

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS<sup>1</sup>**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRENT K. DEVINEY  
(CRD No. 2131402),

Respondent.

Disciplinary Proceeding  
No. 2006004992601

Hearing Officer – LBB

**HEARING PANEL DECISION**

March 18, 2008

**For falsifying customer signatures and submitting falsified documents to a member firm and a non-member insurance company in violation of Conduct Rule 2110, Respondent would be suspended for six months and fined \$5,000. Respondent is given credit, however, for the three-month suspension and \$5,000 fine imposed by the State of Florida. Therefore, the Hearing Panel imposes an additional three-month suspension.**

*Appearances:*

William Brice La Hue, Esq., Regional Counsel, Atlanta, GA, for the Department of Enforcement.

Daniel I. MacIntyre, Esq., Atlanta, GA, for the Respondent, Brent K. Deviney.

**DECISION**

**I. Introduction and Procedural History.**

The Department of Enforcement filed the Complaint in this matter on July 26, 2007, charging Respondent Brent K. Deviney with forging the signatures of former clients and submitting the forged forms to a member firm and a non-member insurance company in violation

---

<sup>1</sup> As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD.

of NASD Conduct Rule 2110. Respondent filed an Answer on August 24, 2007, admitting that he had falsified client signatures as alleged but denying that the falsification constituted forgery. A hearing was held in Boca Raton, Florida, on December 13, 2007, before a Hearing Panel consisting of two current members of the District 7 Committee and the Hearing Officer.

## **II. Findings of Fact.**

The parties have stipulated to almost all material facts in this case, and there are no genuine disputes concerning material facts. There is no dispute that Respondent prepared Change of Registered Representative and/or Dealer of Record Request forms (“Change of Dealer Forms”) in the names of 27 customers who had bought variable universal life insurance products through him at his previous firm, signed the customers’ names, and submitted the forms to his firm and to the life insurance company that had issued the policies.

### **A. Respondent.**

Respondent Brent K. Deviney entered the securities industry in 1991 as an associated person of an NASD member firm. JX-1, Stip. 1.<sup>2</sup> He was first registered as an investment company and variable contracts products representative in 1993, and has been continuously employed in the securities industry since that time. JX-1, Stip. 2, 59; Tr. 114. He was subsequently registered by Equity Services, Inc. (“Equity Services”), a broker/dealer affiliated with National Life of Vermont<sup>3</sup> (“National Life”) from September 1997 until October 2002, and New England Securities (“New England”), where he was employed from October 2002 until April 2006. JX-1, Stip. 3, 4; Tr. 21-22. New England terminated Respondent’s employment as a result of the matters that are the subject of this proceeding. Tr. 134-135. Almost immediately

---

<sup>2</sup> References to the testimony set forth in the transcripts of the Hearing are designated as “Tr. \_\_\_.” References to the exhibits provided by the Department of Enforcement are designated as “CX-\_\_\_” and Respondent’s exhibits are designated as “RX-\_\_\_.” One joint exhibit, the parties’ stipulations of fact, was admitted into evidence and is designated as “JX-1.”

<sup>3</sup> National Life of Vermont has since changed its name to National Life Insurance Company.

after his termination from New England, Respondent was employed by FINRA member firm Newbridge Securities Corporation (“Newbridge”). JX-1, Stip. 61. Since then, he has been continuously employed by Newbridge without a reported disciplinary event or customer complaint. JX-1, Stip. 61.

Respondent had no history of disciplinary problems until April 27, 2006, when New England filed a Uniform Termination Notice for Securities Industry Registration form (Form U5) concerning the matters that are the subject of this proceeding.<sup>4</sup> JX-1, Stip. 59. Respondent entered into a Stipulation and Consent Agreement with the State of Florida Office of Financial Regulation in September 2007. RX-4. Respondent has had no further disciplinary history.

**B. Respondent Falsified Customer Signatures and Submitted the Falsified Documents to His Employer and the Insurance Company That He Represented.**

While Respondent was employed by Equity Services, he sold National Life variable universal life insurance policies and variable annuities, including the policies and annuity contracts that were sold to the 27 customers referenced in the Complaint (the “Policy Owners”). JX-1, Stip. 6-7; CX-1 – CX-27; Tr. 28. When Respondent moved to New England Securities, he remained an agent for National Life, and for a period after joining New England he continued to have access to the customer records through National Life’s computer system. JX-1, Stip. 8; Tr. 119-120.<sup>5</sup> Although it might have been the result of an error by National Life, Respondent continued to receive customer statements when he went to New England. Tr. 117-120.<sup>6</sup>

---

<sup>4</sup> The Form U5 indicated that Respondent had been terminated for “violation of company policy regarding signature irregularities,” and did not mention any violations of statutes, rules, or industry standards of conduct. JX-1, Stip. 24, 60.

<sup>5</sup> Because he was no longer the servicing agent for the policies, he should not have had access to the accounts of customers who had purchased variable products, although he would have had continued access to the accounts of customers with fixed products. Tr. 30-31, 46-47.

<sup>6</sup> National Life’s records show that Respondent did not receive customer statements after he left Equity Services. Tr. 42-43.

In about August 2005, a customer called Respondent, upset that he had been contacted by another agent who tried to make recommendations to him. At about this same time, Respondent stopped receiving the statements and lost computer access to the National Life account information. JX-1, Stip. 9; Tr. 121-122. Respondent wanted to continue to have access to the information because it was useful in advising customers. Tr. 118-119, 131-132. Respondent called the local National Life office for an explanation and was told that the policies had been assigned to another representative. Tr. 122. The office manager at the local National Life office told Respondent that he could have the contracts reassigned to him by submitting Change of Dealer Forms. She sent him a list of the account numbers for the contracts of the National Life customers to whom he had sold variable insurance products. Tr. 123, 157.

Respondent obtained the Change of Dealer Forms from New England and used his files to match up customer names with the account numbers he had received from National Life. On the morning of January 31, 2006, Respondent filled out 27 Change of Dealer Forms, signing his customers' names. JX-1, Stip. 10; Tr. 125, 160. Respondent did not attempt to duplicate the customers' signatures, and the false signatures were "distinctly different" from the customers' genuine signatures. CX-31; Tr. 45, 160. Respondent did not inform the customers that he was going to submit these forms or sign their names, and did not have express authorization from the customers to sign their names to the forms or to change the broker/dealer or registered representative of record for the policies. JX-1, Stip. 11, 17. Respondent knew his actions were wrong, but he was frustrated and impatient with his inability to get access to the account information of his clients, and did not give his actions careful thought. Tr. 128-129.

On or about February 2, 2006, Respondent submitted the 27 Change of Dealer Forms to James Madera, a managing partner at New England, for his approval. JX-1, Stip. 12.

Respondent did not advise Mr. Madera that he had falsified the customer signatures on the forms. JX-1, Stip. 13. Just as when he had falsified the forms, Respondent knew his actions were wrong. Tr. 129-130. Mr. Madera signed the Change of Dealer Forms and returned them to Respondent, who then faxed the forms to National Life. JX-1, Stip. 15, 16; Tr. 155. Each of the 27 Change of Dealer Forms falsely indicated that the Policy Owner had expressly authorized the change. JX-1, Stip. 18.

**C. Discovery of Forgery Leads to Termination of Respondent's Representation and Employment.**

Upon receipt of the Change of Dealer Forms, National Life changed the registered representative and dealer of record from Equity Services to Respondent at New England. JX-1, Stip. 9; Tr. 28, 45. By submitting the forms to National Life, Respondent regained access to the individual customer account information at National Life. National Life relied on registered representatives as servicing agents. For example, if a customer had questions about his or her policy or needed additional information, National Life might contact the servicing agent and ask him to visit the client. The servicing agent would also deal with any customer complaints. JX-1, Stip. 10; Tr. 28-29.

When one of the 27 Policy Owners received a notice that the broker and broker/dealer of record had been changed, he contacted National Life and informed the firm that he had not authorized the change. JX-1, Stip. 21; Tr. 23-24. National Life compared the signatures on the change forms submitted by Respondent and found that the signatures did not match the customer signatures on forms submitted by the customers when they had purchased their policies. Tr. 23-24. National Life contacted Respondent, who admitted that the signatures on the Change of Dealer Forms were not the customers' signatures. CX-32; Tr. 37, 134-135. National Life immediately terminated Respondent as its representative. JX-1, Stip. 24; Tr. 26, 134-135. No

transactions were ever executed pursuant to the 27 Change of Dealer Forms submitted to National Life, and Respondent did not receive any commissions or other remuneration from the submission of the Change of Dealer Forms. JX-1, Stip. 20, 62, 63.

If National Life had not discovered the forgeries and terminated Respondent, he would have received a small servicing agent fee, approximately \$2,700 – \$3,900 per year, as a result of the change. Tr. 30-32, 34-35. At the time Respondent forged and submitted the forms, he had been at New England for four years, had not received any commissions with respect to the policies, and believed he would not receive any commissions or other remuneration as a result of submitting the forms. Tr. 126. He first learned that he would have been entitled to the servicing agent fee when a National Life employee testified at the hearing. Tr. 126.

Immediately after National Life informed him that he had been removed as servicing agent, Respondent called his managing partner at New England and explained the entire situation – that he had falsified customer names on the Change of Dealer Forms, submitted them to Mr. Madera for his signature, and faxed the forms to National Life. Tr. 135-136. As a result of Respondent's actions, New England terminated his employment. Tr. 137-139.

**D. Respondent Was Hired by Newbridge, Subject to Heightened Supervision.**

Soon after New England notified Respondent that his employment would be terminated, Respondent learned that there might be openings at Newbridge and applied for a position there. Tr. 139. While Respondent was interviewing for the position, he told Newbridge that he had falsified customer signatures and was being terminated from New England. Tr. 83, 99, 139-143. Newbridge hired Respondent, but implemented special monitoring procedures for Respondent for a six-month period, verifying the authenticity of all client signatures on his accounts. Tr. 85, 101, 145-146. After the six-month period of special monitoring, Newbridge has continued to spot-check signatures on Respondent's accounts. Tr. 92. Respondent's supervisor reviews

“everything he does” at Newbridge. Tr. 101-102. Respondent has not had any disciplinary issues while at Newbridge. Tr. 85-86, 144.

**E. Respondent Entered into a Consent Order with the State of Florida.**

Pursuant to a Stipulation and Consent Agreement, Respondent was disciplined by the State of Florida for forging the signatures of 27 customers and submitting the forged documents to New England and National Life, the same conduct that is the subject of this proceeding. RX-4; Tr. 147-149. Although Respondent’s misconduct took place when he was at New England, Newbridge helped Respondent to negotiate sanctions with the State of Florida. Tr. 147-148. The firm signed the consent order and agreed to supervise Respondent strictly, enforce all restrictions that the agreement imposes on him, and report any violations of the agreement by Respondent. RX-4; Tr. 86.

Florida imposed a fine of \$5,000 and a three-month suspension, from September 1, 2007, through November 30, 2007.<sup>7</sup> In addition, Respondent agreed that, for a period of two years, he will receive strict supervision from his member firm; he will not exercise discretionary authority in any customer account; his new accounts will be approved by his branch manager; and he will not act in a principal, supervisory, or managerial capacity. Respondent has complied with the terms of the Florida order. RX-4; Tr. 88.

**III. Conclusions of Law.**

Respondent has conceded that he falsified documents and submitted them to National Life and member firm New England in violation of Conduct Rule 2110, but disputes that his conduct technically constituted forgery. Because the sanctions are the same whether Respondent’s conduct is classified as forgery or falsification of documents, the distinction is

---

<sup>7</sup> Respondent was permitted to sell fixed insurance products during the suspension. Tr. 87.

unimportant for purposes of this decision, and the Hearing Panel does not decide which is the appropriate category.

**A. Respondent Falsified Documents in Violation of Conduct Rule 2110.**

There is no dispute that Respondent falsified his former customers' signatures on the Change of Dealer Forms, or that Respondent was not authorized by his customers to sign on their behalf. "The Commission consistently has held that signing another person's name to documents, without authority, constitutes forgery, and that forgery is inconsistent with just and equitable principles of trade under NASD Rule 2110." Dep't of Enforcement v. Claggett, No. 2005000631501, 2007 NASD Discip. LEXIS 27, at \*10 (N.A.C. Sept. 28, 2007) (citations omitted). The NAC has held that a representative committed forgery in violation of Conduct Rule 2110 by signing the name of a principal of his firm to Change of Dealer forms. Dep't of Enforcement v. Cooper, No. C04050014, 2007 NASD Discip. LEXIS 15 (N.A.C. May 7, 2007).

Respondent has argued that his conduct does not constitute forgery under Florida's criminal forgery statute. This proceeding is brought pursuant to FINRA's rules, and state law is not controlling. "An NASD disciplinary action is not a criminal proceeding, and the elements of forgery under ... state law are not dispositive as to whether the record satisfies the allegations ....' of forgery in the Complaint." Dep't of Enforcement v. Argomaniz, No. C07990013, slip op. at 11 (O.H.O. Oct. 18, 1999),<sup>8</sup> quoting Dist. Bus. Conduct Comm. for Dist. No. 1 v. Bickerstaff, No. C01920017, 1994 NASD Discip. LEXIS 60, at \*36 (N.B.C.C. June 23, 1994), aff'd, Exchange Act Rel. No. 35607, 1995 SEC LEXIS 982 (1995).

Furthermore, strict adherence to a state law or common law definition of forgery would be inappropriate because Rule 2110 "is not limited to rules of legal conduct but rather ... it states a broad ethical principle." Dep't of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip.

---

<sup>8</sup> Available at [www.finra.org/OHO](http://www.finra.org/OHO).



LEXIS 6, at \*11 (N.A.C. June 2, 2000) (citation omitted). “Falsifying documents is a prime example of misconduct that adversely reflects on a person’s ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade.” Dep’t of Enforcement v. Taylor, No. C8A050027, 2007 NASD Discip. LEXIS 11, at \*\*22-23 (N.A.C. Feb. 27, 2007); see also Dep’t of Enforcement v. Bukovcik, No. C8A050055, 2007 NASD Discip. LEXIS 21, at \*11 (N.A.C. July 25, 2007) (finding a violation of NASD Conduct Rule 2110 for signing documents on behalf of customers without written authority, even in the absence of forgery or falsification of documents).<sup>9</sup>

The Hearing Panel finds that Respondent violated Conduct Rule 2110 by signing 27 customers’ names to Change of Dealer Forms without authorization from his customers.

**B. Respondent Submitted Falsified Documents to National Life and Member Firm New England in Violation of Conduct Rule 2110.**

It is inconsistent with Conduct Rule 2110 to falsify records maintained in a member firm’s official records. As the SEC has stated, “The entry of accurate information on official Firm records is a predicate to the NASD’s regulatory oversight of its members. It is critical that associated persons, as well as firms, comply with this basic requirement.” Charles E. Kautz, Exchange Act Rel. No. 37072, 1996 SEC LEXIS 994, at \*\*11-12 (Apr. 5, 1996); Dep’t of Enforcement v. Salaverria, No. C07040077, 2005 NASD Discip. LEXIS 10, at \*\*16-17 (N.A.C. Dec. 12, 2005). “A registered person’s submission of forged customer account documentation fails to comply with basic standards of moral and ethical behavior and unquestionably violates

---

<sup>9</sup> The SEC has suggested that fraud or benefit to the forger is an element of forgery. “We have sustained NASD findings of forgery where the forged documents defrauded another person or otherwise benefited the forger.” Rooney A. Sahaj, Exchange Act Rel. No. 51549, 2005 SEC LEXIS 864, at \*\*20-21 (Apr. 15, 2005). In this case, the issue of whether Respondent’s conduct constituted forgery is immaterial because Respondent clearly violated Conduct Rule 2110, whether his conduct is classified as forgery or as falsification of documents.

NASD Rule 2110.” Dep’t of Enforcement v. Ortiz, No. E0220030425-01, 2007 NASD Discip. LEXIS 28, at \*31 (N.A.C. Oct. 10, 2007), appeal docketed, No. 3-12889 (S.E.C. Nov. 15, 2007).

It is also a violation of Conduct Rule 2110 to submit falsified documents to an entity that is not a FINRA member. See, e.g., Dep’t of Enforcement v. Taylor, 2007 NASD Discip. LEXIS 11, at \*\*25-28 (submission of falsified document to Ohio Department of Insurance violates NASD Rule 2110); Dep’t of Enforcement v. Masceri, No. C8A040079, 2006 NASD Discip. LEXIS 29 (N.A.C. Dec. 18, 2006) (violation of NASD Rule 2110 to submit documents with forged customer signatures to insurance company); Dep’t of Enforcement v. Harlal, No. 2005000960801 (O.H.O. July 12, 2007)<sup>10</sup> (violation of NASD Rule 2110 to falsify customer signatures on insurance documents).

The parties have stipulated that Respondent submitted 27 falsified documents to New England and National Life. In submitting these falsified documents, Respondent violated NASD Conduct Rule 2110.

#### **IV. Sanctions.**

For forgery or falsification of records, the Sanction Guidelines recommend a suspension of up to two years in cases where mitigating factors exist, and a fine of \$5,000 to \$100,000. In egregious cases, a bar is recommended. The principal considerations are the nature of the documents forged or falsified and whether the respondent had a good-faith, but mistaken, belief of express or implied authority. FINRA Sanction Guidelines at 39 (2007). Enforcement has recommended sanctions of a suspension of at least one year and a fine of at least \$5,000.

Although this is not an egregious case, the principal considerations also do not support the lowest level of sanctions. The nature of the falsified documents in this matter is an aggravating factor, not a mitigating factor. In a recent case involving forgery of change of dealer

---

<sup>10</sup> Available at [www.finra.org/OHO](http://www.finra.org/OHO).

forms, the NAC recognized that a change of dealer form is an important document, stating that “these documents were integral for the proper maintenance of the customers’ accounts in that they informed the third-party vendors of the authorized brokerage firm for the account.” Cooper, 2007 NASD Discip. LEXIS 15, at \*13. Respondent admits that he did not have authorization from the customers, and that he knew that his conduct was wrong when he did it.

The Hearing Panel has considered the following mitigating facts in determining the appropriate sanctions. Respondent cooperated with FINRA during the investigation. Tr. 151. See Principal Consideration #12. There was no actual customer injury, nor did Respondent’s conduct risk substantial customer injury.<sup>11</sup> Although they had not been aware of the transfer, all three customers who testified said they would have been comfortable, or preferred, to transfer their accounts to Respondent. Tr. 57-58, 67-68, 76. Even the customer who brought the matter to the attention of National Life, when he called to complain that he had not authorized the change, did not suggest that he had been injured. Tr. 43-44.

Respondent’s conduct is not part of a pattern of misconduct. Although the Hearing Panel considered the substantial number of forged signatures as a significant factor, the Hearing Panel did not believe that each false signature should be treated as a separate violation because Respondent forged all of the signatures in a single morning, and had obtained the manager’s signature and faxed the forms to National Life within a couple of days after that. See Principal Considerations ##8, 9, and 18. In fact, the parties stipulated that “Respondent’s actions that are the subject of this proceeding did not occur over an extended period of time, but rather, only once over a very brief period of time.” JX-1, Stip. 64.

---

<sup>11</sup> Cooper, 2007 NASD Discip. LEXIS 15, at \*16 n.15 (“As a general rule, although harm to customers is an aggravating factor, an absence of customer harm is not mitigating”) (citations omitted).

Although he did not come forward to acknowledge his misconduct until it was discovered by National Life, Respondent has repeatedly expressed remorse and embarrassment about his actions, and his intention to comply with FINRA's rules in the future. Tr. 150, 152.

Furthermore, Respondent admitted that the signatures were not genuine when National Life inquired about their authenticity, and he reported his actions to New England immediately after he was contacted by National Life. It is also significant that Respondent voluntarily disclosed his misconduct to Newbridge before he was interviewed for his position there. The Hearing Panel was impressed by the genuineness of Respondent's remorse, his acknowledgement of the wrongfulness of his actions, and the confidence and support he has received from Newbridge.

The Hearing Panel finds that it is appropriate to credit Respondent for the sanctions imposed by the State of Florida. See Dep't of Enforcement v. Prout, No. C01990014, 2000 NASD Discip. LEXIS 18, at \*\*8-9 (N.A.C. Dec. 18, 2000) (crediting Respondent with the suspension imposed by his firm); Dep't of Enforcement v. Greer, No. C05990035, 2001 NASD Discip. LEXIS 34, at \*14 n.6 (N.A.C. Aug. 6, 2001) (considering fines paid to another regulator in determining an appropriate fine); Dep't of Enforcement v. Schwartz, No. E102004083703, slip op. at 7 (O.H.O. Nov. 16, 2007) (considering a fine and heightened supervision requirements imposed by State of Florida in determining sanctions). Respondent's compliance with the restrictions imposed by Newbridge, as well as the substantial sanctions imposed by the State of Florida, is a significant factor. Cf. Bukovcik, 2007 NASD Discip. LEXIS 21, at \*16 n.8; Principal Consideration 14.

## **V. Conclusion.**

If Respondent had not been sanctioned by the State of Florida, the Hearing Panel would impose a sanction of a six-month suspension and a fine of \$5,000 for falsification of documents and the submission of falsified documents to member firms in violation of NASD Conduct Rule

2110.<sup>12</sup> Respondent is given credit, however, for the three-month suspension he has already served and the \$5,000 fine paid in fulfillment of sanctions imposed by the State of Florida. Thus, the Hearing Panel suspends Respondent for an additional three months, and imposes no additional fine. Respondent is also ordered to pay costs of \$1,994.65, which includes an administrative fee of \$750 and the cost of the hearing transcript.

If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on May 19, 2008, and end at the close of business on August 18, 2008.

#### **HEARING PANEL**

---

By: Lawrence B. Bernard  
Hearing Officer

Copies to: Brent K. Deviney (*via overnight courier and first-class mail*)  
Daniel I. MacIntyre, Esq. (*via facsimile and first-class mail*)  
William Brice La Hue, Esq. (*via electronic and first-class mail*)  
Mark P. Dauer, Esq. (*via electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*via electronic and first-class mail*)

---

<sup>12</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.