

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	Disciplinary Proceeding
	:	No. C8A040079
Complainant,	:	
	:	
v.	:	<b>HEARING PANEL DECISION</b>
	:	
GREGORY R. MASCERI	:	
(CRD No. 727672),	:	Hearing Officer - SW
	:	
Respondent.	:	Dated: July 8, 2005
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**Respondent is barred for violating NASD Conduct 2110 and NASD Procedural Rule 8210 by providing false information to the NASD staff. In the absence of the bar for the Rule 8210 violation, Respondent would be suspended in all capacities for two years and fined \$25,000 for violating NASD Conduct Rule 2110 by forging the signatures of two customers on certain insurance documents.**

**Appearances**

UnBo Chung, Esq., Regional Attorney, and Dale A. Glanzman, Esq., Regional Counsel, Chicago, IL, for the Department of Enforcement.

M. David Sayid, Esq. and Edward da Parma, Esq., Sayid and Associates LLP, New York, NY, for Respondent Gregory R. Masceri.

**DECISION**

**I. PROCEDURAL BACKGROUND**

On September 9, 2004, the NASD Department of Enforcement (“Enforcement”) filed a two-count Complaint against Respondent Gregory R. Masceri (“Respondent”). Count one of the Complaint alleges that Respondent violated NASD Conduct Rule 2110 by affixing the signatures of two customers to various insurance documents, without the customers’ permission or knowledge. Count two of the Complaint alleges that

Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by providing false information to the NASD staff in his October 3, 2003 and March 24, 2004 responses to the Rule 8210 requests for information regarding the alleged forgeries.

Respondent denied the allegations. Specifically, with respect to count one of the Complaint, Respondent stated that he either did not place the customers' signatures on the insurance documents, or that he placed their signatures on the documents with their permission and knowledge. With respect to count two of the Complaint, Respondent argued that the information that he provided to the NASD staff was true.

The Hearing Panel, consisting of one current member and one former member of the District 8 Committee and a Hearing Officer, conducted a Hearing in Rochester, New York, on March 8, 9, 10, and 11, 2005.<sup>1</sup>

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction**

Respondent entered the securities industry in April 1981 as an investment company and variable contracts products representative with Monarch Securities, Inc. (CX-1, p. 5). Respondent joined Allstate Financial Services, LLC ("Allstate") in December 1998 as a life specialist.<sup>2</sup> (Tr. pp. 456, 458). From August 2000 to April 2003, Respondent was registered as an investment company and variable contracts products representative with Allstate. (CX-1).

Between July 2003 and December 2004, Respondent was associated with American Portfolios Financial Services, Inc. ("American Portfolios"). (CX-1, p. 3). On

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<sup>1</sup> "Tr." refers to the transcript of the Hearing held on March 8, 9, 10, and 11, 2005; "CX" refers to Enforcement's exhibits; and "RX" refers to Respondent's exhibits.

<sup>2</sup> In 2000, Allstate changed the title from life specialist to financial specialist. (Tr. pp. 455-456).

September 9, 2004, when Enforcement filed the Complaint against Respondent, he was registered as an investment company and variable contracts products representative with American Portfolios, an NASD member firm. (Id.). Thus, NASD has jurisdiction over Respondent.

## **B. Background**

### **1. Respondent affixed his Customers' Signatures to Insurance Documents dated November 26, 2002 and January 7, 2003 without their Permission and Knowledge**

Respondent has suffered from a generalized anxiety disorder since 1984. (Tr. pp. 571-572). Generalized anxiety involves excessive worrying, muscle tension, feeling on edge, irritability, poor concentration, poor attention span, and insomnia. (Tr. p. 793).

In July 2002, Respondent began suffering infrequent panic attacks. (Tr. p. 470). Panic attack symptoms include heart palpitations, sweating, tremors, and more acute and more severe attention and concentration problems that can last from a few minutes to 20 minutes at a time. (Tr. pp. 793-794).

Customers Mr. and Mrs. SY had a home insurance policy through Rocco A. DiStaffen, Jr., an exclusive agent with Allstate. (Tr. p. 675). Mr. DiStaffen was one of five exclusive agents with Allstate with whom Respondent had an agent partnership relationship whereby Respondent used the exclusive agents' books of business to generate leads. (Tr. pp. 458-459).

In the summer of 2002, Mr. DiStaffen mailed a card to his clients soliciting interest in Allstate insurance products. (Tr. pp. 256, 459). Mr. and Mrs. SY responded to Mr. DiStaffen's mailing and expressed an interest in a policy that included life insurance, disability, college savings, and retirement savings features. (Tr. pp. 256, 258). Mr.

DiStaffen referred the lead to Respondent who contacted Mr. SY for an appointment. (Tr. pp. 459-460). Pursuant to Allstate's system, the life specialist, rather than the exclusive agent, handles all phases of the insurance sale from the application to the issuance of the policy. (Tr. pp. 701-702).

On August 7, 2002, Respondent met with Mr. and Mrs. SY at their home to discuss their insurance needs. (Tr. p. 257). At the meeting, Respondent recommended that Mr. and Mrs. SY purchase a Jefferson Pilot Variable Universal Life ("VUL") insurance policy, based on his completion of their needs analysis. (Tr. pp. 462-463). Respondent described the Jefferson Pilot VUL policy as a "poor man's disability policy" because Jefferson Pilot would waive not only the cost of the insurance premium but also waive up to the maximum guideline premium if the customer became disabled.<sup>3</sup> (Tr. p. 465).

Mr. SY testified that he only signed one document and his wife testified that she did not sign any documents at the August 7, 2002 meeting, whereas Respondent testified that both Mr. and Mrs. SY signed all of the August 2002 VUL insurance documents.<sup>4</sup> (Tr. pp. 299, 417, 476). Respondent and Mr. and Mrs. SY agreed that they were supposed to meet again to discuss the policy in greater detail. (Tr. pp. 260, 418, 636). Nevertheless, they all ended the meeting believing that Mr. and Mrs. SY had purchased the VUL policy. (Tr. pp. 466, 636). Respondent submitted the August 2002 VUL application to

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<sup>3</sup> The guideline premium for a VUL policy is the maximum premium that can be made without the policy being classified as something other than a life insurance product. (Tr. p. 464).

<sup>4</sup> The August 2002 VUL insurance documents included but were not limited to: (i) a four-page, nine-part application, together with a one-page agent's report; (ii) a two-page application supplement for variable life insurance listing approximately 24 separate sub-account investments, with confirmation of receipt of a current prospectus; (iii) a 12-page insurance illustration; (iv) an Insurance Department of the State of New York notice confirming that the proposed policy would not be replacing an existing insurance policy; and (v) a notice and consent for HIV related testing. (RX-2).

Allstate on August 19, 2002. (RX-2, p. 9). The VUL application also required that Mr. and Mrs. SY provide urine and blood specimens. (Tr. pp. 466, 649).

Beginning in November 2002, Respondent's panic attacks became severe, and he also experienced agoraphobia. (Tr. p. 469). As a result of his panic attacks, Respondent avoided driving on the expressway, and on occasion avoided calling clients because those activities would bring on anxiety symptoms. (Tr. p. 795). Respondent's wife drove him to his appointments from November 2002 to January 2003. (Tr. p. 470).

Despite his panic attacks, Respondent was the number one producer for Allstate's upstate New York region in calendar year 2002.<sup>5</sup> (Tr. pp. 471, 626). Respondent stated that he was doing the volume of two or three Allstate financial specialists without clerical assistance. (Tr. p. 544). Respondent was capable and comfortable with his job because much of the work was repetitive (Tr. p. 471). Respondent was in the insurance industry for more than 28 years without a customer complaint. (Tr. p. 456).

Up until November 2002, Respondent had no further contact with Mr. SY, and by November 2002, the August 2002 VUL application had expired absent the required medical information about the customers. (Tr. pp. 419, 469, 477). In November 2002, Mr. SY telephoned Mr. DiStaffen to find out why the policy had not been issued. (Tr. pp. 261, 300). Mr. DiStaffen passed the message on to Respondent who contacted Mr. SY in November 2002. (Id.).

In November 2002, Respondent arranged for the customers to provide urine and blood specimens to Portamedic. (Tr. pp. 466-467). Respondent also completed a new VUL insurance application for Mr. and Mrs. SY containing the same customer

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<sup>5</sup> From 1999 until he was terminated in 2003, Respondent's production and income increased every year. (Tr. p. 515). Respondent earned approximately \$175,000 in 2002. (Tr. p. 516).

information as the information provided to Respondent by Mr. and Mrs. SY at their August 7, 2002 meeting and included on the August 2002 VUL insurance application. (Tr. p. 478; RX-2; CX-9).

It was Respondent's practice to complete the insurance documents for his customers and indicate where they should sign. (Tr. pp. 475-476, 662). At the Hearing, Respondent admitted that he recognized his handwriting on the November 2002 VUL application. (Tr. pp. 594, 666). Allstate's policy and procedures manual does not prohibit registered representatives from filling out forms for a customer, but it provides that registered representatives shall not sign a customer's name under any circumstances, whether authorized or not by the customer. (Tr. pp. 21-22; CX-7, p. 9). The November 2002 VUL application consisted of the following documents:

- (i) a four-page, nine-part application purportedly signed by Mr. SY, as the proposed insured, and signed by Respondent, the licensed agent, together with a one-page agent's report signed by Respondent, the licensed agent;<sup>6</sup>
- (ii) a two-page supplement for variable life listing approximately 32 separate sub-account investments, with confirmation of receipt of a current prospectus purportedly signed by Mr. SY, as the proposed insured, and signed by Respondent, the registered representative;
- (iii) page 11 of an 11-page insurance illustration purportedly signed by Mr. SY, as the owner applicant, and signed by Respondent, the representative;
- (iv) an Insurance Department of the State of New York notice confirming that the proposed policy will not be replacing an existing insurance policy, purportedly signed by Mr. SY, as the applicant, and signed by Respondent, the agent;
- (v) a notice and consent for HIV related testing, purportedly signed by Mr. SY, as the proposed insured;

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<sup>6</sup> The agent's report specifically asked the question "[d]id you see all Proposed Insureds on the date of application?" (CX-9, p. 5; CX-10, p. 5). On both the November 2002 and the January 2003 applications, Respondent falsely answered "yes" to that question. (Id.).

(vi) a customer acknowledgement form listing certain investment risks of the VUL policy, purportedly signed by Mr. SY, as the owner, and signed by Respondent, the registered representative;

(vii) a W-9 tax certification form, purportedly signed by Mr. SY, as the primary account holder;

(viii) a second, four-page, nine-part application, with a handwritten label “spouse rider,” purportedly signed by (1) Mr. SY, as the proposed insured, and (2) Mrs. SY, as the spouse, and signed by Respondent, the licensed agent, together with a one-page agent’s report signed by Respondent, the licensed agent; and

(ix) a second HIV related testing consent form purportedly signed by Mrs. SY, as the proposed insured. (CX-9).

Respondent signed his name to the November 2002 insurance application.

(Tr. p. 663). Respondent did not request that Mr. and Mrs. SY meet him to sign the November 2002 insurance documents, nor did he request or receive Mr. and Mrs. SY’s consent to place their signatures on the November 2002 insurance documents. (Tr. pp. 282-283, 423-424).

On December 4, 2002, Mr. and Mrs. SY provided urine and blood specimens.<sup>7</sup>

(Tr. pp. 429-430). The November 26, 2002 VUL insurance application with Mr. and Mrs. SY’s signature was submitted to Allstate on December 9, 2002. (CX-9, p. 12).

At the end of December 2002, Respondent complained to his doctor that the panic attacks were not decreasing in frequency or severity, and his doctor prescribed another drug and recommended that Respondent see specialist Dr. Nasra, a psychiatrist.<sup>8</sup> (Tr. pp.

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<sup>7</sup> In their testimony and in their written statement to Mr. Eby, Mr. and Mrs. SY incorrectly identified the mobile lab company that performed the testing as AccuMed. (Tr. pp. 263, 418). Respondent testified that the mobile lab company that he used was Portamedic located in Rochester, New York, whereas AccuMed is a mobile lab company located in the Chicago, Illinois area where the office of the Allstate investigator, Mr. Eby, is located. (Tr. pp. 467, 562-563).

<sup>8</sup> In addition to being a treating psychiatrist, Dr. Nasra is also a forensic psychiatrist, which is a subspecialty of general psychiatry that provides evaluations for courts. (Tr. p. 789). Because Dr. Nasra was engaged as a treating psychiatrist for Respondent, he testified that he had not done a detailed evaluation of Respondent in anticipation of a hearing. (Tr. pp. 789, 824).

578, 653). Respondent had his first appointment with Dr. Nasra on February 28, 2003. (Tr. p. 577).

In early January 2003, having not heard from Respondent since November 2002, Mr. SY again contacted Allstate to ask about the status of his policy. (Tr. pp. 264, 305-306). In response to Mr. SY's inquiry, Respondent requested a check from Mr. SY for \$125, which Mr. SY provided. (Tr. pp. 306-307; CX-11).

Although Respondent does not remember completing the January 2003 VUL application, he admitted that he signed the additional application dated January 7, 2003.<sup>9</sup> (Tr. pp. 481, 594-595). Respondent did not explain why the January 2003 VUL application was necessary, but the Hearing Panel noted that the spouse rider of the January 2003 VUL application as compared to the November 2002 VUL application was on a new form entitled "Other Insured Supplement." (CX-9, pp. 13-16; CX-10, pp. 6-7).

The January 2003 VUL application consisted of the following documents:

- (i) a four-page, nine-part application purportedly signed by Mr. SY, as the proposed insured, and signed by Respondent, the licensed agent, together with a one-page agent's report signed by Respondent, the licensed agent;
- (ii) a two-page "other insured supplement" purportedly signed by Mrs. SY;
- (iii) an 11-page illustration purportedly signed by Mr. SY, as the owner applicant, and signed by Respondent, the representative; and
- (iv) an Insurance Department of the State of New York notice confirming that the proposed policy will not be replacing an existing policy, purportedly signed by Mr. SY, as the applicant, and signed by Respondent, the agent. (CX-10).

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<sup>9</sup> The only substantive difference between the November 2002 application and the January 2003 application was that the November 2002 application indicated a disability waiver of \$2,000 per month whereas the January 2003 application indicated the disability waiver was \$2,000 per year. (CX-9; CX-10). The Hearing Panel finds that the difference resulted more likely from a copying error rather than a conscious decision to change the amount.



The January 2003 VUL application was submitted to Allstate with the purported signatures of Mr. and Mrs. SY on January 10, 2003.<sup>10</sup> (CX-10, p. 1). Respondent did not request that Mr. and Mrs. SY meet him to sign the January 2003 insurance documents, nor did he request or receive Mr. and Mrs. SY's consent to sign the January 2003 insurance documents on their behalf.<sup>11</sup> (Tr. pp. 423-424).

By the middle of January 2003, Respondent was beginning to feel better. (Tr. p. 653). In February 2003, Respondent contacted Mr. SY to advise him that the Jefferson Pilot VUL insurance policy was ready, and that he needed to submit an additional \$26.87 payment. (Tr. pp. 267, 312, 648). Before Respondent left for his vacation on February 8, 2003, he dropped the insurance policy off with Mr. DiStaffen and told Mr. DiStaffen to collect an additional check from Mr. SY. (Tr. pp. 596, 692). Respondent would have earned approximately \$700 in commissions on the insurance policy.<sup>12</sup> (Tr. p. 558).

On February 7, 2003, Mr. SY picked up his insurance policy from Mr. DiStaffen.<sup>13</sup> (Tr. pp. 268, 315, 701-702). Upon briefly reviewing the policy, Mr. SY realized that it did not have the type of disability feature that he thought he was purchasing, but he left the \$26.87 check and took the policy home to review it with greater care.<sup>14</sup> (Tr. pp. 268-269, 314-315).

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<sup>10</sup> If Respondent did not sign the insurance documents at the same time as his customer, he would sign the documents when he returned to his office after the customer had signed the documents. (Tr. pp. 664-665).

<sup>11</sup> Mr. SY testified that he would have come to Allstate's office to sign the insurance documents had Respondent requested that he do so. (Tr. p. 423).

<sup>12</sup> Mr. DiStaffen was entitled to 10% of the total commission. (CX-10, p. 5).

<sup>13</sup> Mr. DiStaffen was located in Allstate's West Ridge office in New York, whereas Respondent was located in Allstate's Brighton office in New York. (Tr. pp. 192, 520).

<sup>14</sup> Respondent mistakenly advised Mr. SY that the VUL policy had a disability feature that would provide \$2,000 in monthly income, after taxes, if Mr. SY became disabled. (Tr. pp. 214, 569).

On February 19, 2003, Mr. SY returned to Allstate's office and reviewed the insurance policy and the attached insurance applications with Mr. DiStaffen, pointing out the pages that showed the purported signatures of his wife and himself, but which they had not signed. (Tr. pp. 272, 673). Mr. SY told Mr. DiStaffen to cancel the insurance policy.<sup>15</sup> (Tr. p. 274). At Mr. SY's request, Mr. DiStaffen documented Mr. SY's complaint on an Allstate customer complaint form. (Tr. p. 184; RX-1).

## 2. Allstate's Investigation

On February 19, 2003, Mr. DiStaffen forwarded the completed complaint form to his supervisor, Jeff Calderon, who alerted Respondent's direct supervisor, Anthony Pagano,<sup>16</sup> of the customer complaint. (Tr. pp. 159, 190). Mr. Pagano then spoke with Respondent regarding Mr. SY's complaint.<sup>17</sup> (Tr. pp. 166, 183, 185).

Thereafter, Respondent called Mr. SY on February 19, 2003 to discuss the complaint, but he was unable to resolve the matter with Mr. SY. (Tr. pp. 275-277). At the direction of Lane O'Shea, Allstate's field compliance principal, Mr. Pagano contacted Mr. SY on February 20, 2003 to gain a better understanding of Mr. SY's complaint. (Tr. pp. 181, 190, 197, 251).

After speaking with Mr. SY, Mr. Pagano again spoke with Respondent. (Tr. p. 165). Respondent told Mr. Pagano that he did not remember signing Mr. and Mrs. SY's names to the applications because of his medical condition, but he "acquiesced to"

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<sup>15</sup> In a letter dated February 20, 2003, Jefferson Pilot confirmed to Mr. and Mrs. SY that the VUL insurance policy was canceled. (CX-12).

<sup>16</sup> Mr. Pagano supervised approximately 30 financial specialists during February 2003, including Respondent. (Tr. p. 185). Mr. Pagano was also responsible for the attainment of Allstate's plan for the upstate New York market. (Tr. p. 178).

<sup>17</sup> During the February 19, 2003 conversation, Respondent described the customer complaint to Mr. Pagano as basically a poor service problem in that there had been a delay in issuing the insurance policy. (Tr. pp. 166, 183, 250-251).

Mr. Pagano's statement that he must have signed the documents. (Tr. pp. 166-167, 499-500).

At the Hearing, Respondent testified that because he "has never signed anybody's name to anything in [his] life," he did not believe that he had signed Mr. and Mrs. SY's names to the insurance documents; but Respondent had no specific recollection that he did not sign his customers' names. (Tr. pp. 480, 499-500). Respondent testified that there were a lot of blank spots between late November 2002 and the middle of January 2003, although he remembered that he did not see Mr. and Mrs. SY in November 2002 or January 2003. (Tr. pp. 469, 638, 665). Dr. Nasra explained that during a panic attack, the person would be in an altered state of consciousness and would not pay attention to what he was doing. (Tr. pp. 796, 798). Loss of memory would be consistent with panic disorder. (Tr. p. 798).

In addition, Dr. Nasra stated that the untreated panic disorder would have impacted Respondent's judgment and caused Respondent to engage in conduct that he ordinarily would not do. (Tr. p. 797).

In February 2003, an Allstate senior corporate security investigator, Matthew Eby, investigated Mr. and Mrs. SY's complaint regarding Respondent. (Tr. pp. 19-20, 23). Mr. Eby met with Mr. and Mrs. SY on March 12, 2003. (Tr. p. 27). At the meeting, Mr. and Mrs. SY stated that (i) they had met with Respondent only one time, on August 7, 2002, (ii) they had not signed the November 2002 and January 2003 VUL applications, and (iii) they had not given Respondent permission to sign their names to the applications. (Tr. pp. 30, 36-38). Subsequently, Mr. and Mrs. SY documented their allegations in a written statement, which they sent to Mr. Eby. (Tr. pp. 278-279; CX-2).

On March 13, 2003, Mr. Eby met with Respondent. (Tr. p. 47). At the interview, Respondent reviewed his Specialist Employment Agreement dated December 7, 1998 and acknowledged that he had read and signed the agreement, including the provision prohibiting a representative from signing the name of a customer on any document. (Tr. p. 48; CX-5; CX-7, p. 9). At the Hearing, Respondent testified that he did not recall reading Allstate's manual. (Tr. p. 618).

At the March 13, 2003 interview with Mr. Eby, Respondent stated that he signed Mr. and Mrs. SY's name to all insurance documents dated November 26, 2002 and January 7, 2003. (Tr. pp. 52-55). On March 27, 2003, Allstate terminated Respondent for forging the signatures of Mr. and Mrs. SY. (Tr. p. 552).

### **3. NASD Investigation**

On September 9, 2003, the NASD staff sent a request for information to Respondent regarding the insurance applications purportedly signed by Mr. and Mrs. SY. (CX-13). The September 9, 2003 letter included copies of the November 2002 VUL application and the January 2003 VUL application and specifically asked Respondent whether he had signed Mr. or Mrs. SY's name to any of those specific documents. (Id.). The September 9, 2003 letter also specifically asked if Respondent had received authorization from Mr. and Mrs. SY to sign their name to the enclosed documents and, if so, how was the authorization granted. (Id.).

On October 3, 2003, Respondent, after consulting with legal counsel, sent a response to the NASD staff. (CX-14). In his response, Respondent unequivocally stated that he did not sign Mr. or Mrs. SY's names to the documents listed in the September 9,

2003 letter from NASD, and that he had not received his customers' permission to sign their names. (Id.).

The October 3, 2003 letter did not qualify Respondent's "no" answer in any manner; in particular, the response did not state that Respondent was unable to remember the events surrounding the insurance applications, or whether he had signed them. (Id.). The letter also failed to mention that during the time period Respondent had been suffering from panic disorder and agoraphobia, or that Respondent had admitted to Mr. Eby in a taped interview on March 13, 2003 that he had signed his customers' names. (Id.). Accordingly, the Hearing Panel finds that Respondent's October 3, 2003 response letter was false and misleading.

After receiving information from Allstate regarding Respondent's admission of forgery, the NASD staff sent a second request for information to Respondent on March 16, 2003, specifically requesting that Respondent reconcile the answers that he provided in his October 3, 2003 letter with his admissions to Allstate's personnel. (CX-15).

In his March 24, 2004 response to the NASD staff, Respondent wrote that although he told his supervisor that he did not recall signing Mr. and Mrs. SY's name to the insurance applications, his supervisor encouraged Respondent to admit that he had signed the names in the interest of simplicity and advised Respondent that he would only receive a "slap on the wrist" for the misconduct because of the surrounding circumstances. (CX-16). Respondent wrote that he had made the taped admissions to Mr. Eby based on the advice of Mr. Pagano. (Tr. pp. 499-500). Respondent wrote that his

difficulty remembering the events surrounding the issuance of Mr. and Mrs. SY's policy was caused by his acute anxiety disorder.<sup>18</sup> (CX-16).

Respondent's March 24, 2004 letter did not address why he stated unequivocally in the October 3, 2003 response that he had not signed the documents. (Id.).

Subsequently, in connection with a civil suit filed by Respondent against Mr. and Mrs. SY based on their written statement describing Respondent's forgery, Respondent executed an affidavit on December 15, 2004, in which he stated that he believed that "[Mr. SY] was desirous of going through with the underlying insurance transaction and consequently he gave [Respondent] constructive authorization to sign his name." (Tr. p. 632; CX-18; CX-19, p. 3).

**C. Count One of the Complaint: Respondent Forged Mr. and Mrs. SY's Signatures**

The first cause of the Complaint alleges that Respondent affixed the signatures of customers Mr. and Mrs. SY on various insurance documents dated November 26, 2002 and January 7, 2003, without their permission and knowledge, in violation of NASD Conduct Rule 2110.

Affixing the signatures of customers to documents without their permission and knowledge constitutes forgery. It is well established that forgery is not consistent with high standards and just and equitable principles of trade, and therefore violates NASD Conduct Rule 2110.<sup>19</sup>

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<sup>18</sup> Mr. DiStaffen, as well as some of Respondent's other exclusive agent partners, knew that Respondent was having problems, and particularly that his wife was driving him to his customer appointments. (Tr. p. 684).

<sup>19</sup> See, Donald M. Bickerstaff, Exchange Act. Rel. No. 35607 (Apr. 17, 1995).

Despite his written representations on the insurance applications that he saw the proposed insureds on the dates of the applications, Respondent admitted that he did not see Mr. and Mrs. SY in person when the completed November 2002 and January 2003 applications were purportedly signed. The Hearing Panel also finds the testimony of Mr. and Mrs. SY credible that they did not authorize Respondent to sign their names to the applications. At the Hearing, stating that he did not remember the circumstances surrounding the signing of the applications, Respondent did not dispute Mr. and Mrs. SY's testimony that they did not orally authorize Respondent to sign their names.<sup>20</sup> In addition, the Hearing Panel finds that Mr. SY's desire to purchase the VUL policy does not constitute implied authorization for Respondent to sign Mr. and Mrs. SY's names to the VUL applications.

Unlike the respondent in Sahai,<sup>21</sup> Respondent was intimately involved in preparing the paperwork for Mr. and Mrs. SY's insurance applications. Respondent personally completed the insurance applications, signed his name to the applications, and was responsible for sending the insurance applications to be processed. In fact, unlike the respondent in Sahai, Respondent testified that he had no clerical assistance.

Accordingly, although neither Respondent nor Enforcement presented the testimony of a handwriting expert, and the Hearing Panel's comparison of Mr. SY's signature on the January 7, 2003 check to the November 2002 and January 2003

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<sup>20</sup> See, Dist. Bus. Conduct Comm. v. Peters, No C02960024, 1998 NASD Discip. LEXIS 42, at \*\*4-5 (NAC Nov. 13, 1998) (holding that if Peters had oral authority to sign Daly's name, Peter's conduct would not constitute forgery).

<sup>21</sup> Rooney A. Sahai, Exchange Act Rel. No. 51549, 2005 SEC LEXIS 864 (Apr. 15, 2005) (SEC set aside the NAC's finding of forgery in light of Sahai's assertion that other persons had an opportunity to affix the customers' signatures to the allegedly forged documents and in the absence of any financial motive and any record evidence that Sahai either instructed anyone to forge the customers' signatures or was aware that any customers' signatures had been forged).

application documents was inconclusive, the Hearing Panel finds that (i) the signatures on the November 2002 and the January 2003 insurance applications were not those of Mr. and Mrs. SY, and (ii) Respondent signed Mr. or Mrs. SY's names, without their permission or consent, and therefore violated NASD Conduct Rule 2110.

**D. Count Two of the Complaint: Respondent Provided False Information to the NASD Staff**

Count two of the Complaint alleges that Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by responding untruthfully to two requests for information from the NASD staff.

NASD is authorized under Procedural Rule 8210 to require persons subject to its jurisdiction to respond to its requests for information with regard to an investigation. This rule provides NASD with the means to carry out its regulatory functions in the absence of subpoena power, thus serving as a "key element" in the NASD's oversight of its members.<sup>22</sup>

When an associated person provides a false response to a Rule 8210 request for information, that individual violates Rule 8210.<sup>23</sup> A violation of Procedural Rule 8210 also constitutes a violation of Conduct Rule 2110.<sup>24</sup>

In his October 3, 2003 response to the NASD staff's questions concerning whether he forged his customers' signatures, Respondent answered "no" although he

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<sup>22</sup> See Richard J. Rouse, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at \*7 (July 19, 1993); John A. Malach, Exchange Act Release No. 32743, 1993 SEC LEXIS 2026, at \*7 (Aug. 12, 1993).

<sup>23</sup> See, Dist. Bus. Conduct Comm. v. Shear, No. C9A950055, 1997 NASD Discip. LEXIS 24, at \*9-10 (NBCC Jan. 24, 1997); Dep't of Enforcement v. Cardia, No. C9B000007, 2000 NASD Discip. LEXIS 24, at \*38 (OHO Dec. 27, 2000).

<sup>24</sup> See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*25 (NAC Apr. 19, 2000); Dep't of Enforcement v Walker, No. C10970141, 2000 NASD Discip. LEXIS 2, at \*26-27 (NAC Apr. 20, 2000).



knew (i) that he had completed the insurance documents and submitted them without a second or third meeting with Mr. and Mrs. SY, (ii) that he had told the Allstate investigators that he had forged his customers' signatures and had been terminated for such admission, (iii) that Mr. and Mrs. SY denied signing the documents, and (iv) that he had conducted no investigation to ascertain how the signatures were affixed to the documents other than by his hand.

In addition, Respondent's December 15, 2004 affidavit that stated "[Mr. SY] . . . gave [Respondent] constructive authorization to sign his name" implies that Respondent remembers signing the documents, which is contrary to both Respondent's October 2003 and the March 2004 responses to the NASD staff's requests for information.

Accordingly, the Hearing Panel finds that Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by answering "no" to the question did you affix the customers' signatures, without offering any qualification.

### **III. SANCTIONS**

#### **A. Respondent Forged Mr. and Mrs. SY's Signatures on Insurance Documents**

The NASD Sanction Guidelines for forgery recommend a fine of \$5,000 to \$100,000, and, where mitigating factors exist, consideration of a suspension for up to two years. In egregious cases, the Guidelines recommend consideration of a bar.<sup>25</sup> There are two principal considerations: (1) the nature of the document(s) forged; and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.<sup>26</sup>

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<sup>25</sup> NASD Sanction Guidelines, p. 39 (2005).

<sup>26</sup> Id.

The documents that Respondent forged were important, involving not only choosing investment options for the policy, but also providing consent to HIV testing. As discussed previously, Respondent's belief in his customers' desire to obtain the insurance policy does not constitute by itself an express or implied authorization to sign their names without their knowledge or permission, especially in light of Allstate's absolute prohibition on the signing of customers' names.

On the other hand, the Hearing Panel finds certain mitigating circumstances that warrant a sanction less than a bar. Finding that Respondent's actions were explained, in part, by his untreated medical condition, the Hearing Panel finds that Respondent's actions were aberrant and not part of a pattern of conduct. The Hearing Panel finds that, based on Mr. SY's two telephone calls asking about the status of his insurance policy and his submission of a premium payment, Respondent sincerely believed that his customer wanted the VUL insurance policy. Accordingly, the Hearing Panel finds that, when Respondent forged his customers' signatures, his primary motivation was to achieve his customers' goal of obtaining a VUL insurance policy, rather than to earn the \$700 commission on the sale of the VUL insurance policy. The Hearing Panel also finds that, with his panic attacks under control through medication, Respondent is unlikely to engage in future misconduct.

Nevertheless, in view of the seriousness of the misconduct, a substantial sanction is warranted. Accordingly, the Hearing Panel would fine Respondent \$25,000, and suspend him in all capacities for two years for forging the signatures of Mr. and Mrs. SY.

**B. Respondent Provided False Information to the NASD Staff**

The NASD Sanction Guideline for “Failure to Respond or 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 failure to respond truthfully.<sup>27</sup> The Guideline states that a bar should be standard if the individual did not respond in any manner.

The National Adjudicatory Counsel has advised that “untruthful responses [are] as harmful as a complete failure to respond and, as such, . . . a bar is the appropriate sanction.”<sup>28</sup>

The Hearing Panel finds that Respondent’s failure to respond truthfully to the NASD staff warrants a bar because of: (i) the subject matter of the false information, that is, Respondent denied forging the signatures of Mr. and Mrs. SY without having any basis for doing so;<sup>29</sup> (ii) Respondent’s knowledge of the importance of providing accurate information because of his 28 years of experience in the insurance industry; (iii) Respondent’s failure to correct the false information until the NASD requested that he do so; and (iv) the fact that, by October 2003 when he initially responded to the NASD staff’s request for information, Respondent’s panic attacks were under control through medication.

Accordingly, the Hearing Panel bars Respondent for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

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<sup>27</sup> NASD Sanction Guidelines, p. 35 (2005).

<sup>28</sup> Walker at \*31.

<sup>29</sup> Respondent admitted that he took no steps to discover how the insurance applications could have been signed if he did not sign them. (Tr. p. 659).

#### IV. CONCLUSION

For providing the NASD staff with misleading information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210, Respondent Gregory R. Masceri is barred. For forging his customers' signatures on insurance documents, in violation of NASD Conduct Rule 2110, in the absence of a bar for the Rule 8210 violation, Respondent would be fined \$25,000, and suspended in all capacities for two years.

The Hearing Panel also orders Respondent to pay the costs of the Hearing in the total amount of \$7,190.92, consisting of a \$750 administrative fee and a \$6,440.92 transcript fee. The costs shall be due and payable when and if Respondent seeks to return to the securities industry. If this Decision becomes the final disciplinary action of NASD, the bar shall become effective immediately.<sup>30</sup>

#### HEARING PANEL

By: \_\_\_\_\_  
Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
July 8, 2005

Copies to:

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<sup>30</sup> The Hearing Panel has 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.