how long it took him to complete the test, for example. During his testimony at the hearing, however, Guglielminetti conveyed the clear impression that he was altering his story as he went along in an effort to make it consistent with the testimony and documents that had been offered before he testified. Overall, taking into consideration both Guglielminetti's demeanor and the substance of his testimony, the Hearing Panel did not find him to be a credible witness and did not believe his version of the events.

Thus, the Hearing Panel finds that an impostor, rather than Guglielminetti, took his Series 7, and, therefore, that Guglielminetti violated Rules 2110 and 1070, as alleged in the First Cause of Complaint. The Hearing Panel also finds that Guglielminetti was untruthful in his testimony during his interview, and thus violated Rules 8210 and 2110, as alleged in the Second Cause of Complaint. Specifically, during his interview Guglielminetti repeatedly stated that he had taken the Series 7, which, the Hearing Panel has determined, was not true.

Sanctions

The NASD Sanctions Guideline for "Cheating, Using an Impostor, or Possessing Unauthorized Materials - On Qualifications Examinations or in the Regulatory Element of Continuing Education" recommends a bar and a fine of \$25,000 to \$100,000 as sanctions.³⁰ This is an egregious case. There is convincing evidence that Guglielminetti

²⁹ Tr. 146.

³⁰ NASD Sanction Guidelines, 38 (1998 ed.).

had an impostor take his Series 7, then lied about it in his interview testimony and in his testimony at the hearing. There is no evidence of any mitigating facts. Accordingly, the Hearing Panel concludes that a censure, a bar, and a fine at the middle of the range recommended in the Guideline, \$50,000, is appropriate.

In addition, the NASD Guidelines recommend, as a general matter, that adjudicators consider adding to any fine the amount of any financial benefit received by the respondent as a result of his misconduct. In this case, the record establishes that Guglielminetti received earnings of \$29,968.47 from the member firms by which he was employed after the impostor passed the Series 7 on his behalf.³¹ Therefore, the Hearing Panel will add this amount to the \$50,000 base fine, for a total fine of \$79,968.47 for this violation.

The Guideline for “Failure to Respond Truthfully, Completely, or Timely to Requests Made Pursuant to NASD Procedural Rule 8210” recommends a fine of \$25,000 to \$50,000 for failure to respond or to respond truthfully.³² The Guideline also provides that a bar should be standard, but that a suspension may be considered if there are mitigating circumstances. The Hearing Panel finds that Guglielminetti’s failure to respond truthfully during his interview was deliberate and egregious. There is no evidence of any mitigating factors. Accordingly, the Hearing Panel concludes that Guglielminetti should be censured, barred, and fined \$50,000 for violating Rules 8210 and 2110 by failing to respond truthfully to questions posed by the NASD during his interview.

³¹ Tr. 74-75; CX 39.

³² NASD Sanction Guidelines, 31 (1998 ed.).

Therefore, Guglielminetti is censured, barred, and fined a total of \$129,968.47. In addition, he is ordered to pay costs of \$1186.40, which includes an administrative fee of \$300 and the hearing transcript cost of \$886.40.³³

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Dated: Washington, DC
December 1, 1998

Copies to:

Kory E. Guglielminetti (via certified and first class mail)
Dan A. Druz, Esq. (via first class mail)
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³³ 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.