

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAM POI YEE
(CRD No. 2393601),

Respondent.

Disciplinary Proceeding
No. 2011029227701

Hearing Officer – SNB

HEARING PANEL DECISION
January 21, 2014

For providing a false attestation, in violation of FINRA Rule 2010, and causing her firm to have inaccurate records as a result, in violation of NASD Rule 3110 and FINRA Rule 2010, Respondent is suspended for ten business days and fined \$7,500.

Appearances

Kelly A. McCormick, Esq., and Christopher Perrin, Esq., for the Department of Enforcement.

Jeff Kern, Esq., and Rena Andoh, Esq., for the Respondent.

DECISION

I. Introduction

This case involves a single, but serious, lapse in judgment by a sales assistant motivated by a desire to serve her customer. Kam Poi Lee (“Respondent”) falsely attested that she confirmed a request for a fund transfer with customer JH.¹ Unfortunately, the request was actually from an imposter who converted the funds.

¹ On March 1, 2013, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint charging that Respondent made a false attestation, in violation of FINRA Rule 2010, and as a result caused her firm to have inaccurate records, in violation of NASD Rule 3110 and FINRA Rule 2010. A one-day hearing was held in New York, NY, on October 22, 2013. The Hearing Panel was composed of a Hearing Officer and two current members of the District 10 Committee. “Tr.” refers to the transcript of the hearing; “JX” to the parties’ joint exhibits. Exhibits JX-1 through JX-13 were admitted into evidence.

Based upon the undisputed facts, the Hearing Panel concluded that by providing a false attestation, Respondent violated FINRA Rule 2010, and by causing her firm's records to be inaccurate, she also violated NASD Rule 3010 and FINRA Rule 2010. The Hearing Panel further concluded that, based upon the unique facts of the case, the appropriate sanction is a suspension of ten business days and a fine of \$7,500.

II. Findings of Fact

The material facts are undisputed. Respondent entered the securities industry in 1992. Since 1998, she has served as the sales assistant to financial advisor Evan Wuhl ("Wuhl") at several firms. JX-1 p. 8-9; Tr. 21-23 (Respondent). During the time relevant to the allegations in the Complaint, Respondent was registered at UBS Financial Services, Inc. ("UBS" or the "Firm"). *Id.* Respondent was terminated by UBS in August 2011 for the conduct referenced in the Complaint. Tr. 22 (Respondent). After that, Wuhl voluntarily left UBS and joined Wells Fargo Advisors ("Wells Fargo"). Respondent joined Wuhl at Wells Fargo in November 2011, where she is still employed. *Id.*

During the many years that Respondent and Wuhl worked together, they built a substantial book of business premised on a high level of customer service. Tr. 77 (Wuhl). Respondent's responsibilities included booking trades, communicating with customers by telephone and email, and processing customer disbursement requests. Tr. 25-26 (Respondent), 77-78 (Wuhl). Respondent was personally acquainted with Wuhl's clients. JH was Wuhl's personal friend and client for 20 years. Tr. 80 (Wuhl). Respondent and Wuhl knew JH well; and knew that JH's nephew was seriously ill with cancer. Tr. 82 (Wuhl).

On the morning of June 20, 2011, Wuhl forwarded to Respondent an email exchange he believed he had with JH. Although Wuhl did not know it, he was corresponding with an

imposter who had hacked into JH's email. As a result, the imposter was familiar with many of JH's personal details, including the fact that JH's nephew was seriously ill.

The imposter's email requested a \$4,700 disbursement from JH's account, noting that JH's nephew passed away that day, and JH needed help with a disbursement. JX-2; Tr. 33 (Respondent), Tr. 84 (Wuhl). When Wuhl sent an email asking JH to call him, the imposter responded that he was unable to do so because he was at his nephew's funeral. JX-2; Tr. 36-37 (Respondent).

When Wuhl told Respondent about the death of JH's nephew, Respondent was very upset. The death reminded her of the sudden death of her brother, and she felt great compassion and sadness for JH. Tr. 128-129 (Respondent). When Wuhl told Respondent that JH would be faxing a letter of authorization ("LOA") providing details on the payee bank account, Respondent wanted to do whatever she could to help JH. JX-2 p. 9; Tr. 39-40, 129 (Respondent), 89 (Wuhl).

Once Wuhl confirmed that Respondent received the LOA, he asked Respondent to "take care of it." Tr. 90 (Wuhl). Respondent then opened the UBS electronic wire transfer system to process the request. JX-3; Tr. 46 (Respondent), 71 (Swensen). After entering the necessary details, the system required Respondent to attest that she had spoken to JH to confirm his request. JX-4; Tr. 46-48 (Respondent), 63 (Swensen). Respondent believed that JH was not available by telephone, due to his nephew's funeral. In order to finalize the transfer of funds, Respondent provided a false attestation to accommodate what she believed in good faith to be JH's wishes. Tr. 48-50 (Respondent). In reliance upon Respondent's attestation and the information provided by the imposter, the Firm wired the funds from JH's account to the account specified by the imposter. Tr. 50-51 (Respondent), Tr. 73-74 (Swensen).

The next day, the imposter requested a second transfer from JH's account. Respondent and Wuhl became suspicious, and brought the incident to the branch manager after they determined that the signature on the LOA did not match JH's signature on file. As a result, the Firm investigated the incident and terminated Respondent due to her false attestation. Respondent initially represented that she mistakenly checked the box attesting that she had spoken with JH. However, Respondent later volunteered that she did so knowingly. Tr. 127, 130-131 (Respondent), Tr. 96 (Wuhl). JH was reimbursed. Tr. 95 (Wuhl).

As a result of Respondent's termination, Wuhl resigned from UBS and joined Wells Fargo. Tr. 98 (Wuhl). Wuhl subsequently obtained Wells Fargo's permission to hire Respondent as his assistant. Tr. 99 (Wuhl).

JH testified at the hearing that he had no ill will toward Respondent and appreciated the customer service that she provided him over the years. Tr. 146, 151-152 (JH). According to Respondent's branch manager at Wells Fargo, Respondent's performance has been "top-notch" and her performance ratings are consistently at the highest level. Tr. 107 (Arico). He also testified that he was confident that she would never make the mistake of providing a false attestation again. Tr. 119 (Arico).

III. Violations

A. Respondent Made a False Attestation, in Violation of FINRA Rule 2010

FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. Providing a false attestation that a customer approved a funds transfer is unethical and violates the standards demanded by FINRA Rule 2010.²

² *Dep't of Enforcement v. Mizenko*, No. C8B030012, 2004 NASD Discip. LEXIS 20, at *17-18 (NAC Dec. 21, 2004), *aff'd*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005); *Dep't of Enforcement v. Brack*, No. C9B020048, 2003 NASD Discip. LEXIS 8, at *16-17 (OHO Feb. 7, 2003).

Here, it is undisputed that Respondent falsely attested that she spoke with JH to confirm a fund transfer request. Accordingly, Respondent violated FINRA Rule 2010.

B. Respondent's False Attestation Caused her Firm to have Inaccurate Books and Records

NASD Rule 3110(a) requires member firms to “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of [FINRA] and as prescribed by SEC Rule 17a-3.”

Entering inaccurate information in a member firm's books and records violates the requirement of NASD Conduct Rule 3110 to keep accurate books and records.³ FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. Falsification of records, even when one believes he or she is acting consistent with customer wishes, violates NASD Rule 3110 and FINRA Rule 2010.⁴

Here, there is no dispute that Respondent provided a false attestation that she spoke with JH and confirmed that he requested a fund transfer. Accordingly, Respondent violated NASD Rule 3110 and FINRA Rule 2010.

³ *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *6 (NAC Aug. 7, 2009); *see also, Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005).

⁴ *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *16 (NAC Aug. 12, 2008).

IV. Sanctions

Enforcement suggests a unitary sanction for the violations – a 45-day suspension and a \$7,500 fine. Respondent urges that a fine, but no suspension, be imposed.⁵

Respondent's false attestation resulted in the falsification of a document. For falsification of documents, the FINRA Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$100,000 and consideration of a suspension of up to two years, where mitigation exists.⁶ The National Adjudicatory Council ("NAC") has held that, in cases where the recordkeeping violation is intentional, the Guideline for falsification of documents apply.⁷ For this reason, and because the falsification of a document and recordkeeping violations stem from a single course of conduct, the Hearing Panel determined to impose a unitary sanction.

In determining the appropriate sanction the Hearing Panel considered that Respondent knew that the attestation was false and that her Firm was misled by it. The Hearing Panel also found aggravating Respondent's initial false claim that she made an innocent error. However, this was mitigated by her later admission of her true state of mind.

The Hearing Panel also considered that Respondent acted in what she believed to be her customer's wishes; she did not personally gain from the transaction and did not intend to harm anyone. The Hearing Panel also considered that her misconduct was the result of a single lapse in judgment, which she later deeply regretted. In addition, the Hearing Panel considered the

⁵ Respondent argued that the Hearing Panel should impose no suspension because it is Wells Fargo policy to terminate an employee who is suspended by FINRA for any length of time; a penalty which would be disproportionate to the violation. Tr. 113 (Arico). The Hearing Panel did not give weight to this argument because the consequences of wrongful conduct are not considered mitigating. *Dep't of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *100 n. 72 (NAC Oct. 1, 2013).

⁶ Guidelines at 37.

⁷ *Nouchi*, 2009 FINRA Discip. LEXIS 8, at *6 (applying the Guidelines for falsification of documents where respondent intentionally entered false disability waiver claims).

testimony of her current supervisor, who has given her the highest ratings and has confidence in her good conduct going forward.⁸

After careful consideration of the circumstances, the Hearing Panel determined that the appropriate sanction is a \$7,500 fine and a ten business day suspension.

V. Conclusion

For providing a false attestation, in violation of FINRA Rule 2010, and causing her firm to have inaccurate records, in violation of NASD Rule 3110 and FINRA Rule 2010, Respondent is suspended for ten business days and fined \$7,500. In addition, Respondent is ordered to pay the costs of this proceeding in the amount of \$2,231.67, which includes an administrative fee of \$750 and the cost of the hearing transcript. If this Decision becomes the final disciplinary action of FINRA, Yee's suspension shall become effective with the opening of business on Monday, March 17, 2014, and end with the close of business on Friday, March 28, 2014. The fine and costs shall be due and payable on Yee's return to the securities industry.

HEARING PANEL

Sara Nelson Bloom
Hearing Officer

cc: Kam Poi Lee (via overnight and first-class mail)
Jeff Kern, Esq. (via electronic and first-class mail)
Kelly A. McCormick, Esq. (via electronic and first-class mail)
Christopher A. Perrin, Esq. (via electronic mail)
Jeffrey Pariser, Esq. (via electronic mail)
Rena Andoh, Esq. (via electronic mail)

⁸ *Dep't of Enforcement v. Corroero*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *18-20. (NAC Aug. 12, 2008).