

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant v. CHARLES J. CUOZZO, JR. (CRD No. 3123060), Respondent.	Disciplinary Proceeding No. C9B050011 Hearing Officer – RSH HEARING PANEL DECISION November 29, 2005
--	---

Respondent violated Conduct Rule 2110 and IM-2310-2 by falsifying firm records and forging a customer’s initials. For these violations, Respondent is fined \$5,000 and suspended from associating in any capacity with any member firm for one year.

Appearances

David B. Klafter, Esq. and Lynn M. Kaseta, Esq., Woodbridge, NJ (Rory C. Flynn, Esq., Washington, DC, Of Counsel, and John M. D’Amico, Esq., Boston, MA, Of Counsel).

Kevin P. Conway, Esq. and Jennifer A. Pogorelec, Esq., New York, NY, for Charles J. Cuzzo, Jr.

DECISION

I. Procedural History

The Department of Enforcement (“Enforcement”) filed a Complaint against Charles J. Cuzzo, Jr. (“Cuzzo”) on February 10, 2005. The Complaint charged that Cuzzo had violated NASD Conduct Rule 2110 and Membership and Registration Rules Interpretive Material (“IM”) 2310-2 by participating in a scheme to circumvent Regulation 60, a New York state insurance law which mandates certain annuity replacement procedures that are meant to protect customers. Enforcement alleged that

Cuozzo falsified Regulation 60 forms by: (1) falsifying dates and information, (2) forging a customer's initials, and (3) forging a broker's signature.

On March 9, 2005, Cuozzo filed an Answer denying that he violated Conduct Rule 2110 and IM-2310 and requesting a hearing. The hearing was held on August 3, 2005 at NASD offices in Woodbridge, New Jersey before a Hearing Panel composed of the Hearing Officer and two current members of NASD's District 9 Committee.¹

II. Background

Regulation No. 60 ("Regulation 60"), which was implemented by the New York State Insurance Department, became effective on November 10, 1998. Its purpose is to protect New York customers from misrepresentation and unfair practices and to insure that they receive full disclosure of information when they are considering replacing one insurance contract (including fixed and variable annuities) for another. Regulation 60 requires a financial advisor to meet with a client on at least two separate occasions before finalizing an annuity replacement. During the first meeting with the customer, the regulation requires the financial advisor to obtain information concerning the customer's suitability and the annuity he wishes to replace. The financial advisor is required to document this first meeting by having the customer sign the first of two sets of Regulation 60 forms ("Phase I"). During the time between the first and second meetings, the financial advisor or his firm is required to obtain information about the current annuity from the issuer. At the second meeting, the financial advisor is required to

¹ The hearing transcript is referred to as "Tr." Enforcement called the Respondent and two witnesses: Jack Litsky, the NASD investigator on this case and Libby Hart, a registered representative who previously worked in the same member firm as the Respondent. The Respondent did not call any witnesses other than the Respondent. Enforcement introduced 12 exhibits into evidence (Exhibits CX1 through CX12). The Respondent introduced 13 exhibits into evidence (Exhibits RX1 through RX13). In addition, the parties stipulated to the facts contained in their Joint Stipulation of Facts, dated July 2005 (Referred to as "Joint Stipulation").

provide the customer with a side-by-side written comparison of the features of his current annuity and the proposed replacement annuity. After reviewing the comparison with the financial advisor, the customer must approve the replacement by signing a second set of Regulation 60 forms (“Phase II”).²

At Prudential Investment Management Services, LLC (“Prudential”), formerly an NASD member and the firm at which the Respondent was employed during the conduct at issue here, the two-meeting process mandated by Regulation 60 was not followed in numerous instances. Instead of meeting twice with customers who were considering annuity replacements, certain financial advisors had customers sign, but leave undated, both the Phase I and Phase II documents during one meeting. Subsequently, Prudential employees would insert dates in the documents, creating the appearance that the two-meeting procedure had been followed and that information had been obtained from the issuer of the annuity being replaced. In some instances, when customers had dated documents despite instructions not to do so, Prudential employees would alter the documents with “white-out” so that it appeared that Regulation 60 had been followed.³

Prudential discovered the violations in mid-2002 when an internal review of annuity replacements found Regulation 60 documents altered by the use of “white-out” fluid and different ink colors. Circumvention of Regulation 60 was widespread; between November 1998 and mid-2002, Prudential completed 906 annuity replacements subject to Regulation 60 and hundreds of them had alterations. In addition, Prudential financial advisors routinely compressed the two-meeting process into one meeting. Prudential reported the matter to NASD and in January 2004, agreed to a settlement with NASD in

² CX 9; Tr. at 48-50.

³ CX 5; Tr. at 51.

which it paid a fine of \$2 million and agreed to remediation to affected customers of more than \$9.5 million.⁴

III. Findings of Fact

A. The Respondent

Cuozzo began working as a clerk on Prudential's general sales desk ("wholesale desk") in January 2000, after having graduated from college in 1999.⁵ He became registered with the NASD as a Series 7 General Securities Representative on or about July 11, 2000.⁶ As a sales support clerk, it was Cuozzo's job to support the wholesale desk by photocopying, faxing, and performing other clerical tasks. His annual salary was approximately \$28,000.⁷

In August 2000, in addition to working on the wholesale desk, Cuozzo began working on the annuity sales desk part-time. Cuozzo's job on the annuity desk was to provide clerical support to financial advisors selling annuities. In particular, Cuozzo provided telephone support to financial advisors who had questions about completing the Regulation 60 paperwork required for annuity replacements.⁸ In January 2001, Cuozzo began working full-time on the annuity sales desk. He was paid approximately \$45,000 annually. He also received bonuses that were based on the total amount of annuity business done by the financial advisors he supported. Approximately 15% of Cuozzo's yearly bonus was attributable to annuity replacements and the amount totaled less than \$5,000 for the entire time he worked on the annuity desk.⁹

⁴ CX 5; RX 13.

⁵ CX 1 at 2; Tr. at 243-244.

⁶ CX 1 at 8.

⁷ Tr. at 243.

⁸ Tr. at 43, 51.

⁹ Tr. at 229, 300.

On December 13, 2002, Prudential permitted Cuzzo to resign following the firm's "investigation concerning adherence to appropriate procedures for annuity replacements under New York State Reg. 60."¹⁰ Cuzzo is currently dually registered with two NASD member firms, JP Morgan Fleming Asset Management and JP Morgan Distribution Services, Inc.¹¹

B. Prudential's Regulation 60 Policies and Training

Prudential's written policies and procedures made clear that Regulation 60 required financial advisors to meet with clients on two separate occasions;¹² however, Cuzzo denied having received the policies.¹³ No evidence was produced at the hearing to show that Cuzzo or any of the annuity desk employees ever received the written policies. To the contrary, the routing list on the Compliance Alert explaining the process omits the annuity desk employees.¹⁴ Cuzzo testified that Prudential never provided any formal training to him on the purpose or operation of Regulation 60.¹⁵ His testimony was corroborated by every one of the Prudential employees who testified at the hearing or in NASD investigative proceedings—including Cuzzo's supervisor and the annuity desk employee who trained Cuzzo.¹⁶ Cuzzo stated that he obtained his knowledge of Regulation 60 from Karen McGlynn ("McGlynn"), his predecessor on the annuity desk, who explained how to process the paperwork for annuity replacements.¹⁷ During her NASD investigative testimony, McGlynn stated that despite not having received any

¹⁰ CX 2 at 2.

¹¹ Joint Stipulation at 1; CX 1.

¹² CX 10.

¹³ Tr. at 256.

¹⁴ CX 10 at 3, 5.

¹⁵ Tr. at 246, 253.

¹⁶ Tr. at 189; RX 3 at 27-28 (head of annuity sales desk); RX 8 at 19 (person who trained Cuzzo); RX 1 at 110 (national head of annuity sales); RX 10; RX 11 at 25, 39 (annuity sales desk employee).

¹⁷ Tr. at 245.

training on Regulation 60 herself, she had trained Cuozzo.¹⁸ Karim Amiry (“Amiry”), the head of the annuity desk and Cuozzo and McGlynn’s supervisor, also testified that McGlynn had trained Cuozzo.¹⁹

Employees on Prudential’s annuity sales desk were supposed to give assistance to financial advisors, who were ultimately responsible for completing Regulation 60 paperwork.²⁰ The financial advisors found the forms difficult to understand and the process confusing. After constant complaints from the sales force, Amiry told the field that his desk would help the financial advisors with the paperwork.²¹

After obtaining customer signatures on undated Phase I and Phase II documents during a single meeting, many financial advisors forwarded the documents to annuity desk employees for completion. Cuozzo and McGlynn testified that Amiry stressed to them that their job was to help the financial advisors with the Regulation 60 paperwork. Cuozzo and McGlynn testified that they took this to mean that they were required to complete the Regulation 60 paperwork for financial advisors, including, in many instances, writing in or changing dates on the forms.²² They further testified that Amiry knew that they were dating the forms.²³ Amiry sent an e-mail to the annuities sales force telling them that “[the annuity desk] will supply them with all the proper [Regulation 60] paperwork completed with as much info as possible. All the FA will basically have to do is get the signatures...”²⁴

¹⁸ RX 8 at 65-66.

¹⁹ RX 3 at 44.

²⁰ Tr. at 43; RX 1 at 35.

²¹ *Id.*; RX 3 at 34-38.

²² Tr. at 252; RX 8 at 38, 44-45.

²³ Tr. at 248-252; RX 8 at 36, 44, 108.

²⁴ RX 5 at 7.

C. Cuozzo Falsely Dated Regulation 60 Forms

Enforcement alleged that between January 2001 and June 2002, Cuozzo falsified numerous Regulation 60 documents. Cuozzo admitted, during his investigative testimony and at the hearing, that he dated Regulation 60 documents and/or filled in other information for financial advisors in approximately 50 instances.²⁵ Cuozzo dated the Phase I documents when they arrived at his desk from the financial advisor. At a later point, he received an e-mail from another Prudential department telling him that the annuity comparison had been received and that the Phase II paperwork should be sent for processing. He then wrote the date of that e-mail on the Phase II forms and sent them out.²⁶ Cuozzo testified that he was following the procedures he had been taught and that his supervisor knew he was dating the forms.²⁷ Both Cuozzo and McGlynn testified that they did not understand that this practice violated Regulation 60 until Prudential's internal investigation in May 2002, when interviewers told them so.²⁸ While Prudential had written policies prohibiting employees from altering or falsifying firm or client records and from signing another person's name on firm records,²⁹ Cuozzo denied having received the policies,³⁰ and Enforcement did not provide any evidence that he had received them.³¹

The Hearing Panel finds that Cuozzo falsely dated Regulation 60 forms on at least 50 occasions. While he may not have known that he was violating Regulation 60, he

²⁵ CX 3; Tr. at 224.

²⁶ Tr. at 223-224, 249, 297-298.

²⁷ Tr. at 248-252.

²⁸ Tr. at 256; RX 8 at 39.

²⁹ CX 11 at 2, 5.

³⁰ Tr. at 256, 278-280.

³¹ Tr. at 158.

knew or should have known that entering dates and other information rendered the forms inaccurate and was a violation of industry standards.

D. Cuozzo Forged a Customer's Initials on Regulation 60 Form

Enforcement alleged that Cuozzo altered customer JS's Regulation 60 form by falsely dating the form and filling in information concerning the customer's reasons for exchanging her annuity ("Part D Statements").³² Enforcement also alleged that Cuozzo forged JS's initials next to the Part D Statements to make it appear that JS had approved the answers that Cuozzo wrote. Peter Green ("Green"), who was JS's financial advisor, filed a declaration saying that he had not given anyone permission to date or alter JS's Regulation 60 form.³³ Green passed away before the hearing and was never cross-examined.

Cuozzo admitted that he dated JS's Regulation 60 form. He testified that when he received the form he noticed that the three Part D Statements had been left blank. He then called Green, who told him that he wanted to receive his commission that month. Green told Cuozzo what to write in the blanks for the Part D Statements. Cuozzo testified that he consulted Amiry, who told him that the customer needed to initial the answers to the Part D Statements. Cuozzo testified that after he relayed that message to Green, Green told him that he had obtained the customer's permission to fill in the blanks and that Cuozzo could therefore sign the customer's initials. Cuozzo admitted that he did so.³⁴

³² Part D Statements request information stating: "1. The primary reason(s) for recommending the new annuity contract is (are)--; 2. The existing annuity contract cannot meet the applicant's objectives because--; and 3. The advantages of continuing the existing annuity contract without changes are--"

³³ CX 7.

³⁴ Tr. at 230-231, 236-238, 264-266.

The Hearing Panel found that Cuozzo, who testified live and was cross-examined, was more credible on these points than Green's written declaration. Prudential financial advisors had numerous incentives to compress the annuity exchange process. They were able to decrease the time spent on transactions and avoid the possibility that the customer might change his mind upon viewing the side-by-side comparison. In addition, they could receive their commissions more quickly. Cuozzo, however, had little incentive to alter the forms without the permission of the financial advisors.

The Hearing Panel finds that Cuozzo dated, wrote in Part D Statements and signed customer JS's initials on his Regulation 60 form at Green's direction.

E. Cuozzo Did Not Forge Hart's Signature

Enforcement alleged that Cuozzo dated the Regulation 60 forms of SL, financial advisor Libby Hart's ("Hart") customer, and that he also changed information on the form and forged Hart's signature. The Hearing Panel concluded that although Cuozzo signed Hart's name, he did so with her permission and therefore he did not forge her signature.

Cuozzo admitted that he dated the form and signed Hart's name. He also admitted that he filled in the Part D Statements on the form. Cuozzo testified that Hart had inadvertently left the Part D Statements blank and had forgotten to sign the form. Because she wanted the commission on the exchange to be reflected in that month's commission check, she asked Cuozzo to complete the form for her. Cuozzo testified that his supervisor confirmed that he could sign Hart's name with her permission.³⁵ Cuozzo therefore signed Hart's name and filled in the blanks with the information she gave him.³⁶

³⁵ Tr. at 259.

³⁶ Tr. at 240, 257-260.

Hart testified that she might have discussed blanks left on the form with Cuzzo; however, she denied giving Cuzzo permission to date, sign or change information on her customer's form.³⁷ Hart knew that she could be jeopardizing her career if she admitted giving Cuzzo permission to complete SL's form. When Hart was initially questioned by Prudential's investigators, she was aware that 13 managers, including her supervisor, had been suspended for their involvement in circumventing Regulation 60. She also knew that many financial advisors had been suspended. And she saw that three months later, all of them had been terminated. Hart testified, "In [the securities] business, when you forge a signature, you are dismissed immediately."³⁸ In short, Hart had numerous reasons to deny that she had given Cuzzo permission to sign her name. In contrast, Cuzzo had little incentive to alter the form other than to assist Hart. When Cuzzo was first questioned by Prudential's internal investigators and later at his investigative testimony, he candidly admitted his role in altering the documents, suggesting that he did not realize that his actions were wrong.³⁹

After observing Hart's and Cuzzo's demeanors and weighing the considerations discussed above, the Hearing Panel found Cuzzo's testimony to be more credible than Hart's on this point. Consequently, the Hearing Panel finds that Cuzzo did not forge Hart's signature.

IV. Conclusions of Law

NASD Conduct Rule 2110 provides that, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable

³⁷ Tr. at 185; Tr. at 200-201.

³⁸ Tr. at 193, 202-203.

³⁹ CX 3; CX 4.

principles of trade.”⁴⁰ IM-2310-2 alerts members that, “fraudulent activities, such as forgery, non-disclosure or misstatement of material facts, manipulations and various deceptions, have been found in violation of Association Rules.”

Enforcement urged the Hearing Panel to find that Cuzzo understood that he was violating Regulation 60 by dating the annuity exchange forms after customers had signed them. While registered persons are presumed to know and abide by NASD rules⁴¹, they might not be expected to be as familiar with Regulation 60, a New York state insurance regulation. Indeed, there appears to have been widespread confusion about Regulation 60 among Prudential employees. The uncontradicted evidence presented was that Prudential did not adequately educate or train its employees on the purpose and operation of Regulation 60. The employees who seem to have received the least amount of training on Regulation 60 were those responsible for explaining its intricacies to the financial advisors—the clerks on the annuity desk.

A. Cuzzo Violated Conduct Rule 2110 and IM-2310-2 by Falsifying Firm Records

While Cuzzo did not knowingly circumvent Regulation 60, he entered false information on firm records and thus violated Rule 2110.⁴² The accuracy of brokerage firm records is one of the bedrocks upon which the public trust in the financial markets is built. As a registered person, Cuzzo knew or should have known that writing in or altering dates on firm documents could have been misleading or deceptive. By entering false information on firm records he failed to uphold the industry standards for dealing

⁴⁰ Rule 2110 is applicable to associated persons pursuant to Rule 0115(a), which provides, “These Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules.”

⁴¹ See, *In re L.H. Alton & Co, Inc. et al.*, Exchange Act Rel. No 40886, at 5 (Jan. 6, 1990); *Doe v. Alexander Shvarts*, Complaint No. CAF980029 (June 2, 2000).

⁴² See, *Charles E. Kautz*, 52 S.E.C. 730, 734, 1996 SEC LEXIS 994 (April 5, 1996) (“...it is a violation of NASD Rules to enter false information on official Firm records.”)

with customers justly and equitably. In this instance, public customers were deprived of the information they were entitled to receive to make their investment decisions.

B. Cuzzo Violated Rule 2110 by Forging a Customer's Initials

Although Cuzzo testified that Green instructed him to sign JS's initials because JS had approved the Part D Statements, Cuzzo admitted that he had never spoken to JS himself and knew that JS had not seen the statements. Green's permission to sign JS's initials does not confer JS's authority to do so. Cuzzo therefore forged JS's initials. Signing another person's signature on a document without his knowledge and consent is unethical conduct that clearly violates Rule 2110.⁴³

C. Cuzzo Did Not Forge Hart's Signature

The Hearing Panel finds that Hart instructed Cuzzo to sign her name on SL's document. Because Cuzzo had Hart's authority to sign her name, his conduct does not constitute forgery.⁴⁴

V. Sanctions

The NASD Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$100,000 for forgery or falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. In determining appropriate sanctions under this Guideline, the adjudicator is to consider the nature of the forged or falsified document and whether the respondent had a good faith, but mistaken belief of express or implied authority.⁴⁵

⁴³ *Bickerstaff, supra*; See also, *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at **1, 8 (NAC Dec. 14, 1999).

⁴⁴ *DBBC v. Peters*, Complaint No. C02960024, 1998 NASD Discip. LEXIS 42, at *5 (NAC Nov. 13, 1998), citing *In re. Donald M. Bickerstaff*, Exchange Act Rel. No. 35607, 1995 SEC LEXIS 982, at *10 (S.E.C. 1995).

⁴⁵ NASD Sanction Guidelines at 39 (2005).

While Enforcement argued that this is an egregious case, the Hearing Panel disagrees and finds that mitigating factors exist. One of the principal considerations to be taken into account by adjudicators is whether the respondent attempted to conceal his misconduct.⁴⁶ Cuozzo has always admitted, since first being questioned by Prudential internal investigators, that he dated Regulation 60 forms and added or altered information on the forms. This suggests that he did not recognize that his actions were improper. The Hearing Panel concludes that his conduct was negligent, rather than intentional.

Cuozzo admittedly falsified firm records by writing inaccurate dates on Regulation 60 forms. It is a violation of NASD rules to enter false information on official firm records and ignorance of NASD rules is not a defense to violative conduct.⁴⁷ The Hearing Panel found several mitigating factors, however. Cuozzo was a recent college graduate with no experience in the securities industry. Without adequate training on the purpose and operation of Regulation 60, Cuozzo did not fully appreciate the significance of the annuity exchange forms, and was reluctant to question procedures that existed before he joined the annuity desk, particularly when they were followed with his supervisor's apparent knowledge and approval. He reasonably expected that Prudential's procedures would comply with NASD rules and did not recognize that the process he had been taught for entering dates was improper.

⁴⁶ Guidelines at 6.

⁴⁷ *In re Charles E. Kautz*, 52 S.E.C. 730, 1996 SEC LEXIS 994 (S.E.C. Apr. 5, 1996).

With respect to Cuozzo's forgery of JS's initials, the Hearing Panel finds that Cuozzo had a good faith but mistaken belief that Green had spoken to JS and that JS approved of the statements that Cuozzo wrote on the form. Cuozzo had been registered for a short time and had never worked with customers. These circumstances are mitigating factors that argue against finding that Cuozzo's conduct was egregious and deserving of a bar.⁴⁸

The Hearing Panel finds that Cuozzo's conduct was a serious breach of NASD rules and deserves a significant sanction. However, there were a number of mitigating factors, as described above. Accordingly, Cuozzo is fined \$5,000 and suspended for one year from association with any member firm in any capacity.

VI. Conclusion

Respondent Charles J. Cuozzo, Jr. violated NASD Conduct Rule 2110 and IM-2310-2 by falsifying firm records and forging a customer's initials. For these violations, Cuozzo is fined \$5,000 and suspended for one year from association with any member firm in any capacity. In addition, he is ordered to pay costs in the amount of \$2,623.60, which includes an administrative fee of \$750 and the cost of the hearing transcript. The fine shall become due and payable when Cuozzo returns to the industry after the end of

⁴⁸ In arguing that a bar is appropriate in this case, Enforcement relies on several cases in which Prudential employees settled Regulation 60 cases with NASD. That reliance is misplaced; in those Acceptance, Waiver and Consent settlements, the respondents settled without admitting or denying the charges. Further, the National Adjudicatory Council has repeatedly emphasized that appropriate sanctions must be based upon the particular circumstances of each case. *See, DOE v. Roger A. Hanson*, Complaint No. C8A000059, 2002 NASD Discip. LEXIS 5 (N.A.C., Mar. 28, 2002).

his suspension. These sanctions shall become effective on a date set by NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of NASD, except that if this Decision becomes the final disciplinary action of NASD, the suspension shall become effective with the opening of business on February 6, 2006 and end with the close of business on February 5, 2007.

HEARING PANEL

By: Rochelle S. Hall
Hearing Officer

Copies to: Charles J. Cuzzo, Jr. (*via overnight and first class mail*)
Kevin P. Conway, Esq. (*via facsimile and first class mail*)
David B. Klafter, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*electronically and via first class mail*)