

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

FRANK P. GRASSO  
(CRD No. 1047250),

Respondent.

Disciplinary Proceeding  
No. CLI050016

Hearing Officer – DMF

**HEARING PANEL DECISION**

April 17, 2006

*Summary*

**Respondent is suspended for nine months, fined \$10,000 and ordered to requalify for listing false customer addresses on variable annuity applications, in violation of Rule 2110.**

*Appearances*

Jon S. Batterman, Esq. and Jeff Kern, Esq. (Rory C. Flynn and Roger D. Hogoboom, Of Counsel) for Complainant.

Ernest E. Badway, Esq. for Respondent.

**DECISION**

**I. Procedural History**

The Department of Enforcement filed a Complaint on June 7, 2005, charging that Respondent Frank P. Grasso listed false customer addresses on variable annuity applications, in violation of Rule 2110. Grasso filed an Answer contesting the charges and requested a hearing. Enforcement subsequently filed a motion for summary disposition, pursuant to Rule 9264. The Hearing Panel granted the motion in part, holding that the undisputed facts established that Respondent violated Rule 2110, as

charged, but the Panel deferred its determination as to the appropriate sanctions for the violation pending a hearing, which was held in New York, NY, on February 22, 2006.

## **II. Facts**

Grasso has been employed in the securities industry since 1985, and was associated with MONY Securities Corporation from 1991 until October 2003.<sup>1</sup> He is currently associated with North Ridge Securities Corp. He has no prior disciplinary history. (CX 1.)<sup>2</sup>

There is no dispute that on three occasions in 1999 and approximately 17 occasions during the period October 2001 through approximately May 2002, Grasso listed false Connecticut addresses on variable annuity applications for customers who actually lived in New York state. Grasso listed Connecticut addresses in order to obtain a MONY variable annuity product for these customers that was approved for sale in Connecticut (and all other states), but not in New York.<sup>3</sup> Grasso believed that the Connecticut product was superior to the New York product, because, among other things, it included a guaranteed interest rate provision for a longer period than was available under the New York product. Grasso entered the false addresses on the applications himself, or instructed his secretary to enter them, but he promptly corrected the

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<sup>1</sup> He was also associated with MONY's affiliate, Trusted Securities Advisors Corp., from 2000 until October 2003.

<sup>2</sup> In this decision, CX refers to the exhibits to Enforcement's motion for summary disposition, RX refers to the exhibits to Respondent's opposition to Enforcement's motion, and Tr. refers to the transcript of the hearing.

<sup>3</sup> In one other case, Grasso listed a Connecticut address on the application for a customer who lived in Florida. In that case, the annuity product was approved for sale in Florida, but Grasso wanted to share his commission with two representatives who referred the customer. Those representatives were licensed in Connecticut, but not Florida. Grasso, himself, was licensed in Florida, as well as in New York and Connecticut. (Tr. 49, 125-26; CX 6.)

customers' addresses after MONY issued the variable annuity contracts. (CX 4, 6, 8, 9; Tr. 29-30, 37-38.)

In 2003, during a routine audit of a death claim for one of the customers, MONY's audit department noted that the annuity application had a Connecticut address that had been changed to an almost identical New York address immediately after the annuity contract was issued. The audit department then conducted a broader review of Grasso's annuity contracts and identified others in which Connecticut addresses were changed to New York addresses immediately after the annuity contract was issued. The audit department referred the matter to MONY's Special Investigations Unit (SIU). (CX 6.)

The SIU determined that false Connecticut addresses had been listed on 20 annuity applications for 17 New York customers. Three of the applications were submitted in 1999, the remainder during the period October 2001 through June 2002. In most cases, the application listed the customer's correct New York street address, but falsely indicated that the address was in a city in Connecticut. In the remaining cases, the entire Connecticut address was false. Grasso was involved in all of the applications, but on 11 of the contracts he shared the commissions with two other MONY representatives. (CX 6.)

During its investigation, SIU determined that the Connecticut annuities included several provisions that were more advantageous to the customers than the MONY product that was available in New York. SIU was concerned that Grasso might have used false Connecticut addresses to avoid complying with New York law, which requires important disclosures to the customer whenever an annuity product is sold to replace an

existing annuity contract. But SIU discovered “a curious thing” – while only a few of the applications in question involved replacement of existing annuities, in those cases Grasso completed the required New York forms, including the customer’s correct New York address, even though he listed a false Connecticut address on the annuity application. In short, SIU determined that Grasso ensured that all his New York customers received the disclosures to which they were entitled. (CX 6.)

SIU then called Grasso in for an interview. When questioned, Grasso readily admitted that he had listed false Connecticut addresses on the applications. According to the Director of SIU, who interviewed Grasso:

The [superior terms of the Connecticut contract] were the driving motivation. According to Grasso, there was no comparable contract to sell New York State residents, not from MONY or from an outside company. Grasso concedes that the actions that he took were wrong. He accepts full responsibility but provided an explanation. He said that he had no malicious intent and that he did not profit more from [the Connecticut] contract than the [New York] contract. He did not believe that his actions harmed the client or the company. He did not foresee the regulatory impact and apologized to me and to [a MONY in-house attorney, who also took part in the interview].

(CX 6.)<sup>4</sup>

On the day of his interview, Grasso also signed a “confirmation of interview” prepared by his interviewers. In that document, he confirmed that he listed false Connecticut addresses for the New York customers in order to sell them a product that was approved for sale in Connecticut, but not in New York. He stated that he “took all of these ... actions with the intention of placing the best contract in the hands of the client, retaining the business inside MONY and never intended to harm MONY or the client. In

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<sup>4</sup> According to Grasso, at the end of his interview, the MONY attorney said to the Director of SIU, “Don’t we normally look the other way on something like this?” (Tr. 44, 124.)

retrospect, I understand and take responsibility for the attendant regulatory concerns and admit that the actions that I took were not approved by anyone at MONY ....” (CX 8.)

MONY terminated Grasso in October 2003, and the Form U-5 termination notice that it filed with NASD indicated that he was terminated for listing false addresses on variable annuity applications. NASD staff accordingly began an investigation, and sent Grasso a letter requesting a detailed statement. Grasso promptly responded with a letter in which he admitted listing false addresses on the annuity applications, again explaining that he did so to obtain better terms for the customers. He stated that he “was never comfortable” listing false addresses, but “felt that a good thing was accomplished for the client. The client received a high interest rate, the business was kept within MONY and I did nothing that was self-serving, in terms of personal financial gain.” (CX 1, 11.)

Grasso also provided sworn testimony during the investigation, in which he again admitted listing false addresses, explained that he intended to benefit his customers and expressed regret. And at the hearing, he accepted responsibility for his actions, acknowledged that they were wrong, and stated that he was “ashamed of what I did.” (CX 12; Tr. 101-02.)

### **III. Summary Disposition**

Rule 9264 provides that the Hearing Panel may grant a motion for summary disposition “if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.” The Hearing Panel granted Enforcement’s motion for summary disposition, in part, because the

undisputed facts establish that Grasso failed to “observe high standards of commercial honor and just and equitable principles of trade,” as required by Rule 2110.<sup>5</sup>

As explained above, Grasso has repeatedly acknowledged that he entered false customer addresses on variable annuity applications in order to obtain annuities for New York residents that were not approved for sale in New York. And he has repeatedly acknowledged, correctly, that his actions in that regard were improper.

As the National Adjudicatory Council has explained:

Section 15A of the Securities Exchange Act of 1934 (the “Exchange Act”) requires the NASD, as a registered securities association, to have and enforce rules that “promote just and equitable principles of trade.” The “special focus of the NASD’s Rules is the professionalization of the securities industry,” and the rules are “affirmatively and vaguely phrased in terms of what shall be instead of in terms of concrete proscriptions.” ... Conduct Rule 2110 “is not limited to rules of legal conduct but rather ... it states a broad ethical principle.” ... Disciplinary hearings under Conduct Rule 2110 are ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred. ... The NASD has authority to impose sanctions for violations of “moral standards” even if there was no “unlawful” conduct.

Department of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*11 (N.A.C. June 2, 2000).

“Submitting false information about customers on variable annuity applications is a violation of NASD’s just and equitable principles of trade rule.” Department of Enforcement v. Prout, No. C01990014, 2000 NASD Discip. LEXIS 18 at \*6 (N.A.C. Dec. 18, 2000). Such applications provide critical information to guide the variable annuity issuer’s determinations regarding whether and under what terms to issue the

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<sup>5</sup> Although Rule 2110 applies by its terms to NASD member firms, Rule 115(a) provides: “Persons associated with a member shall have the same duties and obligations as a member under these Rules.” Accordingly, it is settled that Rule 2110 applies to associated persons such as Grasso. See, e.g., Department of Enforcement v. Golub, No. C10990024, 2000 NASD Discip. LEXIS 14 at \*21 n.15 (N.A.C. Nov. 17, 2000).

annuity. In this case, although Grasso's goal may have been to obtain more favorable annuity terms for his customers, he now acknowledges that it was unethical and improper for him to falsify the applications to accomplish that goal. (Tr. 65-66.) The Hearing Panel agrees. Therefore, based on the undisputed facts, the Hearing Panel determined that Grasso violated Rule 2110, as charged.

#### **IV. Sanctions**

For falsification of records, NASD's Sanction Guidelines recommend that adjudicators impose a fine of \$5,000 to \$100,000, as well as a bar in egregious cases, or a suspension of up to two years where mitigating factors exist. NASD Sanction Guidelines at 39. Enforcement requested that the Panel impose a bar in this case, but for the reasons set forth below, the Panel concludes that a fine, a lengthy suspension and a requalification requirement are more appropriate sanctions under the particular facts of this case.

The Hearing Panel finds, first, that Grasso's violations were quite serious. As explained above, he deliberately entered false customer addresses on annuity applications with the expectation and intent that MONY would issue variable annuities that were not approved for sale in New York. Grasso testified that in doing so he was influenced by a lax compliance culture at MONY, which led him to believe that "the company would look the other way" if it discovered the false addresses. (Tr. 26-27, 32-33.) Even assuming that MONY did have a lax compliance culture – the Panel finds it unnecessary to reach any conclusions in that regard – that would not absolve or mitigate Grasso's actions. Grasso should have realized that falsifying information on annuity applications was highly improper, even if he thought MONY would look the other way. Grasso also testified that he did not appreciate that his actions would raise regulatory concerns. But

having been employed in the securities industry for many years, Grasso should have recognized that the falsification of documents is of serious concern to regulators.

Grasso emphasized that he acted to obtain superior annuity contract terms for his customers – terms that were available in every state except New York. In doing so, however, he ignored the fact that the annuity contracts he sold the customers were not approved for sale in New York. Although MONY did not attempt to rescind the annuities when it discovered the falsified applications, Grasso could not have been certain of that when he submitted the falsified applications.<sup>6</sup> Yet when he advised the customers that he would be submitting their applications with false Connecticut addresses, he blithely “assured them ... they certainly would not be at fault or hav[e] a problem” if MONY discovered what he had done. (CX 12 at 39.) Thus, the Panel found that substantial sanctions are required “to prevent and discourage future misconduct by [the] respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices.” Guidelines at 2.

There are several circumstances, however, that weigh against a bar. First, the Panel credits Grasso’s unchallenged testimony that he had no financial incentive to falsify the applications, because he would have received equal or greater commissions if he had sold the customers a MONY annuity that was approved for sale in New York. He sold the customers Connecticut annuities to obtain a better guaranteed rate of return for the customers. While this does not excuse his actions, it is significant that he acted in a

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<sup>6</sup> MONY “did not believe that it had the authority to unilaterally cancel the contracts identified without the authorization of the customer.” MONY sent the customers letters notifying them that the annuity they had purchased was not available to New York residents, and advising them that they could contact MONY’s Policyholder Service Center by a toll-free telephone number “to discuss the options available to you.” Several months later, MONY advised NASD: “To date, no complaint has been received from any of these customers in response to this mailing.” (CX 14.)

misguided effort to further his customers' financial interests, not to serve his own.<sup>7</sup> This case stands in contrast to Prout, where the respondent falsified annuity applications in order to obtain higher commissions and to qualify for a trip to Hawaii.

Second, when questioned by MONY's SIU, Grasso promptly admitted his acts and acknowledged that they were wrong. Similarly, when NASD began its investigation, Grasso cooperated, acknowledged his misconduct and accepted responsibility for it. And at the hearing, he acknowledged that his actions were unethical and that he was ashamed of them.

Third, the Hearing Panel had an opportunity to observe and question Grasso, and concludes that he now appreciates that his conduct was improper. The Panel finds that if he is allowed to return to the industry, Grasso is unlikely to repeat his misconduct, or to pose a threat to the investing public. Thus, the Panel finds that Grasso does have the "ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public." Department of Enforcement v. Davenport, No. C05010017, 2003 NASD Discip. LEXIS 4, at \*9 (N.A.C. May 7, 2003).

In that regard, the Panel also considered the testimony of the two owners and principals of the firm with which Grasso has been associated since October 2003. They stated that they have known Grasso professionally since the 1980's and have found him to be "a most upstanding individual." They testified that when Grasso sought employment with them after MONY terminated him, Grasso was candid about his actions at MONY. While recognizing that his actions were improper, and that he should be sanctioned for them, they expressed the view that he "is a good competent guy who made

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<sup>7</sup> The Panel also notes the SIU's finding that when Grasso sold the customers a replacement annuity, he took steps to ensure that they received the disclosures required under New York law, again reflecting Grasso's efforts to serve his customers' best interests.

a mistake.” Based on their knowledge of Grasso, they stated that they believe he will comply with regulatory requirements in the future, and that if Grasso is suspended, they will welcome him back into their firm when the suspension is over. (Tr. 10-13, 20, 133-34, 139-40.)

Taking all these circumstances into consideration, the Panel determined that the appropriate sanctions in this case are a \$10,000 fine and a suspension in all capacities for nine months. In addition, to ensure that Grasso is reminded of the applicable regulatory requirements, the Panel will order him to requalify.<sup>8</sup>

## **V. Conclusion**

Respondent Frank P. Grasso listed false customer addresses on variable annuity applications, in violation of NASD Rule 2110. For this violation, he is suspended from associating with any NASD member in any capacity for nine months, fined \$10,000 and ordered to requalify by examination before again serving in any registered capacity. In addition, he is ordered to pay costs in the amount of \$2,376.64, which includes an administrative fee of \$750 and the cost of the hearing transcript. These sanctions shall become effective on a date set by NASD, but not earlier than 30 days after this decision becomes NASD’s final disciplinary action in this matter, except that if this decision

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<sup>8</sup> As a result of a regulatory action by the New York Insurance Department, Grasso has already disgorged all the commissions he earned from the annuities, and there is no evidence of any injury to customers requiring restitution, so the Panel has imposed no additional monetary sanctions. (Tr. 48.)

becomes NASD's final disciplinary action Grasso's suspension shall begin at the opening of business on June 5, 2006 and end at the close of business on March 2, 2007.<sup>9</sup>

**HEARING PANEL**

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By: David M. FitzGerald  
Hearing Officer

Copies to: Frank P. Grasso (*via overnight and first class mail*)  
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<sup>9</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.