FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JEREIS KHAWAJA (CRD No. 4707688), Respondent.	Disciplinary Proceeding No. 2007007682501 Hearing Officer—Andrew H. Perkins **HEARING PANEL DECISION** May 15, 2009

Respondent is fined $10,000 and suspended in all capacities for two years for providing false and misleading bank comfort letters to his customer and for failing to have his correspondence reviewed and approved by his firm, in violation of Conduct Rule 2110. Respondent is also ordered to pay costs.

Appearances

For Complainant: William Brice La Hue, Sr., and Karen E. Whitaker, FINRA, DEPARTMENT OF ENFORCEMENT, Dallas, TX.

For Respondent: Jereis Khawaja on his own behalf.

DECISION

I. INTRODUCTION

The Department of Enforcement ("Enforcement") brought this disciplinary proceeding against Respondent Jereis Khawaja ("Khawaja") alleging that he had provided a false and misleading "bank comfort letter"[1] for K.D., one of his clients at FINRA member Ameriprise Financial Services, Inc. ("Ameriprise"), in violation of

[1] A "Bank Comfort Letter" or "BCL" is a letter provided by a buyer's bank to confirm that the buyer has sufficient funds to carry out a proposed transaction.

NASD Conduct Rule 2110. The Complaint alleges that the bank comfort letter dated January 4, 2007 (the "Bank Comfort Letter") misrepresented the financial capacity of UE, a company owned by K.D., to enter into a contract for the purchase of 400,000 metric tons of refined sugar. The Complaint further alleges that Khawaja violated Conduct Rule 2110 by not submitting the Bank Comfort Letter to an Ameriprise principal for review.[2]

Enforcement filed the Complaint on September 18, 2008, and Khawaja filed his Answer in letter form on October 31, 2008. Khawaja requested a hearing, which was held on February 18, 2009, in Houston, Texas. The Hearing Panel was comprised of the Hearing Officer and two current members of FINRA's District 6 Committee.

Before the hearing, the parties submitted Stipulations of Fact dated January 30, 2009 ("Stipulations"). The Stipulations cover all of the material facts in this proceeding and designate Enforcement's proposed hearing exhibits (CX-1 through CX-14) as joint exhibits. At the hearing, Enforcement called two witnesses—David C. Suddeth, the FINRA examiner who conducted the investigation, and Khawaja, who also testified on his own behalf. In addition, the joint exhibits were received in evidence.

II. BACKGROUND

Khawaja entered the securities industry in September 2003 at the age of 22 when he started his employment with Ameriprise. Shortly after joining Ameriprise he registered with FINRA as a General Securities Representative. He was registered in that

[2] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidate rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondents' alleged misconduct. In addition, because the Complaint was filed before December 15, 2008, the NASD Procedural Rules were applied in this disciplinary proceeding.

capacity from December 18, 2003, until March 19, 2007.[3] Ameriprise terminated his employment for cause, as reflected on the Uniform Termination Notice for Securities Industry Registration (Form U5) Ameriprise filed with FINRA on March 19, 2007.[4] Ameriprise reported that it had discharged Khawaja for a compliance violation on March 12, 2007.[5]

FINRA opened an investigation after FINRA staff received a tip of possible fraudulent activity that included a copy of one of the bank comfort letters Khawaja had released on Ameriprise letterhead.[6] When FINRA staff contacted Ameriprise, the staff learned that Ameriprise had received a similar tip, and in response it had commenced an examination of Khawaja's branch office. In connection with FINRA's investigation, the staff received copies of e-mails K.D. sent to Khawaja, requesting that he supply bank comfort letters using templates K.D. provided.[7]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The relevant facts are not disputed. In 2005, Khawaja met K.D. at a marketing event sponsored by Ameriprise. K.D. represented himself to be a real estate investor and the owner of a real estate firm in Houston.[8] K.D. also operated another company under the assumed name, UE. Khawaja never understood the nature of UE's business.

In 2005 and early 2006, K.D. opened accounts at Ameriprise for himself, UE, and members of his family.[9] Khawaja was the account representative on each account.[10] The

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[3] Stip. ¶¶ 1-2; CX-1.

[4] CX-2.

[5] *Id.*

[6] Tr. 14.

[7] Tr. 15-16; CX-3.

[8] CX-9, at 2.

[9] Stip. ¶ 4; CX-9; Tr. 24-25.

[10] Stip. ¶ 5.

accounts primarily consisted of mutual funds and variable annuity life insurance policies.[11] The account statements for K.D.'s accounts reflect a total investment of approximately $130,000 during the period in question.[12]

At first, there was no unusual activity in any of K.D.'s accounts. However, beginning in approximately April 2006, K.D. began to request that Khawaja prepare bank comfort letters on Ameriprise letterhead using templates K.D. supplied by e-mail.[13] In the first instance, on August 18, 2006, Khawaja prepared and signed a bank comfort letter on Ameriprise letterhead and then sent it to K.D. by facsimile.[14] Thereafter, between April 2006 and January 2007, Khawaja prepared and sent several other such letters to K.D. upon his instructions.[15] None of the letters was approved by Ameriprise.[16]

On January 4, 2007, K.D. requested that Khawaja prepare the Bank Comfort Letter on Ameriprise letterhead on behalf of UE. Khawaja understood that K.D. intended to send the Bank Comfort Letter to a third party in connection with a contract for the purchase of 400,000 metric tons of refined sugar.[17] Khawaja did as K.D. requested without asking any questions regarding the use of the letter.[18] Khawaja did not know the identity of the addressee, nor did he know the value of the proposed contract.[19] Nonetheless, Khawaja signed the letter and provided it to K.D.[20] Khawaja did not have a

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[11] CX-12; Tr. 27-28.

[12] Tr. 27; CX-12.

[13] Tr. 44-45.

[14] Stip. ¶¶ 8-9.

[15] Stip. ¶ 10.

[16] Tr. 45.

[17] Stip. ¶¶ 11-13; CX-7.

[18] Tr. 47-48.

[19] Tr. 48.

[20] Stip. ¶ 14.

principal at Ameriprise review and approve the Bank Comfort Letter although Ameriprise required all customer correspondence to be reviewed by a principal.[21]

The value of the proposed purchase referenced in the Bank Comfort Letter was more than $109 million based on the quoted market price for raw sugar at the time.[22] Khawaja had no reason to believe K.D. could meet the financial obligation associated with the proposed purchase referenced in the Bank Comfort Letter.

The Bank Comfort Letter was false and misleading.[23] K.D. did not have sufficient funds on account to enter into the referenced purchase contract, nor did he have a credit line at Ameriprise as the letter stated.[24] In addition, the Bank Comfort Letter falsely stated that UE maintained a "banking account" with "our bank."[25] Ameriprise is not a bank, and it was misleading to state that K.D. maintained a "banking account" at Ameriprise.[26]

The Hearing Panel finds that Khawaja violated Conduct Rule 2110, which requires FINRA members, in conducting their business, to "observe high standards of commercial honor and just and equitable principles of trade."[27] Conduct Rule 2110 articulates a "broad ethical principle" to promote the "professionalization of the securities industry."[28] Further, the SEC has held "generally that conduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the

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[21] Stip. ¶¶ 23, 32-33.

[22] Stip. ¶¶ 17-18; Tr. 24.

[23] Stip. ¶ 28.

[24] Stip. ¶¶ 26-27.

[25] Stip. ¶ 29.

[26] *Id*.

[27] *Dep't of Enforcement v. Ortiz,* No. E0220030425-01, 2007 FINRA. Discip. LEXIS 3, at *15 n.14 (N.A.C. Oct. 10, 2007), *aff'd,* Exchange Act Release No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008).

[28] *Timothy L. Burkes,* 51 S.E.C. 356, 360 n.21 (1993), *aff'd mem.*, 29 F.3d 630 (9th Cir. 1994); *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (N.A.C. June 2, 2000).

securities industry is inconsistent with just and equitable principles of trade."[29] Here, the Bank Comfort Letter Khawaja provided to K.D. was false and misleading, and Khawaja failed to have the letter or any of his related correspondence with K.D. reviewed by an Ameriprise principal, in violation of the firm's written policies and procedures. Although the Hearing Panel does not find that Khawaja intended to deceive anyone, he violated Conduct Rule 2110 by his reckless release of the false Bank Comfort Letter.[30]

IV. SANCTIONS

The FINRA Sanction Guidelines ("Guidelines") for reckless misrepresentation provide for a fine of $10,000 to $100,000 and a suspension in any or all capacities of ten business days to two years, or a bar in egregious cases.[31] In determining appropriate sanctions, the Hearing Panel also is guided by the "General Principles Applicable to All Sanction Determinations" and the "Principal Considerations in Determining Sanctions" included in the Guidelines.[32]

The Hearing Panel weighed the seriousness of Khawaja's misconduct against the mitigating factors and other circumstances discussed below and determined that the appropriate sanctions for both violations were a $10,000 fine and a two-year suspension.[33] Without question, Khawaja's preparation and release of the false and misleading Bank Comfort Letter at K.D.'s request without the review and approval of an

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[29] *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008).

[30] *Cf.*, *Robert A. Kauffman*, Exchange Act Release No. 33219, 1993 SEC LEXIS 3163, at *4 n.5 (Nov. 18, 1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (Table) (holding that scienter is not an element of a violation of Rule 2110).

[31] FINRA Sanction Guidelines 93 (2007), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

[32] *Id.* at 1-7.

[33] The Hearing Panel aggregated violations for the purposes of sanctions because they did not cause customer harm and they resulted from a single problem—Khawaja's complete misunderstanding of the nature of the bank comfort letters he was asked to produce. *General Principles Applicable to all Sanction Determinations No. 4*, Guidelines at 4.

appropriate principal at Ameriprise constitute serious violations of the high ethical standards inherent in Conduct Rule 2110.[34] As a registered person, Khawaja should have known that inserting false and misleading information into a form letter for his customer's use was inherently improper. In addition, as a registered person he should have known that his correspondence required the firm's review and approval, particularly in light of the fact that the Bank Comfort Letter was worded to make it appear that the assurances in the letter were made by Ameriprise. Even if Khawaja did not fully understand the nature of the documents he received from K.D, Khawaja failed to use sound judgment by completing the templates as K.D. instructed. The nature of the requests and the obvious inaccuracy of the representations in the Bank Comfort Letter were "red flags," which Khawaja should have had reviewed. Indeed, Khawaja testified that he became "uncomfortable" with K.D.'s requests, yet he still failed to have the material reviewed by a supervisor.[35]

Although Khawaja's violations are serious, they did not rise to the level of egregious misconduct because of the following mitigating factors. First, Khawaja did not attempt to conceal the Bank Comfort Letter and related correspondence from Ameriprise's investigators.[36] Second, Khawaja fully accepted responsibility for his errors in judgment.[37] At no point did he attempt to conceal his actions or blame another. Further, throughout these proceedings, Khawaja expressed deep remorse and sincere apologies for his misconduct. Third, Khawaja expressly acknowledged that his conduct could have harmed Ameriprise or others who might have relied on the representations in

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[34] *Cf. Dep't of Enforcement v. D'Amaro*, No. C05990019, 2000 NASD Discip. LEXIS 41 (O.H.O. Aug. 22, 2000) (respondent violated Conduct Rule 2110 by sending unapproved and false correspondence to customer).

[35] Tr. 54-55, 57.

[36] Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 10).

[37] Tr. 73. Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 2).

the letter.[38] Fourth, although there was a potential for harm to Ameriprise and any third party that might have relied on the Bank Comfort Letter, there was no evidence that Khawaja caused any actual harm.[39]

Finally, although a registered representative cannot—and Khawaja has not tried to—"shift his or her responsibility for compliance with an applicable requirement to a supervisor or to [FINRA]" or rely on his or her "youth and inexperience" to excuse misconduct, the Hearing Panel nonetheless took into consideration the following unique factors in rejecting Enforcement's argument that a bar was needed to protect the investing public and deter others from similar misconduct.

At the time of the violations, Khawaja was 24 years old and in his first professional job. Anxious to succeed and impress his superiors, he was reluctant to admit that he did not understand what K.D. was asking of him. Thus, he did not consult anyone about K.D.'s activities. As Khawaja testified, he erred by placing too much trust in K.D. and paying too little attention to the importance of compliance procedures.[40] K.D. exploited Khawaja's naiveté and trust, as well as certain gaps in Ameriprise's supervisory procedures.

To trick Khawaja into believing that K.D. had sufficient assets to enter into the purchase contract referenced in the Bank Comfort Letter, K.D. provided a document that he claimed was a letter of credit.[41] In reality, the document was a term sheet from a bond offering, which had no bearing on K.D.'s financial resources. Although a more experienced securities professional would have caught the deception, Khawaja did not realize that the document was not what K.D. claimed, or that K.D. was scamming him.

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[38] *Dep't of Enforcement v. Cuozzo, Jr.*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *35 (N.A.C. Feb. 27, 2007).

[39] Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 11).

[40] Tr. 73, 79.

[41] CX-6.

In addition, K.D. learned that Khawaja could send and receive correspondence by e-mail and facsimile without it being reviewed by a supervising principal. Khawaja testified that Ameriprise did not monitor his e-mail electronically, and it did not restrict access to the fax machine located in the branch office. According to Khawaja, his correspondence was reviewed periodically. When the assigned compliance officer visited the branch office, he would request copies of the registered representatives' correspondence.[42] Under this system, it was left to the registered representative to select the correspondence to be reviewed. In Khawaja's case, he did not understand that he was required to submit all correspondence, including that relating to the bank comfort letters. He incorrectly interpreted his compliance officer's instructions to cover only those documents relating to customers' trades although he knew the firm's written policies were not so limited.[43] This gap in coverage, coupled with Khawaja's misunderstanding of Ameriprise's requirements, enabled K.D. to e-mail the templates to Khawaja who then printed them on Ameriprise letterhead and returned the signed copies by fax without them being intercepted by Khawaja's supervisor or the firm's compliance department. Had there been a different system in place, K.D.'s ruse could have been detected sooner.[44]

In conclusion, the Hearing Panel determined that a $10,000 fine and a two-year suspension were sufficient and appropriate under the facts and circumstances of this case.

V. ORDER

Khawaja is fined $10,000 and suspended from associating with any member firm in any capacity for two years for providing his customer with a false and misleading bank

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[42] Tr. 63.

[43] Tr. 64.

[44] Enforcement did not argue, and there is no evidence to suggest, that Khawaja was a knowing participant in K.D.'s non-securities transactions and business.

comfort letter and for failing to have his incoming and outgoing correspondence reviewed by a registered principal, in violation of Conduct Rule 2110.

In addition, Khawaja is ordered to pay the costs of this proceeding in the amount of $1,404.80, which includes a $750 administrative fee and the cost of the hearing transcript.

The fines and costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. If this decision becomes FINRA's final disciplinary action, the suspension shall commence on July 6, 2009, and end at the close of business on July 5, 2011.[45]

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Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

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[45] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.