FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MICHAEL L. VINES (CRD No. 2552188), Respondent.	Disciplinary Proceeding No. 2006005565401 Hearing Officer – LBB **AMENDED HEARING PANEL DECISION** May 30, 2008

For approving the falsification of documents, in violation of NASD Conduct Rule 2110, Respondent is suspended in all capacities for 30 days; suspended in all principal capacities for six months; fined $10,000; and ordered to attend a training program on ethics. Respondent is also assessed costs.

Appearances:

Gene E. Carasick, Esq., Regional Counsel, Atlanta, GA, for the Department of Enforcement.

Keith J. Barnett, Esq., Atlanta, GA, for the Respondent, Michael L. Vines.

DECISION[1]

The Department of Enforcement filed the Complaint in this action on November 6, 2007, charging Respondent Michael L. Vines ("Respondent") with approving the falsification of documents, in violation of NASD Conduct Rule 2110. Respondent conceded liability, and a hearing on the issue of sanctions was held on March 11, 2008, before a Hearing Panel consisting

[1] The effective dates of the suspension are modified in this Amended Decision.

of a current member of the District 7 Committee, a former member of the District 5 Committee, and the Hearing Officer.[2]

I. Findings of Fact

The material facts are undisputed. In a very brief, impromptu discussion, Respondent approved an employee's suggestion that the firm copy customer signatures from outdated forms onto a current version of the form, rather than contacting the customers and obtaining their signatures. As a result, the customers did not receive updated disclosures of their rights in arbitration that incorporated FINRA's latest disclosure requirements.

A. Respondent

Since January 1995, Respondent has been registered solely as a financial and operations principal ("FINOP") with FINRA member UVEST Financial Services ("UVEST").[3] At the time of the violation, Respondent held the position of Senior Vice President of Operations and Technology.[4] The personnel who reported to Respondent were responsible for "back office" operations and did not deal directly with customers.[5] Although Respondent continued to be registered as a Series 27 FINOP, he was not serving as UVEST's FINOP at the time of the violation.[6]

Respondent currently is Senior Vice President, Client Relationships, at UVEST, where he is responsible for certain large clients. He no longer has any responsibility for operations, and his current position does not entail dealing with customer accounts.[7]

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[2] References to the testimony set forth in the transcripts of the Hearing are designated as "Tr. __." All exhibits were submitted by the parties as joint exhibits, and are marked as "JX-___."
[3] JX-1; Tr. 29.
[4] Tr. 30.
[5] Tr. 31.
[6] Tr. 30-32.
[7] Tr. 57-58, 63.

Respondent had no disciplinary problems prior to the incident that is the subject of this case.[8]

B. Respondent's approval of the falsification of documents

In January 2005, FINRA notified its members that it had amended Conduct Rule 3110(f) to require firms to modify predispute arbitration agreements with customers to provide enhanced disclosures about the arbitration process.[9] UVEST's representatives used IRA Adoption Agreements that included an arbitration clause and disclosures.[10]

As a result of the rule change, Pershing Investments LLC ("Pershing"), UVEST's clearing firm, changed the IRA Adoption Agreement. All of the changes involved increased disclosures concerning arbitration procedures and the customers' rights in disputes with the firms.[11] The amendment was originally scheduled to be effective on May 1, 2005, but the effective date was extended to June 1, 2005.[12] Pershing notified its customers, including UVEST, of the change, and of the availability of updated forms compliant with the amended rule.[13]

UVEST's marketing team was responsible for sending updated forms to its representatives in the field shortly before the change became mandatory. Respondent had no responsibility for providing the forms to representatives.[14] Shortly before implementing the changes required by the amendments to Rule 3110(f), UVEST had sent packages of forms to representatives who had recently become associated with the firm.[15] Some of those

[8] JX-1; Tr. 58.
[9] JX-2.
[10] JX-7; JX-8.
[11] JX-7; JX-11.
[12] JX-2; JX-4; JX-13.
[13] JX-12.
[14] JX-9 at 8-11; Tr. 34.
[15] JX-9 at 12; Tr. 40-41.

representatives continued to use these outdated forms after June 1.[16] When completed forms were returned to the Firm, the New Accounts Department, which reported to a vice president who reported to Respondent, reviewed the forms for completeness.[17] The department then faxed the IRA Adoption Agreements to Pershing.[18]

Pershing rejected the outdated forms, and contacted UVEST.[19] When Pershing informed Jennifer Lamonica, UVEST's New Accounts Manager,[20] that it would not accept the out-of-date forms, she went to see Respondent.[21] Respondent typically did not get involved with the details of operational matters.[22] At the time, Respondent was consumed with work. UVEST had recently attracted two large clients that represented about 25 percent of its business. It was a substantial challenge to absorb those two new clients into UVEST's system, and it occupied most of Respondent's time and attention. He was overwhelmed by the work required.[23]

Lamonica "popped her head in" Respondent's office and they spoke very briefly about the nature of the problem and how it should be handled.[24] Lamonica told Respondent that Pershing had rejected the outdated forms and that the representatives were unhappy about having to get updated forms from the customers. She suggested filling out the updated agreements and copying the customers' signatures from the old forms onto the new ones.[25] At the time, Respondent thought that only one or two representatives, and a few accounts, were involved.[26] Respondent, being preoccupied with the opening of the new accounts, made a quick decision

[16] JX-9 at 13; Tr. 40-41.
[17] JX-9 at 13; Tr. 31.
[18] JX-9 at 13; Tr. 38.
[19] JX-9 at 14-15.
[20] Tr. 33.
[21] JX-9 at 16-17; Tr. 39.
[22] JX-9 at 16.
[23] Id.; Tr. 39-40, 44.
[24] JX-9 at 16-17; Tr. 39.
[25] JX-4; JX-9 at 15; Tr. 40-41.
[26] Tr. 41-42, 60.

without giving the matter much thought, and approved Lamonica's suggestion.[27] The New Accounts Department cut and pasted the signatures of 60 customers who had signed the outdated forms.[28]

In July 2005, Brent Peddy, UVEST's chief compliance officer, received an anonymous tip that customer signatures had been copied onto IRA Adoption Agreements. On about July 26, 2005, Peddy asked Respondent if he had approved the copying of customer signatures onto the updated forms, and Respondent immediately acknowledged that he had.[29] Respondent testified that the discussion with Peddy was the first time the significance of what he had done "hit" him.[30] It was also the first time that Respondent knew that "more than just a handful" of signatures had been copied.[31] Respondent immediately told Lamonica that the signature copying had to stop.[32]

Another meeting was held on about July 29, again involving Respondent; Brent Peddy; Denise Abood, senior vice president of compliance (and Peddy's supervisor); Katina Nelson, another compliance officer; and Ginia Polyzos, a vice president of operations who reported to Respondent.[33] At that meeting, Respondent recommended that no action be taken because the customers had signed the previous agreements and would not be harmed if they did not sign the updated agreements.[34] Respondent was also concerned that trying to fix the problem could create a "service nightmare." UVEST "wanted to avoid an additional service issue with its representatives and clients, the majority of whom were with banks newly affiliated with

[27] JX-9 at 17-18; Tr. 44, 63.
[28] JX-4; JX-6.
[29] JX-9 at 19-20; Tr. 45.
[30] JX-9 at 20; Tr. 45.
[31] Tr. 46, 60.
[32] Tr. 46-47.
[33] JX-9 at 20-21; Tr. 33, 48-49.
[34] Tr. 49.

UVEST…."[35] The participants at the meeting agreed to take no action.[36] There was no discussion of notifying Pershing, and Pershing was not informed of the falsification of signatures until much later.[37]

After the meeting, Respondent informed Dan Arnold, UVEST's president, about the situation, including the decision not to seek new signatures from the clients. Arnold reprimanded Respondent and warned him that another incident of that magnitude would be grounds for immediate termination.[38]

On June 16, 2006, FINRA received an anonymous tip alleging that the IRA Adoption Agreements for UVEST customers had been altered by cutting signatures from an obsolete version of the agreements that the customers had recently signed, and photocopying those signatures onto new agreements.[39] FINRA initiated the investigation that led to the Complaint as a result of receiving the tip.[40] FINRA contacted UVEST, which acknowledged that 60 IRA Adoption Agreements had been altered by copying customer signatures onto the updated version of the form.[41]

Soon after being contacted by FINRA, Respondent and others at UVEST realized that not notifying their clients of the signature issues had been a bad decision, and proceeded to notify the clients and obtain proper signatures.[42] UVEST also notified Pershing of the falsification of the forms, and described the measures that it had recently taken to obtain signatures on the proper forms.[43] Of the 60 customers whose records were falsified, 53 signed and returned the proper

[35] JX-5; Tr. 49-50.
[36] JX-5; Tr. 49.
[37] JX-4; JX-5; Tr. 56, 66.
[38] JX-5; JX-8; Tr. 52-53.
[39] JX-3; Tr. 24.
[40] JX-4; Tr. 24.
[41] JX-4; Tr. 24-25, 54.
[42] JX-4; JX-7; JX-9 at 24-25; JX-10; Tr. 54-55.
[43] JX-5.

forms and four were no longer customers. The status of the forms for the other three customers is unclear, and it is possible that falsified forms are still in their files.[44] None of the 60 customers has ever filed an arbitration or lawsuit against UVEST.[45]

II. Conclusions of Law – Respondent participated in the falsification of documents in violation of NASD Conduct Rule 2110.

There is no dispute that Respondent participated in the falsification of records by approving the copying of customer signatures onto IRA Adoption Agreements, thereby violating NASD Conduct Rule 2110.[46] "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."[47]

The IRA Adoption Agreements were maintained in both UVEST's and Pershing's official records. 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."[48]

The evidence establishes that Respondent approved the falsification of records, and Respondent has conceded that he did so. By approving the falsification of records, Respondent violated NASD Conduct Rule 2110.

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[44] JX-29; Tr. 57, 81.
[45] Tr. 77.
[46] Tr. 22.
[47] *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).
[48] *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).

III. 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.[49] Enforcement has recommended sanctions of a suspension in all capacities for one year, a suspension in all principal capacities for eighteen months, and a fine of at least $25,000. Respondent has proposed a six-month suspension in all principal capacities and a fine of $5,000. Respondent's conduct was not egregious, but his failure to consider the ethical implications of the action that he approved warrants sanctions sufficient to ensure that he is more attentive to the ethical implications of his actions in the future.

Several of the Sanction Guidelines' principal considerations are relevant to the determination of the appropriate sanctions. The principal considerations specifically identified in the Sanction Guidelines are the nature of the documents falsified and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.[50] The nature of the documents falsified supports a lower sanction, especially since all customers had signed the previous version that had only recently become non-compliant. The amendment to Rule 3110(f) provided for "enhanced disclosure" about the arbitration process in response to concerns expressed by investor groups.[51] Although the falsified documents contained clearer disclosures than the earlier versions, the revisions to the documents did not alter customers' rights. The fact that FINRA did not require members to inform existing customers of the disclosures and postponed the implementation of the amendments that required the disclosures

[49] *FINRA Sanction Guidelines* at 39 (2007).
[50] *Id.*
[51] NTM 05-09 (JX-2) (available at www.finra.org).

were incremental, not fundamental, changes. Respondent did not believe that UVEST had express or implied authority from its clients to copy their signatures.

Other considerations also support sanctions on the lower end of the recommended sanctions. There was no pattern of misconduct. Respondent's role in the falsification of records lasted only a few minutes on a single occasion, when he approved the copying of customer signatures. The falsification of records did not cause injury to anyone and had very little potential to injure.

Despite the fact that Respondent knowingly approved the falsification, his error was negligent rather than reckless or intentional. It was the result of making a decision in haste while preoccupied with other matters and not considering the nature or consequences of the act, rather than a conscious decision to act dishonestly. The copying of customer signatures had no potential to benefit Respondent, monetarily or otherwise, and Respondent did not benefit.[52] Respondent's self-interest would have led him to the same conclusion as considering the ethical interests involved – that copying customer signatures was a mistake. He had nothing to gain, but much to lose, by approving the falsification of customer signatures.

Respondent has acknowledged to FINRA and his employer that he approved the falsification of records. Respondent has expressed remorse for his actions and testified that he has learned a very "tough life lesson" from the experience.[53] The parties agree that Respondent cooperated with FINRA in its investigation.[54]

The Hearing Panel was concerned that Respondent and UVEST decided not to send the correct forms to customers for signatures when the firm discovered that the records had been falsified. The decision was made in collaboration with other senior employees, including the

[52] Tr. 58.
[53] JX-9 at 18; Tr. 59.
[54] Tr. 26-27, 58.

head of compliance, and was based on the absence of customer injury. The Hearing Panel believes that the absence of customer injury was insufficient reason to continue to rely on records that were known to be falsified. This was, in effect, a collective act of concealment. The Hearing Panel has considered this response to be an aggravating factor.

Having considered all the foregoing, the Hearing Panel finds that the appropriate sanction is a 30-day suspension in all capacities, a six-month suspension in all principal capacities, a fine of $10,000, and a requirement that Respondent attend a classroom ethics training program. The program should be the two-day ethics training program described on the FINRA website, given in New York September 15 and 16, or the next time after this decision becomes final, at whatever location the program is given. If that program is unavailable, or Respondent can show good cause for not attending that particular program, Respondent may instead attend a program or group of programs that will provide the equivalent number of credits, but such programs must be in addition to any mandatory training that Respondent may attend, and Respondent is directed to notify the Department of Enforcement before attending any alternative programs. Respondent is also directed to notify the Department of Enforcement within 15 days of his completion of the ethics training. Finally, he is to notify Enforcement if he has not completed the training as of one year from the date this decision becomes final.

The approval of the falsification of documents is a serious violation, but Respondent's conduct was the result of his focus on business matters and inattention to the ethical implications of his conduct, rather than a conscious disregard for the ethical considerations. The Hearing Panel believes that the sanctions imposed will impress upon Respondent the importance of giving such decisions his full attention in the future.

IV. Conclusion

For falsification of documents in violation of NASD Conduct Rule 2110, Respondent is suspended in all capacities for 30 days; suspended in a supervisory capacity for six months; fined $10,000; and ordered to attend classroom ethics training.[55] Respondent is also ordered to pay costs of $1280.00, which includes an administrative fee of $750 and the cost of the hearing transcript.

If this decision becomes FINRA's final disciplinary action, the 30-day suspension in all capacities shall begin at the opening of business on July 21, 2008, and end at the close of business on August 20, 2008. The six-month suspension in a supervisory capacity shall begin concurrently at the opening of business on July 21, 2008, and end at the close of business on January 20, 2009.

HEARING PANEL

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By: Lawrence B. Bernard
Hearing Officer

Copies to: Michael L. Vines (*via overnight courier and first-class mail*)
Keith J. Barnett, Esq. (*via facsimile and first-class mail*)
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[55] The Hearing Panel has considered and rejects without discussion all arguments of the parties not expressly addressed.