

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TIMOTHY JOSEPH GOLONKA
(CRD No. 1792138),

Respondent.

Disciplinary Proceeding
No. 2009017439601

Hearing Officer – MC

HEARING PANEL DECISION

March 22, 2012

Respondent Timothy Joseph Golonka violated NASD Conduct Rule 2110 when he participated in four telephone calls in which associates impersonated customers in order to obtain confidential information from the customers' insurance company. For doing so, Respondent is suspended from associating with any FINRA member firm in any capacity for nine months, fined \$7,500, and assessed costs.

Appearances

Jonathan M. Prytherch, Senior Regional Counsel, Woodbridge, New Jersey; and Thomas M. Huber, Senior Regional Counsel, Philadelphia, Pennsylvania, for the Department of Enforcement.

Andrew W. Barbin, Esq., Mechanicsburg, Pennsylvania, for Respondent.

I. Introduction

In this case, the facts are largely undisputed. In November 2008, Respondent Timothy Joseph Golonka was registered with FINRA through member firm Hartford Equity Sales Company Inc. ("Hartford"). He worked primarily as a wholesaler of insurance products for Hartford's affiliated insurance company. One of his responsibilities was to review insurance policies held by customers of registered representatives of other firms to determine whether to recommend replacing them with more favorable policies.

In the fall of 2008, Golonka worked with two registered representatives of another firm to review their clients' life insurance policies. In order to conduct the reviews, Golonka needed confidential information about the policies and asked the two registered representatives to gather it. They were unable to contact several of the clients, and therefore could not obtain the required information.

On November 5, 2008, Golonka made four telephone calls to insurance company agents to obtain the information he needed. For each call, one of the registered representatives was prepared to pretend to be the policyholder to give permission to the insurance company to disclose policy information to Golonka.

The single-cause Complaint, filed on February 1, 2011, charges Golonka with participating in an impersonation scheme to obtain confidential insurance information in violation of NASD Conduct Rule 2110.¹ A Hearing Panel convened the two-day hearing in Philadelphia, Pennsylvania, on August 30, 2011.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Golonka was registered with FINRA as a General Securities Representative and Investment Company and Variable Contracts Products Representative with Hartford from October 14, 2005, to March 18, 2009.² When Hartford learned of the conduct that is the subject

¹ 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). The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). Because the misconduct alleged in the Complaint occurred in November 2008, prior to the effective date of the new consolidated rules, this Decision refers to and relies on the NASD Conduct Rules that were in effect at the time the misconduct occurred. The applicable rules are available at www.finra.org/rules.

² Enforcement's Exhibit, CX-1. Enforcement's exhibits are designated as "CX-__." Respondent's exhibits are designated as "RX-__." References to the testimony at the hearing are designated as "Tr. __." References to the on-the-record interview transcript contained in CX-4 are designated as "OTR transcript p.__."

of the Complaint, it terminated Golonka's employment.³ At the time of the hearing, Golonka was employed by another FINRA member firm.⁴ Therefore, Golonka is subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding.

B. The Misconduct

As a Senior Account Executive for Hartford's affiliated insurance company, Golonka evaluated life insurance policies held by customers of registered representatives at a number of firms to determine if they should be replaced by policies more appropriate to the customers' needs.⁵ One of the firms at which Golonka regularly conducted such reviews was the Lancaster office of another FINRA member firm ("Firm A").⁶ At Firm A, there was one business group of brokers with which Golonka had for some time sought to work (the "group").⁷ Golonka wanted to work with the group because it was the largest business group at the Lancaster office.⁸

JA, a junior financial advisor in the group, approached Golonka in the fall of 2008 to ask him to evaluate the life insurance policies of 17 of the group's customers.⁹ The group wanted Golonka to review information gathered by JA and CS, another junior financial advisor, to determine which customers might benefit from exchanging existing policies for new ones with lower premiums or higher death benefits.¹⁰ Golonka did not have access, however, to all of the required information about policies issued by companies other than Hartford.

³ Tr. 346.

⁴ CX-1. At the hearing, Golonka testified that his employer had informed him that he would be terminated from his job in September 2011, for reasons unrelated to any misconduct. Tr. 347.

⁵ Complaint ¶¶ 3, 6, 8; Answer ¶¶ 3, 6, 8.

⁶ CX-3, p. 6, ¶¶ 8-9.

⁷ CX-3, pp. 6-7.

⁸ Tr. 316-317.

⁹ CX-3, p. 7.

¹⁰ Tr. 215.

JA and CS presented Golonka with a spreadsheet showing the information they had already compiled.¹¹ They needed additional information for some of the non-Hartford policyholders to permit Golonka to conduct a thorough review.¹² Since JA and CS were not the agents of record for the policies, they could not obtain information from the companies on their own but needed to contact the customers who would then give the insurance companies authorization to provide Golonka with the information. JA and CS informed Golonka they were unable to reach some of the customers.¹³ Golonka and JA each claimed later that the other initially proposed having JA impersonate the female customers on telephone calls to the insurance companies to pretend to give consent to the insurance agents to answer Golonka's questions. In any event, whoever first proposed the ruse, they agreed to do so.¹⁴

On November 5, 2008, Golonka and JA made three telephone calls to obtain information about policies held by female customers of the group. Because Golonka and JA worked from different offices, the calls were three-party calls.¹⁵ Golonka initiated each by identifying himself and stating that the insured customer was also on the call. During the calls, JA impersonated the policyholder and gave "permission" to the insurance company representative to provide Golonka with the information he asked for.¹⁶ As a result, the insurance agents gave Golonka information such as the policy's cost basis, base death benefit, and other features of the insured's coverage. The agents also agreed to send to Golonka an in-force illustration of a ledger, a document

¹¹ CX-2, p. 22; Tr. 219-221.

¹² Tr. 304-307.

¹³ Tr. 224-225, 303.

¹⁴ Tr. 145, 303; CX-3, p. 8, ¶ 26.

¹⁵ CX-2, p. 14; CX-5, p. 5.

¹⁶ CX-4, p. 34, OTR transcript pp. 131-132; CX-4, p. 38, OTR transcript pp. 148-149; CX-2, p. 14.

containing additional policy and premium information, including a projection of how long the policy would be in effect and its future value based on current value and expected returns.¹⁷

On at least two occasions, after Golonka concluded his questioning and said good-bye to the insurance company agent, Golonka and JA, assuming that the agent had hung up, discussed the impersonations. After questioning one agent, Golonka commended JA by saying, “You sounded like you were 82.” Golonka thanked JA for doing “a real nice job” and asked her to tell CS to prepare to pose as a particular male insurance policyholder. At that point, the insurance agent’s voice came over the line, saying, “Thank you both.”¹⁸ When he heard this, Golonka knew that the agent had overheard his discussion of the impersonations with JA, and that he “had been caught.”¹⁹

Despite this, to obtain information about a male customer with a life insurance policy at the same company as one of the female customers, Golonka made a fourth call, this time with CS a party to the call. By chance, they reached the same agent who had overheard the earlier inculpatory discussion between Golonka and JA. Golonka referred to the previous call and said he was calling again with another policyholder on the phone to inquire about his policy. When the agent put the call on hold, Golonka terminated the call before CS said anything. He told CS that they would not proceed with the impersonation and would make no further calls unless the policyholders were available.²⁰

On February 27, 2009, one of the insurance companies sent a written complaint to Hartford’s Privacy Officer. The insurance company had contacted the insured customer whose

¹⁷ Tr. 224; CX-4, p. 8, OTR transcript p. 27.

¹⁸ CX-4, pp. 35-36, OTR transcript pp. 136-140.

¹⁹ Tr. 384.

²⁰ CX-4, p. 41, OTR transcript pages 158-159.

policy was the subject of a call who said that she did not know Golonka and had not authorized him to obtain information about her policy.²¹ The insurance company attached a transcript of its recording of the call.²²

C. The Investigations

The complaint led Hartford to conduct two investigatory interviews of Golonka.²³ At the outset of the first, conducted on March 10, 2009, when the Hartford investigator played the recording of one of the calls, Golonka initially misidentified JA's voice as that of the policyholder. By the end of the recording, however, Golonka acknowledged it was JA impersonating the policyholder.²⁴ At the interview's conclusion, Golonka signed a statement admitting he obtained confidential information "under false pretenses and/or by means of trickery" on a three-way telephone call in which JA impersonated a client.²⁵ He confessed to working with JA to obtain information concerning three other customers as well.²⁶ After a follow-up interview a week later, Golonka signed a second statement making the same admissions but still denying that he and JA enlisted a male registered representative to impersonate clients.²⁷ The investigator characterized Golonka in these interviews as "contrite and cooperative" after his initial incorrect identification of JA's voice as that of a customer.²⁸

²¹ CX-2, pp. 5-6.

²² CX-2, pp. 7-11. The transcript reflects Golonka telling JA, "You sounded exactly like an older woman." The recording, played at the hearing, also included him whispering to JL, a newly hired Hartford associate he had invited to observe him making the calls, "This is how it works. It's wonderful." Tr. 131; CX-2, pp. 33-34.

²³ Tr. 65-66.

²⁴ Tr. 64-65.

²⁵ CX-2, p. 14.

²⁶ CX-2, p. 15. The Complaint, however, charges Golonka with making calls to obtain information about only three female policyholders, and Enforcement presented no evidence that he made calls concerning a fourth female policyholder.

²⁷ CX-2, p. 25.

²⁸ Tr. 65.

Hartford fired Golonka on March 18, 2009,²⁹ and filed a Form U5 stating the reason for the termination was that Golonka was involved in “a scheme to obtain confidential policy information” about an insurance company policyholder without permission.³⁰

On April 15, 2009, pursuant to Procedural Rule 8210, FINRA issued a request to Golonka to provide a written explanation of the circumstances of his termination.³¹ More than a year later, on August 3, 2010, FINRA staff conducted an on-the-record interview of Golonka. Initially, when asked how many impersonations he had participated in, Golonka recalled only two.³² When confronted with the written statements he had given to Hartford and FINRA, in which he admitted there were four, Golonka explained that because of the passage of time he simply had not remembered JA impersonating more than two insured customers.³³ He testified that his written statements, given to Hartford and to FINRA closer in time to the impersonations, were correct.³⁴

Although he initially denied planning to make the call impersonating a male customer with CS,³⁵ when Golonka heard the recording of the call, he admitted the voices were his and CS's.³⁶ At the hearing, Golonka testified that his faulty memory of the call may have been attributable to the fact that he ended it with no impersonation of the policyholder.³⁷

²⁹ Tr. 77; CX-1, p. 48.

³⁰ CX-1, pp. 37-38.

³¹ CX-3, p. 1.

³² CX-4, p. 23, OTR transcript p. 87.

³³ CX-4, pp. 28-29, OTR transcript pp. 109-110.

³⁴ CX-4, p. 29, OTR transcript p. 112.

³⁵ CX-4, p. 26, OTR transcript p. 101.

³⁶ CX-4, p. 49, OTR transcript pp. 159-160.

³⁷ Tr. 314-315.

D. Golonka Violated NASD Conduct Rule 2110

NASD Conduct Rule 2110 requires adherence to “high standards of commercial honor and just and equitable principles of trade.” Rules designed to maintain just and equitable principles of trade “state ‘broad ethical principles’ and center on the ‘ethical implications’ of ... conduct” to ensure that customers “will be dealt with fairly and in accordance with the standards of the profession.”³⁸ It is well established that “Rule 2110 is an ethical rule ... [and] FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”³⁹ Thus, although Golonka’s conduct in this case does not involve a security, it falls within the ambit of unethical behavior by a registered representative proscribed by Rule 2110. Numerous cases uphold the imposition of disciplinary sanctions for business-related conduct violating NASD Rule 2110 without being related to securities.⁴⁰ Golonka concedes that his conduct was unethical, violated NASD Conduct Rule 2110 as alleged in the Complaint, and subjects him to disciplinary sanctions.⁴¹

Based on the facts set forth above, the Panel finds that Golonka engaged in unethical conduct in violation of NASD Conduct Rule 2110 when he called insurance companies to obtain

³⁸ *Dante J. DiFrancesco*, Exch. Act Rel. No. 66113, 2012 SEC LEXIS 54, at *17 (Jan. 6, 2012) (downloading confidential nonpublic information relating to approximately 36,000 customers violated Conduct Rule 2110 because it is inconsistent with just and equitable principles of trade) (quoting *Thomas W. Heath, III*, Exch. Act Rel. No. 59223, 2009 SEC LEXIS 14, at *13 (Jan. 9, 2009), *aff’d*, *Heath v. SEC*, 586 F.3d 122 (2d Cir. 2009)).

³⁹ *Dep’t of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (finding that a registered person’s submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110).

⁴⁰ See, e.g., *Daniel D. Manoff*, Exch. Act Rel. No. 46708, 2002 SEC LEXIS 2684, 55 S.E.C. 1155 (Oct. 23, 2002) (unauthorized use of customer’s credit card numbers violated Rule 2110); *James A. Goetz*, Exch. Act Rel. No. 39796, 1998 SEC LEXIS 499, 53 S.E.C. 472 (Mar. 25, 1998) (improperly obtaining donation for child’s private school tuition from firm’s matching gifts program violated Rule 2110); *Earnest A. Cipriani, Jr.*, Exch. Act Rel. No. 33675, 1994 SEC LEXIS 506, 51 S.E.C. 1004 (Feb. 24, 1994) (misappropriation from insurance customer violated NASD’s Fair Practice Rules).

⁴¹ Respondent’s Pre-Hearing Memorandum, p. 7.

confidential information about policies held by customers of Firm A, and falsely represented that the insured customers were participating in the calls.

III. Sanctions

Golonka admits violating not only Rule 2110, but also the Hartford Code of Ethics and Business Conduct, which specifically mandates that “[e]mployees should respect the confidentiality of competitor and business partner information and must not misrepresent who they are or for whom they work in obtaining such information.”⁴² As the SEC recently held, violating the confidentiality of client information offends “one of the most fundamental ethical standards in the securities industry.”⁴³

Golonka attributes his misconduct to an “epic lack of judgment,” in “an extremely unwise attempt to expedite beneficial services” to the customers. He argues, however, that he intended and caused them no harm.⁴⁴ He also contends that he has already been sanctioned sufficiently for this misconduct: Hartford fired him; and the Pennsylvania Insurance Department imposed a fine of \$5,000 and a five-year period of probation, during which the Insurance Department may suspend his license if he is the subject of any complaints or violates any terms of the Consent Order to which he agreed.⁴⁵

⁴² CX-2, pp. 15, 44.

⁴³ *DiFrancesco*, 2012 SEC LEXIS 54, at *20, 34-35, quoting *Heath*, 2009 SEC LEXIS 14, at *4, 10. In *DiFrancesco*, the SEC affirmed the imposition of a suspension in all capacities for ten business days and a fine of \$10,000 upon a respondent who downloaded and forwarded to a third party confidential nonpublic information of 36,000 customers of a firm he was leaving.

⁴⁴ Respondent’s Pre-Hearing Memorandum, pp. 7-8.

⁴⁵ RX-2. The Pennsylvania sanctions result from a Consent Order issued on September 9, 2009. It cites Golonka for violating a Pennsylvania statute prohibiting the commission of an unfair insurance practice or fraud and demonstrating “a lack of general fitness, competence or reliability” for licensure by the Insurance Department. Although the Consent Order finds that he and JA engaged in “a scheme to obtain confidential policy information,” it describes only one of the phone calls. Golonka provided a statement admitting his misconduct to the Pennsylvania Insurance Department that was essentially identical to the written statement he gave to FINRA, and in it he admitted to making a series of calls. Tr. 369, 393-394, 402-403. Golonka also agreed to assist the Pennsylvania Insurance Department investigation, and to testify in any hearings that may ensue. Neither party presented evidence that any hearings resulted from the charges filed by the Pennsylvania Insurance Department.

In sharp contrast, Enforcement characterizes Golonka's misconduct as so egregious that it requires a bar from the securities industry. Enforcement insists upon a bar "because he *orchestrated* a scheme by recruiting others for the purpose of impersonating policy owners in order to elicit the confidential information that he needed."⁴⁶ Consequently, in Enforcement's view, allowing Golonka to remain in the securities industry "presents too much of a risk" to the investing public.⁴⁷

Enforcement equates the impersonations in this case to other flagrant species of misconduct: calling a bank to find out how much money a customer has on deposit in the course of selling the customer a security; forging a customer's name to take money out of the customer's account; and employing an imposter to take a qualification examination, for which the standard sanction is a bar.⁴⁸ Enforcement urges the Panel to consider as precedents cases in which bars were imposed for forging customers' initials on account applications to obtain a firm's approval of fee increases, and forging one customer's name on two insurance documents.⁴⁹

As for the Pennsylvania Insurance Department's Consent Order, Enforcement argues that its sanctions are insufficiently remedial.⁵⁰

⁴⁶ Department of Enforcement's Pre-Hearing Memorandum, pp. 7-8 (emphasis in original).

⁴⁷ *Id.* at 9.

⁴⁸ Tr. 435-437; Department of Enforcement's Pre-Hearing Memorandum, p. 6, n.17, citing *FINRA Sanction Guidelines*, p. 40 (2011) (relating to cheating and using an imposter to take qualifying examinations).

⁴⁹ Department of Enforcement's Pre-Hearing Memorandum, p. 7, n.18, citing *Geoffrey Ortiz*, Exch. Act Rel. No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008) (respondent forged customers' initials to approve fee increases); and *Donald M. Bickerstaff*, Exch. Act Rel. No. 35607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (respondent forged insurance customer initials on two documents authorizing premiums to be paid on a lapsed policy by using dividends and cash value on the lapsed policy, and also misled a customer into believing he purchased \$400,000 worth of coverage for 20 years for \$85,000 when the policy actually would lapse in four years).

⁵⁰ *Id.* at 8-9.

Finally, Enforcement argues that the following aggravating factors are present and Golonka should be barred because he: (i) failed to accept responsibility prior to detection; (ii) engaged in a “pattern of misconduct” comprising four calls; (iii) attempted to deceive FINRA and Hartford investigators about his misconduct; (iv) engaged in the misconduct intentionally; and (v) acted venally, intending to profit by commissions if the customers were to replace their life insurance policies with Hartford policies.⁵¹ Enforcement argues that Golonka has not fully accepted responsibility, as evidenced by his claim that JA, not he, initially suggested the impersonations, and his earlier denials of involving CS in the scheme.⁵² Conceding that there is no direct evidence that Golonka had engaged previously in customer impersonations, Enforcement concludes nonetheless that Golonka’s tone and language in the recorded phone calls suggest that he had engaged in similar misconduct on other occasions.⁵³

The Panel does not find the recommendation of either party to be appropriate. While disagreeing with Golonka’s assertion that no further sanctions are necessary, the Panel finds that Enforcement’s recommendation of a bar would be disproportionately severe, harsher than required to accomplish the remedial purposes required, and unnecessarily punitive.

In order to ensure that the sanctions it imposes are proportionate and remedial, rather than excessive and punitive, the Panel is required to consider the seriousness of the conduct, the harm to the investing public, the potential gain to the broker for engaging in the conduct, the potential for recidivism, and the deterrent value to the respondent and others.⁵⁴ It is well settled that a bar

⁵¹ *Id.* at 8.

⁵² Tr. 425.

⁵³ Tr. 420-421.

⁵⁴ *McCarthy v. SEC*, 2005 U.S. App. LEXIS 7112, at *26, 406 F.3d 179 (2d Cir. 2005).

is justified when it is necessary to protect the investing public.⁵⁵ The Panel concludes that, in this case, protection of the investing public does not require a bar.

Nonetheless, the Panel finds that the seriousness of Golonka's misconduct requires a significant penalty, including a substantial suspension. As a starting point, the Panel notes that Golonka testified that, based on what he has heard from others over his 25-year career in the securities industry, he believes customer impersonations are not uncommon.⁵⁶ The Panel finds this troubling. This testimony underscores the necessity to impose sanctions sufficient to deter Golonka and others from similar misconduct.⁵⁷

The Panel discounts Golonka's protestation that he was "extremely uncomfortable" making the calls. The tone and content of his interchanges with JA at the conclusion of two of the calls belie such an assertion.⁵⁸ However, under the circumstances here, and in the absence of evidence that Golonka perpetrated similar ruses on any other occasion, the Panel does not conclude that the four calls, occurring within a short time span on a single day, constitute a pattern of misconduct.⁵⁹

The Panel finds that there is no evidence Golonka intended any financial or other harm to the customers whose identities were impersonated, unlike respondents in some of the cases referred to by Enforcement, who forged customer signatures to gain access to customer funds. Furthermore, the Panel does not find that Golonka acted primarily to obtain the modest commission he received from one policy exchange, and the potential of an additional

⁵⁵ *Id.* at *22.

⁵⁶ Tr. 390.

⁵⁷ General deterrence alone is an insufficient basis for imposing a bar or a suspension, but it is an appropriate factor to weigh in conducting a sanction analysis. *McCarthy*, 2005 U.S. App. LEXIS 7112, at *23.

⁵⁸ Tr. 313.

⁵⁹ *See, e.g., Dep't of Enforcement v. Prout*, No. C01990014, 2000 NASD Discip. LEXIS 18, at *12 (N.A.C. Dec. 18, 2000) (falsely recording five different dates of birth on variable annuity contract applications over a period of four months, under the circumstances, did not demonstrate a pattern of such misconduct).

commission from a second.⁶⁰ At the time, Golonka was enjoying significant success, and had earned recognition from Hartford, which ranked him first in Pennsylvania and 31st in the nation among his peers, for selling over \$1 million in new business in 2008.⁶¹

Based on the evidence, the Panel finds that Golonka decided to take an impermissible shortcut to obtain information needed to review the adequacy of the life insurance policies of customers on JA's list. This finding is not mitigating, but the Panel does not believe Golonka's participation in the four calls is as egregious, as Enforcement argues, as the misconduct of a broker employing another to impersonate him for the purpose of taking a licensing examination. On the other hand, the Panel rejects Golonka's argument that he acted solely to benefit the policyholders. Evaluating the suitability of their policies may have been in the policyholders' interests, but Golonka also sought to promote a positive working relationship with Firm A's business group, which he had hoped to cultivate for some time. Thus, his conduct was at least partly "self-interested," designed to serve his own "interest in establishing a collegial relationship" with the group.⁶²

The Panel concurs with Enforcement's argument that it is not mitigating that none of the policyholders suffered any harm from his misconduct.⁶³ Lack of customer harm is not a mitigating factor.⁶⁴

The Panel also agrees with Enforcement that it is an aggravating factor that Golonka engaged in the misconduct with younger, less experienced registered representatives, including a

⁶⁰ Tr. 310-311.

⁶¹ Tr. 403; RX-3.

⁶² *Heath*, 2009 SEC LEXIS 14, at *11, 40 (sustaining sanctions of censure and a \$100,000 fine for disclosing material nonpublic information about a pending merger to a prospective colleague).

⁶³ Department of Enforcement's Pre-Hearing Memorandum, p. 9; Respondent's Pre-Hearing Memorandum, p. 7.

⁶⁴ *Dep't of Enforcement v. Mizenko*, No. C8B030012, 2004 NASD Discip. LEXIS 20, at *20 (N.A.C. Dec. 21, 2004), *aff'd*, *Mark F. Mizenko*, Exch. Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005).

newly hired Hartford employee whom he invited to observe him make the calls as part of her training.⁶⁵

Enforcement goes further, however, and suggests that Golonka was responsible for harming the three persons who participated in the calls with him.⁶⁶ JA was barred from the securities industry; CS was subjected to a FINRA investigation and was issued a letter of caution by FINRA; and the newly hired Hartford employee was given a letter of reprimand for not reporting the matter to Hartford.⁶⁷ The Panel declines Enforcement's invitation to attribute to Golonka, and factor into the analysis of his sanctions, the adverse consequences JA, CS, and JL suffered as a result of their involvement in the impersonations.

FINRA's Sanction Guidelines do not specifically address the misconduct for which Golonka is liable here. The Panel agrees with Enforcement's suggestion that the most nearly comparable type of misconduct addressed in the Sanction Guidelines is forgery or falsification of documents. For forgery or falsification of documents the Guidelines recommend fines from \$5,000 to \$100,000 and suspension in any or all capacities for up to two years or, in egregious cases, a bar.⁶⁸

Principal Consideration No. 14 of the Sanction Guidelines directs adjudicators to consider discipline imposed prior to FINRA learning of the misconduct, and permits adjudicators to take into consideration the sufficiency of sanctions imposed by another regulator for the same

⁶⁵ Tr. 413-414. The Panel notes that Golonka testified that he believed JA's group wanted to obtain the information on the their customers' insurance policies quickly because, unknown to him at the time, they were planning to leave Firm A to join another firm. They did so two weeks after Golonka made the calls. CX-4, p. 51, ¶ 34; CX-4, pp. 58, 63.

⁶⁶ Tr. 433-434.

⁶⁷ Tr. 77-78, 197; CX-2, p. 34.

⁶⁸ *FINRA Sanction Guidelines* at 37 (2011).

misconduct.⁶⁹ In this case, as noted above, when Hartford discovered Golonka's misconduct, it terminated his employment prior to FINRA becoming aware of the matter. Although in some circumstances, a firm's imposition of a sanction for regulatory purposes may be considered in an analysis of sanctions, generally FINRA discipline is imposed "independent of a firm's decisions to terminate or retain an employee."⁷⁰ The Panel does not consider Hartford's termination of Golonka's employment to be a mitigating circumstance. In addition, as noted above, the Panel does not consider the sanctions that the Pennsylvania Insurance Department imposed to be sufficient. The Panel rejects Golonka's argument that it should deem it to be mitigating that he experienced significant repercussions and financial loss as consequences of his misconduct.⁷¹

Finally, the Panel concludes, weighing both the substance of his testimony and his demeanor at the hearing, that Golonka now recognizes the seriousness of his misconduct, and that he is genuinely contrite. The Panel finds sincere Golonka's assessment that making the four telephone calls was the "dumbest decision I've ever made both personally and professionally over my entire life."⁷² These are factors contributing to the Panel's conclusion that it is not necessary to bar Golonka to protect the investing public.

Based upon all of the above considerations, therefore, the Panel finds it appropriate to impose a nine-month suspension, a fine of \$7,500, and a requirement that he pay the costs of this proceeding.⁷³

⁶⁹ *Guidelines* at 7.

⁷⁰ *Dep't of Enforcement v. Prout*, 2000 NASD Discip. LEXIS 18, at *11-12, 17 (approving nine-month suspension and a fine of \$10,000 for entering, over a period of four months, five false dates of birth on variable annuity contract applications).

⁷¹ Tr. 476.

⁷² Tr. 391.

⁷³ The Panel has considered and rejects without discussion all other arguments of the parties.

IV. Conclusion

For violating NASD Conduct Rule 2110 by making four telephone calls to insurance companies in which he falsely represented that junior associates were life insurance policyholders in order to obtain confidential information about the policies, Respondent Timothy Joseph Golonka is suspended from associating with any FINRA member firm in any capacity for nine months, fined \$7,500, and assessed costs of \$4,282.65, including a \$750 administrative fee and \$3,532.65 for the hearing transcript.

If this Decision becomes FINRA's final disciplinary action, Golonka's suspension shall become effective on May 21, 2012, and shall end at the close of business on February 20, 2013. The fines and costs shall be due and payable on Golonka's return to the securities industry.

HEARING PANEL.

By: Matthew Campbell
Hearing Officer

Copies to:

Timothy J. Golonka (*via overnight courier and first-class mail*)
Andrew W. Barbin, Esq. (*via e-mail and first-class mail*)
Jonathan M. Prytherch, Esq. (*via e-mail and first-class mail*)
Thomas M. Huber, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)