

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MANGRI MOHINI HARLAL
(CRD No. 2242211),

Respondent.

Disciplinary Proceeding
No. 2005000960801

HEARING PANEL DECISION

Hearing Officer – SW

Date: July 2, 2007

Respondent is suspended for six months from associating with any NASD member firm as an investment company products and variable contracts representative and is fined \$10,000 for signing the name of customer TS to three insurance documents in violation of NASD Conduct Rule 2110.

Appearances

Lynn M. Kaseta, Esq., Regional Counsel, and Jonathan M. Prytherch, Esq., Senior Regional Attorney, Woodbridge, NJ, for the Department of Enforcement.

Mangri Mohini Harlal, pro se.

DECISION

I. PROCEDURAL BACKGROUND

On September 15, 2006, the Department of Enforcement (“Enforcement”) filed a one-count Complaint against Respondent Mangri Mohini Harlal (“Respondent”), alleging that Respondent violated NASD Conduct Rule 2110 by (i) affixing customer TS’s signature to three insurance documents, without the customer’s permission and authority, and (ii) submitting the three documents to Mutual of Omaha Insurance Company. (“Mutual of Omaha”).

In November 2004, Mutual of Omaha discovered three alleged forged documents, one document submitted in connection with the insurance application, and two receipts submitted in connection with the effective date of the insurance policy. It is not disputed that customer TS signed the disability insurance application, signed the earlier requisite receipts to make the insurance policy effective, but did not sign the three forged documents.

Respondent admitted that she does not remember exactly what happened with the particular insurance policy. However, Respondent vigorously denied that she signed customer TS's name to any document, arguing that she had no reason to forge TS's signature on the three particular documents.

The Hearing Panel, consisting of two current members of the District 9 Committee and the Hearing Officer, conducted a one-day Hearing on March 6, 2007, in Woodbridge, New Jersey.¹

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent entered the securities industry in 1990. (CX-1, p. 3). From April 1993 to March 2005, Respondent was registered as an investment company products and variable contracts representative with Mutual of Omaha Investor Services, Inc., an NASD member and wholly-owned subsidiary of Mutual of Omaha. (Id.). On March 9, 2005, Respondent was discharged for violating internal policies and procedures. (Id.). Respondent has not been associated with an NASD member since 2005. (Id.). However, Respondent remains subject to NASD jurisdiction for purposes of this proceeding,

¹ 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-"; and references to the transcript of the Hearing will be designated as "Tr. p."

pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed on September 15, 2006, within two years after Respondent's association with Mutual of Omaha was terminated, and (2) the Complaint charges Respondent with misconduct while she was associated with Mutual of Omaha.

B. Rule 2110 Violation Proven by a Preponderance of the Evidence

1. Health Information Form

The first document at issue was the June 8, 2004 authorization for use and disclosure of health information ("Health Information Form"), a form generally signed and submitted with an insurance application.

In June 2004, Respondent met with customer TS, who agreed to upgrade her Mutual of Omaha disability income policy.² (Tr. pp. 152-153). Respondent submitted the signed June 8, 2004 insurance application to the administrative clerk in the Parsippany, New Jersey office, and TS's application was then forwarded to Mutual of Omaha's home office in Omaha, Nebraska ("Home Office").³ (CX-4, pp. 20-30; CX-9, p. 2; CX-14, p. 8, subpage 26; Tr. p. 153). Enforcement argued that Respondent submitted the forged Health Information Form to the Home Office with the insurance application.

According to the Parsippany administrative clerk, health information forms generally are included with the filing of insurance applications. (CX-15, p. 10, subpage 36). In its records, the Home Office had a copy of the forged Health Information Form,

² In 1998, Respondent became TS's insurance agent. (RX-2; Tr. pp. 152, 192). Subsequently, Respondent and TS spoke at least annually to determine whether TS's policy needed to be upgraded because of changes in her insurance needs. (CX-14, p. 6, subpages 18-19; Tr. pp. 13-14).

³ In 2004, Respondent had an office in the Parsippany, New Jersey office of Mutual of Omaha, but her primary office was in her personal residence. (Tr. p. 91).

with Respondent's handwriting on the top of the form, and dated the same date as TS's insurance application.⁴ (CX-4, p. 31; Tr. p. 23).

Respondent testified that the Health Information Form was not required to be submitted with an insurance application; the form was optional because it was an internal form designed to permit cross-marketing among the Mutual of Omaha affiliated insurance companies. (Tr. pp. 15, 166-167). In contrast, Respondent's immediate supervisor, PB, based in the New Jersey Division Office located in Monroe Township, New Jersey ("New Jersey Division Office"), testified that the signed Health Information Form was required to be filed with the insurance application because the form authorized access to the insured's medical information. (CX-4, p. 31; Tr. pp. 89, 90-91, 95, 97).

The language of the Health Insurance Form, however, supports Respondent's description of its use, authorizing the sharing of the applicant's health information among the various Mutual of Omaha insurance companies.⁵ (CX-1A, p. 1). In addition, the insurance application has a provision, which was signed by customer TS, authorizing third parties to disclose medical and other information to Mutual of Omaha.⁶ (CX-4, pp. 26-27; Tr. p. 199).

⁴ Upon receiving TS's insurance application, the Parsippany administrative clerk entered the pertinent information into Mutual of Omaha's database and sent the original insurance application to the Home Office via the priority mail pouch. (Tr. pp. 96-97, 107, 153). There is no dispute that customer TS's insurance application was submitted on June 10, 2004. (CX-9, p. 2; Tr. pp. 105-106, 129).

⁵ The Health Information Form stated that the customer "authorize[s] each of the named insurance companies to use or disclose whatever health information it may have about me or my children. This authorization is limited to uses or disclosures among the named insurance companies and their reinsurance companies for purposes of underwriting an insurance policy for me or them or determining whether to insure me or them." (CX-1A, p. 1; CX-4, p. 31).

⁶ Appendix 1 of TS's insurance application states "I authorize the Medical Persons and Entities, the Specified Companies, employers, consumer reporting agencies and other insurance companies to disclose Personal information about me and, if my children are proposed insureds, about my children to Mutual of Omaha Insurance Company. . . . I understand that I may refuse to sign this authorization. I realize that if I refuse to sign, the insurance for which I am applying will not be issued." (CX-4, p. 25).

When the Home Office receives an insurance application, it is sent to be imaged, i.e., converted from a paper document to an electronic copy and dated as of the date of imaging, after which the electronic copy of the application is sent to the underwriting department for processing. (Tr. p. 97). However, the Home Office has no record of when the Health Information Form was actually submitted. (Tr. p. 47; CX-1A, p. 1).

Consistent with Mutual of Omaha's standard procedures, the duplicate copy of the original TS insurance application, which was maintained at the Parsippany office, was destroyed after TS's insurance policy was approved and issued. (CX-7, p. 3).

Accordingly, it is impossible to determine whether the Health Information Form was submitted with the insurance application or whether the form was submitted later.

Nevertheless, it is undisputed that the forged Health Information Form was submitted to the Home Office; the issue, therefore, was whether Respondent or someone else committed the forgery.

2. Second Cancellation Receipt and Second Delivery Receipt

The second and third documents at issue are (i) the August 4, 2004 second notice of a policy cancellation receipt ("Second Cancellation Receipt"), printed because the newly issued insurance policy was a replacement insurance policy⁷ and the original signed notice of cancellation was not timely received by the Home Office, and (ii) the August 4, 2004 second notice of a delivery receipt ("Second Delivery Receipt"), printed because the original signed delivery receipt was not timely received by the Home Office.

When customer TS's insurance policy was approved by the Home Office's underwriting department on June 22, 2004, the approved policy was sent to the New

⁷ In connection with the upgrade to her policy, customer TS agreed to cancel a recently purchased AFLAC disability policy. (Tr. pp. 152-153).

Jersey Division Office and received on June 28, 2004. (CX-9, p. 2; Tr. p. 105). The actual insurance policy becomes effective only after the Home Office receives a signed notice of delivery, indicating that the customer has reviewed the terms of the policy and has accepted the policy, and because the application involved a policy replacement, the Home Office must also receive a signed notice of cancellation receipt. (Tr. pp. 154-155, 173). Accordingly, in addition to the insurance policy, the Home Office sent notices for the AFLAC policy cancellation receipt and the delivery receipt printed on June 23, 2004 to the New Jersey Division Office to be forwarded to Respondent. (CX-4, p. 32; Tr. p. 101). There is no dispute that Respondent received the insurance policy, the original notice of cancellation receipt, and the original notice of delivery receipt. (Tr. p. 158).

On July 20, 2004, Respondent met with customer TS, who signed the original notice for the AFLAC policy cancellation receipt and the original notice of delivery receipt. (Tr. p. 154). There is no dispute that customer TS signed the two receipts. (CX-1B). Respondent caused the two receipts to be forwarded directly to the Home Office. (Tr. pp. 154, 174). The two original receipts were received by the Home Office as evidenced by an imaging date stamp of August 2, 2004. (CX-1B; Tr. p. 103).

However, because the required receipts were not returned in a timely manner to the Home Office, the Home Office automatically printed the Second Cancellation Receipt and Second Delivery Receipt on July 22, 2004, and mailed them to the New Jersey Division Office to be delivered to Respondent in the Parsippany office. (CX-1A, pp. 2-3; CX-5, p. 1; Tr. pp. 102, 138). Each insurance agent in the Parsippany office received

correspondence via a “cubby hole” mailbox, which was accessible to everyone in the office.⁸ (Tr. pp. 46, 179).

Upon receipt of the second notices, the insurance agent is required to either (i) produce the original signed receipts, or (ii) meet with the client and obtain the client’s signature on the second notices. (Tr. pp. 102, 138).

Respondent has no specific recollection of receiving the second notices, but she testified that she routinely received such second notices and put them in the trash or the administrative clerk put them in the trash. (Tr. pp. 169-170, 177). Respondent routinely maintained copies of original receipts and was able to provide copies of the original receipts, if needed.⁹ (Tr. pp. 158-159).

In this case, someone forged TS’s signature on the second notices of receipts on August 4, 2004, and submitted the second notices to the Home Office. (CX-1A, pp. 2-3). The Home Office received the forged second notices from the New Jersey Division Office, and sent them for imaging on August 20, 2004.¹⁰ (CX-1A, pp. 2-3; CX-9, p. 2).

3. Mutual of Omaha’s Discovery of the TS Forged Documents

In January 2004, Mutual of Omaha began a review of Respondent’s business activity because of a January 16, 2004 customer complaint filed against Respondent by customer MD, who alleged among other things that her signature on certain documents

⁸ In 2004, the sole administrative clerk located in the Parsippany office was responsible for receiving the mail, and distributing the mail to the agents via the mailbox system. (Tr. pp. 32, 96, 107, 140; CX-15, pp. 5-6, subpages 16-17, 18-19).

⁹ In this case, Respondent was able to immediately produce original signed notices when questioned by Mutual of Omaha.

¹⁰ PB wrote to his compliance officer that (i) the unsigned second notices would have been received in the New Jersey District Office on or about July 25, 2004, and would have been provided to the agent on or about July 26, 2004 via the mailbox located in the Parsippany office, and (ii) the forged second notices were received in the New Jersey Division Office on August 9, 2004. (CX-7, p. 3).

had been forged.¹¹ (CX-1, pp. 5-6; CX-4, pp. 1-2). Mutual of Omaha discovered the three forged TS documents in November 2004.¹² On March 10, 2005, Mutual of Omaha terminated Respondent's registration. (CX-1, p. 3).

4. Preponderance of the Evidence Supports Forgery

As to the three forged documents, the only direct evidence that Respondent forged them was the testimony of Enforcement's handwriting expert, GM.¹³ GM, a well-qualified and highly experienced forensic document examiner, testified that TS's signatures on all three documents were forged—which is not in dispute—and that in his expert opinion Respondent forged TS's signature on all three documents.¹⁴ (Tr. pp. 62, 76, 86).

GM's opinion was based on his review of exemplars of TS's signature penned by Respondent, and on authentic signatures of TS. (Tr. pp. 39, 55). GM testified that the forgeries in this case were a combination of (i) an imitation of TS's signature, and (ii) the normal writing of the writer. (Tr. p. 64). GM stated that he was able to determine that Respondent wrote the "omasina" part of TS's signature on documents because that part of the forged signature duplicated the normal writing of Respondent. (CX-11, pp. 1-3, Tr. p. 70). GM testified that the relative slant of the letters, the relative size of the letters as

¹¹ Customer MD's complaint was settled on November 9, 2004. (CX-1, pp. 6-7).

¹² On November 22, 2004, customer TS executed an affidavit of forgery affirming that the Health Insurance Form, the Second Cancellation Receipt, and the Second Delivery Receipt were forgeries. (CX-4, p. 9). On December 30, 2004, Respondent wrote to Mutual of Omaha that (i) she had seen customer TS sign the Health Insurance Form, (ii) she had never seen the signed Second Cancellation Receipt and the Second Delivery Receipt, and (iii) she had copies of the original signed receipts. (CX-4, p. 68). On January 10, 2005, Respondent sent a second letter to Mutual of Omaha repeating the information that she had provided. (CX-4, p. 70).

¹³ In October 2005, NASD hired GM, a forensic document examiner, otherwise known as a handwriting expert. (CX-10, p. 1; Tr. pp. 50-51).

¹⁴ GM has 30 years of forensic experience. (Tr. p. 51). GM is a member of a number of forensic organizations and has testified in more than 200 cases at both the state and federal level. (Tr. pp. 52-53).

they relate to each other, and the absence of stops and starts indicated that the “omasina” portion of the forged signature was the genuine writing of Respondent. (Tr. pp. 70-72).

GM also reviewed exemplars of TS’s signature penned by the administrative clerk in the Parsippany office, and concluded that the administrative clerk had not forged the signatures of TS. (Tr. pp. 76-88). GM testified that he was 100% sure that Respondent forged TS’s signature on the three documents.¹⁵ (Tr. p. 88).

In spite of Respondent’s denial that she forged TS’s signature on the documents, she testified that she had no true recollection of what happened. Respondent could only testify to what she believes happened. Respondent admitted, however, that she wrote the other handwritten information on the Health Insurance Form, and on two separate occasions she stated that she saw TS sign the form, which she admits now did not happen.¹⁶ (CX-14, p. 7, subpages 24-25; Tr. pp. 167-168). These admissions tend to undermine her denial that she forged TS’s signature and lend support to the expert’s opinion that she did commit the forgeries.

The Hearing Panel carefully considered Respondent’s testimony that she had no motive to forge any of the documents because (i) she knew the Health Insurance Form was not required, (ii) she had the original signed receipts in her file, and (iii) she expected to earn a nominal commission on the policy.¹⁷ The Hearing Panel, however, found that the lack of a motive was insufficient to outweigh the expert’s opinion that Respondent

¹⁵ GM did not obtain or review exemplars of TS’s signature penned by any other person in the Parsippany office, nor did he obtain exemplars from anyone in the New Jersey Division Office. (Tr. p. 88).

¹⁶ Respondent initially told NASD and her employer that she saw customer TS sign the Health Information Form. (CX-14, p. 7, subpages 24-25). At the Hearing, Respondent testified that she incorrectly stated that she had seen TS sign the Health Information Form because she was under a great deal of pressure. (Tr. pp. 16, 207).

¹⁷ Respondent had expected to receive a commission of \$30.66, based on the difference between the premiums on the original policy and the replacement policy. (Tr. p. 157).

signed the documents. The Hearing Panel also considered the absence of a motive for anyone else to forge and submit the documents.

Respondent had no reasonable explanation for who else would submit the forged documents.¹⁸ Respondent acknowledged that agents are responsible for their own paperwork.¹⁹ (Tr. p. 183).

Therefore, the Hearing Panel found that a preponderance of the evidence supported Enforcement's allegations that Respondent forged the three documents and submitted them to Mutual of Omaha. It is well established that forging documents violates NASD Conduct Rule 2110.²⁰

III. SANCTION

Enforcement recommended that Respondent be suspended for six months in all capacities and fined \$10,000.

The NASD Sanction Guidelines for forgery recommend fines ranging from \$5,000 to \$100,000, and a bar in egregious cases.²¹ The Guidelines list as Principal Considerations in determining the appropriate sanction for forgery (1) the nature of the

¹⁸ Respondent's only possible explanation for the events was that someone else at Mutual of Omaha had submitted the forged documents to cause her trouble. (Tr. pp. 179, 182). However, Respondent was unwilling to name the particular person. (Tr. p. 179). Respondent also postulated that her supervisor, PB, was involved because (i) she had rejected inappropriate advances from him, and (ii) she had accused him of inappropriate behavior with other women in the office. (Tr. pp. 123, 150-151, 164, 202-203; RX-10). PB vigorously denied any inappropriate actions on his part. (Tr. p. 113).

¹⁹ Finally, Respondent also indicated that she does not believe that she was in the Parsippany office in August 2004 because during that time her sister was ill and subsequently died. (Tr. p. 170). However, Respondent, who represented herself, did not submit any documentation to support her statement that she was absent from the office.

²⁰ See, e.g., *In re Donald M. Bickerstaff*, Exchange Act Rel. No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (finding that forgery constituted a violation of Article III, Section 1 of NASD's Rules of Fair Practice, the predecessor to NASD Conduct Rule 2110).

²¹ NASD Sanction Guidelines, p. 39 (2006).

document(s) forged, and (2) whether Respondent had a good faith, but mistaken, belief of express or implied authority.²²

The Hearing Panel finds that this is a serious, but not an egregious case. It appears that the Health Insurance Form was not a required insurance form and the receipts for the second notices were unnecessary because TS had signed the original notices. Respondent was under extraordinary pressure at the time because of the recent deaths of her parents and contemporaneous illness and then death of her sister, which could have caused her to do things she would not otherwise have done.²³ Under these circumstances, the Hearing Panel accepts Enforcement's recommendation with a slight modification. The Hearing Panel suspends Respondent for six months as an investment company products and variable contracts representative and fines her \$10,000.

IV. CONCLUSION

Respondent Mangri Mohini Harlal is suspended for six months from associating with any NASD member firm as an investment company products and variable contracts representative and is fined \$10,000 for signing the name of customer TS to three insurance documents in violation of NASD Conduct Rule 2110. In addition, Respondent is ordered to pay costs in the amount of \$2,262.25, which includes an administrative fee of \$750 and the \$1,512.25 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 NASD, Respondent's suspension as an investment company products and variable

²² Id.

²³ Prior to the TS transaction, Respondent's mother had died in October 2003, and her father had died in February 2004. (CX-14, pp. 4-5, subpages 13-14; Tr. p. 160). Respondent's younger sister had a stroke on August 4, 2004 and died August 21, 2004, the period that the receipts were forged. (CX-14, p. 4, subpage 13; Tr. pp. 165-166).

contracts representative shall commence at the opening of business on August 20, 2007,
and conclude at the close of business on February 19, 2008.²⁴

HEARING PANEL.

by: _____
Sharon Witherspoon
Hearing Officer

Date: Washington, DC
July 2, 2007

Copies to:

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²⁴ 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.