

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT 1,

and

RESPONDENT 2,

Respondents.

Disciplinary Proceeding  
No. 2009017798902

Hearing Officer – LBB

**EXTENDED HEARING  
PANEL DECISION**

Date: January 25, 2013

**The Department of Enforcement failed to prove that Respondents directed a registered representative to delete or falsely alter firm records, or that Respondent 1 deleted or falsely altered firm records, as charged in the Amended Complaint. The Amended Complaint is dismissed.**

*Appearances*

Kristina Juntunen, Esq., Senior Counsel, Joseph Darcy, Esq., Principal Counsel, Gina M. Petrocelli, Esq., Director, and Danielle I. Schanz, Esq., Senior Litigation Counsel, New York, New York, for the Department of Enforcement.

Sylvia M. Scott, Esq. and Russell R. Fisk, Esq., Los Angeles, California, for Respondents.

**DECISION**

In early 2009, Respondents were successful brokers at UBS Financial Services, Inc. They worked as a team, supported by JK, a young registered representative, and HC, a sales assistant. They were planning to leave UBS and take their four-person team to J.P. Morgan. Late in the day of March 16, 2009, the day they planned to resign from UBS, an alert appeared on their branch manager's computer, informing him that JK was making numerous changes to the firm's computer records of the telephone numbers of the team's clients. When the branch

manager confronted JK about the changes, he admitted that he had been changing clients' telephone numbers, claimed that Respondent 1 and Respondent 2 had instructed him to make the changes, and told the branch manager that Respondent 1 and Respondent 2 were leaving UBS. The branch manager immediately fired JK. Respondents were meeting with their J.P. Morgan branch manager at the time, and had left a resignation letter with HC, who left it on the branch manager's desk. The UBS branch manager informed Respondent 1 and Respondent 2 the next morning that UBS had terminated their employment on March 16. Respondent 1, Respondent 2, and HC began their employment at J.P. Morgan on March 17.

The Amended Complaint charges Respondents with directing JK to change UBS telephone records to impede the firm's efforts to contact Respondents' clients after Respondents left the firm.<sup>1</sup> Enforcement largely relied on JK's testimony to attempt to prove that Respondents had instructed him to change their clients' telephone numbers in the UBS records. JK was not a credible witness, and the Extended Hearing Panel rejects his testimony. He admitted to engaging in dishonest conduct, which alone is sufficient to raise questions about his credibility. His attempt to mitigate his own culpability by claiming that he was following Respondents' orders is the kind of testimony that is regarded with skepticism. His testimony was at times inconsistent with his prior statements, contradicted by other evidence, and illogical. He appeared to be an advocate, struggling at times to come up with explanations for his misconduct that shifted responsibility to Respondents. Respondents and HC testified much more credibly that Respondents did not instruct JK to change telephone records.

Six weeks after the Complaint was filed, Enforcement amended the Complaint to include an allegation that Respondent 1 had personally changed telephone records. Enforcement's only

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<sup>1</sup> JK signed a Letter of Acceptance, Waiver and Consent before the Complaint was filed, settling potential charges against him for altering the records. RX-14.

evidence that Respondent 1 changed the records was a confusing printout provided by UBS, apparently showing that telephone records were changed using her computer and password on March 10, 12, 13, and 16, 2009. Respondent 1 was out of the office without access to a computer when the changes were made on March 16, and she lacked the computer skills to make the changes. In addition, JK regularly used Respondent 1's computer, and he more likely changed the records. The Extended Hearing Panel concludes that Enforcement failed to establish that Respondent 1 changed UBS telephone records.<sup>2</sup>

The Amended Complaint is dismissed.

**I. Facts Concerning JK's Accusation that Respondents Directed Him to Change Telephone Records**

**A. Respondents**

Respondent 1 first registered with a FINRA member firm in 1996, and has been continuously registered since then. She was registered with UBS from March 2000 until March 16, 2009. JX-39; Tr. 154-155. She registered with J.P. Morgan on March 17, 2009, where she remains employed and registered. JX-39.

Respondent 2 was first registered with a FINRA member firm in 1995, and has been continuously registered since that time. He was registered with UBS from October 2000 until March 16, 2009, and with J.P. Morgan from March 17, 2009, until July 2012. Respondent 2 has been registered with [another FINRA-registered firm] since July 2012. JX-40.

**B. Respondents' Business**

Respondents were significant producers for UBS, with almost \$400 million in assets under management. They managed several hundred accounts for several hundred clients.

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<sup>2</sup> The Department of Enforcement filed the Complaint in this disciplinary proceeding on May 2, 2011, and amended the Complaint on June 14, 2011. Respondents answered the Amended Complaint on July 11, 2011, denying the charges. A hearing was conducted in Los Angeles on November 5-9, 2012, before an Extended Hearing Panel composed of two former members of the District 2 Committee and a Hearing Officer.

Tr. 41-42, 173, 354, 963, 1010. Their clients were very loyal to them. Respondents carefully cultivated client relationships, regularly attending social functions with their clients, and attending their clients' family events. Most were high net worth Korean-Americans.

Respondent 1 immigrated to the United States from Korea after growing up, starting a family, and being educated there. Respondent 2 is of Korean ancestry. Both Respondent 1 and Respondent 2 speak Korean. Tr. 153-154, 273, 395, 723-724, 731-732, 743, 876, 903, 952.

**C. J Wealth Management, the Respondent 1 and Respondent 2 Team**

Respondents worked as partners at UBS, calling their partnership "J Wealth Management." Tr. 168, 733. Respondent 1, the partnership's primary rainmaker, spent most of her time prospecting for business. Tr. 167, 742. She described her office as a pit stop, where she would stop briefly each day to check e-mail before leaving the office to prospect for new business. Tr. 193, 743, 748. Respondent 2's primary role was to manage their clients' portfolios. Tr. 167, 933.

JK joined the team as a young registered representative in 2007. Tr. 739; JX-38. Respondents arranged for UBS to hire JK in October 2007 as a favor to his father, a substantial client who is very prominent in the Korean community. The father asked Respondents to help his son get a job at UBS, and offered to refer potential clients to them if they did. Tr. 45, 82-83, 90, 174, 733-735, 924-925; JX-38. JK's job responsibilities included speaking with clients on the telephone and entering trades. Tr. 167, 179. Respondent 1 and Respondent 2 gave JK a share of the commissions on some of their accounts. Tr. 170, 354.

HC became the team's sales assistant sometime in 2008, less than a year before they left UBS. Her job was to assist the three financial advisors, process new account forms and other account information, enter information in the UBS computer system, and answer telephones.

She was not registered with FINRA when Respondents were at UBS. Tr. 275, 346-347, 352, 367; JX-43.

**D. The Impending Move to J.P. Morgan**

Respondents began to look for positions at other brokerage firms in early 2009. Tr. 294. In about February 2009, they began employment discussions with J.P. Morgan, and received offers to join J.P. Morgan. Tr. 186, 296. They eventually received offers for HC and JK as well, although they had to convince J.P. Morgan to extend an offer to JK. Tr. 187, 296-298. They wanted to include JK in their group because of his father's business, and the business his father could refer to the team. Tr. 260-261, 267, 297-298, 951-952.

In late February or early March 2009, the team met with J.P. Morgan personnel at J.P. Morgan's office to discuss procedures for their departure from UBS and joining J.P. Morgan. Tr. 422. J.P. Morgan required Respondents to attend the meeting. Respondents asked to include JK and HC at the meeting, and directed both to attend. Tr. 394, 752, 887-889, 953. At the meeting, J.P. Morgan stressed that only a very limited amount of information could be brought to J.P. Morgan from UBS, a process described as a "clean-exit protocol." Tr. 188-189, 299-300, 376-377, 556-557, 753. J.P. Morgan provided a spreadsheet for entry of customers' names, addresses, and telephone numbers. J.P. Morgan said the team was not permitted to bring account information. Tr. 300.

Although HC offered to assist in the preparation of the spreadsheet, JK said he wanted to do it himself. He prepared the spreadsheet with minimal assistance from HC. Tr. 401. JK also prepared a version of the spreadsheet that was not sent to J.P. Morgan that contained prohibited information, such as client account numbers. JX-4, at 21; Tr. 648, 657-658. JK knew it was wrong to prepare the version with the prohibited information. Tr. 656, 658.

**E. Events of March 16, 2009**

Respondents planned to resign from UBS on the morning of March 16, 2009. Tr. 194, 373, 396, 963. That morning, however, M Corporation, an important new client with a substantial amount of money available for investment, had a problem that required their immediate attention. UBS required M Corporation to provide \$450,000 to UBS immediately, or UBS would liquidate the client's account. Tr. 396-397, 755-757, 771, 964; RX-67.

M Corporation was located in Asia. It had a relationship with CK, another of Respondents' clients, who was located in southern California. M Corporation's U.S. representative was able to arrange with CK to have CK provide the needed funds. Attending to this problem occupied Respondents' entire morning on March 16. Tr. 397-398, 759, 964, 979; RX-65. CK arrived at Respondents' offices with a check for M Corporation at about 11 a.m., and met with Respondents in Respondent 1's office. Shortly before noon, Respondents left with CK for lunch. Respondents and CK were out of the office at lunch until about 1:30 p.m. Tr. 315, 398, 764-765, 767-768, 776, 778, 828, 965, 981, 983-984.

Immediately after their lunch with CK, Respondents left for J.P. Morgan to meet with the branch manager. They did not return to the office before going to J.P. Morgan. They arrived at J.P. Morgan at about 2 p.m. Tr. 780-781, 789-790, 957-958, 966, 987.

Respondents had prepared a letter to Randall Grossblatt, their UBS branch manager, resigning from UBS. Because of the crisis with M Corporation, and their plan to be at J.P. Morgan that afternoon, they had no time to give the letter directly to Grossblatt. Instead, they gave their resignation letter to HC and instructed her to deliver it to Grossblatt at the end of the day. Tr. 320, 398, 784-785. When HC left the office at 3:30 p.m., she left the resignation letter on Grossblatt's desk. Tr. 359, 374, 399, 418. Respondents believed they had resigned by leaving the letter. Tr. 196.

Late in the afternoon of March 16, Grossblatt received an alert on his computer, informing him that JK had changed client telephone numbers in the UBS computer records. Tr. 47, 49-50, 119; JX-1, at 2-11. UBS's computer system automatically created such an alert on the branch manager's computer when there were 30 or more changes to customer records within a specified time period. Tr. 48-49, 51. Grossblatt noted that JK had deleted some telephone numbers, and others were changed by a digit or two. Tr. 48. The alert showed that there were about 87 changes or deletions to the telephone records of 28 of the Respondent 1 and Respondent 2 team's customers. JX-1.

Grossblatt summoned JK to his office. Tr. 54. JK confessed to making the changes. Under pressure, JK told Grossblatt that Respondents had told him to make the changes, and that Respondents were leaving UBS. Grossblatt asked Robert Mourad, another UBS principal, to come to his office, and told JK to repeat the story. JK repeated the story to Mourad. Tr. 54, 57-58, 122, 502, 566-567, 696. At Grossblatt's request, Mourad escorted JK to JK's office. Tr. 503. After checking with UBS headquarters, Grossblatt went to Mourad's office, where JK and Mourad were waiting, and fired JK. Tr. 58.

After Mourad escorted JK off UBS's premises, JK called Respondent 2, who was at J.P. Morgan's office, and told Respondent 2 that he had been fired for changing telephone numbers. Respondent 2 told JK to come to J.P. Morgan, to branch manager Garrett Bland's office, where Respondent 1 and Respondent 2 were meeting with Bland. Tr. 210, 307-308, 697-698, 967-968. Respondent 2 called HC and asked her to come to Bland's office. Tr. 310, 360, 423, 970.

In Bland's office, JK said he had been fired for changing telephone numbers, and that he had told Grossblatt that Respondents told him to change customer phone numbers. Tr. 210, 792-

793, 960. Bland and another J.P. Morgan manager were in the office and heard at least part of the discussion, but were on the telephone for part of the discussion. Tr. 211-212, 330, 360, 960.

The team left J.P. Morgan's office and went to a neighborhood restaurant to discuss the situation. JK repeated his story, telling Respondents again that he had told Grossblatt that Respondent 1 and Respondent 2 made him change the phone numbers. Tr. 221, 308, 311, 314, 795. He told Respondents he was sorry that he "threw them under the bus." Tr. 971-972.

#### **F. Events of March 17, 2009**

The team came to J.P. Morgan's office to begin their employment with J.P. Morgan on March 17. When they arrived, Bland told JK that J.P. Morgan's offer to him was rescinded until the circumstances of his firing from UBS were cleared up. Tr. 265, 316-317, 799, 975.

Grossblatt had tried to reach Respondents by telephone on March 16, but had not succeeded. On the morning of March 17, he spoke to them by telephone, and told them UBS had terminated their employment on March 16. Tr. 59, 65-66, 71-72, 222, 303, 323, 325, 786; JX-4 at 12-19.<sup>3</sup>

At Grossblatt's request, Mourad inspected JK's office on March 17. Mourad found large stacks of holdings pages. Taking the documents from UBS would have violated J.P. Morgan's instructions on what departing representatives were permitted to bring with them to J.P. Morgan. Tr. 73-74, 129, 506. Mourad also found an Excel spreadsheet that included contact information for the team's clients. The spreadsheet also included UBS account numbers, which violated the "clean-exit protocol." Tr. 74, 77, 506; JX-4, at 21-42.

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<sup>3</sup> FINRA began the investigation leading to the filing of the Complaint as a result of the filing of Forms U5 by UBS reporting that it had terminated JK's employment for altering client telephone records at the direction of the Respondents, and that it had terminated Respondents' employment for directing JK to make the changes. Tr. 430.

## **II. Enforcement Failed to Establish that Respondents Directed JK to Change Telephone Records**

Enforcement relies almost entirely on JK's testimony to prove that Respondents instructed him to change their clients' telephone records. The Extended Hearing Panel finds that JK was not a credible witness. Respondents and HC testified, much more credibly, that Respondents instructed JK and HC to follow precisely the strict instructions they received from J.P. Morgan, and did not instruct JK to change telephone numbers.

### **A. JK's Version of Events**

JK testified that very soon after the clean-exit protocol meeting at J.P. Morgan, Respondent 1 and Respondent 2 called him and HC into Respondent 2's office and instructed them to ignore the procedures laid out by J.P. Morgan. JK claimed that Respondents specifically instructed him to alter their clients' telephone numbers to incorrect numbers, to delay UBS brokers who would try to contact Respondents' clients after departure. Tr. 560, 618. He said they also instructed him to print out holdings pages and tax information, and to create a version of the spreadsheet that included prohibited information, such as account numbers. Tr. 557-558, 618. JK testified that Respondent 1 and Respondent 2 told HC to print out new account applications. Tr. 622.

JK testified that when Respondent 1 and Respondent 2 first told him to change the telephone numbers, and in response to numerous subsequent requests, he objected because it was "unnecessary" to make the changes. He told them that their plan to impede UBS brokers was futile because their successor brokers at UBS could quickly and easily get accurate information from other records in the UBS computer system. Tr. 560, 562, 621-623. According to JK, Respondent 1 and Respondent 2 were adamant that they wanted him to change the telephone numbers despite being told that it would not accomplish their alleged objective. Tr. 561.

JK testified that his two tasks on March 16, his last day at UBS, were to change telephone numbers and print holdings pages. Tr. 562-564. He knew it was wrong to change the telephone numbers and to print out the holdings pages. Tr. 561, 624.

JK testified that he first started printing out the holding pages on March 16, but it was taking too long so he started to change the telephone numbers at the same time. He admitted that he made the changes shown on the alert that Grossblatt received on his computer. Tr. 564-565; JX-1, at 12-19. He also admitted that he created a version of the protocol spreadsheet that included prohibited information. Tr. 565; JX-4, at 21-42.

### **B. Respondents and HC Directly Contradict JK's Story**

Respondent 1, Respondent 2, and HC all testified that Respondent 1 and Respondent 2 directed JK and HC to follow precisely the procedures set forth by J.P. Morgan. They testified that Respondent 1 and Respondent 2 did not say that the telephone records should be changed. Tr. 406, 753-754, 911-912, 953. HC testified that Respondent 1 and Respondent 2 also did not instruct JK to print out holdings pages at the meeting in Respondent 2's office, nor did Respondents instruct her to print new account forms. Tr. 910.

### **C. Witness Credibility**

JK was not a credible witness, while Respondents and HC were far more credible.

#### **1. JK Was Not Credible**

The Extended Hearing Panel finds that JK was not a credible witness for a number of reasons. He appeared to be an advocate, enjoying the spotlight. He became more aggressive in his allegations and demeanor as the cross examination by Respondents' counsel progressed, sparring with counsel when his credibility and the consistency of his testimony were questioned.

He committed dishonest acts, including changing the telephone numbers, printing holdings pages, and creating a version of the spreadsheet with prohibited information. JK first

blamed Respondents for instructing him to change the telephone numbers when he was caught by the branch manager, a situation that would encourage lies. He testified that Grossblatt questioned him about the reason for his misconduct, saying, "If you don't have a good reason, you're going to get into big trouble." Tr. 695-696. He then told Grossblatt that Respondents had instructed him to make the changes. Tr. 695.<sup>4</sup> A confession of wrongdoing that implicates others, especially under pressure, should be viewed with suspicion because the declarant has a motive to fabricate.<sup>5</sup>

JK's testimony was frequently inconsistent. For example, Grossblatt testified that JK was required to report daily to Grossblatt because JK was underperforming, falling asleep at the office, and arriving late at the office. Grossblatt delayed giving JK an office for six to nine months because of his performance issues. Tr. 113-114; RX-10. JK testified that he was not delayed in getting his own office, and that he was the first one in his class of new financial advisors to get an office. Tr. 602-603. He also testified that he was not required to report to Grossblatt daily. Tr. 610. JK took frequent naps at the office, but testified that he only fell asleep a few times. Tr. 96, 99, 392, 605, 931. He did admit, however, that he was regularly late to come to the office. Tr. 581, 658.

JK also changed his testimony on how often Respondents told him to change the clients' telephone records. At the hearing, he testified that they told him about five times over a span of a few weeks to make the changes. Tr. 582, 617. He was confronted with his on-the-record

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<sup>4</sup> Respondents and HC testified that at the meeting at the restaurant on March 16, JK told the team members that he panicked and blamed Respondent 1 and Respondent 2. They testified that JK told them that Grossblatt had said it was a criminal offense to make incorrect changes, and that "you'd better have a damn good reason" for making the changes. He said he had "thrown Respondents under the bus" and would fix it. Tr. 363-364, 402-403. Given the Hearing Panel's overall view of JK's credibility, the Extended Hearing Panel makes no finding as to whether Grossblatt actually said JK had committed a criminal offense, or whether JK simply made the comment to justify his panic at being caught.

<sup>5</sup> *Lilly v Virginia*, 527 U.S. 116, 131-133 (1999); *Howard v. Walker*, 406 F.3d 114, 124-125 (2d Cir. 2005).

testimony, where he testified that Respondents told him about 15 times to change the records, during a period of "a week or over a week." He then admitted that his testimony at the on-the-record interview was probably more accurate. Tr. 637-638.

JK's testimony about printing the holdings pages also varied. He first testified that he printed them on March 16, but then said he might have printed some earlier. Tr. 678. He testified that he started printing on March 16 but that it was taking too long, so he decided to make the changes to telephone numbers and print the holding pages at the same time, implying that he started printing the afternoon of March 16. Tr. 679-681, 683. In fact, however, he had printed records all day on March 16, and had printed so many documents the prior week that he tied up the printer. JX-4, at 10-11; Tr. 132, 509.

JK testified that he never logged in for Respondent 1 on her computer, and that he did not send e-mails on her behalf, using her e-mail account. Tr. 582, 596-597. This testimony was also not truthful. He logged in for Respondent 1 regularly, and often used her computer to send e-mails in her name. RX-91; Tr. 839, 842-843, 903.

JK testified that he worried about being fired if he did not comply with Respondents' instruction to change telephone numbers, and that Respondents threatened not to bring him to J.P. Morgan if he did not comply. Tr. 656, 717, 721. JK's statement is not logical. As he well knew, his father was a very substantial and important client. If Respondents had fired JK for failing to comply with an instruction to engage in wrongdoing, they would undoubtedly lose

JK's father's business, as well as the business he could help them obtain through his contacts in the Korean community.<sup>6</sup>

The Extended Hearing Panel finds that JK was not a credible witness.

## **2. Respondents and HC Were Credible Witnesses**

In contrast to JK, Respondents and HC were credible witnesses. There were no substantial inconsistencies in their testimony. They were very responsive and straightforward. The Extended Hearing Panel finds that they testified truthfully.

### **D. Enforcement Failed to Establish that Respondents Instructed JK to Change Clients' Telephone Numbers**

Enforcement failed to establish that Respondents instructed JK to change their clients' telephone numbers. Respondents and HC, who were all credible witnesses, testified that Respondents instructed JK and HC to follow J.P. Morgan's instructions precisely, and did not instruct JK to change telephone numbers. JK's testimony was Enforcement's only support for the allegation, and he was not a credible witness.<sup>7</sup>

Furthermore, several facts are inconsistent with the allegation. When JK called Respondent 2 and told him he had been fired for changing telephone numbers, Respondent 2 told him to come to J.P. Morgan immediately. Respondents met with JK and HC in the branch manager's office to learn what had happened. If Respondents had instructed JK to violate J.P. Morgan's instructions, they would not have instructed him to come to their new branch

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<sup>6</sup> JK also testified that he always believed that Respondent 1 and Respondent 2 were "conniving and manipulative," in part because they used their influence over JK's father as leverage against him. Tr. 721. He claimed that sometime before March 17, 2009, he had told his father that Respondent 1 and Respondent 2 were conniving and manipulative. Tr. 721. The Extended Hearing Panel finds it incredible that his father would keep a large account with conniving and manipulative people, or hold it against his son if such people fired him. Rather, it is another example of JK's dishonest testimony, an attempt to shift the blame to Respondents for his own dishonest conduct of March 2009.

<sup>7</sup> Even if the witnesses had been equally credible, Enforcement would have failed to prove its case by a preponderance of the evidence. There was no basis to find that JK's testimony was sufficient to outweigh the directly contradictory testimony from HC, Respondent 1, and Respondent 2.

manager's office. They also would not have invited HC to join the meeting if they had instructed her to engage in dishonest acts such as copying new account forms, as JK alleged, in violation of J.P. Morgan's instruction.

It also is unlikely that Respondents would have insisted on including JK and HC at the initial protocol meeting at J.P. Morgan if they intended to direct them to violate J.P. Morgan's instructions. While an instruction to falsify or delete telephone records would clearly have been unethical, it might not have been apparent to two young assistants that taking other information was improper. If they had not attended the meeting, JK and HC might not have been aware of the impropriety of the alleged instructions to print holdings pages, record client account numbers on the alternative spreadsheet, or copy new account forms.

According to JK, he told Respondents that changing the records would delay the successor representatives by about 30 seconds per record. Tr. 633-635. This testimony was not credible. It did not make sense that Respondents would have risked firing from UBS, losing their new position with J.P. Morgan, and possible disciplinary action, to create an insignificant impediment to the ability of their successors at UBS to contact their clients.

Respondents had little or no motive to engage in such dishonest behavior. As discussed above, Respondents' clients were extremely loyal. They would almost certainly move with Respondents to J.P. Morgan. See discussion *supra*, and Tr. 754, 876-877.

Enforcement failed to prove that Respondents instructed JK to change telephone records.

### **III. Additional Evidence Concerning Changes to Telephone Records Using Respondent 1's Computer and Password**

Soon after the Complaint was filed, Enforcement amended the Complaint to charge that Respondent 1 had changed customer records using her UBS computer and password.

Enforcement's only evidence concerning the changes was a spreadsheet that UBS provided to

FINRA, purporting to show that from March 10 through March 16, 2009, client telephone information had been changed using Respondent 1's computer and password. No witnesses testified concerning the spreadsheet, or how the changes were discovered.

**A. Changes to Clients' Telephone Numbers Using Respondent 1's Computer**

UBS provided a spreadsheet in response to a Rule 8210 request from FINRA, purportedly showing changes to client telephone numbers using Respondent 1's login information. Tr. 435; JX-33. The spreadsheet contained 480 entries. JX-33. A small number were changed in 2008. The vast majority were changed on March 10, 12, 13, and 16, 2009. JX-33. Almost all the changes on March 16 were made from about 11:45 a.m. to about 3 p.m. A small number were made shortly before 9 a.m. JX-33.

In June 2011, a FINRA investigator called the telephone numbers that were reported as changed or deleted on the spreadsheet. She testified that in 17 instances, either the new telephone numbers did not reach the clients, or the number was deleted. The original numbers did reach the clients.<sup>8</sup> Tr. 441-446, 452. Most of the changes shown on the spreadsheet were correct. Tr. 493, 496.

**IV. Enforcement Failed to Prove that Respondent 1 Changed Telephone Records**

Enforcement failed to prove that Respondent 1 changed clients' telephone numbers. In fact, the evidence establishes that she did not make the changes.

Respondent 1 and Respondent 2 were out of the office when almost all the changes were made on March 16, first at lunch with client CK, and then at J.P. Morgan. Respondent 1 could not have made the changes on March 16. If someone else made the changes on March 16, it is

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<sup>8</sup> The investigator admitted at the hearing that one of the changes she identified as incorrect was actually correct, and that her spreadsheet was incorrect. Tr. 450, 452; JX-33; CX-7. Respondent 1 testified at the hearing that one of the clients is a very close friend who has multiple homes, and that she recognized the new number for that client as correct. Tr. 831, 833. Thus, the number of incorrect or deleted numbers was 15, and not 17.

likely that the same person, rather than Respondent 1, made the changes the previous week. Furthermore, Respondent 1 was unskilled on the computer. She did not know how to change the telephone records. Tr. 389, 408-409, 745, 827.

In addition, the computer records offered by Enforcement as proof that she changed telephone records were not explained, and raised a number of questions. There was no explanation of how the records were developed, or why. Enforcement did not show that the spreadsheet was a business record, or what criteria were used to develop it. There was no explanation of why the changes on her computer did not cause an alert to appear on Grossblatt's computer. There was no explanation of why the changes were not discovered within a day or two after Respondents left UBS, since UBS assigned their clients to other representatives immediately. Tr. 77. There was also no explanation of why a substantial majority of the changes were correct. Thus, the record is unreliable evidence that records were falsely altered using Respondent 1's computer and password.

The evidence more strongly suggests that JK, rather than Respondent 1, made the changes using Respondent 1's computer. JK had routine access to Respondent 1's computer. He logged on for her every morning. Tr. 390-391, 742, 746, 840, 912, 992. He changed her password for her. Tr. 914. He often worked in Respondents' offices when they were not there, and often used Respondent 1's computer. Tr. 391-392, 747, 990. HC noticed that JK sat in Respondent 1's office most of the day of March 16. Tr. 375. In addition, the timing of the changes suggests that JK used Respondent 1's computer to make them. Most of the changes from Respondent 1's computer on that date were made from about 11:45 a.m. until 3 p.m. He started making the changes on his computer at about 4 p.m. Tr. 487; JX-1, JX-33.

In addition, JK began printing the holdings pages during the week prior to March 16. He printed the holdings pages on March 16 in conjunction with changing the computer records. It is consistent with his unethical behavior to have printed the holdings pages during the week of March 16 in conjunction with changes to the telephone records.

For all of the foregoing reasons, the Extended Hearing Panel finds that Respondent 1 did not change computer records, as alleged in the Amended Complaint.

## **V. Conclusion**

Enforcement has not shown that Respondents directed a registered representative to alter their firm's telephone records to delete records or create inaccurate records, or that Respondent 1 altered telephone records. The Amended Complaint is dismissed.<sup>9</sup>

**Extended Hearing Panel.**

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Lawrence B. Bernard  
Hearing Officer

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<sup>9</sup> The Extended Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.