FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ANGELO XAGORARIS (CRD No. 2495422), Respondent.	Disciplinary Proceeding Nos. 20080127674 & 20080133768 Hearing Officer – LBB **HEARING PANEL DECISION** Date: March 15, 2013

For making unsuitable recommendations to two customers, in violation of NASD Rules 2310 and 2110, Respondent is barred from associating with any FINRA member firm in any capacity. Respondent is also barred for engaging in an outside business activity without providing prompt written notice to his firm, and making misrepresentations to his member firm, in violation of NASD Rules 3030 and 2110. One member of the Hearing Panel dissents from the sanctions imposed by the majority. The dissenting panelist would suspend Respondent for three months and require him to requalify before acting in any capacity requiring qualification. Respondent is ordered to pay costs.

Appearances

Bradley Mirkin, Esq., Washington, D.C., and Mark Graves, Esq. San Francisco, California, for the Department of Enforcement.

Alvin L. Fishman, San Francisco, California, for Respondent.

DECISION

In February 2005, KM came to Respondent Angelo Xagoraris, seeking help with her difficult financial situation. KM, who was recently divorced, wanted help achieving financial security and increasing her income. She had two children in high school who were living at home, and an adult child on a church mission. KM owned her home, subject to a mortgage requiring monthly payments. She had an IRA and some money from her divorce settlement, but

had very little income from her job as a part-time fitness instructor, and no discretionary income. She would leave her children almost $900,000 if she died, and believed that her ex-husband and their grandparents would care for them. Nevertheless, Respondent sold two variable universal life insurance ("VUL") policies to KM, one for $250,000 in February 2005, and an additional policy for $500,000 in June 2005, providing her with a total of $750,000 in insurance, which was more than she needed (if she needed any at all), and a $750 monthly payment she could not afford.

Respondent also persuaded KM to participate with him in a real estate investment. He advised her to refinance her home to liquefy some of the equity, primarily to fund the real estate investment. Respondent was the loan officer for the refinancing, and received a commission on the refinancing. KM used $70,000 from the refinancing as an investment in a rental property. Respondent kept information about the investment from KM, did not provide any legitimate documentation to KM for the investment, put the property in his own name on all documents related to the investment, and kept the rental income. He did not disclose the investment to his firm, and falsely stated on compliance questionnaires that he had not received funds directly from a customer in a check payable to himself, knowing that he had received a $70,000 check from KM, payable to Respondent, for the real estate investment.

In early 2006, KM recommended Respondent as a financial advisor to her friend RG, who was also experiencing financial problems. RG was an unmarried nurse who owned a home subject to two mortgages. She had credit card debt, very limited assets, and no discretionary income. She sought Respondent's help in solving her debt problems. Relying on Respondent's advice, RG bought a large VUL policy, increased her debt by refinancing her home through Respondent with a variable rate, negative amortization loan that was larger than her combined

original mortgages, and used liquefied equity she took from the refinancing to fund a large up-front premium for the VUL policy and to invest in a mutual fund.

COMPLAINT AND ANSWER

The Department of Enforcement filed the four-cause Complaint in this disciplinary proceeding on January 25, 2011. The First Cause of Action charges Respondent with making unsuitable recommendations to Customer KM for the purchase of two VUL policies that she neither needed nor wanted, in violation of NASD Rules 2310 and 2110. The Second Cause of Action charges Respondent with engaging in outside business activity – the real estate investment with KM – without providing prompt written notice to his firm, in violation of NASD Rules 3030 and 2110. The Third Cause of Action charges Respondent with making unsuitable recommendations to Customer RG for the purchase of a VUL policy that she neither needed nor wanted, and to refinance her home to invest in the VUL policy and a mutual fund, in violation of NASD Rules 2310 and 2110. The Fourth Cause of Action charges Respondent with providing false information to his member firm concerning the receipt of money directly from KM, in violation of NASD Rule 2110.[1]

[1] On July 26, 2007, the Securities and Exchange Commission approved a proposed rule change that NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. *See* Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522, 523. Following the consolidation, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008). FINRA's disciplinary action was instituted after the consolidation of NASD and NYSE, but the conduct at issue took place before the consolidated rules took effect. Accordingly, NASD's conduct rules apply to this proceeding, and FINRA's procedural rules apply. References to FINRA include references to NASD.

Respondent filed an Answer on May 10, 2011, denying most of the allegations in the Complaint.[2]

DECISION SUMMARY

As summarized below, the Hearing Panel concludes that Respondent violated FINRA's Rules when he recommended and sold unsuitable investments to KM and RG; engaged in an outside business activity without promptly notifying his firm; and falsely answered questions on compliance questionnaires. The majority of the Hearing Panel (the Hearing Officer and the "Majority Panelist") impose separate bars for (1) the suitability violations under the First and Third Causes of Action and (2) the outside business activity and misrepresentation violations under the Second and Fourth Causes of Action. The third panelist ("Dissenting Panelist") disagrees with the sanctions imposed by the majority because he does not find Respondent's conduct egregious, as set forth in his Dissenting Opinion attached to this Decision.

The following summarizes the Hearing Panel's findings with respect to Respondent's liability for each of the four causes of action:

- Unsuitable Recommendations to Customer KM (First Cause of Action). The entire Hearing Panel concludes that Respondent made unsuitable recommendations to KM, although they did not agree on both alleged violations. All conclude that Respondent made an unsuitable recommendation in connection with the sale of the $500,000 VUL policy in June 2005. The two industry panelists dismiss the allegation that Respondent also made an unsuitable recommendation to KM in connection with the $250,000 VUL policy in February 2005. The Hearing Officer concludes that this recommendation was unsuitable, as set forth in his concurring statement attached to this Decision.

[2] A four-day hearing was conducted in San Francisco on March 29-30, and June 26-27, 2012, before a hearing panel composed of two current members of the District 1 Committee and a Hearing Officer. Enforcement called customers KM and RG, a FINRA examiner, and Respondent as witnesses. Respondent testified on his own behalf, and called a character witness and two FINRA examiners as witnesses.

- Outside Business Activity (Second Cause of Action). The entire Hearing Panel concludes that Respondent failed to provide his firm with written notice of his outside business activity.

- Unsuitable Recommendations to Customer RG (Third Cause of Action). The Entire Hearing Panel finds that Respondent made an unsuitable recommendation to Customer RG in connection with the sale of a $600,000 VUL policy to RG in March 2006. The majority of the Hearing Panel finds that Respondent also made an unsuitable recommendation to RG to liquefy equity in her home to invest in a mutual fund and to make a lump sum payment on the purchase of her VUL policy.

- Misrepresentations to Firm on Compliance Questionnaires (Fourth Cause of Action). The entire Hearing Panel finds that Respondent made misrepresentations on his firm's compliance questionnaires by falsely denying that he had accepted any checks made payable to himself from any of the firm's customers, when he had accepted a check from KM made payable to Respondent.

FINDINGS OF FACT

The majority of the Hearing Panel makes the following findings of facts, except where it is specifically noted the Majority Panelist and the Hearing Officer do not agree on a specific factual finding. The Dissenting Panelist disagrees with a number of the majority's factual findings, as noted in the Dissenting Opinion that follows this majority decision.

I. Respondent

Respondent was first registered with a FINRA member firm in 1994. He has been registered with member firm World Group Securities, Inc. ("WGS" or the "Firm") since 2002.[3]

[3] WGS is currently known as TransAmerica Financial Advisors. Tr. 209.

JX-1; Tr. 209, 216, 638.[4] During all periods relevant to the Complaint, Respondent was a loan officer for a mortgage company that was not affiliated with WGS. The Firm approved his affiliation with the mortgage company as an outside business activity. Answer ¶ 4; Tr. 383-384; JX-23.

II. Respondent's Transactions with Customer KM

A. Customer KM

In early 2005, KM was a 43-year-old mother of three who had been divorced for two years after a 20-year marriage. She was helping to support her 20-year-old child, who was serving a church mission, and had two children in high school who were living at home. Tr. 27-29, 38, 61; JX-5, at 8. KM earned about $210 each week as a part-time fitness instructor. Tr. 27-28, 31-32. She received approximately $1,200 monthly in support payments from her ex-husband. The payments were to end in June 2007, which caused her to be "a little panicked." Tr. 29-30, 33. She owned her home, which she had bought for about $550,000. Her mortgage was about $170,000. Tr. 34-35, 71. She had approximately $415,000 in an IRA, $7,000 in a mutual fund, $6,500 in a Roth IRA, and $80,000 she received in her divorce, which was invested in a money market fund. She sometimes used the money market fund to pay monthly living expenses. Tr. 33, 35, 42-43, 72-73. She had balances on her credit cards because she did not have sufficient income to pay them off. Tr. 34.

When KM first met Respondent, she knew nothing about investments. Tr. 48-49. KM's ex-husband had handled all their finances during their marriage. Tr. 27-28.

[4] References to the exhibits provided by Enforcement are designated as "CX-___." References to the hearing transcript are designated as "Tr. ___." Respondent admitted certain allegations of the Complaint. References to the matters admitted are designated as "Answer ¶ ___."

B. Respondent's Sales of VUL Policies to KM

Respondent sold two VUL policies to KM. The First Cause of Action charges that both sales were unsuitable.

1. Respondent's Sale of a $250,000 VUL Policy to KM in February 2005

KM met with Respondent in February 2005 because she wanted additional income from her investments, to meet her living expenses. Answer ¶ 8; Tr. 33, 48. She told Respondent she was struggling financially, and that her financial situation was going to get more difficult when her support payments from her ex-husband ended in about two years. Tr. 48, 50. She said she was a part-time fitness instructor with an income of about $15,000 from her job, and received support payments of $1,200 per month from her ex-husband. Tr. 51, 159.[5] She told Respondent she wanted to get her finances in order and be more financially secure. She believed the $80,000 lump sum settlement from her divorce would be fully depleted within two years. Tr. 33, 62-63, 66. She was not saving any money, and told Respondent there was no amount that she could comfortably set aside for investments. Tr. 74-75, 239; JX-5, at 214.

Respondent recommended that KM purchase a VUL policy. Tr. 78. He told her that a VUL policy was a good investment, a mutual fund masked as an insurance policy. Tr. 78-79, 161-164. Respondent recommended a $250,000 VUL policy. Tr. 78, 81, 250, 256. KM testified that she felt she did not need life insurance. She knew her children would be taken care of and be financially secure if she died. Their father and grandparents would look after them, and they

[5] Respondent's notes show that KM told him that her income was $64,000, and her taxable income was $39,000. Respondent testified that KM told him at their first meeting that her income was $64,000. KM testified that she never told him that her income was $64,000. JX-5, at 211 Tr. 67-68, 226-227. KM reported her wages on her 2005 tax return as about $10,000, and her total income as about $15,000. JX-11, at 69. Thus, if Respondent testified truthfully, KM misrepresented her income to Respondent. KM was more credible than Respondent. Respondent has not shown that KM had any reason to misrepresent her income, and in light of her need for financial advice, she had a strong incentive to provide accurate information to Respondent. In addition, as discussed below, her actual income was insufficient to qualify for the VUL policy. She would not have known of a need to falsify her income to qualify for the VUL policy, or what numbers would work to qualify her for the policy, unless she had received advice from Respondent on the amount she needed to qualify.

would live with their father. They would sell her house and inherit her IRA. Her ex-husband owned a business with property, valued at $5 million in 1999, that was in a trust for the benefit of their children if he died. Tr. 39, 112-113, 160-162. She testified that in her discussions with Respondent, she was adamant about not needing or wanting insurance. Tr. 78. Respondent testified that KM told him she wanted life insurance to be certain that her children could pay off the mortgage and stay in her house if she died, and have enough money for college. Tr. 612-614. The Hearing Officer finds that KM did not want life insurance, and told Respondent that she did not. The Majority Panelist disagrees with this finding.[6]

Respondent told KM the premium for the VUL policy would be $250 per month. When she expressed concern about paying $250 per month, he told her she could put money down and not have to worry about the payments. Tr. 80-81. He told her she could stop paying at any time because the policy was a mutual fund. Tr. 80, 163-164. She agreed to purchase the $250,000 VUL policy, relying on Respondent's recommendation. Tr. 78, 81-82.

Respondent filled out account forms for KM on February 9 and February 11, 2005, which KM and Respondent both signed. JX-5, at 8, 39; Tr. 83. KM signed the forms without reading them. Tr. 55-56, 325. The forms did not accurately reflect what she told Respondent. She did not tell Respondent, as he wrote on the forms, that her investment objective was aggressive

[6] The Hearing Officer finds that KM was credible in testifying that she did not want or need life insurance, and that she informed Respondent of those views. Her explanation for why she felt she did not need insurance was very credible and reasonable, and there was no reason for her to express a different view to Respondent in 2005. It also did not make sense that she would want two high school students to be able to stay in the house if she died. The Majority Panelist did not find KM's testimony credible on this point, and finds that KM wanted to provide greater financial security for her children.

growth, that her risk tolerance was 100% high risk, that her annual income was $34,000, or that she had $1,000 of monthly discretionary income. Tr. 84-88, 92-93.[7]

Respondent filled out a life insurance application for KM on February 9, 2005. She and Respondent signed the form. The application contained several disclosures, including that the applicant was buying a life insurance policy and not a mutual fund. KM initialed the disclosures, but she did not read the form. Tr. 86, 88-89, 179; JX-5, at 10.[8] The application was approved. Tr. 267-268, 293. KM made payments on the $250,000 VUL policy until she cancelled it in December 2007 because she could not afford the payments. Tr. 188, 192.

2. Respondent's Sale of an Additional $500,000 VUL Policy to KM in June 2005

A few months after KM purchased the $250,000 VUL policy, Respondent recommended that she purchase an additional $500,000 VUL policy so she could make more money from an additional investment. Tr. 111, 173.[9] KM knew $500 more would be deducted from her bank account each month and expressed concern about her ability to make the payments, but Respondent told her she could withdraw money from mutual funds if she needed money to make

[7] The Hearing Officer finds that KM did not know what Respondent wrote on the forms. The Majority Panelist did not find it credible that KM was unaware of what was on the forms. However, the Majority Panelist and the Hearing Officer both find that Respondent knew that the information was inaccurate, in part because KM would not have been sufficiently familiar with the income requirements to obtain a life insurance policy to have fabricated income numbers that would qualify for the purchase of the life insurance policy under WGS guidelines. The Firm's policies required a letter of explanation for a policy that exceeded ten times the applicant's annual income. Tr. 283, 343.

[8] Respondent testified that he read the disclosures to KM, including the disclosure that KM was purchasing life insurance, and that he also read the questions aloud when he sold a second VUL policy to KM. Tr. 607, 609, 611, 617. KM testified that the signing process for documents was "pretty quick," and that she would have questioned Respondent if she had understood the disclosures. Tr. 179. Respondent's testimony was not credible. It conflicted with KM's description of the signing process, and KM was more credible overall. Furthermore, as discussed below, he testified that he also read disclosures aloud to RG, which conflicted with RG's description of the process.

[9] Respondent testified that KM came to his office in June 2005 because she had acquired more clients, and said her income was now about $60,000. According to Respondent, she wanted to increase the amount on the initial policy to $750,000. Tr. 255, 259, 615. Her actual employment income for 2005 was about $10,000. Tr. 124; JX-11 at 69 (KM's 2005 income tax return). KM would not have qualified for a second VUL policy even with an income of $34,000, the amount Respondent had falsely written on her forms in February 2005. Tr. 283-284, 343. Respondent's testimony was not credible. It is not credible that she would have known that she needed to tell Respondent, falsely, that her income had increased to $64,000 to qualify for the second VUL policy, or that she had such a strong desire to buy additional life insurance that she would lie to Respondent to qualify for a policy.

the payments. Tr. 114-115. KM followed Respondent's recommendation and bought the new VUL policy. Tr. 116, 257; JX-5, at 27.

Respondent filled out a client account form for KM, dated June 17, 2005. According to the form, KM's income had increased to $64,000. The statement was not true, and KM did not tell Respondent that her income had increased. JX-5, at 24; JX-11, at 69; Tr. 110-111, 117-118. Respondent wrote on the form that KM now had $1,300 monthly discretionary income. The statement misrepresents what she told Respondent, and it was untrue. Tr. 118; JX-11, at 69.[10]

Respondent filled out an order ticket, insurance application, and disclosure form for the $500,000 VUL policy on June 17, 2005. KM signed the application and initialed the disclosures, but she did not read what she signed. JX-5, at 26, 27; Tr. 119, 121. Respondent wrote that her gross income as a fitness instructor was now $64,000 per year, as he had on the client account form. Like the same statement on her client account form, this statement was untrue, and KM never told Respondent that her income had risen. In fact, her income had not changed. Tr. 120. Although KM still had the $250,000 policy, Respondent checked the box on the application that indicated that KM had no other life insurance. He testified that it was an inadvertent error, which was not credible. JX-5, at 28, 30; JX-5, at 30; Tr. 119, 623, 655-656, 670.[11]

Respondent submitted the application for the second VUL policy to WGS. Tr. 294-295. KM purchased the $500,000 VUL policy and made payments until December 2007, when she

[10] Respondent testified that KM told him she had $1,300 discretionary income in June 2005. Tr. 260. Discretionary income of $1,300 would equal $15,700 annually, which exceeded KM's total pre-tax gross income for the year. JX-11, at 69. Even including her support payments, her total income for 2005 was insufficient for her to have much, if any, discretionary income, and the support payments would end in two years.

[11] Respondent knew that even if his inflated figure for KM's income were accurate, he would have to provide a letter of insurable need to his firm for $750,000 of insurance for KM. Tr. 283-284. By splitting the policies and inaccurately reporting that KM did not have other insurance, he avoided the scrutiny from his firm that a letter of insurable need would invite. Given Respondent's many other misrepresentations, it is not credible that he inadvertently provided the incorrect information that was necessary to qualify KM for the additional $500,000 insurance policy.

cancelled both the $250,000 and $500,000 policies because she could not afford the $750 monthly payments. She lost everything she had paid into the policies. Tr. 115, 163-164, 176, 188, 192; Answer ¶ 14.

C. Respondent Engaged in an Outside Business Activity by Participating in a Real Estate Investment with Customer KM

When KM first met with Respondent, she told him she wanted an investment that would provide monthly income. Although Respondent and KM were both located in California, Respondent suggested that they jointly invest in Arizona real estate that would provide monthly rental income. Tr. 61, 65, 69, 75-76, 125, 148, 208-209, 348. Respondent told KM that he would find the property and manage it with the help of a property manager. Tr. 130, 145-146, 357, 359; Answer ¶ 23.

Respondent told KM it was not smart to have so much equity in her house, and that she should refinance her house to finance their proposed real estate transaction. Tr. 52, 125. She refinanced her house with a $290,000 variable rate mortgage, with negative amortization in the first year.[12] KM took out $101,145.68 from the refinancing. At Respondent's recommendation, she invested about $28,000 in a mutual fund, and gave $70,000 to Respondent for the real estate investment. Tr. 125-126, 129-130, 313, 315; JX-5, at 165; JX-7, at 4-6; JX-11, at 10-11, 70. Respondent acted as loan officer for the refinancing. Tr. 313.

KM gave Respondent a check for $70,000, payable to Respondent, on June 7, 2005. Respondent gave her a receipt stating that the money was for the purchase of a property, "Address to be determined." JX-11, at 78; Tr. 350, 375-376.

[12] The loan provided that the payments would be constant for the first year. The interest rate for the first month was 1%, and after that, became 3.05% above an index. The payments would not change until the thirteenth payment. The loan could become a negative amortization loan again between the reset after the thirteenth month and the end of the fifth year, depending on changes in the index. JX-11, at 10-12.

In July 2005, Respondent bought a rental property, in his name only, in Arizona. He testified that he bought the property on behalf of his alleged partnership with KM. Tr. 354-355, 652; JX-11, at 82; JX-12, at 9; CX-29. There was no written partnership agreement between Respondent and KM. Tr. 356. Respondent did not contribute any money to the real estate investment. He took out the mortgage on the investment property in his name only. Tr. 354.[13]

KM called Respondent frequently to find out the address of the property, but he did not provide it. Later, on the advice of her boyfriend, she asked to see the deed. In November 2006, Respondent sent her a document dated November 14, 2006, 16 months after he bought the property. The document was a form deed with typewritten language that appeared to be a grant from Respondent, as the owner of a property, to Respondent and KM of 50% interests in the property. The document was unsigned, and identified the property only as "a property in Maricopa County, Arizona." Tr. 131-132, 142-143, 568; JX-11, at 86. KM wrote letters to Respondent trying to get information about the property and to get a legitimate deed that included her as an owner, or to get her money back. In January and February 2007, Respondent repaid $68,500 to KM, which was $1,500 less than she had given to him in June 2005. Respondent told her he had to refinance his house to pay her back, and insisted that KM pay half the costs of his refinancing, or $1,500, because they had allegedly agreed to hold the property for three years. Tr. 133-135, 139, 144, 564, 619, 648; JX-11, at 79, 84-85; JX-12, at 7-8.

[13] Respondent testified that he and KM agreed that KM would not receive any portion of the rental income, and she would receive only a share of the gains on the sale of the property. Tr. 358. He testified that they agreed that he would not contribute cash but would be solely liable for mortgage, and could apply rents to pay the mortgage. Tr. 619-620. KM testified that they agreed that both would invest $70,000 and that she would receive monthly income. Tr. 69. The Hearing Officer finds that Respondent's testimony was not credible. It both contradicts KM's account of the agreement, and is not consistent with KM's objectives. Respondent and KM agree that she wanted to augment her monthly income, yet, according to Respondent's version of events, she agreed to contribute $70,000 to an investment that would provide no monthly income. The other members of the Hearing Panel make no finding on whether Respondent's testimony on this matter was credible.

Respondent received rental income on the Arizona property during the time before he repaid KM. KM never received any rental income from the property. Tr. 146, 356, 359-362, 364-373; JX-26; JX-27.

Respondent first disclosed the real estate purchase and his receipt of the check from KM to the Firm in March 2007, in response to questions from a WGS compliance examiner. Tr. 350; JX-12, at 4, 5; JX-23, at 2.

D. Respondent's False Answers on Compliance Questionnaires Concerning Receipt of Funds from Customer KM

WGS representatives were required to fill out compliance questionnaires each year at one of the Firm's quarterly compliance meetings. Tr. 589. The branch manager read each question aloud as the representatives filled out the questionnaires. Tr. 589-590. Respondent filled out and signed a questionnaire on October 12, 2005. JX-5, at 289. Respondent certified that he had not "accepted from a customer or a WGS representative, any cash, a check made payable to myself…." JX-5, at 286 (Question 39). At the time he gave this answer, he had accepted a $70,000 check from KM, payable to himself, for the purchase of real estate. Tr. 593-594; Answer ¶ 44. Respondent also answered this question falsely on two subsequent compliance questionnaires. JX-5, at 291-296 (January 14, 2006); JX-5, at 297-302 (November 6, 2006); Answer ¶ 44.

III. Respondent's Transactions with Customer RG

In the Third Cause of Action, the Complaint charges Respondent with two violations in transactions with Customer RG. The Complaint alleges that Respondent sold a $600,000 VUL policy to RG that was unsuitable because she neither wanted nor needed life insurance. In addition, the Complaint charges Respondent with making an unsuitable recommendation to RG

to liquefy equity in her home so she could invest in a mutual fund and make a lump-sum payment on the VUL policy.

A. Customer RG

KM recommended Respondent to RG early in 2006. Tr. 154, 438. RG was a 39-year-old woman, single, with no children or dependents. Tr. 424-425; JX-2, at 46-47. RG had a difficult financial situation at the time, and had concerns about making ends meet. Tr. 430. She was employed as a nurse, with a salary of about $78,000. Tr. 425-426. She did not have any discretionary income. Tr. 461. She received a tax refund of about $8,000 every year, which she used to try to increase the funds she had available for emergencies. Tr. 450. She owned her home, which was worth about $460,000, subject to a first mortgage of $183,000, and a second mortgage of $48,000. Tr. 430, 448. Her only other assets were a small 401(k), and savings of about $7,000 to $10,000. Tr. 432; JX-2, at 7. She had credit card debt of about $3,600. She had worked with a collection agency to reduce her payments. Tr. 428, 529. Her liquid net worth was about $5,000. Tr. 395-396; JX-2, at 7.

RG had no investment experience. Tr. 528.

B. Respondent's Sale of a $600,000 VUL Policy to RG

RG called Respondent and told him she needed help because she was "in a financial mess." Tr. 438-39. When they met in March 2006, she told Respondent that she wanted to get out of debt and add money to her emergency fund. They discussed her two mortgages. She told him she had no dependents. Tr. 392-393, 439, 442-444, 449, 459; JX-2, at 46-47.[14] RG disclosed all of her assets and debts to Respondent. Contrary to Respondent's testimony, RG did

[14] She also mentioned wanting a new car and to finish work on her house "someday" or "eventually." The new car and home improvements were not the reason for her visit. Tr. 447-448, 513-514.

not refuse to provide any financial information to Respondent. Tr. 442-444, 453, 508; JX-2, at 48.[15]

Respondent testified that RG told him she wanted life insurance to be certain that her house would go to her brother upon her death, without a mortgage and with some money left over. Tr. 617, 631, 641. RG testified that she did not believe at the time she met with Respondent that she needed life insurance, although she was not certain whether she told Respondent. Tr. 435, 454, 540. She also testified that she told Respondent that she did not want her house to go to her family upon her death. Tr. 451, 526, 535-536. The Hearing Officer finds that RG's testimony was credible and accurate, and that she did not tell Respondent she wanted life insurance. The Majority Panelist does not join in the finding with respect to whether RG told Respondent she wanted life insurance.[16]

Respondent recommended to RG that she purchase a $600,000 VUL policy. Answer ¶ 31; Tr. 456. Respondent told RG that a VUL policy was "mutual funds packaged up in a life insurance policy" and "not about the life insurance." Tr. 453-454, 527. Respondent told RG that he would frontload the payments, using equity in her home, so she did not have to worry about monthly payments. Tr. 454-455.

[15] Respondent wrote in his notes, and testified at the hearing, that RG said she had other assets that she did not feel comfortable disclosing, directly contradicting RG's testimony. Tr. 629-630; JX-2, at 48. The majority of the Hearing Panel rejects this testimony as not credible. RG was a more credible witness than Respondent. In addition, it is not logical that RG would refuse to disclose information concerning her financial condition when she came to Respondent seeking help with a bad financial situation, especially as a nurse who would know the importance of full disclosure to a care provider. It is also not credible that someone with two mortgages, little in the bank or investments, and credit card debt, would have substantial undisclosed financial assets. Furthermore, Respondent claims that both KM and RG repeatedly either lied to him or concealed information. It is not credible that either customer would lie to Respondent about her financial situation, and it is less credible that both would do so.

[16] The Hearing Officer finds that RG's testimony that she did not want to leave her house to her brother was more credible than Respondent's testimony. RG was generally a much more credible witness than Respondent, and it would not be logical for her to misrepresent her wishes with respect to leaving the house to her brother, or to tell Respondent that she wanted life insurance when she credibly testified that she did not want life insurance. The Majority Panelist does not join in the finding that RG did not tell Respondent that she wanted insurance so that her brother would not be burdened with the mortgage because it was a reasonable goal, and because RG's testimony on this issue was confusing, and she could have been similarly confusing in her discussions with Respondent.

RG purchased the VUL policy through Respondent. Tr. 396-397. RG knew she was purchasing life insurance, but Respondent told her the objective was growth, not insurance. Tr. 527. Respondent filled out a WGS client account form for RG, which she signed on March 10, 2006. She did not read the form before signing it. JX-2, at 7; Tr. 461. According to the form, RG had a liquid net worth of $5,000, a total net worth of $41,000, and $1,800 of monthly discretionary income. JX-2, at 7. Respondent wrote that her investment objective was aggressive growth and her risk tolerance was high, which was not true. Contrary to what Respondent wrote on the form, RG did not have any discretionary income. Tr. 461.[17]

Respondent filled out the life insurance application and disclosure form. RG initialed the disclosures, including a disclosure that she was purchasing life insurance. Tr. 397, 466-467, 524; JX-2, at 8-23.[18] RG mentioned to Respondent that the form included a representation that the applicant was not using the proceeds of a mortgage to fund the policy, and Respondent said, "We all do it." JX-2, at 8; Tr. 528. RG made total payments on the policy of $20,500, consisting of an initial payment of $500 (JX-2, at 8), and a lump sum payment of $20,000 from the proceeds of refinancing her home, as discussed below.

RG complained to WGS about the VUL policy in 2007, and the Firm offered her the opportunity to rescind the policy. She rescinded the policy in 2008, and received $20,500 from WGS in November 2008. Tr. 487-489; JX-18, at 1-3.

---

[17] Respondent testified that RG had discretionary income because she received an $8,000 tax refund every year, and could adjust her withholding to have discretionary income. Tr. 660. This rationalization is not credible. RG told him that she intended the refund to be her emergency fund, making his view irrelevant. RG had virtually no financial assets and was burdened with debt, so using the funds would require a change in her spending patterns. Finally, RG told Respondent that she had no discretionary income.

[18] Respondent testified that he went through all the disclosure statements with RG, read each disclosure aloud, and she initialed each one. Tr. 524, 628. The Hearing Officer finds that this testimony was not credible. It conflicted with RG's testimony, and RG was a much more credible witness. In addition, Respondent's testimony was similar to his testimony that he read disclosures to KM, which was also not credible. The Majority Panelist would find only that Respondent knew that some of the information was false, but would not find that RG only scanned the documents or was unaware of the contents of the documents.

C. Respondent Refinances RG's Home so RG Can Liquefy Home Equity for Securities Investments

At their meetings in March 2006, Respondent talked to RG about refinancing her home to use the equity as leverage to make money. Tr. 441. Respondent presented a plan to refinance her home to pull out equity to invest in mutual funds and to put money into the VUL policy. Tr. 449-450, 470, 476, 539; Answer ¶ 33. Respondent knew that it was against WGS policy to recommend the use of home equity to invest in securities products, or to knowingly accept mortgage proceeds for investment purposes. Tr. 321-324, 570-571; JX-5, at 250, 252.

RG refinanced her home through Respondent on May 10, 2006. Respondent recommended, and RG obtained, a variable rate mortgage for $322,000. He told RG that he recommended an amount that was larger than her existing loans so she could take out money to invest in mutual funds. The loan had a very short-term "teaser" rate. When the teaser rate expired, the payments continued to be low because the loan became a negative amortization, variable rate loan. She consolidated her two mortgages, paid off credit card debt, and took out about $84,000 in cash. Respondent was the loan officer for the refinancing of RG's home. Tr. 399-400, 449, 470-472.[19]

RG met with Respondent on May 13, three days after he refinanced her home. He filled out a new account form and forms for the purchase of a mutual fund. The forms contained inaccurate information concerning RG's finances and financial objectives. JX-2, at 25-30; Tr. 477-479. RG gave Respondent three checks on May 13, 2006: a $5,000 check as an initial investment in an IDEX mutual fund; a $55,000 check payable to IDEX Investor Services, postdated to May 18, 2006, for a mutual fund investment; and a $20,000 check to pre-fund the

[19] Respondent testified that he understood that RG was refinancing so she could fix up her home. Tr. 400. This testimony was not credible, especially in light of the fact that RG invested in a mutual fund and a VUL policy immediately after refinancing, as discussed below.

VUL policy. Respondent told her she should make the $55,000 check payable to IDEX, and asked her to post-date the check. JX-2, at 28; JX-21, at 10-11; Tr. 405, 408, 479, 481-482. The $80,000 for the three checks came from the $84,000 she received in the refinancing. Tr. 476, 479-480; JX-6, at 50. RG testified that Respondent was aware that the funds came from refinancing her home. Tr. 476. Respondent testified that RG represented that the money came from assets that she was not comfortable disclosing. Tr. 402, 409, 629, 634; JX-2, at 49. RG's testimony was much more credible. The fact that she gave Respondent $80,000 for investments three days after she obtained $84,000 in the refinancing should have been sufficient to alert him to the source of funds. There also was no reason for RG to lie to Respondent about the source of funds.

According to WGS's procedures, when a representative received a check from a client, he or she was required to record it on the blotter and send the check to the Firm. Respondent sent the $55,000 check directly to IDEX and did not enter it on the blotter. Tr. 405, 576-580.[20]

CONCLUSIONS OF LAW

The majority of the Hearing Panel finds that Respondent recommended and sold unsuitable insurance policies to both KM and RG. Only the Hearing Officer would find that the first insurance policy was unsuitable. The majority of the Hearing Panel also finds that Respondent's recommendation to RG to liquefy home equity to provide investment funds was unsuitable. The majority also finds that RG engaged in an outside business activity without providing prompt written notice to his firm, and provided false information on his firm's compliance questionnaires.

[20] Respondent claimed that he was not sure how to handle the check. Tr. 406. This was not credible, especially since he had sent the $5,000 check to the Firm. He later told the Firm that RG had sent the check directly to IDEX without his knowledge. Tr. 580, JX-6, at 8; Tr. 577, 581-582. This was a misrepresentation to his firm, one of many misrepresentations the majority of the Hearing Panel considered in assessing his credibility.

The views of the Dissenting Panelist are set forth in the Dissenting Opinion, except that the Dissenting Panelist and Majority Panelist both find that Enforcement failed to prove that the sale of the first VUL policy to KM was unsuitable. As the majority decision on that issue, the views of the Majority and Dissenting Panelist on the sale of the first VUL policy are set forth below.

I. First and Third Causes of Action: Respondent Recommended and Sold Unsuitable Investments to KM and RG

The majority of the Hearing Panel finds that the sale of the second VUL policy to KM was unsuitable. The Majority Panelist and the Dissenting Panelist find that the sale of the first VUL policy to KM was not unsuitable. The Hearing Officer finds that both recommendations and sales to KM to purchase VUL policies were unsuitable because KM did not want or need life insurance, and she could not afford to pay premiums for life insurance when she was already struggling and failing to meet her monthly living expenses. The Hearing Officer's views on the unsuitability of the first VUL policy are set forth in a concurring statement.

The majority finds that the sale of the $600,000 VUL policy to RG was unsuitable. The majority also finds that Respondent's recommendation to RG to liquefy home equity to make securities investments was unsuitable.

A. Investment Recommendations to Customers Must Be Suitable (NASD Rules 2110 and 2310)

NASD Rule 2310(a) provided, at the time of the alleged violations:

> In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

A recommendation to a customer must be consistent with the customer's best interests and tailored to the customer's financial profile and investment objectives.[21] In addition, IM-2310-2 explained that it is a violation of a member's responsibility of fair dealing to "recommend[] the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment."[22]

B. Specific Suitability Principles for VUL Policies

FINRA's suitability rules apply to recommendations to customers concerning variable life insurance products.[23] Before selling a variable life insurance product to a customer, a registered representative is required to make reasonable efforts to obtain information concerning the customer's financial and tax status, the customer's financial objectives, and such other information as may be helpful in making a recommendation to the customer. Among the specific factors to consider are representations from the customer concerning his or her life insurance needs and the customer's need for liquidity.[24] "The member should consider whether the customer desires and needs life insurance and whether the customer can afford the premiums likely needed to keep the policy in force."[25]

C. Respondent Recommended Unsuitable VUL Policies to KM and RG

As discussed below, the Hearing Officer and the Majority Panelist both find that the sale of the second VUL policy to KM was unsuitable because she did not need a second insurance

---

[21] *Dep't of Enforcement v. Evans*, No. 2006005977901, 2011 FINRA Discip. LEXIS 36, at *22 (N.A.C. Oct. 3, 2011).

[22] IM-2310-2(b)(5) (Fair Dealing With Customers); *see also*, *Dist. Bus. Conduct Comm. v. Hurni*, No. C07960035, 1997 NASD Discip. LEXIS 15 (N.B.C.C. March 7, 1997). The same principle is found in FINRA Rule 2111.

[23] NTM 96-86, 1996 NASD LEXIS 108 (Dec. 1996); NTM 00-44, 2000 NASD LEXIS 52 (July 2000); *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD LEXIS 123, at *35 (N.B.C.C. Oct. 31, 1997).

[24] NTM 96-86, 1996 NASD LEXIS 108, at *4.

[25] NTM 00-44, 2000 NASD LEXIS 52, at *9 (July 2000).

policy and could not afford it. The majority of the Hearing Panel also finds that the sale of the VUL policy to RG was unsuitable because the policy provided more insurance than she needed even if she wanted to provide for her brother, and she could not afford the premiums. The Majority Panelist, joined by the Dissenting Panelist, finds that the sale of the $250,000 policy to KM was not unsuitable. The Hearing Officer finds that all three policies were also unsuitable because neither customer wanted, needed, or could afford any life insurance.

1. The Recommendations to KM to Purchase VUL Policies

a. Respondent's Recommendation to KM to Purchase the $250,000 VUL Policy

The Majority Panelist and Dissenting Panelist both find that Enforcement failed to prove that the sale of the first VUL Policy to KM was unsuitable.[26] With two children at home and likely facing college expenses, it was reasonable for KM to want and need some life insurance. Although she would leave her children almost $900,000 if she were to die, additional insurance would be helpful for the two children in high school to pay for living expenses and the cost of attending college. The evidence of her former husband's ability, willingness, and legal obligation to care for and support the children and pay the costs in the event of KM's death is insufficient to conclude that he would adequately provide for them. Furthermore, the Majority and Dissenting Panelists find it credible that she wanted life insurance, and told Respondent that she did.[27]

[26] The Dissenting Panelist's views are generally stated in the Dissenting Statement. Because the Dissenting Panelist and the Majority Panelist form the majority opinion with respect to the suitability of the sale of the first VUL policy to KM, the Dissenting Panelist's views with respect to the suitability of that policy are stated here.

[27] The Hearing Officer does not agree with the finding that KM told Respondent that she wanted life insurance. In the attached concurrence, the Hearing Officer finds that KM did not want or need the first VUL policy.

b. Respondent's Recommendation to KM to Purchase the $500,000 VUL Policy Was Unsuitable

The majority of the Hearing Panel finds that Respondent's recommendation to KM that she purchase the $500,000 policy was unsuitable regardless of what Respondent believed about KM's desire for life insurance, because she could not afford the $500 monthly premium on top of the premiums for the original $250,000 policy, and she had already provided adequately for her children's financial well-being.[28] She had very little income and no discretionary income when she first came to Respondent, and her support payments from her ex-husband would end in two years. The first VUL policy had already added $250 to KM's monthly expenses. By recommending and selling the second policy to KM, Respondent violated NASD Rules 2310 and 2110.

2. Respondent's Recommendation to RG to Purchase a $600,000 VUL Policy Was Unsuitable

The majority of the Hearing Panel finds that the amount of insurance that RG purchased was unsuitable in light of her financial condition and insurance needs. RG was in no financial position to purchase such a substantial amount of life insurance. She had two mortgages and credit card debt, and came to Respondent because she was in a "financial mess" and wanted help getting out of debt. She had no discretionary income and was not saving any money, yet Respondent caused her to have a substantial monthly payment for life insurance once the initial "frontload" amount, funded by liquefying equity in her home, was used up. If RG wanted to

[28] The Hearing Officer finds that the recommendation to purchase the $500,000 VUL policy was unsuitable for the additional reasons that Respondent knew that KM did not want insurance, and did not need it because her children's financial future was secure without any life insurance. In addition, given her financial difficulties, if she had a genuine need for life insurance, an inexpensive term policy would have been far more suitable.

provide for her brother in the event of her death, and if she could afford insurance premiums, a $600,000 policy was substantially more than was required to meet her objectives.[29]

The majority of the Hearing Panel finds that Respondent's recommendation to RG to purchase a $600,000 VUL policy was unsuitable, in violation of NASD Rules 2310 and 2110.

D. Respondent's Recommendation to RG to Liquefy Home Equity to Purchase the VUL Policy and Shares in a Mutual Fund Was Unsuitable

In Notice to Members 04-89, FINRA reminded members that "recommending liquefying home equity to purchase securities may not be suitable for all investors and that members and their associated persons should perform a careful analysis to determine whether liquefying home equity is a suitable strategy for an investor."[30] FINRA expressed a concern that liquefying home equity to fund securities investments could cause an investor to lose his or her home if the investment fails to earn a return adequate to cover mortgage payments.[31] FINRA also expressed a concern that investors may misapprehend their risk tolerance for investments using liquefied home equity.[32] Investors may also fail to recognize potential conflicts of interest.[33] In addition, liquefying home equity may undermine the asset diversification benefit of home ownership.[34] FINRA identified several factors that should be considered in assessing suitability, including whether the mortgage is a fixed or variable rate and the investor's overall debt burden.

---

[29] The Hearing Officer would find that Respondent's recommendation was also unsuitable because Respondent knew that RG did not want or need any life insurance. In addition, the purchase was unsuitable because RG could not afford a VUL policy of any amount.

[30] NTM 04-89, 2004 NASD LEXIS 76, at *1 (Dec. 2004); *see also* NTM 05-68, 2005 NASD LEXIS 44, at *11 (Oct. 2005) (stating that members and their associated persons "should perform a careful analysis to determine whether liquefying home equity [to facilitate the purchase of securities] is a suitable strategy for an investor").

[31] NTM 04-89, 2004 NASD LEXIS 76, at *3.

[32] NTM 04-89, 2004 NASD LEXIS 76, at *5.

[33] NTM 04-89, 2004 NASD LEXIS 76, at *5.

[34] NTM 04-89, 2004 NASD LEXIS 76, at *6.

Respondent's recommendation to RG to liquefy equity in her home to make a $20,000 payment on the VUL policy and to invest another $60,000 in the IDEX mutual fund was unsuitable. RG had a substantial debt burden and sought help in managing it. Instead of addressing her need to manage her debt, Respondent caused her debt burden to increase because of the size of the mortgage loan, and to increase still further because of the loan's negative amortization. The mortgage had a variable rate, subjecting RG to a risk that the payments would increase substantially. Furthermore, Respondent had a clear conflict of interest, because he was the loan officer on the refinancing, and recommended to RG that she use the funds to make investments that provided a commission to Respondent.

The majority of the Hearing Panel finds that Respondent's recommendation to RG to liquefy home equity to invest in the VUL policy and a mutual fund was unsuitable, in violation of NASD Rules 2310 and 2110.

II. Second Cause of Action: Respondent Failed to Provide Prompt Written Notice of His Outside Business Activity

At the time of Respondent's alleged violation, NASD Rule 3030 provided:

> No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.[35]

Respondent failed to provide written notice to WGS that he was engaged in a real estate venture with KM that was outside the scope of his relationship with WGS. The real estate purchase was not a passive investment. Respondent agreed to manage the investment, and he did so. By failing to provide prompt written notice to WGS of his outside business activity, Respondent violated NASD Rules 3030 and 2110.

[35] A violation of NASD Rule 3030 is also a violation of NASD Rule 2110. *Kent M. Houston*, Exchange Act Rel. No. 66014, 2011 SEC LEXIS 4491, at *18 (Dec. 20, 2011); *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *24 n.19 (N.A.C. July 26, 2012).

III. Fourth Cause of Action: Respondent Provided False Information on His Firm's Compliance Questionnaires

The SEC recently stated that "it is a basic duty of all securities professionals to respond truthfully and accurately to their firm's requests for information, and that the failure to do so can be inconsistent with just and equitable principles of trade, especially when the purpose of the information request is to help ensure that the associated person is in compliance with applicable laws, rules, and policies."[36] Misrepresentations by securities professionals to member firms are "especially troubling" when they involve transactions with "a significant potential for conflicts of interest and misconduct."[37] Providing false information to one's member firm violates NASD Rule 2110.[38]

Respondent provided false answers on three WGS compliance questionnaires when he denied that he had accepted a check made payable to himself from any WGS customers, knowing that he had accepted the $70,000 check from KM, payable to Respondent. Respondent's false answers on the WGS compliance questionnaires denied the Firm the opportunity to review the transaction with KM, one which involved significant potential for conflicts of interest and misconduct. By providing false answers on the compliance questionnaires, Respondent violated NASD Rule 2110.

SANCTIONS

I. Sanctions for Suitability Violations

For making unsuitable recommendations in violation of NASD Rule 2310, the FINRA Sanction Guidelines ("Guidelines") recommend a suspension of 10 business days to one year,

[36] *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012); *see also Dep't of Enforcement v. Taylor*, No. 20070094468, 2011 FINRA Discip. LEXIS 17, at *20 (N.A.C. Aug. 5, 2011).

[37] *Mullins*, 2012 SEC LEXIS 464, at *45.

[38] *Mullins*, 2012 SEC LEXIS 464, at *48; *see also*, *Dep't of Enforcement v. Taylor*, 2011 FINRA Discip. LEXIS 17, at *20; *Dep't of Enforcement v. Davenport*, No. CO5010017, 2003 NASD Discip. LEXIS 4, at *8 (N.A.C. May 7, 2003).

and a longer suspension or a bar in egregious cases. The Principal Considerations are those applicable to all violations.[39] The majority of the Hearing Panel finds that Respondent's conduct was egregious, and bars him in all capacities.[40]

Five of the Principal Considerations are relevant to Respondent's violation of NASD Rule 2310 by selling unsuitable VUL policies to KM and RG, and all are aggravating factors. Respondent has not accepted responsibility for his actions. He continues to deny that his recommendations were unsuitable, and justifies his recommendations by blaming his customers for allegedly providing false information to him, an excuse that the majority of the Hearing Panel rejects because the majority finds that Respondent knew the customers' true financial condition.[41] He used a series of misrepresentations to implement his unsuitable recommendations by falsifying information on the forms submitted to WGS and the insurance carrier, and has attempted to justify his misconduct by a series of misrepresentations, including several misrepresentations in his testimony at the hearing.[42] Both of his customers were extremely unsophisticated about investments.[43] Respondent's misconduct was intentional.[44] Respondent gained financially from his misconduct, earning commissions on all three VUL policies.[45] He received a commission of $1,250.35 for the $250,000 policy, and $2,485.67 for

[39] *FINRA Sanction Guidelines* at 94 (2011).

[40] The Guidelines also recommend consideration of a fine of $2,500 to $75,000, increased by adding the amount of a respondent's financial benefit, or requiring the respondent to offer rescission to the injured customers. No fine is imposed in light of the bar. Respondent's financial benefit was modest, and although Respondent significantly harmed two customers, the harm was not widespread. *See Guidelines* at 10.

[41] Principal Consideration No. 2 (acceptance of responsibility).

[42] Principal Consideration No. 10 (concealment).

[43] Principal Consideration No. 19 (customer sophistication).

[44] Principal Consideration No. 13 (whether violation was negligent, reckless, or intentional).

[45] Principal Consideration No. 17 (potential gain for Respondent).

the $500,000 policy he sold to KM. Answer ¶¶ 13, 17. He received a commission of $1,278.90 for the $600,000 policy he sold to RG. Answer ¶ 36.

Four Principal Considerations are also aggravating factors with respect to Respondent's recommendation to RG to liquefy home equity. Respondent concealed the unsuitable recommendation to RG to liquefy home equity to invest in securities. He initially concealed his misconduct by sending the post-dated $55,000 check for the IDEX investment directly to IDEX. Had he sent the check to the Firm, it could have alerted the Firm to possible misconduct because the amount of the check exceeded RG's financial assets. He further concealed his misconduct by denying on the Firm's compliance questionnaires that he had liquefied home equity for investment purposes, and twice denied to his Firm that he had accepted $55,000 directly from RG, telling his firm that RG must have invested directly with IDEX. JX-5, at 299; JX-6, at 8, 51; Tr. 581-582, 635. In addition, he attempted to justify his misconduct by misrepresenting to the Hearing Panel that RG told him the funds came from assets that she did not want to disclose to him, which was not true. Respondent's misconduct was intentional. He knew that the recommendation violated WGS policy, and must have known that the recommendation was unsuitable.

Respondent's recommendation to liquefy home equity harmed RG. Respondent put RG into a variable rate, negative amortization loan, with a substantial increase in the amount of her mortgage at the time of the refinancing, and a further increase of $36,000 by the time she refinanced out of the mortgage that Respondent sold her, as a result of the negative amortization. Tr. 485-486.[46] She also incurred a prepayment penalty when she refinanced out of the negative amortization loan. Tr. 473, 486, 523. His misconduct also resulted in financial gain to

[46] Principal Consideration No. 11 (customer injury).

Respondent. He received commissions on both securities investments, and as the loan officer on the loan.

Each of the unsuitable recommendations was an egregious violation, and collectively they constitute an egregious pattern of taking advantage of unsophisticated customers by recommending unsuitable investment strategies. Respondent is barred from associating with any FINRA member firm in all capacities.

II. Sanctions for Failure to Provide Prompt Written Notice of Outside Business Activities and Misrepresentations on Compliance Questionnaires

A unitary sanction is appropriate for Respondent's violations of NASD Rules 3030 and 2110 by engaging in an outside business activity without providing prompt written notice to his firm, and for misrepresenting to WGS that he had not received funds directly from a client in a check payable to himself. The violations are closely related because the check Respondent received for the outside business activity was the check that made his answers false on the Firm's compliance questionnaires.

Because the primary violation was the failure to provide prompt written notice of an outside business activity, the majority relied on the guideline for that violation, and considered the misrepresentation to Respondent's firm as an aggravating factor. For violations of NASD Rule 3030, the Guidelines recommend consideration of a suspension of up to 30 business days when the outside business activity does not involve aggravating conduct. When the outside business activity involves aggravating conduct, the Guidelines recommend consideration of a

suspension of up to one year. In egregious cases, including those involving significant injury to customers of the firm, the Guidelines recommend consideration of a longer suspension or a bar.[47]

Several of the Principal Considerations specifically applicable to outside business activity violations are relevant to Respondent's violation, and all are aggravating. The outside business activity involved a customer of the Firm.[48] The outside business activity resulted in injury to KM.[49] She lost $1,500 because Respondent made her pay half the closing costs to refinance his home so he could refund her investment, and she refinanced her home with a variable rate, negative amortization loan to fund the investment in the Arizona property. Respondent misled his Firm about the existence of the outside activity by attesting on WGS compliance questionnaires that he had not "solicited … or raised money from [WGS] clients … other than transactions processed by WGS…."[50] The outside business activity violated the Firm's rules, as reflected on the compliance questionnaire, which specifically identified real estate as a prohibited activity. CX-5 at 288; JX-5 at 295, 300-301 (question 57). He also misled the Firm, and violated NASD Rule 2110, by representing on the compliance questionnaire that he had not received a check from a customer payable to himself, as charged in the Fourth Cause of Action. In addition, when asked about the real estate investment by a WGS compliance examiner, Respondent falsely represented that KM had a deed of trust for half the Arizona property. JX-12, at 5. The only deed was the bogus deed that Respondent provided. Respondent did not provide the deed to the Firm because he allegedly destroyed it when KM returned it to him, thus

[47] *Guidelines* at 13 (Guideline applicable to FINRA Rule 3270, the successor to NASD Rule 3030). The Guidelines recommend consideration of a fine of $2,500 to $50,000, which may be increased by the amount of Respondent's financial benefit. Respondent ultimately lost money on the outside business activity. Tr. 621-622. In light of the bar and Respondent's loss on the real estate investment, the majority does not impose a fine. *Guidelines* at 10.

[48] Principal Consideration No. 1.

[49] Principal Consideration No. 2.

[50] Principal Consideration No. 5.

concealing it from the Firm. Tr. 565-566. Respondent's conflict of interest is also an aggravating factor. He encouraged KM to liquefy equity in her home to enter into the real estate transaction, and earned a commission on the refinancing. Tr. 573.

In addition, the majority of the Hearing Panel considered the terms of the transactions and Respondent's conduct toward KM. KM wanted an investment that would generate monthly income, yet Respondent kept all the rental income from the property. Respondent provided virtually no documentation to KM to evidence her interest in the property or the alleged partnership. There was no partnership agreement, and KM's name was not on the genuine deed. Respondent repeatedly refused to tell her where the property was, and provided her a bogus deed 17 months after her investment, perhaps assuming that KM was so unsophisticated that she would not recognize the uselessness of the document.

Furthermore, the investment put KM's $70,000 investment at risk, but she stood to gain only if the property was sold at a profit. Respondent's return of most of KM's money is not mitigating. He returned the funds only after KM made repeated oral and written requests.

The majority of the Hearing Panel finds that Respondent's participation in an outside business activity without providing written notice to his Firm was an egregious violation, and bars him in all capacities.

III. Restitution

Enforcement asked for restitution for KM for both her payments for the VUL policies and for the real estate investment, but did not establish the specific amounts of KM's losses, or state the precise theory for the losses for the real estate investment. Enforcement asked for restitution for RG for losses due to the liquefaction of home equity to fund the real estate investment, but failed to establish dollar amounts. Tr. 733-738. Enforcement has failed to establish the specific

amount of restitution that would be appropriate. Therefore, the Hearing Panel does not order restitution.

CONCLUSION

For making unsuitable recommendations to two customers, in violation of NASD Rules 2310 and 2110, Respondent Angelo Xagoraris is barred from associating with any FINRA member firm in any capacity. Respondent is also barred from associating in any capacity with any FINRA member firm for engaging in an outside business activity without providing prompt written notice to his firm, and submitting false annual compliance certifications to conceal this activity from his firm, in violation of NASD Rules 3030 and 2110. The bars shall become effective immediately if this decision becomes FINRA's final action.

Respondent shall pay costs in the amount of $6,325.00, which represents the cost of the hearing transcript together with a $750 administrative fee. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

HEARING PANEL

_____

By: Lawrence B. Bernard
Hearing Officer

CONCURRING STATEMENT OF HEARING OFFICER
ON FIRST CAUSE OF ACTION

I concur with the Majority Panelist on the finding that the sale of the $500,000 VUL policy to KM was unsuitable in violation of FINRA's Rules, as set forth in the majority's decision. I disagree with the Majority and Dissenting Panelists with respect to their finding that Enforcement failed to establish that the sale of the $250,000 VUL policy to KM was unsuitable. I find that Respondent's recommendation and sale of the $250,000 VUL policy to KM was unsuitable.[1] She told Respondent that she did not need life insurance. KM did not understand what she was purchasing. Respondent steered her into a VUL policy with false representations that the policy was not really insurance, but an investment vehicle "masked" as an insurance policy.[2] With her meager income, her support payments ending in two years, already unable to meet her monthly expenses without invading the lump sum she received in her divorce, she could not afford the policy. Even without life insurance, she would leave adequate assets to her children to provide for their needs into adulthood, and her ex-husband and the children's grandparents would care for them if she were to die.

The Hearing Officer finds that Respondent's recommendation to KM to purchase the $250,000 VUL policy was unsuitable, in violation of NASD Rules 2310 and 2110, both because KM told Respondent that she did not want or need insurance, and because she could not afford to pay the premiums on the policy.

[1] The Majority Panelist does not join in finding that the first VUL policy was unsuitable. He would find that KM did want some life insurance, and that recommending the first policy was reasonable in light of KM's financial situation and insurance needs.

[2] An investment may be unsuitable if the customer does not understand it. *Cf. Dep't of Enforcement v. Kesner*, No. 2005001729501, 2010 FINRA Discip. LEXIS 2, at *33, *38 (N.A.C. Feb. 26, 2010) (investment unsuitable if investor does not understand the risks of the investment).

DISSENTING OPINION
By Hearing Panelist

I find that the sanctions imposed by the majority of the Hearing Panel are excessive and inconsistent with FINRA's Sanction Guidelines. I would suspend Respondent for three months and require him to re-qualify before acting in any capacity requiring qualification. I also disagree with a number of the findings of fact and conclusions of law stated by the majority of the Hearing Panel.

I believe the Majority did not give enough weight to the Firm's review of the documents that the customers signed and Respondent submitted to the Firm. The practice at WGS was that the Firm reviewed and approved every trade, including insurance applications. The insurance company conducted a further review for insurability. In addition, the Firm reviewed Respondent's conduct and found that a four-week suspension and training, including an ethics course, adequately addressed the need for disciplinary action, and I do not believe the majority has given adequate weight to the Firm's determination.

A substantial basis for Enforcement's case is its contention that the customers provided truthful information to Respondent concerning their desire to purchase insurance and their financial situations. I find no basis in the record for finding that the customers' testimony was more truthful and accurate than Respondent's testimony. I believe the most reliable evidence of the transaction is the contemporaneous documents, most of which were signed by the customers. Given the passage of time, I find that the memories of all witnesses are less reliable than the documents.

KM signed documents containing false information about her financial situation, including documents submitted to the life insurance provider and the mortgage company. Both KM and RG signed insurance applications expressly acknowledging that they were purchasing

life insurance, and initialed specific disclosures, but claim that they understood that the VUL policies were investments "masked" as life insurance. The assertions that they did not understand that the VUL policies were life insurance products were not credible.

I also do not believe that KM and RG were as naive as Enforcement contends. KM had attended seminars at WGS on selling insurance, and was clearly interested in augmenting her income quickly. RG was a nurse with substantial responsibility, and understood that she was purchasing life insurance. It was not credible that KM and RG did not fully understand that the VUL policies were life insurance products.

I would find that KM wanted life insurance, and had a genuine need for life insurance. KM had two children at home and was providing monthly funding for the child on a church mission, and it was reasonable for her to want some life insurance. I would also find that RG wanted life insurance, and that she had a reasonable need for life insurance. Respondent's reason for believing that RG wanted life insurance was consistent with her family situation. The detailed information that Respondent had concerning RG's brother must have come from the customer, and explains her desire for life insurance.

I would find that the recommendation to KM to purchase the additional $500,000 VUL policy was unsuitable because of her limited income, and because the $250,000 was sufficient to provide for her needs in light of her overall financial situation. I would also find that the $600,000 policy that Respondent sold to RG was unsuitable because the amount of insurance was excessive in light of her insurance needs and financial situation, including her lack of discretionary income. The amount of the policy substantially exceeded the mortgage debt on her home, and she could have left the property to her brother free and clear, with some additional money, with a substantially smaller amount of insurance.

I would not find that the recommendation to RG to liquefy home equity to make securities investments was a violation. At the time of the recommendation, many financial advisors and publications recommended that people use equity in their homes as a source of funding for other investments. While Respondent's conduct violated the Firm's policies, there was no specific FINRA rule barring the use of home equity as a source of funding for investments. I would find that Enforcement has sustained its burden of proof on the Third Cause of Action only with respect to the majority's fining that the amount of RG's policy was an unsuitable of the amount of life insurance that Respondent recommended for RG.

I agree that Respondent violated NASD Rule 3030 by failing to provide prompt written notice to WGS that he was engaged in an outside business activity, and violated Rule 2110 by submitting inaccurate responses to the Firm on its compliance questionnaires. I disagree with the majority's conclusion that Respondent's failure to provide written notice of his participation with KM in the real estate investment, coupled with the error on his compliance questionnaires, was an egregious violation. The investment was reasonable in the very active real estate market of the time, and many investors were leveraging the equity in their homes to purchase investment real estate. KM was not substantially harmed, as Respondent returned almost all of her money. There is no evidence that Respondent's inaccurate answers on the compliance questionnaires were intentional.

I would impose an aggregate sanction of a suspension of three months. In arriving at this sanction, I considered a number of factors. Enforcement failed to establish damages. In fact, Respondent largely made the two customers whole through his own efforts. He largely repaid KM for her investment in the real estate, and his firm refunded RG's payments on the VUL policy. Respondent has already suffered serious financial harm, partly as a result of losses

incurred in the outside business activity. Furthermore, Respondent has had a "clean" Form U4 for nearly 20 years, with no prior disciplinary problems. In addition, Respondent followed common sales practices in selling the VUL policies, using forms provided by the firm, as he was trained to do. Furthermore, the firm reviewed insurance applications for suitability, and approved all three applications that are at issue in the proceeding.

It is my view that the violations, while serious, were not egregious. I think the sanctions imposed by the majority are unduly harsh and substantially exceed the sanctions suggested by the Guidelines. In light of Respondent's lack of prior disciplinary problems for nearly 20 years, the Firm's review of his conduct and imposition of sanctions, and Respondent's efforts to repay KM for her investment in the Arizona property, I would suspend Respondent for three months and require him to re-qualify by examination.