NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CHARLES C. FAWCETT, IV (CRD No. 1576169) Respondent.	:	Disciplinary Proceeding No. C9A040024 **Hearing Panel Decision and Order Granting, in Part, Enforcement's Motion for Summary Disposition** Hearing Officer - SW Dated: May 24, 2005

Respondent is barred from associating with any member firm in any capacity for refusing to provide information and refusing to appear for an on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct 2110 as alleged in count two of the Complaint.

With respect to count one of the Complaint, the Hearing Panel found that Enforcement failed to establish the charges by a preponderance of the evidence, and, accordingly, dismissed count one of the Complaint.

Appearances

Thomas M. Huber, Esq., Regional Counsel, Philadelphia, PA, for the Department of Enforcement.

Thomas P. Puccio, Esq., New York, NY, for Respondent Charles C. Fawcett, IV.

DECISION

I. Procedural Background

On June 25, 2004, the Department of Enforcement ("Enforcement") filed a two-count Complaint against Charles C. Fawcett, IV ("Respondent"), a former registered

investment company and variable contracts products representative and principal of Federated Securities Corp. ("FSC"). Count one of the Complaint alleges that Respondent violated NASD Conduct Rule 2110 by deleting or attempting to delete six emails that he knew or believed were subject to a regulatory subpoena. Count two of the Complaint alleges that Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to provide information and failing to appear at an on-the-record interview, as requested by the NASD staff pursuant to NASD Procedural Rule 8210.

On July 20, 2004, Respondent filed an Answer denying that he had violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210. Respondent admitted that: (i) he had deleted multiple emails; (ii) he had refused to provide information to the NASD staff regarding the deletion of the emails; and (iii) he had failed to appear for an on-the-record interview requested by the NASD staff.

On September 20, 2004, Enforcement filed a motion for summary disposition, pursuant to NASD Procedural Rule 9264, as to counts one and two of the Complaint.[1] On November 9, 2004, Respondent filed an opposition to Enforcement's motion for summary disposition.

On November 12, 2004, the Hearing Panel granted Enforcement's summary disposition motion as to count two of the Complaint. The Hearing Panel determined to continue the proceeding to a Hearing regarding the allegations of count one of the Complaint.

[1] Hereinafter, Enforcement's exhibits attached to its September 20, 2004 motion for summary disposition will be designated as "CX"; the Complaint will be designated as "Complaint"; and the Answer will be designated as "Answer."

On February 23, 2005, the Hearing Panel, consisting of a current member of the District 7 Committee, a current member of the District 11 Committee, and a hearing officer conducted a Hearing with respect to the allegations in count one of the Complaint in Pittsburgh, Pennsylvania.[2] At the Hearing, Enforcement presented one witness, Mr. JC, FSC's outside counsel, and 16 exhibits; Respondent presented no witnesses and one exhibit.[3]

The Hearing Panel sets forth below the basis for granting Enforcement's motion for summary disposition as to count two of the Complaint and for dismissing the allegations as to count one of the Complaint.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became registered with FSC as an investment company and variable contracts products representative on October 21, 1986. (CX-2, p. 2). On December 17, 1999, Respondent became registered as an investment company and variable contracts products principal with FSC. (Id.). On January 15, 2004, NASD terminated Respondent's registrations. (Id.). Respondent is not currently employed in the securities industry. (Id.).

NASD has jurisdiction over this proceeding pursuant to Article V, Section 4 of the NASD's By-Laws because (i) the Complaint was filed within two years after the effective date of termination of Respondent's registrations, and (ii) the Complaint

[2] On January 5, 2005, the Hearing Officer deemed Respondent in default for failing to appear at a pre-hearing conference. But, on February 10, 2005, the Hearing Officer granted Respondent's motion to vacate the default order and scheduled the February 23, 2005 Hearing.

[3] Hereinafter, Enforcement's exhibits presented at the Hearing will be designated as "CXH-," Respondent's exhibits presented at the Hearing will be designated as RXH-," and references to the transcript of the Hearing will be designated as "Tr. p."

charges misconduct while Respondent was registered with FSC, and failure by Respondent to respond to requests for information issued by the NASD staff during the two year period of retained jurisdiction.

B. Respondent Violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110

1. Background

On December 9, 2003, NASD electronically received a Rule 3070 filing from FSC regarding Respondent, which disclosed that Respondent was "[t]erminated on November 24, 2003 for intentionally deleting e-mail correspondence relevant to a regulatory investigation."[4] (CX-1).

After receipt of the Rule 3070 filing, the NASD staff began an investigation of Respondent. Pursuant to NASD Procedural Rule 8210, the NASD staff sent Respondent three letters, dated December 19, 2003, February 10, 2004, and March 4, 2004, requesting information concerning the conduct alleged in FSC's Rule 3070 filing. (Complaint at ¶¶12-16). The March 4, 2004 letter also requested that Respondent appear for an on-the-record interview on March 17, 2004. (Complaint at ¶16). In his Answer to the Complaint, Respondent admitted that he failed to respond to the three Rule 8210 requests and that he failed to appear to testify as required by the March 4, 2004 request. (Answer at ¶1).

[4] NASD Conduct Rule 3070 requires an NASD member to report to NASD when, among other things, an associated person has been found to have: (i) violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization; (ii) engaged in conduct which is inconsistent with just and equitable principles of trade; or (iii) been the subject of any disciplinary action taken by the member involving suspension or termination.

2. Enforcement is Entitled to Summary Disposition as to Count Two of the Complaint

After filing the Complaint, Enforcement filed a motion for summary disposition, on September 20, 2004, alleging that there was no genuine dispute about the facts and therefore it was entitled to summary disposition.

Pursuant to NASD Procedural Rule 9264(d), a Hearing Panel may grant a motion for summary disposition when "there is no genuine issue with regard to any material fact and the party that files the motion is entitled to summary disposition as a matter of law." This is identical to the standard under Rule 56(c) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") governing summary judgments. It is well established under Fed. R. Civ. P. 56 that the moving party bears the initial burden of showing "the absence of a genuine issue of material fact."[5] Enforcement met its burden with respect to count two of the Complaint.

3. Rule 8210 Obligation to Respond to the NASD Staff's Requests for Information

There is no dispute that Respondent failed to respond to the NASD staff's three requests for information concerning the deletion of the emails, or that Respondent failed to appear for a scheduled on-the-record interview. Furthermore, it is clear that the information was directly relevant to the NASD staff's investigation of possible rule violations by Respondent. By refusing to provide the information, Respondent impeded the NASD staff's ability to pursue its investigation, and thereby undermined NASD's ability to carry out its regulatory mandate.

[5] Celotex Corp. v. Catrett, 477 U.S. 317, 321 (1986).

When Respondent elected to become associated with an NASD member, he agreed to be bound by NASD's rules, including NASD Procedural Rule 8210, which imposes an unqualified affirmative obligation on members and associated persons to cooperate in NASD investigations: "No member or person shall fail to provide information or testimony . . . pursuant to this Rule."[6]

With no issue of material fact present, the only issue to be determined is whether Respondent raised a valid defense for his failure to respond. Respondent's sole defense was that he was invoking his Fifth Amendment privilege against self-incrimination because he is the subject of ongoing SEC and New York State Attorney General ("NYAG") investigations.

4. Invoking the Fifth Amendment is Not a Valid Defense for Violating NASD Procedural Rule 8210

In his opposition to Enforcement's motion for summary disposition, Respondent argued that he should not be forced to respond to the NASD staff's requests for information, in light of his Fifth Amendment privilege, until the SEC and NYAG investigations were concluded. Constitutional privileges, including the Fifth Amendment, provide protection against governmental, not private, action.[7] NASD is a private not-for-profit corporation organized under the laws of Delaware and is a self-regulatory organization registered with the SEC as a national securities association pursuant to the 1938 Maloney Act Amendment to the Securities Exchange Act of 1934,

[6] See Joseph G. Chiulli, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *18 (Jan. 28, 2000).

[7] Desiderio v. National Association of Securities Dealers, Inc., 191 F.3d 198, 1999 U.S. App. LEXIS 23269 (Sept. 22, 1999), cert. denied, 2001 U.S. LEXIS 112 (Jan. 8, 2001).

15 U.S.C. §78o et seq.[8]

The Supreme Court has repeatedly held that private entities, even those intimately involved in governmental regulatory schemes, are not thereby made government actors.[9] The courts have specifically held that NASD, in performing its statutory mandate and central role, is not a government actor.[10] Therefore, Respondent had no Fifth Amendment right to refuse to provide on-the-record testimony to the NASD staff. Further, "[i]t is . . . well settled that respondents cannot impose conditions on their response to NASD's inquiries."[11]

On November 12, 2004, the Hearing Panel concluded, based on controlling precedent and the undisputed facts, that Respondent violated NASD Conduct Rule 2110 and Procedural Rule 8210, and Enforcement was entitled to summary disposition as to count two of the Complaint.

C. Enforcement Presented Insufficient Evidence to Prove by a Preponderance of the Evidence that Respondent Knew or Believed that the Six Emails that He Deleted Were Within the Scope of the NYAG Subpoena

1. Deletion of the Emails

On August 29, 2003, the NYAG issued a subpoena to Federated Investment Management, a FSC related entity. (CXH-12). The NYAG Subpoena required Federated Investment Management, Federated Investors, Inc., FSC, Federated Investment

[8] Id.

[9] See National Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 193 (1988); San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 544 (1987).

[10] See Jones v. S.E.C., 115 F.3d 1173, 1182-1183 (4th Cir. 1997) (rejecting claim based on the Fifth Amendment's Double Jeopardy Clause because NASD is not a government agency), cert. denied, 118 S. Ct. 1512 (1998); Datek Secs. v. NASD, 875 F. Supp. 230, 234 (S.D.N.Y. 1995) (dismissing Fifth and Fourteenth Amendment claims regarding a disciplinary proceeding because NASD is not a state actor).

Counseling, and any of their respective present or former parents, mutual funds, subsidiaries, directors, officers, partners, employees, or agents to produce documents and information pertaining to market timing and late trading with any persons. (CXH-12, pp. 3, 6). The NYAG Subpoena specifically requested information regarding transactions with Canary Capital, Inc., Haidar Capital, and Principia Investment Partners, LP. (CXH-12, pp. 4, 7). Market timing was defined in the NYAG Subpoena to include any agreement, arrangement, practice, or understanding concerning the frequency or amounts of trading of mutual funds. (CXH-12, p. 3).

On September 9, 2003, FSC, through its general counsel, Stephen A. Keen, disseminated to FSC's employees an "Urgent Memorandum/E-Mail." (CXH-11). Mr. Keen's memorandum stated that the NYAG had issued a subpoena to FSC for information and documents concerning market timing and late trading, and directed the employees to retain all files and documents concerning any actual or proposed late trading or market timing arrangements, and any transactions related to Canary Capital, Inc., Haidar Capital, Principia Investment Partners, LP, Edward J. Stern, Security Trust Company, and/or Bank of America. (Id.). The Memorandum also made reference to an SEC request for information regarding market timing that FSC had received.[12]

One day earlier, on September 8, 2003, Respondent deleted nine emails from his computer. (CXH-15, p. 2). The nine emails were dated June 5, 6, 10, 11, 12, 19, and 25, 2003, July 8, 2003, and August 4, 2003. (CXH-2; CXH-3; CXH-4; CXH-5; CXH-6;

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[11] Dept. of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003) aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004).

[12] On September 4, 2003, FSC received from the Securities and Exchange Commission ("SEC") a Request for Information relating to actual, contemplated, or suspected market timing activities with respect to Federated mutual funds. (CX-4, p. 2).

CXH-7; CXH-8; CXH-9; CXH-10). Respondent advised FSC that he had deleted the emails, and FSC was able to recover the deleted emails. (Tr. p. 38; CXH-15, p. 3).

Although none of the emails that were deleted mentioned Canary Capital, Inc., Haidar Capital, Principia Investment Partners, LP, Edward J. Stern, Security Trust Company, and/or Bank of America, FSC ultimately concluded that six of the nine emails were arguably within the scope of the NYAG Subpoena. (CXH-2, CXH-3; CXH-4; CXH-5; CXH-6; CXH-7; CXH-15, pp. 2-3). FSC concluded that three of the deleted emails clearly were not within the scope of the subpoena. (CXH-8; CXH-9; CXH-10; CXH-15, pp. 2-3).

Enforcement provided no evidence or analysis to support or explain FSC's conclusion that the six emails were within the scope of the NYAG Subpoena.[13]

[13] A summary of the six emails follows:

(1) the June 6, 2003 email is from AG to Respondent, and it lists Federated equity and international mutual funds and provides certain information regarding each fund such as (i) the Morningstar category, (ii) inception year, (iii) total assets as of April 2003, and (iv) breakdown of 1%, 3%, 5%, 7.5% and 10% of assets as of April 2003;

(2) the June 10, 2003 email is from AG to Respondent, and it lists Federated funds and provides certain information regarding each fund such as (i) their Morningstar category, (ii) total assets as of April 2003, (iii) CUSIP numbers. The email also contained statements about a maximum 2% of fund assets owned by Trautman Wasserman & Co ("TW & Co."), and maximum 1% of fund assets redeemed in 5 consecutive business days. (Enforcement offered no evidence or analysis of the meaning of the references to maximum fund of assets or redeemed in 5 consecutive business days. To the contrary, Mr. JC testified that TW & Co. never opened any Federated mutual fund accounts. (Tr. pp. 48-49));

(3) the June 11, 2003 email is from AG to Respondent and it is a duplicate of the June 10, 2003 email;

(4) the June 12, 2003 email is from Respondent to SA and it includes the information from the June 10 email and makes reference to a presentation to TW & Co. and the possibility of "round trips" (Enforcement offered no evidence or analysis to establish the meaning of this reference or its possible relevance to the NYAG subpoena);

(5) the June 25, 2003 email is from AG to SC, a TW & Co. employee, copied to Respondent, and it makes reference to a list of Federated funds and specifically asks what the minimum number of rounds trips per annum that TW & Co. would need to manage their business; and

(6) the August 4, 2003 email is from JW, a TW & Co. employee, to Respondent and copied to SC, and it states that Mr. W would love to have a brief conversation with Respondent about exciting news.

Even though four of the six emails were from AG, Enforcement presented no evidence indicating for whom Mr. G worked or why he sent the emails. (CXH-2, CXH-3; CXH-4; CXH-6). Moreover, after reading the six emails, the Hearing Panel did not find that the emails, without more information, were clearly within the scope of the NYAG Subpoena or that Respondent would have "believed" that they were within the scope of a subpoena received by FSC. (Id.).

On October 3, 2003, Respondent was interviewed by three members of FSC's outside counsel in connection with an internal investigation concerning possible market timing and late trading activities by FSC's employees. (Tr. pp. 26-27). Outside counsel conducted more than 100 interviews as part of the internal investigation. (Tr. p. 42). Respondent related to outside counsel that he had discussions regarding possible market timing arrangements with Trautman Wasserman & Co., but he did not disclose that he had deleted any emails. (Tr. pp. 28, 31).

On October 16, 2003, Respondent contacted JC, an attorney with FSC's outside counsel, and said that he had additional information "that he wasn't sure whether it was relevant or not" to FSC's internal investigation. (Tr. p. 31).

At the second interview on October 16, 2003, Respondent disclosed that he had deleted emails and stated that he learned of the existence of a subpoena on September 5, 2003 from Mr. Thomas Donahue, FSC's CFO. (Tr. pp. 35-37). In describing Respondent's conversation with Mr. Donahue, Mr. JC's notes of the October 16, 2003 interview stated "TD didn't say what subpoena." (Tr. p. 76; CXH-14, p. 6). Another attorney present at the October 16, 2003 interview wrote in his notes of Respondent's

interview, "kept a hard copy file as well—gave all hard copy files—[n]one destroyed." (CX-17, p. 8).

Mr. JC also testified that, as far as he knew, there was no general dissemination of information about the NYAG Subpoena before Mr. Keen's September 9, 2003 memorandum. (Tr. p. 72). Mr. Donahue executed an affidavit stating that he did not remember discussing the NYAG Subpoena with Respondent. (RXH-1).

In the October 16, 2003 interview with Mr. JC, to explain his deletion of the emails, Respondent stated "I panicked." (Tr. p. 32). In reviewing the deleted emails, the Hearing Panel did not find anything that would cause an individual to panic, or hear anything that would tie any such panic to a belief that the emails were covered by a subpoena or were evidence of some wrongdoing by Respondent. Enforcement failed to present any information to connect Respondent's statement of panic to the NYAG Subpoena. Mr. JC's impression of the statement was that Respondent was simply embarrassed about a couple of the emails; Mr. JC testified that he "did not draw any connection between [the panicked deletion of the emails] and anything in the subpoena." (Tr. p. 80).

When asked by the NASD staff about the email deletions, Respondent refused to provide any information during the investigation, and he refused to testify at the February 23, 2005 Hearing because of ongoing NYAG and SEC investigations of Respondent.

2. No Violation of NASD Conduct Rule 2110 Proven

The Complaint charged that in deleting the emails, Respondent violated NASD Conduct Rule 2110, which 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."[14] Consequently, if the surrounding facts and circumstances indicate that conduct is unethical, the conduct is viewed as a violation of NASD Conduct Rule 2110.

The Complaint alleges that Respondent learned from a co-worker on September 5, 2003, that FSC had received a subpoena from NYAG, and that Respondent learned or understood from the conversation that the NYAG Subpoena required FSC to produce documents concerning an investigation into market timing and/or late trading activities. The Complaint also alleges that the emails that were deleted were "likely within the scope" of the NYAG Subpoena. Bearing the burden of persuasion, Enforcement argued that the above facts indicate that the email deletions were unethical.

Despite the allegations of the Complaint, Enforcement presented no evidence to establish the above facts. Enforcement failed to present evidence that Respondent either knew or believed that a subpoena had been issued by NYAG concerning market timing and/or late trading, or that Respondent had a reason to attempt to conceal the information in the emails because of a subpoena.

Neither Mr. Donahue, Mr. JC, nor the documents presented by Enforcement corroborated Enforcement's claims regarding Respondent's belief or knowledge concerning the NYAG Subpoena. Mr. JC, in describing his interview with Respondent, did not testify that Respondent admitted that (i) the subpoena mentioned by Mr. Donahue was a NYAG Subpoena, or (ii) the subpoena mentioned by Mr. Donahue called for documents related to market timing and late trading. (Tr. p. 70). Mr. Donohue did not

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

remember discussing the subpoena with Respondent. (RXH-1). In fact, Enforcement presented no evidence that Respondent learned from Mr. Donahue (i) who had issued the subpoena, i.e., that it was a regulatory subpoena, (ii) the subject matter of the subpoena, i.e., market timing and late trading, or (iii) the scope of the subpoena.

Enforcement argued that the Hearing Panel should infer that Respondent knew or believed the emails were covered by the NYAG Subpoena because the deletions occurred within days after Respondent learned that FSC had received a subpoena and the deleted emails were two to three months old at the time of deletion. As discussed above, Enforcement presented no evidence that Respondent knew on September 5, 2003 that an NYAG Subpoena existed. In addition, Enforcement presented no evidence that it was unusual for Respondent to wait two or three months before he deleted an email. In fact, the three emails that FSC concluded were not within the scope of the subpoena were two to three months old at the time of their deletion.

Enforcement also argued that the Hearing Panel should infer that Respondent believed the deletions were unethical based on his statement to Mr. JC to the effect that he was aware of the existence of a subpoena and that he "panicked." Enforcement, however, failed to present any evidence that the information in the emails should cause Respondent to panic or to attempt to conceal the information in the emails. To the contrary, the evidence indicates that Respondent readily discussed the Trautman Wasserman & Co. communications with Mr. JC, that he retained hard copies of the emails, and that the subject matter of certain of the emails, i.e., an investment by Trautman Wasserman & Co. in Federated mutual funds, was never consummated.

Finally, Enforcement argued that, because Respondent refused to testify about the emails, the Hearing Panel should draw an adverse inference that Respondent's testimony about his knowledge of the subpoena would have been harmful and adverse to him. Enforcement is correct that even when the Fifth Amendment privilege applies (though it does not in NASD proceedings), "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence against them."[15] This principle applies, inter alia, in disciplinary proceedings conducted by governmental entities; a fortiori it applies in NASD proceedings.[16]

The trier of fact (in this case the Hearing Panel), however, is permitted, but not required, to draw an adverse inference. Moreover, even if an adverse inference is drawn, the inference "may be employed to complete a chain of reasoning on a point partially established by direct evidence, but it cannot be used to fill a void where there is otherwise no evidence."[17] Instead, "the disciplinary action, whatever it may be, may not be based exclusively on the [Respondent's] failure to testify but it must be based on independent evidence that it is warranted."[18]

In this case, rather than presenting evidence, Enforcement is seeking to have the Hearing Panel infer that: (i) in his September 5, 2003 conversation with Mr. Donahue, Respondent learned of the existence of the NYAG Subpoena; (ii) Respondent knew or

[15] Baxter v. Palmigiano, 425 U.S. 308, 318 (1976).

[16] Arthurs v. Stern, 560 F.2d 477, 478 (1st Cir. 1977), cert. denied, 434 U.S. 1034 (1978).

[17] Michael Flanagan, Initial Decision Release No. 241, 2003 SEC LEXIS 2795 at *28 (Nov. 24, 2003).

[18] Book v. United States Postal Service, 675 F.2d 158, 160 n. 4 (8th Cir. 1982).

believed that the six emails would have been required to be disclosed to the NYAG pursuant to its subpoena; (iii) Respondent panicked because he was concerned that the information in the emails were damaging to him or to FSC; and (iv) Respondent refused to testify because he did not want to admit any of the preceding facts.

The Hearing Panel, based on Respondent's refusal to testify, declines to infer that Respondent knew or believed that the emails that he deleted were subject to the NYAG Subpoena. As explained above, the adverse inference cannot be used to fill a void where there is otherwise no evidence. And, Enforcement failed to present evidence to establish (i) that the six emails were, in fact, within the scope of the NYAG Subpoena, (ii) that Respondent had knowledge of the NYAG Subpoena prior to deleting the six emails, or (iii) that Respondent had a reason to conceal the information in the deleted emails.

Enforcement presented no affirmative evidence that Respondent knew or believed that he was acting improperly when he deleted the emails. Given the existence of ongoing SEC and NYAG investigations, the Hearing Panel does not believe that the only legitimate inference is that, if he testified, Respondent would have been forced to admit that when he deleted the emails, he knew or believed they were covered by the NYAG Subpoena.

The Hearing Panel, therefore, finds that Enforcement failed to satisfy its burden of showing by a preponderance of the evidence that Respondent violated NASD Conduct Rule 2110 as alleged in count one of the Complaint, and, accordingly, the Hearing Panel dismisses count one of the Complaint.

III. Sanction

With respect to count two of the Complaint, the applicable NASD Sanction Guideline recommends that, where an individual respondent does not respond, a bar should be standard, and a fine ranging between $25,000 and $50,000 should be imposed.[19] The Guidelines also provide that adjudicators generally should not impose a fine if the individual is barred in a failure to respond case when there is no customer loss.[20] Enforcement requested that Respondent be barred.

Considering the importance of NASD Procedural Rule 8210, and noting the extensive case law addressing the need to respond to Rule 8210 requests, the Hearing Panel finds no mitigating factors and no reasons to impose a sanction below those recommended by the Guidelines. Accordingly, the Hearing Panel bars Respondent from association with any NASD member in any capacity.

IV. Conclusion

Finding that Respondent Charles C. Fawcett, IV violated NASD Conduct Rule 2110 and Procedural Rule 8210 as set forth in count two of the Complaint, the Hearing Panel orders that Respondent be barred from associating with any NASD member firm in any capacity. If this Hearing Panel Decision become the final disciplinary action of

[19] NASD Sanction Guidelines, p. 35 (2005).

[20] Id. at 10.

NASD, the bar shall become effective immediately.[21]

HEARING PANEL

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by: Sharon Witherspoon
Hearing Officer

Date: Washington, DC
May 24, 2005

Copies to:
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[21] 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.