

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHAD A. McCARTNEY  
(CRD No. 4294388),

Respondent.

Disciplinary Proceeding  
No. 2010023719601

Hearing Officer—Andrew H. Perkins

**HEARING PANEL DECISION**

September 15, 2011

**The Respondent is barred from associating with any member firm in any capacity for violating NASD Conduct Rule 2110 by falsifying an expense report and submitting fake supporting documentation (including a forged letter) to obtain funds from his employer to which he was not entitled. Respondent also is ordered to pay the costs of this proceeding.**

**Appearances**

For the Department of Enforcement: Thomas M. Huber and David F. Newman, Philadelphia, PA.

For Chad A. McCartney: Richard A. Levan, WIGGIN AND DANA, Philadelphia, PA.

**DECISION**

**I. INTRODUCTION**

On December 13, 2010, the Department of Enforcement filed a Complaint with the Office of Hearing Officers that contains two related causes of action alleging that Respondent Chad A. McCartney (“McCartney”) violated NASD Conduct Rule 2110<sup>1</sup> by

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<sup>1</sup> Following consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

creating and submitting a false expense report and supporting documentation to Hartford Life Distributors, LLC, then known as Planco Financial Services, LLC (“Hartford Life”).<sup>2</sup> The Complaint further alleges that McCartney forged the signature on one of the fabricated documents he submitted to Hartford Life.

McCartney filed an Answer to the Complaint on December 30, 2010, and an Amended Answer on February 23, 2011. In the Amended Answer, McCartney admitted that he falsified an expense report and related documentation to obtain a \$500 reimbursement from Hartford Life, as alleged in the Complaint.

A hearing to decide sanctions was held on July 7, 2011, in Philadelphia, Pennsylvania before a Hearing Panel composed of the Hearing Officer and two current members of FINRA’s District 9 Committee. McCartney was the only witness at the hearing. In addition, the parties submitted eight joint exhibits, which were admitted into evidence.<sup>3</sup>

## **II. FINDINGS OF FACT**

### **A. The Respondent**

McCartney first became registered with FINRA in November 2000 as an Investment Company and Variable Products Representative (“IR”) with Hartford Life.<sup>4</sup> In December 2009, McCartney terminated his relationship with Hartford Life. Between January 27, 2010, and February 9, 2011, McCartney was registered as an IR with FINRA

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<sup>2</sup> Planco Financial Services, LLC changed its name to Hartford Life in November 2009.

<sup>3</sup> In this decision, “J” refers to the parties’ joint exhibits and “Tr.” refers to the hearing transcript.

<sup>4</sup> J-1, at 3.

member firm Lincoln Financial Distributors, Inc.<sup>5</sup> He is not currently registered with FINRA or associated with a FINRA registered firm.<sup>6</sup>

**B. McCartney Falsified an Expense Report and Supporting Documents**

While registered with Hartford Life, McCartney was employed as an external “wholesaler” of variable annuity products issued by Hartford Life or its affiliates. As a wholesaler, McCartney made presentations and gave seminars to registered representatives of other broker-dealers, who would then sell Hartford Life variable annuities. As an independent contractor, McCartney worked on a commission-only basis and was responsible for the payment of all of his business expenses.<sup>7</sup> Hartford Life did not provide McCartney with an expense account, but it did reimburse him up to \$500 for each qualifying seminar he presented.<sup>8</sup> To receive reimbursement of seminar expenses, Hartford Life required McCartney to produce actual receipts for the seminar expenses he incurred, as well as verification letters from broker-dealers whose representatives attended McCartney’s seminars.<sup>9</sup>

In April 2006, Richard Malloy (“Malloy”), a financial advisor with Wachovia Securities, LLC and one of McCartney’s highest producing clients, asked McCartney to make a contribution to his child’s private school, Triad Academy.<sup>10</sup> McCartney had known and worked with Malloy since approximately 2000, and over the years Malloy had more than once mentioned Triad Academy and the fact that his wife was actively

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<sup>5</sup> J-1, at 2.

<sup>6</sup> Id.

<sup>7</sup> Tr. 21.

<sup>8</sup> Tr. 21-22.

<sup>9</sup> Tr. 36-37.

<sup>10</sup> Tr. 30.

engaged in fundraising efforts for the school.<sup>11</sup> McCartney agreed to make a contribution and wrote a personal check dated April 4, 2006, for \$500 payable to the order of Triad Academy.<sup>12</sup> Triad Academy deposited the check into its Building/Donation Fund at Wachovia Securities on April 12, 2006.<sup>13</sup>

At the time McCartney made the contribution to Triad Academy, he was disgruntled with Hartford Life's expense reimbursement policy, which he believed was unduly limited and out of step with Hartford Life's competitors.<sup>14</sup> Indeed, Hartford Life's reimbursement policy had been the subject of a discussion among a number of Hartford Life's wholesalers at a divisional meeting in early 2006.<sup>15</sup> During the meeting, Steve Leary ("Leary"), another wholesaler for Hartford Life, told McCartney and a group of others that he had been submitting false expense reports to get around Hartford Life's strict reimbursement policy.<sup>16</sup> Leary further explained that he used an invoice template bearing the logo of the Embassy Suites hotel chain to create false invoices.<sup>17</sup> At some point, Leary distributed the Embassy Suites template on Hartford Life's computer system and thereby made it available to McCartney.

McCartney decided to use the Embassy Suites template to create a false invoice to obtain reimbursement of the contribution he had made to Triad Academy although he knew that it was not a reimbursable expense. McCartney created a false Embassy Suites

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<sup>11</sup> Tr. 30, 51, 87.

<sup>12</sup> J-6.

<sup>13</sup> J-7, at 3. Malloy was the financial advisor on the Triad Academy account.

<sup>14</sup> Tr. 48-49.

<sup>15</sup> Tr. 67-68.

<sup>16</sup> Tr. 65-68.

<sup>17</sup> Tr. 66.

invoice dated April 3, 2006.<sup>18</sup> He then made up numerous individualized details, including the date of the fictitious seminar, the number of people who attended, the room rental fee, food and beverages served, and sales tax. To accompany the fabricated hotel invoice, McCartney also created a false verification letter on Wachovia Securities, LLC letterhead thanking him for holding a seminar for 27 people at a cost to McCartney of \$500.<sup>19</sup> McCartney forged Malloy's signature on the fake letter.<sup>20</sup> McCartney did not have Malloy's authorization to draft the letter or to sign his name.<sup>21</sup>

McCartney also fabricated a fake check to submit as proof of payment with his false expense report. McCartney fabricated the fake check by altering check number 1787 that he had drawn on his personal account to make the \$500 contribution to Triad Academy. McCartney changed the payee to Wachovia Securities and deleted the Triad Academy account number that had been handwritten on the memo line on the face of the check.<sup>22</sup>

McCartney then submitted the false invoice, verification letter, and check to his expense processor, who prepared an expense report based on the false documentation and forwarded it to Hartford Life on McCartney's behalf.<sup>23</sup> As a result, McCartney received a \$500 expense reimbursement payment from Hartford Life.<sup>24</sup> There is no evidence that

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<sup>18</sup> J-3.

<sup>19</sup> J-5.

<sup>20</sup> Tr. 36, 57, 65.

<sup>21</sup> Tr. 65.

<sup>22</sup> Compare J-4 (check payable to Wachovia Securities) with J-6 (original check payable to Triad Academy).

<sup>23</sup> J-2; Tr. 56-58.

<sup>24</sup> Tr. 58.

Hartford Life discovered McCartney's fraud before he terminated his relationship with the company.

### **III. CONCLUSIONS OF LAW**

NASD Conduct Rule 2110 requires registered persons to "observe high standards of commercial honor and just and equitable principles of trade." As the Securities and Exchange Commission ("SEC") recently reiterated, "conduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade."<sup>25</sup>

NASD Conduct Rule 2110 is an ethical rule. FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad "to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security."<sup>26</sup>

McCartney admits that he fabricated an invoice, seminar verification letter, and check, which he submitted to Hartford Life with a fraudulent expense report, and that he accepted a \$500 expense reimbursement to which he was not entitled under Hartford Life's expense reimbursement policy. McCartney's submission of the falsified expense report and supporting documents, as well as his receipt of the resulting financial benefit, reflect negatively on his ability to comply with regulatory requirements and his ability to handle other people's money. "The entry of accurate information in firm records is a foundation for FINRA's regulatory oversight of its members, and '[i]t is critical that

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<sup>25</sup> *John M.E. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761, at \*13 (May 26, 2010) (citations omitted).

<sup>26</sup> *Id.* (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated NASD Conduct Rule 2110).

associated persons, as well as firms, comply with this basic requirement.”<sup>27</sup> Accordingly, the Hearing Panel finds that McCartney’s conduct was inconsistent with just and equitable principles of trade and that he thereby violated NASD Conduct Rule 2110.

#### **IV. SANCTIONS**

##### **A. Mitigating Factors**

The Hearing Panel first considered McCartney’s claims that several mitigating factors exist. As stated in greater detail below, the Hearing Panel rejects McCartney’s mitigation arguments and finds that several aggravating factors exist.

First, McCartney contends that he has a clean disciplinary history that should mitigate sanctions. The Hearing Panel rejects this argument. While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating.<sup>28</sup> A respondent should not be rewarded because he may have previously acted appropriately as a registered person.

McCartney next argues that he should be given credit for having accepted responsibility for his misconduct. The Hearing Panel does not agree that McCartney accepted responsibility for his actions before FINRA began its investigation. Although he eventually chose to admit his misconduct, he did so only after he was caught, and there is no evidence tending to show that he otherwise would have done so. FINRA Sanction Guidelines (“Sanction Guidelines”) provide that adjudicators should consider whether the respondent accepted responsibility for and acknowledged the misconduct to respondent’s

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<sup>27</sup> *Saad*, 2010 SEC LEXIS 1761, at \*14 (quoting *Charles E. Kautz*, 52 S.E.C. 730, 734 (1996)).

<sup>28</sup> *E.g.*, *Department of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15 (N.A.C. May 13, 2011). *Department of Enforcement v. Fergus*, No. C8A990025, 2001 NASD Discip. LEXIS 3, at \*58-59 (N.A.C. May 17, 2001) (holding that the absence of disciplinary history is not considered part of “relevant disciplinary history” under the FINRA Sanction Guidelines for purposes of reducing sanctions) *See also Michael Frederick Siegel*, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459, at \*42 (Oct. 6, 2008) (lack of disciplinary history is not mitigating).

employer or a regulator *prior to* the detection and intervention by the firm or a regulator.<sup>29</sup> He did not, nor did he provide substantial assistance to FINRA before he was caught.

McCartney further suggests that relatively lenient sanctions are sufficient because this case involves a “single moment of very poor judgment.”<sup>30</sup> The Hearing Panel rejects McCartney’s characterization of his actions. McCartney’s misconduct was premeditated and intentional, factors that the Hearing Panel finds aggravating. McCartney learned of the existence and availability of the Embassy Suites template many weeks before he used it to fraudulently seek repayment of the contribution he made to Triad Academy.

McCartney then undertook a multi-step process to fabricate the documentation he needed to support his false expense reimbursement claim. McCartney illicitly procured a sheet of Wachovia Securities’ office stationery and then forged Malloy’s name to the fake letter he prepared to submit with the fraudulent expense report. McCartney submitted these documents to Hartford Life with a fraudulent expense report. However, Hartford Life rejected his claim because he did not provide proof of payment. The April 19, 2006 note on his expense report dated April 18, 2006, states, “Please provide the receipt for your Client Seminar on March 3 in the amount of \$500.00. I have the Embassy Suites Hotel bill but nothing that shows you paid \$500.00.”<sup>31</sup> At this point, McCartney could have reversed his initial lapse of judgment, but instead he chose to compound his misconduct by altering the check he had written to Triad Academy, which he then forwarded to Hartford Life as proof of payment for the fictitious seminar expense. Contrary to his

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<sup>29</sup> Sanction Guidelines 6 (2011) (Principal Consideration No. 2), *available at* [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines) (emphasis added).

<sup>30</sup> Tr. 106.

<sup>31</sup> J-2, at 3.



assertion, the facts demonstrate that his misconduct was premeditated and intentional, not a momentary lapse of judgment, and that his ongoing deceit is an aggravating factor with respect to sanctions.

McCartney also seeks to minimize the seriousness of his misconduct. McCartney argues that his misconduct was of slight consequence because: (1) the donation to Triad Academy benefitted Hartford Life, not him; (2) the amount of money involved was inconsequential, particularly in light of Hartford Life's size; (3) no customer was harmed; and (4) Hartford Life, the injured party, is a sophisticated party.<sup>32</sup> These arguments rest on three misguided notions: McCartney did not act out of self-interest; the injury to Hartford Life is not an aggravating factor because it gives millions of dollars a year to charities such as Triad Academy; and the contribution to Triad Academy was a legitimate business expense that he incurred on behalf of Hartford Life. The Hearing Panel rejects these arguments.

First, there is no question from McCartney's testimony that he made the contribution to Triad Academy to foster and preserve his business relationship with Malloy. McCartney testified that Malloy was one of his most important customers and that he wanted to assure that Malloy would continue to do business with him and Hartford Life.<sup>33</sup> Plainly, McCartney would have been adversely affected if Malloy had withdrawn all or some of his business as McCartney claimed he feared might happen if he did not make the contribution. To that extent, this contribution was no different than other entertainment expenses McCartney incurred as an independent contractor to attract and maintain his business relationships. As an independent contractor McCartney

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<sup>32</sup> Tr. 106-07.

<sup>33</sup> Tr. 25, 39.

determined what marketing expenses were appropriate for his business. At his discretion, McCartney incurred a variety of entertainment and other expenses for his benefit. For example, McCartney testified that he entertained his customers by taking them to sporting events, to dinner, and to play golf.<sup>34</sup> McCartney viewed these expenses as essential because in his words, “doing fun events like that ... was about building relationships and friendships, and that's how you were able to get repetitive business.”<sup>35</sup> McCartney’s argument that he made the contribution without regard to his personal benefit is disingenuous.

Second, as an independent contractor, McCartney lacked any authority to make decisions regarding Hartford Life’s expense and charitable giving policies. Indeed, McCartney did not argue that he had such authority. Accordingly, McCartney cannot minimize his grave misconduct by arguing that the contribution to Triad Academy was either a reasonable business expense or charitable gift that should be paid by Hartford Life. In the end, Hartford Life had not approved the expenditure. Moreover, regardless of McCartney’s motive, his conduct has the potential to result in monetary gain to himself at Hartford Life’s expense,<sup>36</sup> and the Hearing Panel finds these factors to be aggravating.<sup>37</sup>

Finally, McCartney’s testimony undercut his argument that he made the contribution for Hartford Life’s benefit alone. In fact, McCartney repeatedly stated that a major factor underlying his decision to submit the fraudulent expense report was his

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<sup>34</sup> Tr. 29.

<sup>35</sup> Tr. 29. McCartney estimated that he grossed approximately \$300,000 per year and that his expenses ran between \$60,000 and \$100,000 per year. Tr. 27, 29.

<sup>36</sup> *Leonard J. Ialeggio*, Exchange Act Rel. No. 40028, 1998 SEC LEXIS 1228, at \*9 (May 27, 1998) (“[T]hat Ialeggio abused only his employer's trust is not mitigative.”), *aff'd*, 185 F.3d 867 (9th Cir. 1999) (Table).

<sup>37</sup> Sanction Guidelines 6 (Principal Considerations Nos. 11, 17).

concern about his rising expenses and Hartford Life's restrictive reimbursement policy.<sup>38</sup> For example, when asked to explain why he expensed the contribution, McCartney testified "the gas, the lunches, the dinners, it would just continue to pile up and pile up and pile up. ...I mean, I wish I wouldn't have taken this route to try to get reimbursed, but I saw that as a way to at least get reimbursed for a business expense to maintain a relationship."<sup>39</sup> At a later point in his testimony, the Hearing Panel asked McCartney to clarify the reasoning behind his decision and whether his decision was triggered by some particular event or extraordinary financial pressure. McCartney replied,

You know, ... it was just the constant amount of expenses that I was incurring on a daily and monthly basis. You know, maybe when I wrote out the check it was realizing that the actual \$500 was going to be taken out of my account along with all the other expenses that had been accumulating for just doing business that I said, well, I want to see if I can try to get this reimbursed. At least, it might not seem like a lot of money, \$500, but \$500 certainly is a lot when thousands are being spent on my business every single day.

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It was just, ... how much are you spending in expenses on a monthly basis when the amount of expenses we were spending, me personally, was a lot, to me. And I just felt that — you know, ... that this was a business expense. ... And if I could save myself \$500, then that's what I was going to try to do, and that's obviously what I did.<sup>40</sup>

## **B. Prior Disciplinary Proceedings**

The Hearing Panel next considered McCartney's argument that Enforcement's request that he be barred is excessive when compared to sanctions assessed in other cases. For example, McCartney notes that in 1995 FINRA concluded that a censure, a \$15,000 fine, and an order to re-qualify as a general securities principal was appropriate

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<sup>38</sup> McCartney also testified that he made the contribution to support a charitable cause. Tr. 39.

<sup>39</sup> Tr. 73.

<sup>40</sup> Tr. 88-90.

where the respondent was found to have submitted expense vouchers and received duplicate payments to which he was not entitled between September 1988 and February 1990.<sup>41</sup> McCartney argues that if the sanction imposed in *Ialeggio* was sufficient for submitting numerous expense vouchers over nearly 18 months, “then [the appropriate sanction] can’t be a bar today to submit one false reimbursement.”<sup>42</sup>

“It is well established, however, that the appropriateness of a sanction ‘depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with action taken in other proceedings.’”<sup>43</sup> FINRA is not obligated to make its sanctions uniform. Accordingly, the Hearing Panel rejects McCartney’s argument that a bar is inappropriate in this case because the same sanction has not been uniformly imposed in other cases.

### **C. Application of Sanction Guidelines**

The Hearing Panel next consulted the Sanction Guidelines. The Hearing Panel first considered the Sanction Guidelines for “conversion or improper use of funds or securities.”<sup>44</sup> The Sanction Guidelines recommend a fine of \$2,500 to \$50,000 for the improper use of funds. The Sanction Guidelines also recommend a bar for all cases involving conversion and a bar for the improper use of funds unless the misuse resulted from a misunderstanding or other mitigating factors exist. The Sanction Guidelines define

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<sup>41</sup> *District Bus. Conduct Comm. v. Ialeggio*, No. C01930044, 1995 NASD Discip. LEXIS 42 (Dec. 7, 1995), *aff’d*, Exchange Act Rel. No 40028, 1998 SEC LEXIS 1228 (May 27, 1998), *aff’d*, 185 F.3d 867 (9th Cir. 1999) (Table).

<sup>42</sup> Tr. 101.

<sup>43</sup> *Saad*, 2010 SEC LEXIS 1761, at \*21-22 (quoting *Paz Sec., Inc.*, Exchange Act Rel. No. 57656 (Apr. 11, 2008), 93 SEC Docket 5122, 5134 (citing *Butz v. Glover Livestock Comm’n Co.*, 411 U.S. 182, 187 (1973) (“The employment of a sanction within the authority of an administrative agency is thus not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases.”)), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009)).

<sup>44</sup> Sanction Guidelines 36.

conversion for purposes of imposing sanctions as “an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.”<sup>45</sup>

McCartney contends that his misconduct did not constitute conversion or misuse of funds, and the Hearing Panel therefore should apply the Sanction Guidelines for “forgery and/or falsification of records.”<sup>46</sup> However, as the SEC noted in *Saad*, submitting a fraudulent expense report to obtain funds to which a respondent is not entitled constitutes more than just the falsification of records.<sup>47</sup> “He also misappropriated employer funds, and FINRA may consider all the facts and circumstances surrounding the misconduct at issue when deciding to impose a bar.”<sup>48</sup> Moreover, the Sanction Guidelines “address some typical securities-industry violations. For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.”<sup>49</sup>

Although the Sanction Guidelines provide that a bar is the standard sanction for conversion regardless of the amount involved, the Hearing Panel did not confine its analysis to a finding that McCartney converted \$500 from Hartford Life. The Hearing Panel also considered the lack of mitigating factors and the existence of aggravating factors, including the intentional nature of McCartney’s misconduct.<sup>50</sup>

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<sup>45</sup> *Id.* n.2.

<sup>46</sup> *Id.* 37.

<sup>47</sup> *Saad*, 2010 SEC LEXIS 1761, at \*23.

<sup>48</sup> *Id.* at \*23-24.

<sup>49</sup> Sanction Guidelines 1.

<sup>50</sup> See *Department of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at \*27 (N.A.C. Oct. 6, 2009), *aff’d*, 2010 SEC LEXIS 1761 (May 26, 2010).

In addition, the Hearing Panel considered the seriousness of the offense and the potential for recurrence.<sup>51</sup> McCartney's dishonesty and willingness to obtain funds to which he was not entitled "indicates a troubling disregard for fundamental ethical principles which, on other occasions, may manifest itself in a customer-related or securities-related transaction."<sup>52</sup> Equally troubling are McCartney's continued rationalizations regarding his misconduct. McCartney steadfastly seeks to defend his conduct by asserting that he acted in Hartford Life's best interests and that the amount involved was inconsequential when compared to the company's resources. These arguments totally ignore the fact that he knew the contribution to Triad Academy was not an approved business expense and that his primary concern was to recoup the contribution expense that he made to preserve his relationship with his customer. Hartford Life's reimbursement policy was unambiguous, and McCartney admits he understood it. McCartney's actions reveal a willingness to defraud his employer in disregard of his company's expense reimbursement policies. Such conduct is the antithesis of the high standards of honesty required of registered representatives and suggests that his continued participation in the securities industry poses an unwarranted risk to the investing public.

The Hearing Panel also considered the Sanction Guidelines governing sanctions for forgery and/or falsification of records, which recommend a fine of \$5,000 to \$100,000

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<sup>51</sup> See *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005) (finding that, in connection with sanctions, it is appropriate to consider: (1) all mitigating factors that the respondent has raised; (2) the seriousness of his offenses; (3) the corresponding harm that he caused to members of the trading public; (4) his potential gain for disobeying the rules; (5) the potential for repetition of his misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others).

<sup>52</sup> *Department of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at \*28 (citing *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) (finding that, although respondent's misconduct did not involve securities, NASD was justified in concluding that, on another occasion, it might)).

and a suspension for up to two years where mitigating factors exist, or consideration of a bar in egregious cases.<sup>53</sup> The Sanction Guidelines also direct adjudicators to consider the nature of the documents forged or falsified, and whether the respondent had a good-faith, but mistaken, belief of express or implied authority to falsify the documents. Both of these factors aggravate McCartney's misconduct. The false expense report McCartney submitted was used to obtain funds to which he was not entitled. McCartney documented the expense report with a fabricated receipt and letter. By using Wachovia Securities' letterhead and forging Malloy's name to the fictitious letter, McCartney implicated a completely unrelated company and one of its registered representatives. Further, McCartney admitted that the seminar for which the expense report was concocted never occurred; he clearly did not believe he had any authority to falsify the documents. Taking these aggravating factors into consideration along with the lack of mitigating factors, the Hearing Panel concluded that a bar would also be the appropriate remedial sanction were it to apply the Sanction Guidelines for forgery and falsification of documents.

In summary, the Hearing Panel finds McCartney's misconduct in this case to be very troubling. Throughout this proceeding, McCartney has not displayed true remorse for his actions. To the contrary, he attempted to justify his blatant disregard of Hartford Life's expense reimbursement policy as reasonable and appropriate by arguing that he made the contribution to Triad Academy for the company's benefit, not his. His arguments and attitude regarding his misconduct overshadow any otherwise mitigative effect of his professed admission of wrongdoing. In short, the Hearing Panel finds that McCartney does not understand and accept the serious nature of his wrongful conduct.

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<sup>53</sup> Sanction Guidelines 37.

McCartney also sought to trivialize his misconduct by arguing that Hartford Life contributed millions of dollars to charitable organizations such as Triad Academy. The misconduct here cannot be trivialized in this manner. McCartney's actions were a flagrant breach of the duty he owed Hartford Life and constituted a serious violation of high standards of commercial honor and just and equitable principles of trade under NASD Conduct Rule 2110 (now FINRA Conduct Rule 2010).

Accordingly, the Hearing Panel finds that McCartney's conduct was egregious and that the aggravating facts and lack of mitigating facts require that McCartney be barred from associating with any member in any capacity "to protect the public interest from future harm at his hands'. . . . A bar will prevent [McCartney] from putting customers at risk and will serve as a deterrent to others in the securities industry who might engage in similar misconduct."<sup>54</sup>

## **V. ORDER**

Chad A. McCartney is barred from association with any member firm in any capacity for creating and submitting a false expense report and supporting documentation (including a forged letter) to Hartford Life to obtain funds to which he was not entitled, in violation of NASD Conduct Rule 2110.<sup>55</sup> In addition, he is ordered to pay costs in the amount of \$1599.65, which includes a \$750 administrative fee and the cost of the hearing transcript. The fine and costs shall be payable on a date set by FINRA, but not less than

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<sup>54</sup> *Saad*, 2010 SEC LEXIS 1761, at \*32 (citations omitted).

<sup>55</sup> "SEC case law and [FINRA] practice strongly suggest that sanctions be assessed per cause." *Department of Enforcement v. Fox & Co. Invs., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at \*37 (N.A.C. Feb. 24, 2005) (citing *Investment Mgmt. Corp.*, 2003 NASD Discip. LEXIS 47, at \*27-28), *aff'd*, 2005 SEC LEXIS 2822 (Oct. 28, 2005). However, in a case such as this, "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals." *Id.* Accordingly, the Hearing Panel found it appropriate to impose a unitary sanction of a bar that covers both of McCartney's violations.



30 days after this decision becomes FINRA's final disciplinary action in this matter. The bar will become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.<sup>56</sup>

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

Chad A. McCartney (*via FedEx, next day delivery, and first-class mail*)  
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David F. Newman, Esq. (*via electronic mail*)  
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David R. Sonnenberg, Esq. (*via electronic mail*)

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<sup>56</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.