FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DENISE M. OLSON (CRD No. 2190824), Respondent.	Disciplinary Proceeding No. 2010023349601 Hearing Officer – MAD HEARING PANEL DECISION January 4, 2013

Respondent is barred from associating with any member in any capacity for converting firm funds by falsifying an expense report, in violation of FINRA Conduct Rule 2010. One panelist dissented as to the sanction.

Appearances

For the Complainant: Jonathan Golomb, Esq., and Daniel Gardner, Esq., FINRA, DEPARTMENT OF ENFORCEMENT, Rockville, MD.

For Respondent: Bruce Bettigole, Esq., Sutherland, Ashbill, and Brennan, LLP, Washington, DC.

DECISION

I. INTRODUCTION

The Department of Enforcement initiated this disciplinary proceeding against Respondent Denise M. Olson, a former General Securities Representative and General Securities Sales Supervisor with Wachovia Securities, Inc. (later known as Wells Fargo Advisors, LLC), a FINRA member firm. The Complaint charges Olson with converting firm funds by falsifying an expense report, in violation of FINRA Conduct Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high

standards of commercial honor and just and equitable principles of trade." Specifically, the Complaint alleges that Olson used her corporate credit card to purchase two iPods for her relatives, and then falsely marked the charge as a business expense when submitting her expense report.

Olson filed an Answer and requested a hearing. In her Answer, she admitted that she submitted an inaccurate expense report to Wachovia and received reimbursement for the iPods. However, Olson argued that the Hearing Panel should not sanction her for her "lapse in judgment." During a pre-hearing conference and at the hearing, Olson confirmed that (1) she did not contest liability for the conversion cause of action, and (2) the only issue before the Hearing Panel was a determination of sanctions.[1]

For the reasons discussed below, the Hearing Panel concluded that Olson committed the violation alleged in the Complaint: conversion of firm funds by falsifying an expense report, in violation of Rule 2010. A majority of the Panel also concluded that the appropriate sanction for Olson's misconduct was a bar.[2]

[1] The Initial Pre-Hearing Conference was held on November 17, 2011. During the conference, Olson, through her counsel, stated that she was not contesting liability. The November 18, 2011 Order confirmed the parties' statements and the Hearing Officer's rulings during the conference. On October 2, 2012, the hearing was conducted in Minneapolis, Minnesota, at which the Hearing Panel confirmed that Olson did not contest liability. Tr. 16-17, 86-87.

[2] Enforcement's hearing exhibits are labeled CX-1 through CX-6, and Olson's are labeled RX-1 through RX-11. The parties also submitted three joint exhibits, labeled JX-1 through JX-3. All of the exhibits were admitted into evidence.

II. FINDINGS OF FACT

A. Olson's Background and Experience in the Securities Industry

Olson entered the securities industry in 1991.[3] She joined Wachovia in 2004.[4] At Wachovia, Olson was registered with FINRA as a General Securities Representative and a General Securities Sales Supervisor.[5] Olson was a Wachovia branch manager from approximately June 2005 until June 2010.[6] In that position, she supervised approximately 50 financial advisors.[7] When supervising the financial advisors, Olson was responsible for approving their expense reports.[8]

Wachovia terminated Olson in June 2010 as a result of the misconduct alleged in the Complaint: the conversion of firm funds.[9] In early 2011, Olson re-entered the securities industry when she joined Ameriprise Financial Services, Inc.[10] She is currently employed at Ameriprise as a recruiter and registered with FINRA as a General Securities Representative and General Securities Sales Supervisor.[11]

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[3] Answer ¶ 2.

[4] JX-1, at 3.

[5] JX-1, at 5.

[6] *Id*. ¶ 2.

[7] Tr. 19.

[8] Tr. 20, 72. Her responsibilities also included the integration of an acquired branch and resulting building modifications. Answer ¶ 2.

[9] Answer ¶ 2.

[10] Tr. 43; Answer ¶ 2; JX-1, at 3.

[11] Tr. 43; JX-1, at 5. FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws. The alleged misconduct occurred while she was registered with FINRA and associated with Wachovia, and Olson is currently registered with FINRA.

B. Olson Converted Firm Funds and Falsified an Expense Report

Wachovia provided Olson with a corporate credit card for business expenses.[12] Wachovia's expense policies permitted employees to seek reimbursement for legitimate business expenses, not personal expenses.[13] Olson periodically used her corporate credit card for personal purposes.[14] When she did so, she designated those expenditures as personal on the firm's internal computer system so that she, and not the firm, paid for her personal expenses.[15]

Olson admitted that in April 2010 she converted firm funds by charging two iPods, which were gifts for her relatives, to the firm.[16] Olson's purchase of the iPods, including her submission of the charge as a business expense, and her explanation for her misconduct are discussed below.

1. Olson's Purchase of iPods and Submission of False Expense Report

On April 2, 2010, Olson purchased two iPods at a Best Buy store as gifts for her niece and nephew.[17] She charged the $740.10 cost of the iPods on her corporate credit card.[18] On April 30, 2010, Olson posted the credit card charges she incurred during March and April to the firm's computerized expense reporting system.[19] Rather than designate the iPod purchases as a personal expense, she knowingly designated the

[12] Answer ¶ 5.

[13] JX-2, at 6-7. Despite her supervisory role that required approval of expense reports, Olson never read the relevant Wachovia policies. Tr. 73.

[14] *See generally* CX-1.

[15] Answer ¶ 6.

[16] Tr. 26, 56-57; Answer ¶ 6.

[17] Tr. 55.

[18] Tr. 55; Answer ¶ 7.

[19] Tr. 56; CX-1, at 9.

$740.10 charge as a business expense.[20] She falsely described the expense as office equipment for a branch-office conference room, entering the words "branch equip for new cof room" in the "description" column of the expense report.[21]

As a result of Olson's submission of the false expense report, Wachovia paid $740.10 for the purchase of the iPods.[22] Olson repaid her firm for the iPods after she was fired.[23]

2. Olson's Explanation for Her Conversion of Firm Funds

Olson's falsification of the expense report came to light in the course of an internal audit by Wachovia. A Wachovia auditor met with Olson in June 2010 and reviewed her expense reports.[24] When questioned by the auditor regarding the $740.10 charge, Olson initially stated that it was for branch-office equipment for a conference room.[25] However, when the auditor asked which conference room the equipment was for, Olson acknowledged using the card for personal purposes and failing to identify the iPod purchase as personal.[26] She also asserted that she had previously paid for branch expenses personally, including two refrigerators she purchased in September 2009 when the branch office was being renovated, without seeking reimbursement.[27] Olson explained that, at the time she submitted the report, her "fleeting thought" was that she would get reimbursed

[20] Tr. 67, 77, 78; CX-1, at 9; Answer ¶ 8.

[21] Tr. 74; CX-1, at 9; Answer ¶ 8.

[22] Answer ¶ 9.

[23] Answer ¶¶ 1, 9; Olson's Pre-hrg Br. at 3.

[24] Tr. 62-63.

[25] Tr. 64.

[26] Tr. 65.

[27] CX-2.

for the refrigerators by designating the iPod charge as a business expense.[28] She "felt … it would have possibly balanced itself out in the end."[29]

During FINRA's investigation, Olson described her misconduct as a "mistake."[30] However, at the hearing, she admitted that she "intentionally misled [her] company."[31]

III. CONCLUSIONS OF LAW

The Hearing Panel finds that Olson converted $740.10 from Wachovia by purchasing two iPods with her corporate credit card, which she then paid using firm funds by falsifying her expense report, in violation of FINRA Conduct Rule 2010.[32]

Rule 2010 is an ethical rule. It requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. FINRA's authority to pursue disciplinary action for violations of Rule 2010 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.[33] The test to determine whether conduct violates Rule 2010 is whether "the misconduct reflects on the associated person's ability to comply with the

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[28] Tr. 56-57.

[29] CX-2.

[30] CX-3, at 3. Olson also stated that she mistakenly used the wrong credit card when purchasing the iPods, using her corporate card instead of her personal credit card. Tr. 51. She stated that she did not correct the mistake because of the line of people behind her. Tr. 51. That said, the basis for the violation was Olson's deliberate choice, made after the purchase occurred, to obtain reimbursement for a personal expenditure and to falsify the expense report, not the use of the corporate card. *See Dep't of Enforcement v. Kaplan*, No. 20070077587, 2008 FINRA Discip. LEXIS 22 (OHO June 20, 2008) (involving falsified claims for payment of credit card charges where the firm allowed the corporate credit card to be used for personal purposes, so long as personal expenses were paid by the employee).

[31] Tr. 67.

[32] *See Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd* 101 F.3d 37 (5th Cir. 1996).

[33] *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (NAC Oct. 6, 2009) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110 (now Rule 2010)), *aff'd*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

regulatory requirements of the securities business and to fulfill [her] fiduciary duties in handling other people's money."[34]

Here, not only did Enforcement prove by a preponderance of the evidence that Olson violated Rule 2010 by charging personal expenses on her Wachovia credit card and then obtaining reimbursement from the firm by falsifying her expense report, but Olson admitted to liability. Accordingly, the Hearing Panel concludes that Olson violated FINRA Conduct Rule 2010.

IV. SANCTIONS

A. Sanction Guidelines

FINRA's Sanction Guidelines ("Guidelines") for conversion or the improper use of funds recommend a bar.[35] The Guidelines define conversion for purposes of imposing sanctions generally 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."[36] As discussed above, the Hearing Panel concluded that Olson converted $740.10 from Wachovia. Accordingly, consistent with the Guidelines, the Panel majority concluded that a bar is the appropriate sanction in this case.[37]

B. Principal Considerations

The parties argued that certain factors set forth in the Principal Considerations in Determining Sanctions section of the Guidelines were applicable. Upon review of the

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[34] *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

[35] FINRA Sanction Guidelines 36 (2011), *available at* www.finra.org/sanctionguidelines.

[36] Guidelines at 36 n.2.

[37] One panelist dissents as to sanctions. The Dissent tracks the National Adjudicatory Council's recent decision in *Dep't of Enforcement v. McCartney*, No. 2010023719601, slip op. (NAC Dec. 10, 2012). However, in *McCartney*, the complaint did not allege conversion. *McCartney*, slip op. at 5-6 n.9.

Principal Considerations, the Panel majority found several aggravating factors.[38] First, the Panel majority determined that Olson's misconduct was intentional.[39] Crediting Olson's version of events, she knew when she purchased the iPods that she had charged $740.10 to her corporate credit card. Then, when the charge for the iPods appeared on the credit card statement, she processed it as a business expense. Olson did not inadvertently record the charge as a business expense; rather, she made a deliberate decision to do so.[40] She claimed that she saw an opportunity to recoup money she thought was owed to her, and took that opportunity.[41]

Second, Olson concealed her misconduct.[42] When seeking reimbursement, she posted the charges to Wachovia's books and records in a manner to conceal the fact that she was using corporate funds to pay for the iPods. Specifically, she marked her personal expense as "branch equip for cof room." She made no entries to denote the true nature of the iPod charge, and she never brought her alleged mistake to anyone's attention.

Third, Olson's misconduct resulted in her wrongful gain of $740.10 from her firm.[43] Olson argued that it is mitigating that her misconduct did not result in financial harm to any customers. "[W]hile the theft of funds from a customer is an extremely

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[38] *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 respondent's offenses; (3) the corresponding harm that respondent caused to members of the trading public; (4) respondent's potential gain for disobeying the rules; (5) the potential for repetition of respondent's misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others). By addressing the Principal Considerations raised by the parties, the Panel majority is not implying that any sanction guideline other than conversion is applicable to this case.

[39] Guidelines at 7 (Principal Consideration No. 13).

[40] Tr. 78.

[41] Tr. 56-57, 81.

[42] Guidelines at 6 (Principal Consideration No. 10).

[43] *Id.* at 7 (Principal Consideration No. 17).

serious offense, so too is any type of theft."[44] The Securities and Exchange Commission ("SEC") has emphasized that a theft or violation not involving a customer is not considered as mitigation.[45] Further, the Principal Consideration addressing "injury" is not limited solely to financial injury to public customers.[46] Rather, it directs adjudicators also to consider the nature and extent of injury to the member firm with which a respondent is associated.[47] In conversion cases, the amount of the gain is irrelevant; there is no *de minimis* exception.[48] The Panel majority finds that Olson violated her firm's trust and caused financial injury to her firm.

C. Olson's Mitigation Arguments

Olson presented several arguments in mitigation. Each is addressed separately below.[49]

1. Acceptance of Responsibility

Olson argued that she is a good, moral person. She contended that she accepts responsibility for her actions and understands that she made a mistake in marking the charge as a business expense. However, the Panel majority found the opposite for three reasons. First, Olson miscoded the iPod charge so that it could not be discovered. Second, it was only when the Wachovia auditor confronted her that she came forward to correct

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[44] *Dep't of Enforcement v. Zulick*, 2001 NASD Discip. LEXIS 22, at *36 (OHO Feb. 27, 2001).

[45] *See Leonard John Ialeggio*, 53 S.E.C. 601, 605 (1998) (fact that respondent abused only his employer's trust is not mitigative); *Livada Securities Co.*, 45 S.E.C. 598, 600 (1974) (fact of no customer losses does not mitigate violations).

[46] Guidelines at 6 (Principal Consideration No. 11).

[47] *Id*.

[48] *Id*. at 36. *See also Saad*, 2009 FINRA Discip. LEXIS 29, at *10 (involving false claims totaling $1,144), and *District Bus. Conduct Comm. No. 4 v. Kwikkel-Elliott*, 1998 NASD Discip. LEXIS 4, at *3 (NBCC Jan. 16, 1998) (involving false claims of $913.60, only about $840 of which was paid). The respondents in those cases were barred.

[49] In addressing Olson's mitigation arguments, the Panel majority is not implying that any sanction guideline other than conversion is applicable to this case.

her "mistake."[50] Third, Olson failed to appreciate the wrongfulness of her actions at the time she submitted the report or soon thereafter.[51] After marking the charge as a business expense to avoid paying for the iPods, Olson stated that she was not concerned about what she had done and that it never bothered her.[52] Olson testified, "while I'm being terminated I realized that [Wachovia] took it much more serious. I mean, obviously, I was terminated for it, so, yes, I realized when I was terminated that I should never have marked it as a business expense."[53]

2. Lack of Disciplinary History

The Panel majority rejected Olson's argument that her clean disciplinary history should mitigate sanctions.[54] "While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating. … A respondent should not be rewarded because [s]he may have previously acted appropriately as a registered person."[55]

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[50] Guidelines at 6 (Principal Consideration No. 2) (adjudicators should consider whether an individual accepted responsibility for and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm).

[51] Unlike the Dissent, the Panel majority did not find that Olson recognized the seriousness of her behavior. She accepted responsibility only *after* the firm detected her misconduct. *See Dep't of Enforcement v. Hunt*, No. 2009018068701, slip op. at 11 (NAC Dec. 18, 2012) (finding acceptance of responsibility is not mitigating when respondent acknowledges his misconduct after detection by his firm).

[52] Tr. 74.

[53] Tr. 80.

[54] Unlike the Dissent, the Panel majority did not find that Olson's clean disciplinary history warranted a reduced sanction. The SEC has "repeatedly stated that a 'lack of disciplinary history is not a mitigating factor for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional.'" *Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620, at * 25 (Feb. 24, 2012) (quoting *Dennis S. Kaminiski*, Exchange Act Rel. No. 65347, 2011 SEC LEXIS 3225, at *43 (Sept. 16, 2011) (citations omitted) (noting that respondent's 32-year industry career with an unblemished record was not mitigating); *see also Dep't of Enforcement v. Hunt*, No. 2009018068701, slip op. at 9 (NAC Dec. 18, 2012) (rejecting argument that lack of disciplinary history was mitigating).

[55] *Saad*, 2009 FINRA Discip. LEXIS 29, at *20; *see also Manoff*, 55 S.E.C. at 1165-66 n.15; *Saad*, 2010 SEC LEXIS 1761, at *28-29 (May 26, 2010); *Dep't of Enforcement v. Newman*, 2011 FINRA Discip. LEXIS 33, at *29 (OHO Mar. 30, 2011).

3. Aberrant Lapse in Judgment

Olson also argued that her conduct was an aberrant lapse in judgment, and not part of a pattern of conduct intended to deceive her employer.[56] Although the Panel majority recognizes that Olson has no prior disciplinary history, her conversion of firm funds was compounded by her falsification of firm records. Her misconduct was intentional, evidencing deliberate concealment rather than mere oversight. These were acts of deception, and the Panel majority therefore rejects this mitigation argument.[57]

4. Financial Difficulties

Olson asserted that she has suffered enough. Specifically, she lost her job at Wachovia, and then ultimately found a lower paying position at Ameriprise.[58] The Panel majority found that Olson's job loss and resulting financial difficulties are irrelevant factors in determining the appropriate remedial sanction for her misconduct. Sanctions are remedial in nature, not punitive. They are designed to prevent future harm.[59] Accordingly, the fact that Olson was fired, or has already suffered, is not a factor in determining sanctions.[60]

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[56] Guidelines at 6 (Principal Consideration No. 8).

[57] *Cf. Mark F. Mizenko,* Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655, at *17 (Oct. 13, 2005) (rejecting aberrant mitigation argument for forgery violation).

[58] Tr. 42-43.

[59] *First California Co.*, Admin. Pro. File No. 3-4647, 1976 SEC LEXIS 2767, at *70 (May 20, 1976).

[60] *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *21 (NAC Aug. 12, 2008); *Dep't of Enforcement v. Prout*, No. C01990014, 2000 NASD Discip. LEXIS 18, at *11 (NAC Dec. 18, 2000); *Dep't of Enforcement v. Hunt*, No. 2009018068701, 2011 FINRA Discip. LEXIS 52, at *28 (OHO Oct. 17, 2011), *aff'd.* (NAC Dec. 18, 2012).

5. Offset for the Purchase of Refrigerators

Olson explained that her reimbursement for the iPods was offset by the fact that she had spent significant sums of money for refrigerators for the firm.[61] Specifically, Olson testified "I had already spent a lot of money out of my own pocket, and that I would let this go through as a business expense and not a personal – not mark it as a personal expense."[62] "The suggestion that [she] may have been able to obtain reimbursement for [such expenses] if submitted properly does not exonerate or lessen the significance of [her] unethical conduct."[63] If Olson wanted to be reimbursed for the cost of the refrigerators, she should have sought reimbursement honestly. The case law is clear that one may not help oneself to her employer's money because she believes that her employer owes her money for something else.[64]

6. Repaid the Firm

Olson asserted that she repaid the firm "long before FINRA contacted her."[65] While she may have repaid the firm before being contacted by FINRA, she did not do so before Wachovia terminated her.[66] Her repayment was a result of being caught, not of being honest or remorseful, and does not undercut the need for a bar here. There is no evidence that she would have repaid Wachovia absent being confronted about the charge. Any mitigation for repaying the money, or for accepting responsibility, must be based on

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[61] Tr. 77.

[62] *Id*.

[63] *Saad*, 2009 FINRA Discip. LEXIS 29, at *22.

[64] *Dep't of Enforcement v. Doan*, No. 2009019637001, 2011 FINRA Discip. LEXIS 56, at *9 (OHO Sept. 19, 2011); *Newman*, 2011 NASD Discip. LEXIS 33, at *27; *Saad*, 2009 FINRA Discip. LEXIS 29, at *22; *Zulick*, 2001 NASD Discip. LEXIS 22, at *36.

[65] Answer ¶ 9.

[66] Respondent admits having repaid the money at the firm's request. Olson's Pre-hrg Br. at 3.

a respondent's actions that come before the misconduct is detected and the respondent is confronted by the firm.[67]

D. Conclusion

The Panel majority concluded that a bar is consistent with the Guidelines and is the appropriate remedial sanction. Olson held a position of significant responsibility at Wachovia, supervising approximately 50 financial advisors. Her duties included reviewing expense reports of others. In her position, she should have been highly sensitive to the wrongfulness of her misconduct. Instead, she converted firm funds and never gave it a second thought until she was confronted by Wachovia. As the SEC held in a similar case, "[Olson's] submission of the falsified expense report, and resulting financial benefit, reflects negatively on both [her] ability to comply with regulatory requirements and [her] ability to handle other people's money."[68] Accordingly, the Panel majority bars Olson from associating with any FINRA member.[69]

V. ORDER

Respondent Denise M. Olson is barred from associating with any FINRA member firm in any capacity for conversion of firm funds, in violation of FINRA Conduct Rule 2010. In addition, Olson is ordered to pay costs in the amount of $1909.71, which includes an administrative fee of $750 and hearing transcript costs of $1,159.71.

The bar shall be effective immediately if this decision becomes FINRA's final disciplinary action. The payment of costs shall be due on a date set by FINRA, but not

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[67] Guidelines at 6 (Principal Considerations Nos. 2, 4); *Kaplan*, 2008 FINRA Discip. LEXIS 22, at *15; *Kwikkel-Elliott*, 1998 NASD Discip. LEXIS 4, at *17-18.

[68] *Saad*, 2010 SEC LEXIS 1761, at *14.

[69] The Panel majority considered the testimony of Olson's two character witnesses who testified as to her honesty and reputation in the community. We nonetheless concluded that it is appropriate in the public interest that Olson be barred from association with any FINRA member.

sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[70]

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Maureen A. Delaney
Hearing Officer
For the Hearing Panel Majority

DISSENT

Panelist, dissenting, with regard to sanctions:

I respectfully dissent from the sanction imposed on Respondent Olson as I would impose a six-month suspension and a $5,000 fine rather than a bar for her violation of Rule 2010.

Here, the evidence supports a sanction for Olson short of a bar. The case involves a single mistake by Olson mischaracterizing a $740.10 personal expense as a business expense. There is no pattern or practice of Olson violating industry rules or violating her employing broker-dealer policies, intentionally or otherwise. Furthermore, there was no customer harm.

I do not agree with the Panel majority's conclusion that several aggravating and no mitigating factors exist and, for the reasons outlined below, I find that Olson's violation was serious, but not egregious. "The relevancy and characterization of [an aggravating or mitigating] factor depends on the facts and circumstances of a case and the type of violation."[71] Balancing the factors present in this case, I find that lesser sanctions

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

[71] Guidelines at 6.

would be appropriately remedial.[72] In my opinion, simply alleging conversion should not mandate a bar. My position and proposed sanction is consistent with the National Adjudicatory Council's December 10, 2012, decision in *Dep't of Enforcement v. McCartney*[73] where the facts and circumstances are remarkably similar.

Olson's testimony was extremely credible. She recognized the seriousness of her behavior, was truly remorseful, and accepted the consequences of her actions. She acknowledges that a serious sanction is warranted for her misconduct, is genuinely ashamed of her behavior, and avows that her lapse in judgment will not be repeated. Furthermore, Olson took full responsibility for her mistake.[74] I also note that Olson admitted her misconduct from the outset of the inquiry and immediately repaid the funds to her employer. I further find that Olson testified consistently throughout the course of

[72] I am guided by the recent action in *Dep't of Enforcement v. Leopold*, No. 2007011489301, 2012 FINRA Discip. LEXIS 2 (NAC Feb. 24, 2012), which is a similar case. In *Leopold*, the NAC upheld the Hearing Panel's findings that Leopold fabricated in excess of 20 hotel invoices and broker-dealer verification letters. The *Leopold* Hearing Panel barred Leopold. On appeal, the NAC reduced Leopold's bar to a $25,000 fine and a one-year suspension. The NAC found that Leopold demonstrated remorse, recognized the significance of his misconduct, accepted responsibility for his actions, acknowledged that a serious sanction was in order, and vowed that similar misconduct would not recur. The NAC also noted that Leopold admitted his misconduct from the outset to his firm's investigators and to FINRA's examiners, and that his testimony was consistent throughout the course of the proceeding. In *Leopold*, the NAC balanced these factors with the absence of aggravating factors, such as harm to customers and significant loss to the firm, and determined that Leopold's misconduct was serious, but not so egregious as to warrant a bar. In light of the *Leopold* decision and to "promote consistency in the imposition of remedial sanctions," the NAC reached a similar conclusion in *Dep't of Enforcement v. McCartney*. *See McCartney*, slip op. at 5-6 n.6. (citing *Leopold*, 2012 FINRA Discip. LEXIS 2, at *17).

[73] *Dep't of Enforcement v. McCartney*, No. 2010023719601, slip op. (NAC Dec. 10, 2012).

[74] *See Keith Perkins*, 54 S.E.C. 989, 994 (2000) (finding respondent's recognition that his submission of false expense reimbursement requests was inherently dishonest to be mitigating); *Leopold*, 2012 F1NRA Discip. LEXIS 2, at *20-22 (holding that respondent's expression of remorse, recognition of the severity of his misbehavior, acceptance of responsibility, and vow that lapses in judgment will not be repeated support reducing the sanction from a bar); *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *11 (NAC Aug. 7, 2009) (concluding that a sanction should fall within the lower end of the relevant Guidelines range where, among other factors, the respondent expressed "sincere remorse").

the underlying investigations and at the hearing.[75]

Olson has worked in the securities industry for more than 20 years without incident (other than this matter). Olson did not engage in numerous acts of misconduct, a pattern of misconduct, or misconduct that extended over a lengthy period of time, and since then has not repeated her misconduct.[76] I find that Olson's misconduct appears to be a one-time, isolated incident.[77]

Balancing the facts and circumstances of this case, I have determined that Olson's misconduct was serious, but not egregious, and warrants a sanction of less than a bar. I find that Olson breached her duty as an associated person to act ethically and in a manner that comports with high standards of commercial honor and just and equitable principles of trade. I also find that Olson failed to use sound judgment by knowingly submitting a personal expense as a business expense. Olson, however, appears to understand fully the magnitude of her failings and is genuinely remorseful.

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[75] *See Dep't of Enforcement v. Cuozzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *35-36 (NAC Feb. 27, 2007) (holding that factors that militate against finding respondent's misconduct to be egregious include that respondent did not attempt to conceal his false dating of documents from investigators; expressly acknowledged that his conduct may have harmed firm customers; accepted responsibility for his misconduct; and expressed remorse and offered sincere apologies for his actions throughout these proceedings); *Dep't of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *22-23 (NAC Sept. 1, 2000) (reducing Hearing Panel bar where, when confronted, respondent immediately admitted that he had converted firm funds, repaid the firm the amount he converted, and cooperated with investigators and regulators).

[76] Guidelines at 6 (Principal Consideration Nos. 8, 9).

[77] *But see Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *22-24 (NAC Oct. 6, 2009) (finding that misconduct was premeditated and ongoing where respondent covered up his misconduct for nearly a year, and he fabricated an elaborate lie regarding a two-day business trip that never occurred, lied to obtain reimbursement for an acquaintance's purchase of a cell phone, misled his office staff as to his whereabouts for two days, manufactured numerous false receipts, misled a state examiner and FINRA examiner, and hedged his answers in a FINRA on-the-record interview), *aff'd*, 2010 SEC LEXIS 1761; *Dep't of Enforcement v. Manoff*, No. C9A990007, 2001 NASD Discip. LEXIS 4, at *33-34 (NAC Apr. 26, 2001) (finding misconduct egregious where respondent exploited a junior employee, actively concealed his misconduct during the firm's and regulator's investigations, provided conflicting accounts of events, and failed to show remorse or admit wrongdoing), *aff'd*, 55 S.E.C. 1155 (2002).

Unlike the Panel majority, I cannot agree that Olson's misconduct warrants such a severe sanction. Thus, I would suspend Olson from associating with any member firm in any capacity for six months and assess a $5,000 fine rather than bar her from the industry. I find that these sanctions are appropriately tailored to address Olson's misconduct.[78]

[78] FINRA sanctions may be remedial, but must not be punitive. *McCarthy v. SEC*, 406 F.3d at 188-89; Guidelines at 2. A remedial sanction is designed to correct the harm done by respondent's wrongdoing and to protect the trading public from any future wrongdoing the respondent is likely to commit. *McCarthy*, 406 F.3d at 188. In addition to remediation, deterrence may also be relied upon as an additional rationale for the imposition of sanctions. *Id.*