

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHELLE M. MAYO  
(CRD No. 2403554),

Respondent.

Disciplinary Proceeding  
No. E8A20041203102

**HEARING PANEL DECISION**

Hearing Officer – SW

Date: July 31, 2007

**Respondent is fined \$5,000 and suspended for one year from associating with any FINRA<sup>1</sup> member firm in all capacities for falsifying employment documents in violation of NASD Conduct Rule 2110.**

**Appearances**

Dale A. Glanzman, Esq., Regional Counsel, and Richard S. Schultz, Esq.,  
Regional Counsel, Chicago, IL, for the Department of Enforcement.

L. Andrew Brehm, Esq., Chicago, IL, for Respondent Michelle M. Mayo.

**DECISION**

**I. PROCEDURAL BACKGROUND**

On November 10, 2006, the Department of Enforcement (“Enforcement”) filed a one-count Complaint, alleging that Respondent Michelle M. Mayo (“Respondent”) violated Conduct Rule 2110 by falsifying certain company documents while she was associated with Pruco Securities, LLP. Specifically, between January 2003 and March 2004, Respondent falsified four Sales Preference Questionnaires (“SPQs”) and 46

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<sup>1</sup> Financial Industry Regulatory Authority (“FINRA”) was formerly known as NASD. FINRA’s rules, available on FINRA’s internet site at [http://www.finra.org/RulesRegualtion/FINRARules/index.htm](http://www.finra.org/RulesRegulation/FINRARules/index.htm), include NASD Conduct and Procedural Rules.

Financial Services Selection Tests (“FSSTs”), documents used to determine the sales aptitude of individuals to become insurance agents and registered representatives.

Respondent admitted that she falsified the SPQs and the FSSTs. However, Respondent argued that her misconduct did not constitute a violation of NASD Conduct Rule 2110 because of the nature of the falsified documents. In the alternative, Respondent argued that no sanction was required for her misconduct because there was no harm to the public or her firm under the particular circumstances.

The Hearing Panel, consisting of two current members of the District 8 Committee and the Hearing Officer, conducted a two-day Hearing on April 17-18, 2007, in Chicago, IL.<sup>2</sup>

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

### **A. Jurisdiction**

Respondent became employed by Prudential Financial Insurance Company and its wholly-owned subsidiary, Pruco Securities, LLC (collectively “Prudential”) in September 1993. (CX-1, p. 2). Respondent became registered with Prudential as an investment company and variable contracts products representative on October 20, 1993, as an investment company and variable contracts products principal on April 30, 1998, and as a general securities representative on January 1, 2001. (CX-1, p. 3). On November 17, 2004, Prudential terminated Respondent for cause. (CX-1, pp. 2-3).

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<sup>2</sup> Hereinafter, Enforcement’s exhibits presented at the Hearing will be designated as “CX-”; Respondent’s exhibits presented at the Hearing will be designated as “RX-”; references to the transcript of the Hearing will be designated as “Tr. p.”; and references to the Stipulations, filed by the Parties on March 1, 2007, will be designated as “Stip. at ¶.”

Since February 28, 2005, Respondent has been associated with W&S Brokerage Services, Inc. (“W&S”). (CX-1, p. 2). Respondent became registered with W&S as an investment company and variable contracts products representative on March 4, 2005, as a general securities representative on May 16, 2005, and as an investment company and variable contracts products principal on October 4, 2005. (Id.).

**B. Respondent Violated Conduct Rule 2110**

**1. Background**

The primary facts are not in dispute. In 2003, Respondent was the sales manager of Prudential’s Kalamazoo, Michigan office, and she was striving to have Kalamazoo become the number one insurance agency in the Prudential branch system. (Tr. pp. 167, 294, 300-301). At the same time, Respondent’s husband, who had retired in 2001 because of health issues, was suffering from increasingly more severe health issues.<sup>3</sup> (Tr. p. 175).

In 2003, Prudential had established a 10-5-2 standard for its sales managers, pursuant to which every week sales managers were expected to (i) participate in 10 joint sales appointments with their agents, (ii) complete five applications with their agents, and (iii) administer two FSST aptitude tests to employee applicants. (Tr. pp. 115-116, 182-183). Prudential adopted the two FSSTs per week standard to assure that qualified candidates were available for Prudential to hire. (Tr. pp. 97, 310-311, 319).

The employee-hiring process at Prudential was a multi-step process. (Tr. p. 93). As the initial step, an applicant underwent a short interview and then took the FSST. (Tr. p. 93; Stip. at ¶ 3). If the applicant failed the test, the hiring process was terminated. (Tr.

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<sup>3</sup> Respondent’s husband suffers from diabetes, congestive heart failure, kidney disease, hypertension, Crohn’s disease. (Tr. pp. 175-176). He suffered for one year from herpes zoster that got into one eye and caused double vision. (Id.). He is hospitalized two or three times a year. (Tr. pp. 176-177).

p. 94). If the applicant successfully passed the FSST, the applicant went to the next step, which involved the SPQ, a test designed to assist Prudential in determining the personality characteristics of a candidate. (Stip. at ¶¶ 5, 7; Tr. pp. 33, 94, 190, 251-252).

Respondent stipulated that, between January 2003 and March 2004, she falsified four SPQs and 46 FSSTs (42 FSSTs in 2003, and four FSSTs in 2004) while she was the sales manager of the Kalamazoo office. (Stip. at ¶¶ 8, 9). Specifically, Respondent inserted fictitious names and fictitious social security numbers on FSSTs and personally completed the tests in such a manner that the fictitious applicants failed the test and the employee process was halted, but Respondent appeared to have met her quota of two FSSTs per week. (Stip. at ¶ 9). The date on the first false FSST was January 16, 2003. (CX-8, pp. 1, 5).

In addition, because Respondent lost the SPQs of three applicants, Respondent photocopied an SPQ that she already had on file and inserted the names of the three applicants. (Stip. at ¶ 8; Tr. p. 196). Respondent also inserted the name of a fourth fictitious applicant on a fourth copy of the SPQ. (Id.). Consequently, each of the falsified SPQs had the exact same answers. (CX-7).

At the end of 2003, Respondent was ranked 13th out of 270 sales managers. (Tr. pp. 182, 196). In February 2004, Respondent was promoted to managing director of the Kalamazoo and Grand Rapids branch offices, but she retained her sales manager responsibility for the Kalamazoo branch office for two months. (Tr. pp. 230-231, 257). The last false FSST that Respondent created was dated March 3, 2004, and the last false SPQ that Respondent created was dated April 24, 2004. (CX-7, p. 3; CX-8, pp. 4, 168).

In mid-2004, Prudential decided to merge the Kalamazoo and Grand Rapids offices into the Troy, Michigan office. (Tr. pp. 101, 304-305).

During the same period, however, because of the identical answers on the four photocopied SPQs that Respondent had submitted, Prudential realized that the SPQs had been falsified. (Tr. p. 323). Prudential's corporate investigation unit then checked the social security numbers on the other tests that Respondent had submitted and discovered that the social security numbers did not match the names on 46 out of 118 FSSTs submitted by Respondent. (Tr. pp. 96, 330, 359).

On September 8, 2004, Respondent met with Prudential expecting to discuss a possible buy-out arrangement in view of an announced downsizing. (Tr. p. 207). Instead, she was advised that Prudential had discovered the false documents. (Id.). Respondent admitted her wrongdoing and was put on administrative leave. (Tr. pp. 218-219). On November 17, 2004, Prudential terminated Respondent's employment for cause, and, on November 29, 2004, Prudential filed a Form U-5 terminating Respondent's registrations. (CX-1, pp. 2-3, RX-8).

Prior to her termination, Respondent had been approached to work at W&S by FD, her former Prudential managing director, who was a district managing director at W&S. (Tr. pp. 398, 404). Even after she confessed her conduct to FD, FD vouched for the general ethical behavior of Respondent, and he testified on Respondent's behalf at the Hearing. (Tr. pp. 404, 415, 420; RX-1).

W&S put Respondent on heightened supervision for one year, and she completed the one year without incident.<sup>4</sup> (Tr. pp. 152, 154, 156). The State of Michigan also put Respondent on probation for a year, which she completed. (Tr. pp. 227-228).

DD, another former Prudential managing director, who is now an assistant vice president at W&S, also testified that Respondent was an ethical person despite the “poor judgment” she exhibited when she falsified the documents. (Tr. pp. 131-133, 136, 139-140). GV, the former sales manager for Prudential’s Grand Rapids, MI office and Respondent’s peer in 2003, also testified as to Respondent’s ethical character, apart from the incident in question. (Tr. pp. 336, 339, 364).

## **2. NASD Conduct Rule 2110**

The sole count of the Complaint alleges that Respondent violated Conduct Rule 2110 by falsifying employment documents.<sup>5</sup> There is no dispute that Respondent falsified the FSSTs and SPQs.

It is well settled that NASD Conduct Rule 2110 is not limited to rules of legal conduct, but rather states a broad ethical principle. Thus, it is a violation of NASD Conduct Rule 2110 to enter false information on firm records.<sup>6</sup>

There is no credible argument that the FSSTs and SPQs are not firm records.<sup>7</sup>

The FSSTs were sent to Newark, New Jersey, scanned, and scored by the recruitment and

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<sup>4</sup> The heightened supervision required: (i) weekly meetings to review Respondent’s securities activities with FD, her supervision principal; (ii) quarterly evaluations; (iii) documented evaluations of her books and records; and (iv) three office inspections, one of which was to be unannounced, within a 15-month period. (Tr. p. 155).

<sup>5</sup> See Daniel D. Manoff, Exchange Act Rel. No. 46,708, 2002 SEC LEXIS 2684, at \*2 n.1 (Oct. 23, 2002) (confirming that “associated persons have the same duties and obligations as NASD members under the NASD’s rules”).

<sup>6</sup> Charles E. Kautz, 52 SEC 730, 734, 1996 SEC LEXIS 994 (Apr. 5, 1996).

<sup>7</sup> Section 1.D. of the Prudential Insurance Division Compliance Policies Manual dated September 11, 2003 listed the following as examples of business records or documents: policies; contracts; databases; policy envelopes and receipts; applications; or other completed forms. (CX-2, p. 1).

selection division of Prudential. (Tr. pp. 325-326). The SPQs were scored by an outside service for \$60 per test. (Tr. pp. 309, 317, 323). Both types of tests were retained by Prudential, and verification analyses were performed on the test data annually to determine whether the test or any particular questions had an adverse impact on a particular group of people. (Tr. pp. 309-310). Prudential provided the results of the validation studies to the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, as required. (*Id.*). Prudential administered between 14,000 and 15,000 FSSTs a year. (Tr. pp. 316-317).

Accordingly, the Hearing Panel finds that Respondent violated NASD Conduct Rule 2110, as alleged in the sole count of the Complaint.

### **III. SANCTION**

The FINRA Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000 for forgery and/or falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases.<sup>8</sup> In determining appropriate sanctions under the Guidelines, the adjudicator is to consider the nature of the forged or falsified documents and whether the respondent had a good faith, but mistaken, belief of express or implied authority. In addition, the adjudicator should consult the applicable general principal considerations listed in the Guidelines.

The Department of Enforcement argued that Respondent’s intentional falsification of 46 FSSTs and four SPQs over a period of 14 months warranted a bar. Enforcement argued that Respondent intentionally deceived Prudential into believing that real applicants had taken the tests and were interested in becoming associated with Prudential

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<sup>8</sup> FINRA Sanction Guidelines, p. 39 (2007).

and that her motive was her belief that she would suffer financial repercussions and/or loss of employment if she did not meet Prudential's 10-5-2 standard. Prudential managers, however, testified that failure to meet the two FSSTs a week standard, standing alone, was not generally grounds for discipline. (Tr. p. 97; CX-6, p. 1). The Hearing Panel also noted that there were no bonuses tied to meeting the two FSSTs standard, and the number of FSSTs administered was not included in determining the sales managers' rankings.<sup>9</sup> (Tr. pp. 203, 295, 297).

In determining the appropriate sanctions in this case, first the Hearing Panel considered the nature of the documents, noting that, while the documents were consequential internal employment documents, they were not customer-related documents.<sup>10</sup> The Hearing Panel also considered that Respondent understood and admitted that she had no authority to falsify the documents.

The Hearing Panel also considered the following relevant general principal considerations: (i) whether the respondent engaged in numerous acts and/or a pattern of misconduct; (ii) whether the respondent engaged in the misconduct over an extended period of time; (iii) whether the respondent's misconduct resulted directly or indirectly in injury to the respondent's firm; (iv) whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence; (v) whether the member firm with which an individual respondent is/was associated disciplined respondent for the misconduct at issue prior to regulatory detection; (vi) whether the respondent attempted

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<sup>9</sup> Every Monday, the sales managers received their ranking based, in part, on the level of production, the number of recruits, the number of productive representatives, the retention rate, and the amount of life insurance commissions. (Tr. pp. 121, 343).

<sup>10</sup> In filing the Form U-5, Prudential determined that Respondent's misconduct did not constitute a violation of an investment-related statute or rule or industry standard of conduct. (Tr. p. 119).



to delay FINRA's investigation; and (vii) whether the respondent attempted to conceal information from FINRA.

The number of Respondent's falsifications over a 14-month period warrants a serious sanction. However, because a number of aggravating factors are not present, the Hearing Panel determined that this was not an egregious case warranting a bar. There was no actual or threatened harm to any customer and the actual and threatened harm to Prudential was limited. The impact of the 46 false FSSTs on Prudential's verification tests was negligible because the 46 tests were an inconsequential percentage of the 14,000 to 15,000 FSSTs that Prudential administered every year, and the \$240 cost of scoring the four false SPQs was also negligible. The Hearing Panel also noted that Respondent's failure to administer two FSSTs per week did not prevent her from meeting her recruitment goals of four new representatives in 2003.

Although Respondent's actions were clearly intentional, Respondent did not intend to cause harm to Prudential and believed that because the fictitious applicants failed the tests, the falsified FSSTs and the SPQs would simply be filed away by Prudential. (Tr. p. 199). When confronted, Respondent admitted her misconduct, and she did not attempt to delay the FINRA investigation or attempt to conceal information. Because of her actions, Respondent was placed on one-year heightened supervision by her new employer, which she completed successfully.

Respondent was remorseful and explained that she was subject to a great deal of personal and professional pressure at the time, including her husband's serious illnesses and repeated hospitalizations. The testimony of several witnesses indicated that

Respondent's actions were aberrant and not reflective of her generally high ethical standards.

Accordingly, the Hearing Panel finds that a \$5,000 fine and a one year suspension in all capacities are sufficient to remediate Respondent's misconduct.

#### **IV. CONCLUSION**

Respondent Michelle M. Mayo is fined \$5,000 and suspended for one year from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 by creating 50 false internal firm records. In addition, Respondent is ordered to pay costs in the amount of \$3,973.06, which includes an administrative fee of \$750 and the \$3,223.06 cost of the Hearing transcript.

The fine and 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 FINRA, Respondent's suspension in all capacities shall commence at the opening of business on October 1, 2007, and conclude at the close of business on September 30, 2008.<sup>11</sup>

#### **HEARING PANEL.**

by: \_\_\_\_\_  
Sharon Witherspoon  
Hearing Officer

Date: Washington, DC  
July 31, 2007

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<sup>11</sup> The Hearing Panel considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

Copies to:

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