

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TIMOTHY J. DUMA
(CRD No. 2204619),

6300 Hobson Road
Downers Grove, IL 60516,

Respondent.

Disciplinary Proceeding
No. C8A030099

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

September 28, 2004

Respondent barred for misrepresenting his employment status on a new account application, in violation of Conduct Rule 2110, for failing to notify his employer, in writing, that he had opened a securities account at another firm and failing to notify the firm at which he opened the account that he was associated with an NASD member, in violation of Conduct Rules 3050(c) and 2110, and for testifying untruthfully at an on-the-record interview, in violation of Conduct Rule 2110 and Procedural Rule 8210. Respondent also found to have engaged in outside business activity without providing his employer with prompt written notice, in violation of Conduct Rules 3030 and 2110, and to have used unapproved advertising, in violation of Conduct Rules 2210 and 2110. However, in light of the bars for the other violations, no additional sanctions were imposed for these violations.

Appearances

Dale A. Glanzman, Regional Counsel, Chicago, IL (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel) for the Department of Enforcement.

Stephen S. Berkeley, Shaheen, Novoselsky, Staat, Filipowski & Eccleston, Chicago, IL, for the Respondent.

DECISION

I. INTRODUCTION

The Department of Enforcement (the “Department”) filed a Complaint on December 19, 2003, against Timothy J. Duma (“Duma” or “Respondent”). The Complaint contains five causes of action. The first cause of action charges that the Respondent violated NASD Conduct Rules 2210 and 2110 by failing to obtain approval for a print advertisement and a sales brochure. The second cause of action charges that the Respondent violated NASD Conduct Rules 3030 and 2110 by failing to give his firm written notice of his outside business activities with Southwestern Life Insurance Company.¹ The third cause of action charges that the Respondent violated NASD Conduct Rules 2110 and 3050(c) by failing to notify his firm that he opened and maintained a securities account at another broker-dealer, H&R Block Financial Advisors, Inc. (“H&R Block”). The fourth cause of action charges that the Respondent violated NASD Conduct Rule 2110 by failing to state on the new account application with H&R that he was a registered representative associated with WMA Securities, Inc., an NASD member firm.² The final cause of action charges that the Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by testifying untruthfully during two on-the-record interviews conducted by NASD staff regarding his involvement with the H&R Block account.

On March 9, 2004, the Respondent filed an Answer and requested a hearing. In his Answer, the Respondent admitted many of the facts alleged in the Complaint, but denied

¹ The Complaint further alleged that the Respondent failed to give written notice of his activities with LaWorldwide Mortgage. However, during the hearing the Department withdrew this claim.

² WMA Securities ceased doing business on April 12, 2002, and its registration as a broker-dealer was terminated effective June 28, 2002. (Ex. C-11, at 1.)

violating any NASD conduct rules. On June 10, 2004, the Parties submitted Stipulations that addressed the material underlying facts. The hearing was held in Chicago, IL, on June 23, 2004, before a Hearing Panel composed of the Hearing Officer, and two current members of the District 6 Committee.³

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background

Duma began his career in the securities industry in 1988 with Primerica Financial Services selling life insurance.⁴ In 1992, Duma became registered as an Investment Company and Variable Contracts Products Representative with PFS Investments, Inc., Primerica's broker-dealer. In 1996, he left Primerica and joined WMA Securities. Between April 1996 and October 2000, Duma was registered as an Investment Company and Variable Contracts Products Representative and an Investment Company and Variable Contracts Products Principal with WMA Securities.⁵ According to Duma's record in the Central Registration Depository ("CRD"), currently he is registered with Premier Securities of America, Inc.⁶

WMA Securities marketed both securities and non-securities insurance products. It also had two marketing channels for insurance products: captive and non-captive agents.⁷ Generally, WMA Securities permitted non-captive agents to continue to sell insurance products and conduct

³ The hearing transcript is cited "Tr.," and the Department's exhibits are cited as "C." The Respondent did not submit any exhibits.

⁴ Ex. C-1.

⁵ Stip. ¶ 1; Ex. C-1.

⁶ Ex. C-1, at 2. Duma is subject to NASD's jurisdiction because he was registered with NASD at the time the Complaint was filed and at the time of the alleged misconduct.

⁷ "A 'captive agent' is required to sell only the products of the firm with which he or she is employed." (*Department of Enforcement v. Hartley*, No. C01010009, 2003 NASD Discip. LEXIS 49, at *3 n.3 (N.A.C. Dec. 3, 2003).)

other outside businesses after they joined the firm. Duma was such a non-captive agent. His primary business was estate and financial planning.⁸ Nevertheless, Duma had supervisory responsibilities at WMA Securities. In 1997, Duma held the position of Supervisory Principal, and, in 1998, he became a Branch Office Manager.⁹ During the relevant period, he supervised approximately 26 registered representatives.¹⁰ However, in May 2000, his friend and supervisor, Marc Guerra, recommended that Duma no longer serve as a Branch Office Manager because he had “a general disregard for a number of compliance requirements.”¹¹

B. Origin and Nature of Investigation

In March 2001, WMA Securities filed an amended Uniform Termination Notice for Securities Industry Registration–Form U-5 for Susan R. Rogers that disclosed that WMA Securities was investigating whether she had disseminated unapproved advertising while she was associated with the firm.¹² The advertisement was for estate planning services provided by Duma and Rogers under the name Rogers, Duma & Associates.¹³ Accordingly, NASD staff opened investigations into Roger’s and Duma’s outside business activities, which ultimately led to the institution of this disciplinary proceeding.

C. Advertising Violations

Duma admits that he placed an annual advertisement in *The Shepherd’s Guide* for the years 1997 through 2000 and that he used a marketing brochure between either 1998 or 1999 and

⁸ Tr. at 70, 74.

⁹ Ex. C-3, at 1.

¹⁰ *Id.* at 4.

¹¹ Tr. at 20, 28–29.

¹² *See* Ex. C-2, at 1.

¹³ *Id.* at 10.

2000.¹⁴ Duma did not have approval to use either advertisement although he knew such approval was required.¹⁵ Guerra, Duma's supervisor, testified that he did not learn of the advertisements until December 1999 when the firm's regional compliance officer brought them to Guerra's attention.¹⁶ Guerra then questioned Duma about the advertisements, and Duma admitted that he had used them for years although he had not submitted them for approval.¹⁷ In addition, Duma testified that he never submitted the advertisements to NASD for approval.¹⁸ Accordingly, the Hearing Panel finds that Duma violated NASD Conduct Rules 2210 and 2110,¹⁹ as alleged in the first cause of action.

D. Outside Business Activity

NASD Conduct Rule 3030 provides that no person registered with a member "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 ... in the form required by the member." The purpose of Conduct Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under

¹⁴ Stip. ¶ 2; Ex. C-2, at 6-7.

¹⁵ For example, on April 15, 1999, Duma signed an annual compliance certification that set forth WMA Securities' requirement that he obtain approval from his manager and the firm's compliance department "prior to publishing any advertisement in a newspaper, magazine or publication." (Ex. C-2, at 24.)

¹⁶ Tr. at 26.

¹⁷ *Id.* at 26-27, 39.

¹⁸ *Id.* at 108-09.

¹⁹ Conduct Rule 2110 provides that members shall "observe high standards of commercial honor and just and equitable principles of trade." Violations of other NASD rules also constitute violations of Rule 2110. (*Department of Enforcement v. Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8, at *18 n.11 (May 13, 2004).)

applicable law.²⁰ Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.²¹

In 2000, Duma received \$2,015.30 from Southwestern Life Insurance Company,²² but he failed to give WMA Securities written notice that he was doing business with Southwestern Life.²³ In addition, Guerra testified that he had no knowledge of Duma's relationship with Southwestern Life.²⁴ Accordingly, the Hearing Panel finds that Duma violated NASD Conduct Rules 3030 and 2110, as alleged in the second cause of action.

E. The H&R Block Account

To maintain integrity in their dealings with the investing public, NASD members must monitor the personal securities transactions of their associated persons. To facilitate this, Conduct Rule 3050(a) requires any NASD member that “knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member [to] ... use reasonable diligence to determine that the execution of such transaction will not adversely affect the interests of the employer member.” Further, a member who knows that a person associated with another member will have a financial interest in an account must notify the employer member prior to executing any transactions in the account and, upon request, must transmit duplicate copies of confirmations and account statements to the employer member.

²⁰ *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No 26,178, 1988 SEC LEXIS 2032 (Oct. 13 1988).

²¹ *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (N.B.C.C. Oct. 31, 1997).

²² Stip. at ¶ 3.

²³ Tr. at 23, 76.

²⁴ *Id.* at 23.

To ensure that firms will be able to identify the persons who are subject to this monitoring scheme, Conduct Rule 3050(c) requires that “[a] person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member” Duma admits he did not do this when he opened a joint securities account with his brother in May 2000 at H&R Block.²⁵ In addition, Duma did not tell the H&R Block broker on the account, Christopher J. Peszek, that he was associated with WMA Securities.²⁶ As a result, H&R Block could not notify WMA Securities of the account or send it copies of Duma’s confirmations and account statements, and H&R Block was unable to monitor the activity in the account. Thus, Duma violated Conduct Rules 3050(c) and 2110.

In mitigation, Duma explained that he put himself on the H&R Block account for “estate planning” purposes because his brother was unmarried.²⁷ Duma asserted that he considered his brother to be the owner of the account; thus, when he completed the account application, he answered the questions on behalf of his brother and did not disclose his association with WMA Securities.²⁸ In addition, where the form specifically referred to Duma, he listed his occupation and current “employer/nature of business” as “Marketing Director” for “Estate Plan Services”

²⁵ Stip. at ¶ 4. The account was opened at Olde Discount Corporation, which was acquired by H&R Block in or about August 1999. (Tr. at 59.)

²⁶ Stip. at ¶ 6; Tr. at 59.

²⁷ Tr. at 80, 102; Ex. C-5, at 4 (Tr., Jan. 16, 2003, on-the-record-interview, at 128).

²⁸ Tr. at 82.

because he was not employed by WMA Securities.²⁹ Rather, Duma considered himself an independent contractor.

Duma's explanations, however, do not hold up when viewed in light of his prior statements, which themselves are inconsistent and illogical. For example, at his on-the-record interview on January 16, 2003, at one point he explained that he listed his employer as Estate Plan Services because it was his general "protocol" to avoid the "insurance and security 'stigma'."³⁰ Yet, at another point Duma claimed that he told Peszek that he was in the securities industry. When NASD staff questioned Duma about what he told Peszek about his reason for sending estate planning customers to Peszek to liquidate their securities holdings,³¹ Duma testified:

Q. Did [Peszek] ask why you were referring these customers to him?

A. I think I probably told him that my broker-dealer is a big crazy company that I don't want to deal with.

* * *

Q. Did you notify [Peszek] that you were associated or registered with WMA Securities?

A. I'm pretty sure he knew because I think he reported to our broker-dealer that I'm associated with a broker-dealer. He knows I'm involved in the insurance and securities business.

Q. How does he know that?

A. From my talking to him. He asked me what I did in estate planning. I told him, "I have a securities hat, too, but I don't want to do my broker-dealer on this."³²

At the hearing, Duma did not attempt to reconcile these inconsistent explanations.

²⁹ *Id.* at 80–81.

³⁰ Ex. C–5, at 4 (Tr., Jan. 16, 2003, on-the-record interview, at 128–29).

³¹ Peszek testified at the hearing that Duma referred four clients to him and that he opened accounts for these clients to liquidate their equity holdings at other firms. (Tr. at 64–65.)

³² Ex. C–5, at 9 (Tr., Jan. 16, 2003, on-the-record interview, at 143–48).

Duma's story at the hearing also does not agree with Duma's use of the H&R Block account. Duma made all the trades and wrote all the checks in the account.³³ Indeed, Peszek never even spoke to Duma's brother, although Duma claimed otherwise.³⁴ Duma downplayed this anomaly by claiming that he only started to use the account in late 2000 to hide funds from his wife who had filed for divorce.³⁵ He did not explain, however, why he failed to report the account to WMA Securities once he started using it in this fashion, or why he failed to disclose the account to his new firm when he left WMA Securities in October 2000.³⁶ Indeed, Duma admitted in his on-the-record interview that he did not report the account to his new firm until the firm's compliance officer questioned him about the account, which was after November 7, 2002.³⁷ This delay is particularly troubling given the fact that NASD had commenced the investigation of his outside business activities by that time and had questioned him about the account in his on-the-record interview in October 2002.

Finally, although the evidence strongly suggests that Duma deliberately misrepresented his status as an associated person on the new account application, even if he was merely careless, that would not excuse his actions. "When he signed the new account application, he was a registered representative and principal; he should have known how important it was for him to complete the application accurately, including disclosing his status as an associated person."³⁸

³³ Tr. at 104–05.

³⁴ Tr. at 60, 117.

³⁵ *Id.* at 83–84.

³⁶ Stip. at ¶ 7.

³⁷ Ex. C–5, at 8, 10 (Tr., Jan. 16, 2003, on-the-record interview, at 142, 152).

³⁸ *Department of Enforcement v. Brack*, No. C9B020048, 2003 NASD Discip. LEXIS 8, at *18 (O.H.O. Feb. 7, 2003).

In conclusion, the Hearing Panel finds that Duma (1) failed to inform WMA Securities of his H&R Block account and his transactions in that account, in violation of Conduct Rules 3050(c) and 2110, and (2) failed to include his employment with WMA Securities on the H&R Block new account application, in violation of Conduct Rule 2110.

F. Untruthful On-The-Record Interview Testimony

In the final cause of action, Duma is charged with giving false or misleading testimony in two on-the-record interviews about his involvement and role in the H&R Block account.

Although the Complaint does not specify the statements in question, at the hearing the Department pointed to Duma's testimony about the purpose and use of the account.

The Hearing Panel finds that Duma's denial that he ever did any personal transactions in the H&R Block account is false.³⁹ At the hearing, Duma admitted that he did execute numerous personal transactions in the H&R Block account. Accordingly, the Hearing Panel finds that Duma thereby violated NASD Conduct Rule 2110 by providing false testimony about his use of the H&R Block account at his on-the-record interview on January 16, 2003.

However, the Hearing Panel was not persuaded by a preponderance of the evidence that Duma lied about the purpose of the H&R Block account. On this issue, Duma's on-the-record testimony was ambiguous. The Department claimed that Duma testified untruthfully when he stated that the purpose of the H&R Block account was for "estate planning." The Department argued that since he began using the account for his own purposes after he opened the account in May 2000, his testimony in October 2002 and January 2003 should have referred to his personal use of the account. However, Duma's responses and explanations could be understood to refer to

³⁹ Ex. C-5, at 11 (Tr., Jan. 16, 2003, on-the-record interview, at 154).

the time the account was opened. For example, at page 79 of the transcript of the October 2002 on-the-record interview,⁴⁰ the Department asked Duma a series of questions about the new account application, such as the date the account was opened. The Department further asked Duma if the H&R Block account showed him as an “owner” of the account. Duma answered “Yes” to those questions. Then, Duma volunteered the following explanation:

I did find out later I should have disclosed that [referring to the fact that the account was at another firm]. I don’t believe - - -

I have to be honest with you. I didn’t realize that. This account, he [referring to his brother] put me on there for a joint ownership and I think we are in the process of doing a trust with him just to get my name off of there.

He is not married, so I’m just there basically for estate planning purposes, so to speak.

In context, Duma’s statement that “I’m just there for estate planning purposes” could be read fairly to refer to the time he and his brother opened the account, as Duma contends. Duma volunteered the information in response to questions about the new account application, and his response addressed the information placed on the form when he opened the account. Moreover, at no point did the Department seek to clarify any ambiguity in Duma’s response.

The Department’s reliance on another response is similarly flawed. At page 128 of the transcript of the January 2003 on-the-record interview,⁴¹ the Department asked Duma if there was any reason he did not note his employment at WMA Securities on the H&R Block account application. In response, Duma stated:

Actually, my brother is single. So he doesn’t got any children or anything. So I’m on this [referring to the account application] as kind of just estate planning, obviously, for contingent if something happened to him. So that’s what I usually wrote down for my occupation *back then*. (Emphasis added.)

⁴⁰ Ex. C-4, at 21.

⁴¹ Ex. C-5, at 4.

Although the Department argued that Duma answered in the present tense, making the statement untrue as of the date of the on-the-record interview, the Hearing Panel finds that both the context of the question and the wording of the answer could refer to the time Duma completed the new account application. Moreover, the Department did not follow up to clarify his response or introduce any evidence directly contradicting Duma's assertion that the original purpose for putting him on the account was for his brother's estate planning.

III. SANCTIONS

The Hearing Panel begins its consideration of sanctions with the axiom that the sanctions to be imposed should be "necessary and appropriate to protect investors, other member firms and associated persons, and to promote the public interest."⁴² In this case, that requires the Hearing Panel to consider the Respondent's conduct as a whole, which leads the Hearing Panel to the conclusion that Duma should not be permitted to remain in the securities industry. Taken as a whole, Duma's conduct demonstrates that he represents an unreasonable risk to the public and other industry participants. Not only did Duma flout the dual notice requirements of NASD Conduct Rule 3050 that he advise his firm of the H&R Block account and that he advise H&R Block that he was associated with another NASD member firm, but he lied about the nature of the account. Moreover, even after NASD's investigation began, Duma did not disclose the H&R account to his new firm. Only after that firm's compliance department came to him and specifically asked about the account did Duma admit its existence. In addition, for approximately

⁴² NASD Sanction Guidelines 3 (2004 ed.)

three years, Duma purposefully violated NASD's rules requiring pre-approval of advertisements and sales literature. All in all, Duma's conduct evidences an alarming disregard for NASD's rules.

A. Advertising Violations

NASD's Sanction Guidelines ("Guidelines") governing communications with the public recommend that failure to file an advertisement warrants a fine ranging from \$1,000 to \$15,000 and a suspension of up to five business days.⁴³ The particular considerations applicable to establishing a fine for violations of this rule are: (1) whether the failure to file was inadvertent; (2) whether the communication with the public was circulated widely; and (3) whether the respondent failed to notify his supervisor of the communication with the public.⁴⁴ Considering these factors along with the Guidelines' Principal Considerations in Determining Sanctions, the Hearing Panel finds that Duma's conduct was serious and involved a number of aggravating factors. For instance, Duma certified in connection with his annual compliance review in May 1999 that he had not run any advertisements. As he admitted at the hearing, this certification was false. In addition, as discussed above, the Hearing Panel finds that Duma's actions were intentional. Accordingly, the Hearing Panel concludes that a sanction at the upper end of the recommended range would be appropriate under the facts and circumstances of this case. However, in light of the bars imposed below, the Hearing Panel will not impose a sanction for

⁴³ Guidelines 85.

⁴⁴ *Id.*

this violation. A suspension would be redundant,⁴⁵ and a monetary fine would serve no additional remedial purpose.⁴⁶

B. Outside Business Activity

The Guidelines governing outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances. When the outside business activities involve aggravating conduct, the Guidelines provide for a longer suspension of up to one year. Finally, in egregious cases, such as those involving a significant injury to customers, the Guidelines provide for a bar.⁴⁷ This case does not present any aggravating circumstances warranting more than the minimum sanction for this violation. Except for the \$2,015.30 Duma received from Southwestern Life, he reported all of his outside business activity. The Hearing Panel finds that his failure to report this income was due to inadvertence. As a non-captive agent, WMA Securities had never prohibited Duma from selling insurance in connection with his estate planning business. However, for the reasons discussed above, the Hearing Panel will not impose an additional sanction for this violation in light of the bars otherwise imposed in this Decision.

C. The H&R Block Account

Under the third and fourth causes of the Complaint, the Hearing Panel found that Duma violated NASD Conduct Rules 2110 and 3050(c) by (1) failing to disclose the H&R Block account to WMA Securities; (2) failing to advise H&R Block that he was associated with an

⁴⁵ *Department of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

⁴⁶ *See e.g., Department of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip. LEXIS 1, at *36–37 (N.A.C. Feb. 19, 2004).

⁴⁷ Guidelines 16.

NASD member firm; and (3) falsely stating on the H&R Block account application that he was not associated with an NASD member firm. For these violations, the Hearing Panel bars Duma from the securities industry.

The applicable Guidelines for violations of Conduct Rule 3050 recommend, in egregious cases, a suspension of up to two years or a bar, as well as a fine.⁴⁸ The specific considerations listed in the Guidelines focus on whether the transactions in the undisclosed account presented real or perceived conflicts of interest or involved “hot issues” (there is no evidence of either circumstance in this case) or whether the respondent provided oral notice to the employing firm or the executing firm, and whether the employer orally acquiesced. In this case, as found above, Duma withheld information about the account until he was confronted about it by the compliance department at the broker-dealer he joined after he left WMA Securities. He also lied about his use of the account in his January 2003 on-the-record interview. In view of his conduct, the Hearing Panel determined that Duma’s violation was egregious. Duma did not simply fail to disclose the H&R Block account to WMA Securities and his associated person status to H&R Block. In his new account application, he lied to H&R Block about whether he was employed by a broker-dealer, which prevented H&R Block from notifying WMA Securities of the account. These circumstances are highly aggravating. By itself, therefore, this violation supports barring Duma from any association with any NASD member.

Duma’s misrepresentations on the H&R Block new account application are closely related to his failure to disclose the account. The most analogous Guideline for this violation is for “Forgery And/Or Falsification of Records,” which recommends consideration of a bar, as

⁴⁸ Guidelines 19.

well as a fine, in egregious cases.⁴⁹ The Hearing Panel finds that this is an egregious case. As explained above, the information that Duma misrepresented was critically important. If he had answered the questions truthfully, H&R Block would have notified WMA Securities, but because he misrepresented his status, H&R block did not notify WMA Securities. As a result, WMA Securities was unable to monitor Duma's trading in the H&R Block account. Moreover, as discussed above, the Hearing Panel finds that Duma's misrepresentations were deliberate. In short, Duma's actions show that he is unfit to remain registered as a securities professional and that he must be barred to protect the investing public. To maintain the integrity of the securities industry, registered representatives and especially registered principals must accept responsibility for their actions. Duma has shown he is unwilling to do that. As a result, he would pose a serious risk to the investing public if he were allowed to continue to associate with an NASD member.

D. Untruthful On-The-Record Interview Testimony

The Guidelines for failing to respond truthfully in an on-the-record interview conducted pursuant to NASD Procedural Rule 8210 provide for a fine of \$25,000 to \$50,000 and a bar, absent mitigation.⁵⁰ In assessing the relative seriousness of a respondent's conduct, the Guidelines suggest that the Hearing Panel consider the degree of regulatory pressure that was needed to obtain a complete and truthful response. Here the Department questioned Duma on two occasions about his use of the H&R Block account and had to confront him with copies of canceled checks before he would admit that he used the account for his personal finances. The Hearing Panel considers this highly aggravating, particularly when it is considered alongside his

⁴⁹ Guidelines 41.

other conduct concerning the H&R Block account. Duma tried to conceal his activity in the account from his broker-dealers and NASD staff. Only when he realized that he could not maintain the falsity any further did he reluctantly concede that he directed the activity in the account. Under these circumstances, the Hearing Panel concludes that this violation by itself warrants that Duma be barred from associating with any NASD member firm.

IV. ORDER

Therefore, having considered all the evidence, Timothy J. Duma is barred from associating with any member firm in any capacity for (1) failing to notify his employer in writing that he had opened a securities account at another firm and failing to notify the firm at which he opened the new account that he was associated with an NASD member firm, in violation of NASD Conduct Rules 3050(c) and 2110; (2) misrepresenting his employment status on a new account application, in violation of NASD Conduct Rule 2110; and testifying untruthfully about his use of the new account during an on-the-record interview, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

In light of the bars, the Hearing Panel imposes no further sanctions. However, Duma is ordered to pay costs in the amount of \$1,879.26, which include an administrative fee of \$750 and

⁵⁰ *Id.* at 37.

hearing transcript costs of \$1,129.26. These costs shall be due and payable on a date set by NASD, but not sooner than 30 days after this Decision becomes the final disciplinary action of NASD.⁵¹

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Timothy J. Duma (*overnight courier and first-class mail*)
Stephen S. Berkeley, Esq. (*facsimile and first-class mail*)
Dale A. Glanzman, Esq. (*first-class and electronic mail*)
Rory C. Flynn, Esq. (*first-class and electronic mail*)

⁵¹ The Hearing Panel has 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.