NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SAMUEL J. TRIGILLO (CRD No. 1303837), Respondent.	Disciplinary Proceeding No. C8A040082 Hearing Officer – DRP **PANEL DECISION** June 8, 2005

Respondent is barred from association with any member firm in any capacity for violating NASD Conduct Rule 2110 by: (1) affixing a customer's signature to at least two securities-related documents without the customer's knowledge or consent; (2) transferring a customer's funds from a fixed annuity to a variable annuity without the customer's knowledge or consent; and (3) affixing another registered representative's signature on customer forms without the registered representative's knowledge or consent. In light of the bars imposed, Respondent is not further sanctioned for engaging in outside business activity without providing prompt written notice to his member firm, in violation of NASD Conduct Rules 3030 and 2110.

Appearances

For the Department of Enforcement: Richard S. Schultz, Regional Counsel, Chicago, IL (Rory C. Flynn, Esq., Washington, DC, Of Counsel).

For the Respondent: Howard W. Feldman, Esq., Feldman, Wasser, Draper & Benson, Springfield, IL.

DECISION

I. Procedural History

The Department of Enforcement filed a four-count Complaint on September 17, 2004, charging Samuel J. Trigillo (Trigillo or Respondent) with violations of NASD Conduct Rule 2110 for: (1) affixing a customer's signature to securities-related documents without the

customer's authority; (2) transferring a customer's funds from a fixed annuity to a variable annuity without the customer's knowledge or consent; and (3) signing another registered representative's signature on customer forms without the registered representative's knowledge or consent. The Complaint also alleges that Trigillo engaged in outside business activity, in violation of NASD Conduct Rules 3030 and 2110. Trigillo filed an Answer on October 12, 2004, in which he admitted certain facts, denied liability, and requested a hearing. On January 25, 2005, a one-day hearing was held in Chicago, before a hearing panel composed of the Hearing Officer and two current members of the District 8 Committee.

At the hearing, Enforcement called four witnesses: customer HW, and three current or former employees of Horace Mann Investors, Inc. (Horace Mann), Richard P. Deverman, Charles C. Chrisman and Roger B. Hayashi. Enforcement also offered thirty-seven exhibits, all of which were admitted in evidence. Respondent offered no exhibits, but called one witness, Michael R. Vignola, formerly of Horace Mann, and testified on his own behalf.[1]

II. Findings of Fact and Conclusions of Law

A. Respondent

Trigillo, who started with Horace Mann in August 1978, was registered with the firm from October 28, 1985 until his registration was terminated on July 1, 2002. From September 5, 2002 until November 23, 2004, he was registered with Linsco/Private Ledger Corp. (Linsco). Since that time, he has not been associated or registered with any NASD member. (Tr. 283-284; CX-1; CX-37A.)

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of

[1] References to the hearing transcript are noted as Tr. Enforcement's exhibits are cited as CX; Respondent did not offer any exhibits.

Respondent's registration with Linsco, charges him with misconduct that commenced while he was registered.

B. Customer HW

Public customer HW is a retired machinist who was Respondent's client for about 25 years. HW relied on Respondent's advice, but never authorized Respondent to sign any documents, change his address, or transfer or withdraw his account funds. HW had a conservative portfolio, very limited investment experience, and his annuity investments always involved fixed annuities. (Tr. 22, 291, 327-28, 339; CX-5.)

In May 2001, Respondent discussed with HW, who was then 74 years old, transferring a fixed annuity from American National Insurance Co. (American National) to Horace Mann, in order to obtain a better rate of return. HW could not recall all of the details regarding the conversation, but remembered that Respondent said the Horace Mann annuity paid a special interest rate of 7%. Though HW would be assessed a surrender charge by American National for transferring the annuity, Respondent explained that the Horace Mann program paid bonuses that would more than make up the difference. (Tr. 26-28, 33, 61, 294, 330-331; CX-4; CX-11, p. 137.)

Based on his conversation with Respondent, HW believed that, as in the past, this would be a *fixed* annuity, which he believed to be "a fixed amount of investment, a fixed amount of return, and a fixed expiration date." He was unwilling to tolerate any interest rate fluctuations and thus insisted on having strictly a "black and white" investment vehicle. Accordingly, on May 22, 2001, HW agreed to the transfer and completed an application for what he believed was a Horace Mann fixed annuity. (Tr. 30, 56, 62-64, 77-78; CX-3, p. 6; CX-4; CX-11, pp. 137-138.)

In reality, HW's funds were invested in something quite different. Contrary to HW's belief, Respondent had placed him in a fixed-variable annuity program. Respondent failed to disclose to HW that funds deposited in the fixed account after June 1, 2001 would earn 7% under the "Dollar-Cost-Averaging Special Interest Rate Program," only if HW's money was transferred in equal monthly installments from the fixed account to one or more variable annuity investment options.[2] Moreover, it was not until the *end* of the first year that the account would receive a bonus and, *at that time*, would equal approximately $323,000.[3] According to Respondent, this was a five-year renewable contract, which allowed the customer to withdraw 10% per year. (Tr. 302-303, 354-356; CX-3, p. 6; CX-11, pp. 4-10, 18-21, 30.)

The customer was misinformed, in part, because Respondent did not understand the program. Trigillo admitted that he misunderstood how the program worked, and that, months after initially discussing it with HW, the home office advised him that the special interest contract required funds to be transferred to a variable account over a period of 12 months.[4] Instead of consulting with his client about this matter, however, Trigillo took a number of steps to try to rectify this, and other problems, on his own. (Tr. 342-343, 349-353; CX-11, pp. 159, 167.)

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[2] According to the prospectus, there were a number of variable annuity investment options, including several Horace Mann funds, several Fidelity funds, a JP Morgan fund, and several others. Respondent, however, claims that he transferred HW's money to a money market or "short-term" account. (Tr. 301-302; CX-11, pp. 1-6, 48-49.)

[3] HW believed that a total of $323,000 would be put into the Horace Mann annuity at inception. Respondent testified that he told HW that it would take a year to accrue $323,000 and explained that this amount reflected $291,592.57 from the American National annuity, $7,714 from mandatory IRA distributions, $14,550 in interest after one year, and $10,205.72 as an estimated bonus after one year. (Tr. 34-35, 297; CX-11, p. 85.) In light of Respondent's subsequent efforts to correct the paperwork related to this transaction and his admission that he misunderstood some elements of the program, the Panel does not credit Respondent's testimony on this issue.

[4] For this reason, the Panel rejects Respondent's testimony that he fully explained the investment to HW.

1. Affixing HW's Signature to Firm Documents and Transferring His Funds

Shortly after HW signed the application for the new investment, the firm notified Respondent that it was unable to process the application. By memorandum dated June 19, 2001, the firm advised Respondent of several problems that needed to be corrected. Most notably, Respondent did not have HW complete a suitability questionnaire. Three days after receiving this memorandum, Respondent completed and signed HW's name to a Horace Mann "variable products suitability information" form, which indicated that HW "understands that [this] . . . is a variable product, and that because my account values are not guaranteed, my account balance may decrease or increase."[5] Respondent, who neither discussed the document with HW, nor provided him a copy, did "not have an answer for" why he forged HW's signature on the suitability form.[6] (Tr. 31, 334-338; CX-11, pp. 136, 139.)

In addition to completing the suitability questionnaire, a customer in the special interest rate program needed to provide written instructions regarding the allocation of funds to the variable investments. This was accomplished by completing and signing a "transfer between accounts request" form. On September 21, 2001, the firm asked Respondent to have HW amend the contract, because the customer had failed to designate how "future flexible premiums" should be allocated. Rather than consult his client, Respondent completed and signed HW's name to a "transfer between accounts request" form, which directed that funds be transferred from HW's fixed annuity to a "short-term" account in September, October and November, and then returned to the fixed annuity in December. Respondent also instructed that HW's monthly account statements be sent to a "new address," which was Respondent's post office box. Thus, the firm's

[5] In light of Respondent's admission that he completed and signed the suitability document just three days after the firm's memorandum regarding this omission from HW's application, the Panel does not credit his testimony that he had "never seen" the memorandum addressed to him. (Tr. 334-337.)

[6] The Complaint does not charge Respondent with forging this document.

September 26, 2001 letter to HW, confirming the transfer of funds to the short-term account, went to Respondent's address.[7] (Tr. 37, 41-42, 339-342, 347; CX-11, pp. 10, 154-155, 159, 160, 164.)

The firm subsequently contacted Respondent and explained that the special interest contract required a transfer of funds over a 12-month period. In response, Trigillo completed and signed HW's name to an "annuity change request" form in February 2002, in order to arrange for one year of monthly transfers from the customer's fixed annuity to a "short-term" account.[8] At that time, Respondent also tried to backdate the transfers to rectify the error he had made on the "transfer between accounts request" form he had completed in September, in order to ensure that HW qualified for the special interest rate of 7%. Once again, Respondent completed these documents and signed HW's name without the customer's permission or knowledge.[9] (Tr. 42, 304, 342-343, 349-353; CX-11, pp. 159, 167-169, 171.)

Horace Mann's Code of Ethics, which was in effect during the relevant period, prohibited representatives from signing an applicant's or customer's name on any form or application.[10] Horace Mann also issued Rules of Market Conduct to its representatives, which included a strict prohibition on signing a client's name, regardless of whether the customer consented. Starting in 2001, all employees were required to attest annually to having received, read, understood, and

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[7] Respondent admitted that, without HW's knowledge or consent, he also completed and signed the customer's name to a "mandatory distribution withdrawal request" form on September 25, 2001, directing that the annual distribution from HW's IRA be transferred to the fixed-variable annuity account. Respondent was not charged with forging this document. (Tr. 38-39; 344-345; CX-11, p. 70.)

[8] Respondent testified that he was told that the firm would return HW's funds to American National if a transfer form was not completed within 24 hours. Respondent signed HW's name when he did not "get a hold of" the customer.

[9] Respondent received a commission when the American National annuity was transferred to Horace Mann, which occurred on or about September 11, 2001. (Tr. 329-330; CX-11, p. 49.)

[10] Prior to January 1, 2001, the firm had no written prohibition against signing an application for a customer, but the firm's employees certainly understood that such an action would be improper. (Tr. 145, 174-175, 201.)

complied with the firm's Code of Ethics, including the Rules of Market Conduct. In October 2001, Trigillo represented to Horace Mann that he understood that he was "not permitted to sign another person's name to a document under any circumstances." (Tr. 228, 237-238; CX-9, p. 53; CX-10, pp. 40, 44, 47.)

2. Diverting HW's Mail

Not only did Respondent fail to consult with HW prior to signing all of these forms, Respondent could not recall mailing copies of any of the forms, or other account documents, to HW. In fact, when he completed and affixed HW's signature to the "transfer between accounts request" form in September 2001, Trigillo changed the account address to his personal post office box, which HW could not access. From that point on, all of HW's account mail was delivered to Trigillo's post office box, not to HW.[11] Respondent retrieved the mail, and even his office mate did not have access to the post office box. Respondent did not seek his client's approval to divert his mail, and only informed him that he had done so after being terminated from Horace Mann. (Tr. 36-38, 43, 49-50, 91, 136-137, 305, 338, 340-342, 345-346, 352, 354, 356, 373; CX-11, p. 159.)

Respondent claims to have diverted HW's mail to be able to monitor the account closely, because the fixed-variable annuity program was still new to him. However, the record demonstrates that he could have called Horace Mann's home office for HW's account information or to request duplicate statements. He could also have accessed the information through a program on his Horace Mann laptop computer. In fact, during the relevant period, representatives received weekly e-mail notifications that customer information had been updated

[11] Respondent's former supervisor, Charles Chrisman, who was employed at Horace Mann a total of 34 years and served as an agency manager for 14 years, testified it is a common practice for representatives to have post office boxes. According to Chrisman, this practice ensures regular mail delivery. (Tr. 150-151, 172-173.)

in the computer system. Nonetheless, Respondent did not ask for duplicate statements or try to monitor the account another way. The Panel thus discredits his testimony and finds that Respondent diverted HW's mail to prevent the customer from learning that he had invested in a variable annuity. (Tr. 92-94, 249-250, 304, 306-307.)

C. Transactions Involving Non-Horace Mann Products

During a surprise audit on June 21, 2002, Horace Mann learned that Respondent had been offering and selling outside products. During the interview portion of the audit, which was conducted by Respondent's supervisor and compliance officer Roger Hayashi, Respondent denied having engaged in any type of outside business activity. When they discovered sales information related to Blue Cross/Blue Shield, however, they confronted Respondent. He then admitted selling outside products in violation of his employment contract with Horace Mann, and was suspended. After refusing access to, and interfering with their attempt to take possession of, files in his office, he was terminated. From 1999-2001, Trigillo's total commissions from outside business activities, placed with 13 different companies, totaled approximately $80,000. (Tr. 226, 253-256, 258-261, 274, 364-365, 370; CX-9, pp. 12-13; CX-33, pp. 3, 23, 49, 90.)

Respondent, who concedes he sold policies for other insurance companies, neither sought nor received the firm's permission to sell non-Horace Mann products. To the contrary, in 2000, Trigillo represented on his Disclosure of Outside Business Activities form that he had not engaged in outside business activity.[12] Again, in October 2001, Trigillo represented on his Outside Business Activities Report that he had engaged in no other business activity outside of Horace Mann, including the sale of financial products or services not offered through the firm. (Tr. 226-227, 365-367; CX-9, p. 42; CX-17, p. 40.)

[12] The form is undated; however, it was located in a file among similar forms dated 2000, and the Treasurer and Compliance Officer referenced on the form were employed in those capacities at Horace Mann in 2000. (Tr. 236-237.)

Trigillo's 1978 employment contract unequivocally prohibited registered representatives from conducting outside sales and representing other insurance companies and warned that such activities would lead to termination. Although the policy was "tweaked" from time to time, the exclusivity requirement remained in place. In fact, the new employment contract Trigillo signed in June 2001 contained similar covenants: "[y]ou are a full time employee of [Horace Mann] . . . [a]ll of the insurance, financial and related products solicited, negotiated, produced, accepted, renewed or serviced by [y]ou during this Agreement shall be . . . exclusively for, on behalf of and in the name of Horace Mann or its Partnering Company and shall be placed exclusively with Horace Mann or its Partnering Company." (Tr. 96-97, 152, 181; CX-7, p. 7; CX-37A, p. 3; CX-37B, p. 1.)

Furthermore, Horace Mann's 2001 Rules of Market Conduct prohibited registered representatives from representing "any other insurance-related company or broker-dealer in the sale or service of [its] products or services," unless otherwise authorized by the firm. In reality, the firm did not allow representatives to engage in outside business activity, even if the representative sought approval or promptly notified the firm in writing of such sale. The only way a Horace Mann representative could sell another company's product was through formal "partnering" arrangements made between Horace Mann itself and another company, as noted in the employment contract. (Tr. 161-163, 216-217; CX-10, pp. 40, 45-46.)

Until recent years, however, this prohibition was somewhat loosely enforced. Michael Vignola, who was Chief Marketing Officer at Horace Mann from 1998 until 2001, confirmed that most members of the senior staff had some knowledge that agents were directly or indirectly selling non-Horace Mann products, but essentially had a "don't ask, don't tell" policy. Management typically only confronted a representative after receiving concrete information

about outside activity. If the agent refused to cancel the outside contracts and abide by firm policy, he was terminated.[13] (Tr. 179-182, 190-197, 212-213, 219-220; CX-7, p. 3.)

Trigillo admitted he knew that the firm's policy, even prior to 2001, prohibited selling "outside the company," and that he "absolutely" was not supposed to sell products that Horace Mann did not offer. Furthermore, he was twice warned that termination would result from his failure to comply with that policy.[14]

D. Affixing the Signature of Registered Representative Deverman

Because Respondent knew it was improper to engage in outside business, he took some measures to hide the activity. One such measure involved Richard Deverman, the Horace Mann registered representative whom Respondent supervised from June 1996 until his departure in 2002. Deverman considered Trigillo a mentor and friend; however, Deverman never gave Trigillo, or anyone else, permission to sign his name to any document. (Tr. 87-88, 90-91, 108, 112, 115, 171, 173-174, 319.)

Respondent conceded he signed Deverman's name to forms used to transfer customer funds from various insurance companies to purchase Horace Mann insurance products.

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[13] Prior to 2001, compliance at the firm was generally lax. Compliance meetings prior to 2001 were golf outings, or were focused primarily on marketing and sales issues. During that time, it was rare for registered representatives to receive compliance newsletters or bulletins to update existing policy, and the firm did not conduct regular audits of its employees' files. (Tr. 119, 143, 167-168, 187-189, 213.)

[14] In 1989, Respondent's supervisor, Charles Chrisman, questioned Respondent about a health insurance policy that a customer had with another company. Respondent explained that he had merely discussed the policy with the customer on behalf of a friend who sold individual health insurance. Chrisman nevertheless reminded Respondent that he exclusively represented Horace Mann and warned that a failure to abide by the firm's policy prohibiting outside business activity would lead to termination of his employment. (Tr. 153-156; CX-6, pp. 3-7.)

Chrisman subsequently learned from Vignola that Respondent had attempted to sell a viatical product, which was not a product that Horace Mann carried. Vignola handled the situation, but Chrisman spoke to Respondent and asked whether he had placed any business with other companies. Respondent replied that he had not, but Chrisman again warned that he would be terminated for such conduct. Vignola also reminded Respondent of the firm's policy and warned him to discontinue outside sales or his employment would be terminated in accordance with his employment contract. Respondent agreed to comply. (Tr. 156-159, 182-183, 208-211; CX-6, pp. 4-5; CX-7, pp. 7-9.)

Respondent admitted that the four customers involved were his, not Deverman's, and that he received commissions from these transactions. Respondent further admitted he did not want the companies involved to know he represented the customers on both sides of the transaction, because he was afraid of being terminated, and, in retrospect, described his action as "incorrect" and "stupid." Respondent claimed that Deverman gave him permission to use his signature, which Deverman emphatically denied.[15] (Tr. 108, 110-112, 288, 290-291, 313, 318-322; CX-10, pp. 59-62; CX-16, pp. 34-37, 39.)

E. Discussion

The charges considered by the Hearing Panel were whether Respondent violated NASD Conduct Rule 2110 by: (1) affixing a customer's signature to securities-related documents without the customer's authority; (2) transferring a customer's funds from a fixed annuity to a variable annuity without the customer's knowledge or consent; and (3) signing another registered representative's signature on customer forms without the registered representative's knowledge or consent. The Hearing Panel also considered whether Respondent engaged in outside business activity without providing prompt written notice to his employer, in violation of NASD Conduct Rules 3030 and 2110.

1. Forgery

NASD Conduct Rule 2110 states a broad ethical principle that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 115 extends this requirement to persons associated with members. The ethical and legal obligations set forth in Rule 2110 are not limited to the sale of securities but encompass a wide variety of

[15] Deverman testified that he once signed a document transferring business to Horace Mann at Respondent's request, because Respondent did not want a "friend" at the other company to know that Respondent was responsible for the transfer. (Tr. 131-132.)

unethical business-related conduct.[16] Affixing a customer's signature on a document without the customer's knowledge and consent is unethical conduct that falls under the purview of Rule 2110.[17]

Respondent admits that he affixed HW's signature to several documents without the customer's knowledge or consent. Respondent knew it was improper to sign HW's name, and affirmatively represented to his firm that he understood that he was not allowed to sign another person's name on any form under any circumstances. Moreover, Respondent benefited from these forgeries. By signing HW's name on these documents, Respondent effectuated the transfer from the customer's American National fixed annuity to Horace Mann's fixed-variable annuity, and received a commission from his firm.

The Hearing Panel thus finds that Respondent violated NASD Conduct Rule 2110, as charged in the first cause of the Complaint.

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[16] *See Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (citations omitted); *Daniel J. Alderman*, Exchange Act Release No. 35,997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997); *Dep't of Enforcement v. Bendetsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *16 (NAC Aug. 9, 2004) ("[W]e have determined that disciplinary hearings under Rule 2110 are 'ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred [and that] NASD has authority to impose sanctions for violations of 'moral standards' even if there was no 'unlawful' conduct.'") (quoting *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NAC June 2, 2000).

[17] *See Donald M. Bickerstaff*, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995). *See also Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at **1, 8 (NAC Dec. 14, 1999); *Dist. Bus. Conduct Comm. v. Peters*, No. C02960024, 1998 NASD Discip. LEXIS 42, at **3-5 (NAC Nov. 13, 1998). Moreover, the SEC has "sustained NASD findings of forgery where the forged documents defrauded another person or otherwise benefited the forger." *Rooney A. Sahai*, Exchange Act Release No. 51,549, 2005 SEC LEXIS 864, at *20 (Apr. 15, 2005) (internal citations omitted).

Affixing another securities professional's signature to documents without that individual's authorization also constitutes a violation of NASD Conduct Rule 2110.[18] Though he admitted that signing Deverman's name was improper, Respondent claims that he thought he was authorized to do so.[19] Deverman denied giving any such authorization.

Respondent had incentive to forge the documents. Had he signed the forms himself, Horace Mann might have learned of his impermissible outside business activities. Additionally, because he was serving his own clients, he was in a position to benefit from his actions. Finally, the forgery here is consistent with other forgeries alleged and proven in this proceeding.

Accordingly, the Hearing Panel credits Deverman's testimony and finds that Respondent violated NASD Conduct Rule 2110, as charged in the third cause of the Complaint.

2. Unauthorized Transfers of HW's Funds

The SEC and NASD have consistently held that "unauthorized trading in a customer's account violates Conduct Rule 2110."[20] Here, the evidence establishes that Respondent unilaterally changed HW's investment to a fixed-variable annuity, arranging for monthly transfers to another investment without the customer's knowledge or consent. None of the Respondent's actions resulted from a misunderstanding or a miscommunication, aside from his own misunderstanding of how this particular annuity product worked.

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[18] *Dep't of Enforcement v. Mizenko*, No. C8B030012, 2004 NASD Discip. LEXIS 20 (NAC Dec. 21, 2004), *appeal docketed*, No. 3-11806 (SEC Feb. 2, 2005); *Peters*, 1998 NASD Discip. LEXIS 42; *Dist. Bus. Conduct Comm. v. Mandell*, No. LA-4215, 1990 NASD Discip. LEXIS 29 (BOG Mar. 27, 1990).

[19] Tr. 289-291, 313, 321-322. If Respondent had oral authority to sign Deverman's name, his conduct would not constitute forgery. *Peters*, 1998 NASD Discip. LEXIS 42, at **4-5, *citing Bickerstaff*, 1995 SEC LEXIS 982.

[20] *Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4 at **13-14 (NAC Mar. 27, 2002) (citations omitted). *See also Robert Lester Gardner*, Exchange Act Release No. 35,899, 1995 SEC LEXIS 1532, at *1 n. 1 (June 27, 1995); *Keith L. DeSanto*, Exchange Act Release No. 35,860, 1995 SEC LEXIS 1500 (June 19, 1995), *aff'd*, 101 F.3d 108 (2d Cir. 1996).

Respondent claims that HW was aware from the beginning that he was investing in a fixed-variable annuity account and that equal monthly installments would be transferred to a short-term money-market account over the course of a year, at the end of which time the entire amount would be invested in a fixed annuity. However, all of the evidence contradicts this contention.

Based on HW's age, conservative investment history and lack of investment experience, the Panel finds it highly unlikely that he agreed to a fixed-variable annuity. Moreover, HW's application, as actually signed by that client, specified that the annuity was "100% Fixed." Respondent's admission that he subsequently signed several documents without HW's knowledge or consent in order to effectuate monthly transfers of funds to another investment, and that he unilaterally changed the address on the account to his own post office box, further supports our conclusion. The Hearing Panel credits the customer's testimony that he believed Respondent sold him a Horace Mann fixed annuity and finds that Respondent intentionally arranged for HW's account funds to be transferred without authorization, in violation of NASD Conduct Rule 2110, as charged in the second cause of the Complaint.

3. 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 Rule 3030 is to give the firm a meaningful opportunity to review the representative's activity and

determine the extent, if any, to which it should supervise his involvement. Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.[21]

Respondent does not dispute that from January 1999 to June 2002 he engaged in outside business activities, in violation of NASD Conduct Rule 3030. Rather, he shifts the blame to the firm for allegedly having lax supervision and a policy of tolerance towards such activities, which he described as a "free-for-all."[22] Respondent presented some evidence to support this assertion; however, a registered representative is responsible for his actions and cannot shift that responsibility to the firm or his supervisor.[23]

Horace Mann's prohibition on outside business activity is clear. Respondent acknowledged he was aware of the prohibition, and he was twice placed on notice that his employment would be terminated if he failed to comply with the policy. Moreover, he repeatedly denied his outside business activities, both verbally and in writing, and only admitted the misconduct when faced with incontrovertible proof.

Accordingly, the Panel finds that Respondent violated NASD Conduct Rules 3030 and 2110 by failing to provide prompt written notice of his outside business activities to Horace Mann, as charged in the fourth cause of the Complaint.[24]

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[21] *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (NBCC Oct. 31, 1997). By its express terms, Rule 3030 does not apply to private securities transactions, which are governed by Rule 3040. Trigillo's activities are covered by Rule 3030, rather than Rule 3040, because they involved insurance products that were not securities.

[22] Tr. 286-287.

[23] *See Dist. Bus. Conduct Comm. v. Holland*, No. C3A960014, 1997 NASD Discip. LEXIS 63, at *14 (NBCC Nov. 18, 1997).

[24] A violation of another NASD rule constitutes a violation of Conduct Rule 2110. *Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

III. Sanctions

Enforcement is seeking a bar; Respondent suggests that a lesser sanction would be appropriate. In determining the appropriate sanctions for these violations, the Panel reviewed the Principal Considerations[25] set forth in NASD's Sanction Guidelines (Guidelines), in addition to the Guidelines for each violation. The Panel notes that Respondent engaged in a pattern of misconduct by repeatedly forging documents when he viewed it to be advantageous, and that he persistently concealed his misbehavior.

A. Forgery

The Guidelines recommend a fine of $5,000 to $100,000 for forgery or falsification of records.[26] Additionally, the Guidelines recommend a suspension in any or all capacities for up to two years where mitigating factors exist, or a bar in egregious cases. In determining appropriate sanctions, the adjudicator is to consider the nature of the forged documents and "whether respondent had a good-faith, but mistaken belief of express or implied authority."

Respondent affixed HW's signature without authority on several account-related forms over several months. Moreover, the forms effected significant changes to HW's account, which the customer would not have endorsed. Finally, Respondent changed HW's address to Respondent's own post office box, ensuring that he would not receive correspondence or monthly account statements and thereby learn about the variable annuity. Given these circumstances, the Panel finds that Respondent did not have a "good-faith, but mistaken belief" that the customer authorized him to complete and sign the forms.

Likewise, Respondent forged his colleague's signature on several of his customers' account-related forms in order to conceal other misconduct. There is no credible evidence that

[25] NASD Sanction Guidelines at 8-9 (2004 ed.).

[26] *Id.* at 41.

Respondent had a "good-faith, but mistaken belief" that Deverman authorized him to sign his name. They did not share customers or have any reason to sign one another's name. Furthermore, it was against firm policy to do so. This violation is particularly egregious because Trigillo was Deverman's immediate supervisor.

The Hearing Panel finds Respondent's multiple acts of forgery to constitute an egregious pattern of misconduct and disregard for securities compliance. Accordingly, Trigillo is barred from association with any NASD member firm in any capacity for these violations.[27]

B. Transferring Customer Funds Without Customer's Knowledge or Consent

Based on the Guideline for unauthorized trading,[28] the Hearing Panel has determined to bar Respondent for this violation. The Guidelines recommend a fine of $5,000 to $75,000, and a suspension or a bar in egregious cases. The adjudicator is to consider whether the respondent misunderstood his authority or the terms of the customer's order and whether the unauthorized transactions were egregious. There are several categories of egregiousness identified in the Guidelines, particularly "unauthorized trading accompanied by aggravating factors, such as, efforts to conceal the unauthorized trading . . .."[29]

As noted previously, there is evidence that Respondent misunderstood how this specific annuity program worked. There is no evidence, however, that he misunderstood his authority regarding the terms of HW's consent to purchase the annuity. The unauthorized transactions were egregious here, because they were enabled by forgery and concealed from the customer

[27] Fines are generally not imposed in forgery cases where the Respondent has been barred. *Id.* at 12.

[28] *Id.* at 100.

[29] *Id.* at 100, n. 2.

when Respondent diverted HW's mail to Respondent's address. Accordingly, a bar is the appropriate sanction for this misconduct.[30]

C. Outside Business Activity

For violations of Conduct Rules 2110 and 3030, the Guidelines recommend a fine of $2,500 to $50,000, and, depending upon the extent of aggravating conduct, a suspension for up to one year, or in egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm, a longer suspension or a bar.[31]

In applying the Principal Considerations for Outside Business Activities, the Hearing Panel notes that the duration of the activity, number of customers involved, and the dollar volume of sales and Respondent's commissions are moderate. However, to the extent his outside activity involved customers of Horace Mann, it is an aggravating circumstance, although he often sold products that Horace Mann did not offer. This possibly benefited his clients and may have helped Horace Mann to retain some of its customers; in any event, there is no evidence of injury to any customers.

An additional aggravating factor is that Respondent misled his employer about his activities, repeatedly denying he was engaging in outside business, and attempted to conceal his activities from his employer. It is disturbing that Respondent went to great lengths – including forging Deverman's signature, ignoring firm policy and warnings, and repeatedly lying – to conceal his outside activities.

The Hearing Panel concludes that Respondent willfully disregarded the requirements of Conduct Rule 3030 and that a lengthy suspension and a fine would be appropriate sanctions. In

[30] The Panel notes that Horace Mann paid damages to HW as part of a settlement and release agreement dated February 19, 2003. (Tr. 52-53; CX-11, pp. 123-126.) Accordingly, we are not ordering restitution.

[31] *Id.* at 16.

light of the bars imposed for his other violations, however, a suspension would be redundant,[32] and a monetary fine would serve no additional remedial purpose.[33] Accordingly, the Panel imposes no further sanctions for this violation.

IV. Conclusion

Respondent Samuel J. Trigillo violated NASD Conduct Rule 2110 by: (1) affixing a customer's signature to at least two securities-related documents without the customer's authority; (2) transferring a customer's funds from a fixed annuity to a variable annuity without the customer's knowledge or consent; and (3) signing another registered representative's signature on customer forms without the representative's knowledge or consent. For these violations, Respondent is permanently barred from association with any member firm in any capacity.[34] In light of the bars, Trigillo is not further sanctioned for engaging in outside business activity, in violation of NASD Conduct Rules 3030 and 2110. Finally, Respondent shall pay costs in the amount of $3,164.54, which includes an administrative fee of $750 and transcript costs of $2,414.54. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

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Dana R. Pisanelli
Hearing Officer
For the Hearing Panel

Dated: June 8, 2005
Washington, DC

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[32] *Hodde*, 2002 NASD Discip. LEXIS 4, at *17.

[33] *See, e.g.*, *Dep't of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip. LEXIS 1, at **36-37 (NAC Feb. 19, 2004).

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

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