

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PETER ORLANDO  
(CRD No. 1142715),

Respondent.

Disciplinary Proceeding  
No. 2014043863001

Hearing Officer– CC

**HEARING PANEL DECISION**

January 29, 2019

**Respondent engaged in unethical conduct by assuming control over an elderly customer’s finances, made an unsuitable recommendation to the customer, and held in his files two blank forms that the customer had signed. For this misconduct, the Hearing Panel bars Respondent from associating in any capacity with any member firm and orders him to pay the customer restitution of \$4,000 plus interest.**

*Appearances*

For the Complainant: Jessica Zetwick-Skryzhynskyy, Esq., John R. Baraniak, Jr., Esq.,  
Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Peter Orlando appeared pro se.

**DECISION**

**I. Introduction**

This case centers on the interactions of Respondent Peter Orlando (“Orlando”) with elderly customer DW in the summer and fall of 2014. Orlando abused DW’s trust after the loss of her husband, using her concerns over her finances to wrest control of her money from her family members to himself. Orlando recommended that DW surrender a variable annuity to further control her assets. His recommendation was unsuitable. Orlando engaged in this misconduct while associated with member firm MetLife Securities, Inc. (“MetLife”). After Orlando resigned from the firm, MetLife found two blank forms signed by DW in his customer file. Orlando contends that he acted in good faith to protect DW from her sons who, he

suspected, might steal from her. We find no evidence to support Orlando's claim that he acted to protect DW and conclude that his actions placed DW at increased risk of loss.

## **II. Procedural History**

FINRA's Department of Enforcement ("Enforcement") filed a three-cause Complaint on February 7, 2018. Cause one alleges that Orlando improperly assumed financial control of DW by abusing her trust, in contravention of FINRA Rule 2010. Specifically, cause one alleges that Orlando acted unethically when he exerted influence over DW to become executor of her revised will, the primary beneficiary of her will, and the beneficiary of her bank account, and to obtain durable power of attorney over DW's healthcare and finances. Cause two alleges that Orlando recommended that DW surrender a Metropolitan Life Variable Annuity ("MetLife VA") without having a reasonable basis to believe that the surrender was suitable for DW, in violation of FINRA Rules 2111 and 2010. Cause two also alleges that Orlando's recommendation was unsuitable in light of surrender fees, other charges, and the loss of subsequent income. Cause three alleges that Orlando maintained in his files at MetLife a variable annuity withdrawal form and a request for electronic transfer of funds, both blank except for DW's signature and a date, in violation of FINRA Rule 2010.

Orlando admits that he accepted power of attorney for DW's healthcare and finances but contends that he did so under "emergency circumstances" to protect DW from family members. He contends that he never exercised power of attorney in either area, and that he was unaware that DW had named him the primary beneficiary of her will or the beneficiary of her bank account. Orlando also claims he was unaware that DW named him the executor of her will. Further, he denies that his recommendation to surrender the MetLife VA was unsuitable for DW and denies maintaining signed, blank forms in DW's customer file at MetLife.

The parties participated in a three-day hearing in October 2018.

## **III. Facts**

### **A. Respondent's Background and FINRA's Jurisdiction**

Orlando first associated with a FINRA member firm in May 1983.<sup>1</sup> Orlando was associated with MetLife and registered as a general securities representative from July 2010 through December 2014.<sup>2</sup> Orlando voluntarily terminated his association with the firm during its investigation of his conduct.<sup>3</sup> After leaving MetLife, Orlando associated with another FINRA

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<sup>1</sup> August 24, 2018 Joint Stipulations ("Stip.") ¶ 1. Before that, Orlando worked briefly in the securities industry in 1973 and 1974. Stip. ¶ 1.

<sup>2</sup> Stip. ¶ 4; Complainant's Exhibit ("CX-") 35, at 4.

<sup>3</sup> October 22-24, 2018 Hearing Transcripts ("Tr.") 348-49, 377-78; Stip. ¶ 23.

member firm from December 2014 until February 2018.<sup>4</sup> Orlando is subject to FINRA's jurisdiction.<sup>5</sup>

## **B. MetLife's Policies and Procedures**

Between 2011 and 2014, Joseph Kotula ("Kotula") was Orlando's manager at MetLife.<sup>6</sup> They worked in the same office suite in Rhode Island. Kotula testified that Orlando had a private office with a lock where he stored his files.<sup>7</sup>

Kotula testified that, in 2014, MetLife maintained its policies and procedures on an intranet site accessible to all staff members.<sup>8</sup> The firm required all registered persons to know how to access these procedures.<sup>9</sup> A document titled "Prohibited and Restricted Business Practices" was among the items on MetLife's intranet site in 2014.<sup>10</sup> In it, MetLife strictly prohibited an associated person, like Orlando, from obtaining and keeping on file blank forms that have been signed by a client.<sup>11</sup>

In 2014, MetLife also prohibited its registered representatives from serving as power of attorney for non-family members and executors of non-family members' wills. MetLife further prohibited registered representatives from being named as beneficiaries of non-family members' bank accounts.<sup>12</sup> Kotula testified that, if a client or other non-family member placed a registered person in one of those roles, the registered person was required to report it to firm leadership and communicate to the client that he wanted to withdraw from the role.<sup>13</sup>

MetLife's "Outside Business" policy, which also was available on the firm's intranet site, stated:

Representatives may not be the owner or beneficiary of an individual's contract, policy or account, including but not limited to . . . bank account (except for family

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<sup>4</sup> CX-35, at 3-4. When Enforcement filed the Complaint, Orlando was associated with another member firm. That firm terminated Orlando in February 2018 "due to [the] ongoing FINRA investigation." Stip. ¶ 5.

<sup>5</sup> Stip. ¶ 6.

<sup>6</sup> Tr. 338-39.

<sup>7</sup> Tr. 340, 343. Orlando contended that he had too many client files to fit into his office, so he also stored files in a shared file room. Tr. 388; Supplement to Answer, at 8-9.

<sup>8</sup> Tr. 344.

<sup>9</sup> Tr. 345.

<sup>10</sup> Tr. 346-47; CX-20.

<sup>11</sup> Tr. 346-47; Stip. ¶ 22; CX-20, at 4, 11.

<sup>12</sup> Tr. 368-69, 376-77; CX-20, at 19.

<sup>13</sup> Tr. 369; CX-20, at 19.

members and other insurable interests such as business partners), regardless of whether the individual is a client . . . .

Additionally, representatives are prohibited from serving in a fiduciary capacity, such as [an] . . . executor . . . or attorney in-fact under a power of attorney unless the individual is a family member.<sup>14</sup>

On August 11, 2014, DW opened and funded a bank account on which Orlando was a beneficiary.<sup>15</sup> On August 21, Orlando became DW's healthcare power of attorney.<sup>16</sup> On August 28, DW executed a will naming Orlando as executor and primary beneficiary.<sup>17</sup> On September 10, 2014, Orlando became DW's power of attorney for all financial matters.<sup>18</sup> Orlando never advised Kotula or anyone at MetLife that DW had named him as healthcare and financial power of attorney, executor or beneficiary of her will, or beneficiary on her bank account.<sup>19</sup>

In 2014, MetLife also had in place a "Seniors Market" policy applicable to all associated persons, including Orlando.<sup>20</sup> The policy stated,

Representatives who have interaction with a client or notice activity in a client account that raises concerns that the client may be experiencing diminished capacity or financial exploitation should discuss their concerns with their manager . . . .<sup>21</sup>

The policy directed managers to contact the firm's Special Investigations Unit or a fraud hotline to report the problem.<sup>22</sup>

Kotula testified that MetLife's intranet site enabled associated persons to report concerns that an elderly customer suffered from diminished mental capacity or was the victim of elder

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<sup>14</sup> Tr. 370-75; CX-18, at 12-13; CX-19, at 12-13.

<sup>15</sup> CX-3.

<sup>16</sup> Joint Exhibit ("JX-") 2.

<sup>17</sup> CX-34, at 4-11.

<sup>18</sup> JX-2.

<sup>19</sup> Tr. 375-76; CX-27.

<sup>20</sup> Tr. 366-67; CX-17.

<sup>21</sup> CX-17, at 7.

<sup>22</sup> Tr. 367-68; CX-17, at 7.

abuse.<sup>23</sup> Orlando never used the intranet site to report that he suspected the abuse of DW.<sup>24</sup> Nor did he report his concerns to Kotula until DW's family complained about his conduct.<sup>25</sup>

On August 19, 2014, Orlando participated in an annual compliance review in which he certified his familiarity with MetLife's policies and procedures and his ability to access intranet content.<sup>26</sup> Orlando admitted he was aware that MetLife's policies and procedures prohibited registered representatives from serving in a fiduciary role (such as conservator, executor, and power of attorney) for anyone other than a family member and from being the beneficiary of a bank account other than the account of a family member.<sup>27</sup>

### **C. Customer DW**

DW became Orlando's customer in 2008.<sup>28</sup> Orlando visited DW and her spouse in their home 20 to 40 times between 2008 and 2014.<sup>29</sup> In October 2011, when DW was 78 years old, Orlando sold her the MetLife VA, which included a guaranteed minimum income benefit ("GMIB") rider, to meet her income needs as she aged.<sup>30</sup> Between 2011 and 2014, the MetLife VA's overall performance generated a positive rate of return.<sup>31</sup>

DW had five children. As of the October 2018 hearing in this matter, four children were living.<sup>32</sup> Although DW was estranged from two living children, she had a relationship with two sons, WW and KW.<sup>33</sup> The home DW shared with her husband was across the street from the home WW shared with his wife, PW, now his ex-wife. PW continues to reside in the home.<sup>34</sup>

In 2013, Orlando discovered large withdrawals from DW's MetLife VA.<sup>35</sup> Orlando brought the withdrawals to DW's attention and, with Orlando's assistance, DW's husband and sons determined that DW's daughter, MS, had withdrawn about \$150,000 from DW's MetLife

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<sup>23</sup> Tr. 365.

<sup>24</sup> Tr. 366, 391-92.

<sup>25</sup> Tr. 391-92.

<sup>26</sup> Tr. 50-53.

<sup>27</sup> Tr. 53-54.

<sup>28</sup> Stip. ¶ 7.

<sup>29</sup> Tr. 63-64; Stip. ¶ 8.

<sup>30</sup> Tr. 67-69; Stip. ¶ 9.

<sup>31</sup> Tr. 69-70; JX-5.

<sup>32</sup> Tr. 177.

<sup>33</sup> Tr. 233. DW's son KW was also Orlando's customer at MetLife. Tr. 84.

<sup>34</sup> Tr. 179, 253.

<sup>35</sup> Supplement to Answer, at 4.

VA without her permission.<sup>36</sup> Local authorities filed criminal charges against MS for the theft, but DW recovered little of the stolen money.<sup>37</sup> WW testified that his sister was able to steal from DW because she was too trusting and easily misled.<sup>38</sup> WW also testified that DW was not “savvy” with respect to finances.<sup>39</sup> After MS stole from DW, DW appointed KW and WW to act as power of attorney for financial and healthcare matters.<sup>40</sup> WW and KW paid her bills, eventually sold her home, managed her accounts, occasionally spoke with Orlando on DW’s behalf, and drove her to doctor appointments.<sup>41</sup>

In March 2014, DW’s husband died.<sup>42</sup> At that time, DW was 81 years old. PW spent time with DW almost daily.<sup>43</sup> PW testified that DW was anxious and emotional after her husband’s death.<sup>44</sup> WW testified that MS’s 2013 theft hurt DW’s finances and, after her husband died in 2014, she needed to sell her home to remain financially independent.<sup>45</sup> WW originally intended to use the proceeds of DW’s house sale to purchase a smaller, less expensive home next door to KW’s house that he and KW would renovate for her to live in.<sup>46</sup>

DW’s family listed her home for sale for around \$400,000.<sup>47</sup> DW also had about \$62,000 in the MetLife VA, \$29,000 in a bank account, a detached parcel of land with a private pool near her home, and two family trusts (from her father) from which she received income.<sup>48</sup> DW also received a regular monthly payment of approximately \$626 from the MetLife VA.<sup>49</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; Tr. 186.

<sup>38</sup> Tr. 184.

<sup>39</sup> Tr. 177, 184. We find WW’s testimony regarding his mother to be credible. PW, WW’s ex-wife, corroborated his testimony. Both PW and WW voluntarily appeared to testify in person and neither stood to gain from their testimony. Additionally, Orlando offered no credible evidence to rebut WW’s testimony regarding his mother’s abilities with respect to finances.

<sup>40</sup> Tr. 187.

<sup>41</sup> Tr. 188-89.

<sup>42</sup> Tr. 64-65; Stip. ¶ 10.

<sup>43</sup> Tr. 253-54.

<sup>44</sup> Tr. 253-54.

<sup>45</sup> Tr. 178.

<sup>46</sup> Tr. 178-79, 255-57.

<sup>47</sup> Tr. 64-65. Orlando testified that he knew the family was selling DW’s house. Tr. 64.

<sup>48</sup> Tr. 64-66, 188-89. Orlando testified that DW’s portion of the trusts was worth approximately \$500,000 (Tr. 64-66), but there is no other evidence to corroborate this amount.

<sup>49</sup> Tr. 190.

On August 1, 2014, DW sold her house and moved to an assisted living facility called Capital Ridge.<sup>50</sup> WW testified that Capital Ridge assessed DW's condition when she moved in. At that time, she was in good health but had memory issues.<sup>51</sup> After paying realtor commissions, satisfying a reverse mortgage, and paying costs associated with moving into Capital Ridge, DW netted \$350,000 to \$400,000 from the sale of her home.<sup>52</sup> DW was unhappy about staying there, and her family did not intend for her to remain permanently at Capital Ridge.<sup>53</sup> But WW and KW were unable to purchase the home near KW as planned,<sup>54</sup> so DW remained at Capital Ridge.<sup>55</sup> PW testified that DW adjusted, and Capital Ridge is now part of her life.<sup>56</sup>

DW did not testify at the hearing in this matter. WW and his family did not want her to testify, and she expressed no interest in doing so.<sup>57</sup> WW testified that DW's "incredibly emotional" interactions with the police about her daughter MS's theft "set her back."<sup>58</sup> He also testified that she is sometimes confused and becomes more so when she is questioned.<sup>59</sup> His mother is frail, weighing only about 100 pounds. PW testified that DW's memory is "spotty," and she becomes confused when she is upset or anxious.<sup>60</sup> PW also testified that DW's memory has deteriorated over time.<sup>61</sup> WW and DW had a falling out in the summer of 2014 due in large part to the events at issue here, but PW's relationship with DW has remained unchanged.<sup>62</sup> About a year after their falling out, WW and DW reconciled.<sup>63</sup>

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<sup>50</sup> Tr. 178; Stip. ¶¶ 11, 12. WW testified that his mother had visited Capital Ridge with friends before moving there. She expressed interest in the facility partly because it is only a quarter mile from her former home and PW's home. Tr. 180. PW described Capital Ridge as within walking distance from her home. Tr. 259.

<sup>51</sup> Tr. 181, 183.

<sup>52</sup> Tr. 180-81. DW pays approximately \$5,000 per month to live at Capital Ridge. Tr. 180.

<sup>53</sup> Tr. 258.

<sup>54</sup> Tr. 179-80.

<sup>55</sup> Tr. 258.

<sup>56</sup> Tr. 258-59.

<sup>57</sup> Tr. 218. WW stated that he told DW he was testifying in a hearing related to Orlando. She appeared to have no reaction. Tr. 217-18. WW also noted that his family never complained to FINRA. They contacted MetLife, predominantly to reinstate DW's MetLife VA, and MetLife communicated with FINRA. Tr. 220-21.

<sup>58</sup> Tr. 217. *See also* Tr. 293-98 (PW's testimony that, after her daughter's theft and her husband's death, DW became increasingly anxious and confused, particularly when trying to recall past events).

<sup>59</sup> Tr. 217.

<sup>60</sup> Tr. 260, 293-95.

<sup>61</sup> Tr. 260, 290.

<sup>62</sup> Tr. 261. WW testified that he was often "at odds" with his mother about her finances because she believed she understood more than she actually did, and he encouraged her to leave her money in the bank rather than look for investments. Tr. 197.

<sup>63</sup> Tr. 219-20.

In July 2016, Enforcement staff conducted a telephone interview with DW, and in April 2018, staff conducted an in-person interview.<sup>64</sup> FINRA Investigative Attorney Catherine Moore (“Moore”) attended both meetings and took notes for Enforcement.<sup>65</sup> Moore testified that, during the two meetings with Enforcement, DW recalled little to nothing about her interactions with Orlando. She also remembered little or nothing about attorneys Orlando introduced to her or the documents she signed in August and September 2014.<sup>66</sup> Moore testified that DW was shocked to learn that she had added Orlando to the bank account into which she had deposited the proceeds of the sale of her house and that she had granted Orlando power of attorney.<sup>67</sup> DW denied that she intended to disinherit her sons.<sup>68</sup> She recalled changing her will, but could not recall what the changes were.<sup>69</sup>

WW and PW testified before the Hearing Panel, and we found both witnesses to be credible. Before WW testified, MetLife had already reinvested DW in the MetLife VA and refunded her withdrawal fees. WW therefore had nothing to gain from testifying. He voluntarily appeared in person and candidly discussed the occasional difficulties he had communicating with his mother, admitting that he and his mother were estranged for a period. Additionally, the testimony of other witnesses corroborated much of his testimony. PW also appeared voluntarily and spoke openly about her relationship with DW, which has always been cordial, even during WW’s estrangement. She currently serves as DW’s financial power of attorney. She appears to be a positive influence in DW’s life, and she had nothing to gain from testifying. We found PW’s and WW’s testimony credible.

#### **D. Orlando’s Interactions with DW in 2014**

On August 7 and 8, 2014, Orlando hand wrote letters for DW directing MetLife to close all of her accounts.<sup>70</sup> DW signed the letters and Orlando submitted them to the firm by facsimile.<sup>71</sup>

Orlando testified that he learned that DW’s sons held a financial power of attorney for DW and were handling her finances on or around August 10, 2014.<sup>72</sup> This notwithstanding, on August 11, 2014, Orlando called MetLife with DW without alerting her sons. MetLife recorded

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<sup>64</sup> Tr. 517-18, 535.

<sup>65</sup> Tr. 518, 536; JX-11; JX-12.

<sup>66</sup> Tr. 522-24; JX-11.

<sup>67</sup> Tr. 529.

<sup>68</sup> Tr. 529.

<sup>69</sup> Tr. 550; JX-12.

<sup>70</sup> Stip. ¶ 13; JX-2, at 7-8.

<sup>71</sup> Tr. 88-90; JX-2, at 7-8.

<sup>72</sup> Tr. 86-87.



the call.<sup>73</sup> Orlando did most of the talking. On speakerphone with a MetLife representative, Orlando informed MetLife that DW intended to surrender the MetLife VA because her “circumstances have changed.”<sup>74</sup> During the call, MetLife’s representative advised Orlando and DW that DW would incur a surrender penalty of about \$3,464, to which DW responded, “Oh, I didn’t know.”<sup>75</sup> Orlando asked DW, “Is that okay?” She responded that it was: “Whatever you say.”<sup>76</sup> Orlando testified that he made the call for DW because DW “was the type of person” who wanted other people to handle things for her.<sup>77</sup> DW’s August 11, 2014 surrender of the MetLife VA yielded a net payout of \$57,806.68, after a sales charge of \$30, a GMIB charge of \$479, and a surrender fee of \$3,440.<sup>78</sup> Orlando helped DW deposit the payout into a bank account on which he was the beneficiary.<sup>79</sup>

On August 11, 2014, Orlando also drove DW to her bank so she could revoke the powers of attorney that she had given to her sons WW and KW.<sup>80</sup> On August 11, 2014, DW withdrew all the funds she held in a joint bank account with WW, closed the account, and deposited the funds into one of two new accounts she opened that day—both titled “[DW], TTEE for Peter Orlando.”<sup>81</sup> Orlando had online access to the two accounts, which together held approximately \$362,000, including DW’s surrender of the MetLife VA.<sup>82</sup>

On August 13, 2014, although Orlando knew that DW had used attorney DL’s legal services for many years, he contacted RH, an attorney unfamiliar to DW.<sup>83</sup> Orlando contacted

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<sup>73</sup> CX-10.

<sup>74</sup> Tr. 72-76; Stip. ¶ 14; CX-10; CX-11, at 2; CX-13. Orlando did not tell DW’s sons about DW surrendering her MetLife VA. Tr. 88.

<sup>75</sup> CX-11, at 9-10.

<sup>76</sup> CX-11, at 10.

<sup>77</sup> Tr. 83-84.

<sup>78</sup> Stip. ¶ 15; CX-13.

<sup>79</sup> CX-3, at 7; CX-13, at 1.

<sup>80</sup> Tr. 90-91; Stip. ¶ 16; JX-2, at 28; CX-2, at 2-4. Orlando printed the revocation form from the Internet, completed the blank sections, and signed as one of the witnesses. Tr. 91; CX-2, at 2-4.

<sup>81</sup> Tr. 77-78, 91-92; Stip. ¶ 16; CX-3. Orlando admitted that “TTEE for Peter Orlando” meant that Orlando was the beneficiary on those accounts. Thus, if DW died, Orlando could have taken control of the funds immediately. Tr. 93-94. Orlando testified that he did not understand the significance of “TTEE” when DW opened the accounts. We do not find this claim credible, given Orlando’s significant history in the financial services industry and his admission that he had titled his own bank account “Peter Orlando, TTEE for [Orlando’s spouse].” Tr. 95, 631-32.

<sup>82</sup> Tr. 92-93; CX-3.

<sup>83</sup> Tr. 95-96. DL had been DW’s attorneys for decades before the events at issue. Tr. 95-96, 209-10, 276-77. DW used DL to appoint WW and KW as power of attorney for financial matters and healthcare in 2013. Tr. 187. When DW met with Enforcement, she advised them that she could not recall meeting with lawyers introduced by Orlando. She stated that her long-time lawyer was DL. Tr. 524, 534, 548; JX-11, at 2-3; JX-12, at 1.

RH out of the presence of DW to discuss possibly establishing a conservatorship over DW.<sup>84</sup> Orlando paid RH's \$2,000 legal fee with a check he wrote, dated August 13, 2014, signed by DW and drawn on her bank account.<sup>85</sup> Orlando ultimately decided against becoming DW's conservator, in part because a MetLife superior advised him that the firm does not permit registered representatives to act as conservators to non-family members.<sup>86</sup>

After Orlando abandoned the idea of becoming DW's conservator, he instead secured DW's financial power of attorney and a healthcare power of attorney. For this, Orlando hired the S&H law firm—another law firm with which DW was unfamiliar.<sup>87</sup> On August 21, 2014, Orlando drove DW to the S&H law firm and attended her meeting with the attorneys there.<sup>88</sup> In their meeting, Orlando did most of the talking.<sup>89</sup> Orlando wrote a \$2,000 check from DW's account (that DW signed) to pay the S&H law firm for the meeting.<sup>90</sup> The S&H law firm drafted a document appointing Orlando as DW's healthcare power of attorney, a document appointing Orlando as DW's financial power of attorney, and revised DW's will to, among other things, disinherit her sons and make Orlando the primary beneficiary.<sup>91</sup> Orlando became DW's healthcare power of attorney on August 21, 2014.<sup>92</sup> He became her financial power of attorney on September 10, 2014.<sup>93</sup> Orlando told MetLife about the powers of attorney only after DW's family complained.<sup>94</sup>

The S&H law firm also revised DW's will in other ways. Orlando communicated with the law firm about the will through telephone and email communications that did not include DW.<sup>95</sup> Although Orlando claimed not to have seen the executed will, he saw the unsigned draft, which essentially disinherited DW's children except for a nominal amount DW left to one daughter and her grandchildren.<sup>96</sup> In this will, DW left most of her estate, including the parcel of property on which she had a pool and all her personal property, to Orlando as her primary

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<sup>84</sup> Stip. ¶ 17; Tr. 98-102.

<sup>85</sup> Tr. 95-97; CX-3, at 2.

<sup>86</sup> Stip. ¶ 18.

<sup>87</sup> Tr. 102-03.

<sup>88</sup> Tr. 103-05.

<sup>89</sup> Tr. 579.

<sup>90</sup> Tr. 104; CX-3, at 9.

<sup>91</sup> Tr. 105-06; JX-2, at 31-43; CX-38.

<sup>92</sup> Stip. ¶ 19; JX-2, at 31-36. As such, Orlando was DW's attorney-in-fact to make all healthcare decisions for her. Stip. ¶ 19.

<sup>93</sup> Stip. ¶ 20; JX-2, at 37-43. As such, Orlando was DW's agent and attorney-in-fact with specific authority to acquire and sell DW's property and make banking, investment, and insurance decisions for her. Stip. ¶ 20.

<sup>94</sup> Tr. 108-09.

<sup>95</sup> CX-38.

<sup>96</sup> Tr. 119-23; CX-38, at 11.

beneficiary.<sup>97</sup> If Orlando predeceased DW, the will left her estate to Orlando's spouse, whom DW had never met.<sup>98</sup> The will also appointed Orlando as executor.<sup>99</sup> Orlando never advised MetLife of these developments.<sup>100</sup> DW met with attorneys from the S&H law firm and executed the will on August 28, 2014, at Capital Ridge. Orlando attended part of that meeting but left when DW actually executed the will.<sup>101</sup>

#### **E. Orlando's Interactions with DW's Family Members**

When WW learned that DW had withdrawn all the money from the bank account that he shared with her, he called Orlando.<sup>102</sup> Orlando told WW that DW "had some reservations regarding what was happening with the money and some of the things that had happened with the sale of the house . . . . [H]e took [DW] to the bank, and she opened a new account."<sup>103</sup> WW also confronted his mother. She was confused and did not understand why he was upset.<sup>104</sup> WW subsequently learned that, with Orlando's assistance, his mother had revoked his and his brother's powers of attorney as well.<sup>105</sup>

Later in September 2014, WW entered his bank (which is also his mother's bank). The bank manager called him into his office and advised WW that, if DW died that day, Orlando would receive all the funds in her bank accounts.<sup>106</sup> WW later learned that his mother also changed her will essentially to disinherit her children and make Orlando the primary beneficiary

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<sup>97</sup> CX-38, at 11.

<sup>98</sup> Orlando testified that he called the S&H law firm to direct them to add his wife as the secondary beneficiary because he worried that DW's sons would hurt him when they learned of his actions regarding DW's money. He stated:

But the one thing I thought about prior to that and what made me call about my wife is that I was very concerned that they'd do something violent to me. Really, I was. I was literally looking under my car for pipe bombs, you know, because I heard such unsavory things. I said, if these guys blow me up, I mean, my wife is left with nothing . . . . [M]y wife would have received the proceeds if anything happened to [DW] and me, that's correct. I didn't have any problem with that.

Tr. 680.

<sup>99</sup> Tr. 117-20, 122-26; CX-38, at 11.

<sup>100</sup> Tr. 127.

<sup>101</sup> Tr. 578-80; CX-34, at 4-12. Orlando claimed to have never seen the final executed will.

<sup>102</sup> WW did not know the specific date that he learned that DW had withdrawn all of the funds out of the account he shared with his mother, but he believed it to be sometime in August 2014. Tr. 191-92.

<sup>103</sup> Tr. 192-93.

<sup>104</sup> Tr. 193-94.

<sup>105</sup> Tr. 194-96; CX-2, at 2-4.

<sup>106</sup> Tr. 198.

and made Orlando the sole beneficiary of her bank account.<sup>107</sup> WW contacted KW who, at the time, was also Orlando's customer.<sup>108</sup> They later met with Orlando at KW's house and asked Orlando to "step away" from DW. Orlando became agitated, appearing to believe they were accusing him of misconduct.<sup>109</sup>

On September 23, 2014, Orlando called and asked WW for receipts evidencing the sons' sales of furniture from DW's house.<sup>110</sup> Orlando testified that DW wanted to see the receipts.<sup>111</sup> WW testified that Orlando had been consulted on some of the decisions related to the house sale, but in the end, WW and KW did what they felt was best for their mother.<sup>112</sup> WW and Orlando both testified that their telephone conversation became "heated," and Orlando suggested they meet in person at Capital Ridge.<sup>113</sup> WW and KW then proceeded to Capital Ridge.<sup>114</sup>

While in route, WW called Richard Spicuzza ("Spicuzza"). WW knew Spicuzza socially and knew he worked at MetLife with Orlando.<sup>115</sup> WW asked Spicuzza to intervene and attempt to diffuse the brothers' interaction with Orlando.<sup>116</sup> Spicuzza met WW and KW at Capital Ridge,<sup>117</sup> finding that Orlando had "barricaded" himself with DW in her locked apartment, and that Orlando had called the police.<sup>118</sup> The police went into DW's apartment. Spicuzza stayed in the hallway outside the apartment, and KW and WW stayed in the parking lot.<sup>119</sup> When the

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<sup>107</sup> Tr. 198.

<sup>108</sup> Tr. 198-99.

<sup>109</sup> Tr. 199-200.

<sup>110</sup> Tr. 200.

<sup>111</sup> Tr. 147. PW testified that DW wanted all new furniture and linens for her apartment at Capital Ridge. Tr. 257. She did not want to move furniture from her home. Tr. 257-58. PW and a neighbor took DW shopping for furniture and linens for her apartment at Capital Ridge. Tr. 257-58, 309-13, 317-18. WW sold DW's old furniture.

<sup>112</sup> Tr. 201.

<sup>113</sup> Tr. 147-48, 201, 208.

<sup>114</sup> Tr. 201-02, 208.

<sup>115</sup> Tr. 202, 208.

<sup>116</sup> Tr. 427-28.

<sup>117</sup> Tr. 202-03, 208-09, 428-29. Orlando testified that he, not WW, called Spicuzza to help him. Tr. 151. Spicuzza testified that WW called him. Tr. 427-28. Based on Spicuzza's corroborating testimony, we credit WW's testimony that he called Spicuzza.

<sup>118</sup> Tr. 148.

<sup>119</sup> Tr. 430-31, 447.

police exited DW's apartment, they reported to WW that an officer spoke to DW alone and asked if she feared WW and KW.<sup>120</sup> DW said she did not, and the police left without incident.<sup>121</sup>

Orlando then confronted WW and KW in the parking lot of Capital Ridge.<sup>122</sup> WW testified:

He came out aggressively to speak to us, telling us that we didn't care about our mother, and we didn't care what happened to her. He was going to take her out to dinner, and she hadn't eaten. We very simply explained we're paying \$5,000 a month. She's very cared for. She's taken care of, they'll feed her. It's not his job.<sup>123</sup>

WW and KW left Capital Ridge after their conversation with Orlando. Spicuzza also departed Capital Ridge and did not discuss the incident with Orlando again.<sup>124</sup>

The next day, Orlando returned to DW's apartment at Capital Ridge with a typewritten letter prepared for DW's signature.<sup>125</sup> The letter stated that Orlando did "not have any beneficial interest to any of [DW's] property including bank accounts . . . . He has declined any beneficial interest." The letter continued:

[Orlando] has helped me as a friend and nothing he has done should be construed as work for hire or business activity . . . . I am competent and able to handle my own affairs, make out my own checks, decide on employing a dog walker or driver to take me to the hair dresser.<sup>126</sup> My sons, [WW and KW] who had power of attorney over me wanted me to buy a run down house for them in which I would live,<sup>127</sup> have acted in a hostile and bullying manner to me . . . doing everything to make me feel vulnerable and isolated, including putting me in such fear that I had to call the police when they came to my apartment complex last night. Moreover,

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<sup>120</sup> Tr. 148-49, 202-03, 208-09. WW testified that the police officer advised him that Orlando initially did not want DW to speak to the officer alone, but the officer had insisted. Tr. 203.

<sup>121</sup> Tr. 203.

<sup>122</sup> Tr. 149-50. Orlando stated that KW and WW yelled at him. There was no physical altercation. Tr. 149-50. Spicuzza described the interaction as a "shouting match" between Orlando and KW and WW. Tr. 430.

<sup>123</sup> Tr. 204.

<sup>124</sup> Tr. 434. Spicuzza testified that Orlando called him once after the incident and asked him to pull a customer file for him. Spicuzza refused. Tr. 434.

<sup>125</sup> Tr. 150-51.

<sup>126</sup> Orlando wrote and had DW sign checks drawn on her account to two of Orlando's family members. Tr. 155-59; CX-3, at 9-10, 14-15. Orlando contended that these two individuals walked DW's dogs and drove her to the hairdresser. Tr. 155-56.

<sup>127</sup> Orlando believed the house into which KW and WW intended to move DW was "rundown," although he admits that he never saw the house. Tr. 85-86. WW testified that the house required updating and that he and KW intended to renovate it before moving their mother there. Tr. 178-79, 255-57.

they have threatened Mr. Orlando . . . . Mr. Orlando is a friend of mine and I thank God ever (sic) day for his kindness, courage, intelligence and honesty.<sup>128</sup>

DW signed the letter on September 24, 2014.<sup>129</sup>

Also on September 24, 2014, Orlando drove DW to the bank and removed himself from her “TTEE” account.<sup>130</sup> DW also revoked Orlando’s power of attorney for health care and financial matters that day.<sup>131</sup>

DW’s family contacted MetLife to complain about Orlando on or about September 25, 2014.<sup>132</sup> DW thereafter gave PW power of attorney for financial matters, and WW power of attorney for healthcare.<sup>133</sup> After PW’s appointment as financial power of attorney, Orlando met with PW and DW at Capital Ridge to turn over DW’s check ledger and other documents.<sup>134</sup> Orlando also had in his possession and returned to PW, DW’s wedding ring,<sup>135</sup> the key to DW’s swimming pool, VC-1 license plates,<sup>136</sup> and a painting.<sup>137</sup>

Shortly after PW became DW’s financial power of attorney, PW drove DW to DL, the attorney DW had used for decades. With DL’s assistance, DW revoked the will that named Orlando as primary beneficiary and prepared another will that includes KW and WW as beneficiaries.<sup>138</sup> PW learned from the documents Orlando gave her that DW had surrendered her MetLife VA. PW discussed the surrender with DW, who stated that she did not want to surrender the MetLife VA.<sup>139</sup> PW later talked with Kotula and asked how to reinstate the MetLife VA.<sup>140</sup>

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<sup>128</sup> JX-2, at 22.

<sup>129</sup> JX-2, at 22.

<sup>130</sup> Tr. 163-65, 205.

<sup>131</sup> Tr. 163-64; CX-23.

<sup>132</sup> Tr. 164.

<sup>133</sup> Tr. 263-64, 267; JX-9.

<sup>134</sup> Tr. 268-74.

<sup>135</sup> There is no explanation in the record for why Orlando possessed DW’s wedding ring. Tr. 272-74.

<sup>136</sup> Tr. 272-73. Orlando possessed DW’s vanity license plates that DW valued. WW testified that, while at Capital Ridge, he saw that Orlando had “VC-1” plates on his car. Tr. 216. These plates had been in DW’s family for many years and had belonged to DW’s father. Tr. 216, 274-75. Orlando testified that DW wanted to keep the plates in the family and, because she did not have a car, she asked Orlando to register them to his car temporarily. Tr. 689. DW signed a typed document, however, stating that she had given the plates as a gift to Orlando, who the document identified as “a cherished family friend.” Tr. 215-16, 657; JX-2, at 23.

<sup>137</sup> Tr. 272-74. Before the events at issue, WW had given a painting by an Italian artist to Orlando as a gift. CX-34, at 25. Orlando returned the painting to PW.

<sup>138</sup> Tr. 210-11, 275-77.

<sup>139</sup> Tr. 282.

<sup>140</sup> Tr. 282-83.

On October 6, 2014, at DW's direction, PW submitted a written request for the reinstatement of DW's MetLife VA.<sup>141</sup> MetLife reinstated her MetLife VA on January 6, 2015, and deposited into DW's checking account the six monthly income payments (of \$626.91) DW missed in the interim.<sup>142</sup> MetLife also waived DW's surrender fee when it reinstated the contract.<sup>143</sup>

#### **F. MetLife's Investigation of Orlando**

On September 23, 2014, Spicuzza called Kotula and reported the call he had just received from WW, in which WW stated that Orlando had "barricaded" himself in his mother's apartment at Capital Ridge and asked Spicuzza to intervene.<sup>144</sup> Spicuzza advised Kotula that he was driving to Capital Ridge. Spicuzza called Kotula one hour later and reported that Orlando eventually left Capital Ridge.<sup>145</sup>

Kotula testified that KW called him on September 24, 2014. KW advised Kotula that, the night before, Orlando had "barricaded" himself in his mother's assisted living apartment. KW confirmed that he and his brother called another MetLife advisor (Spicuzza) to convince Orlando to leave.<sup>146</sup> KW also presented a list of complaints about Orlando's conduct with respect to DW.<sup>147</sup> In particular, they suggested that Orlando had become too possessive and controlling of DW.<sup>148</sup> In a subsequent conversation with Kotula, KW described Orlando's relationship with DW as "strange," and indicated that Orlando had written DW a letter stating that he would help her through the process of "making sure that the children don't devastate or destroy her estate."<sup>149</sup>

Also on September 24, 2014, Kotula asked Orlando to come to his office to discuss the evening of September 23 and his relationship with DW.<sup>150</sup> The two met in person. Orlando told Kotula that KW and WW were "out to steal [DW's] money" and that WW was "a gambler, an adulterer, and [Orlando] didn't believe that they were going to do anything appropriately for [DW] and her future."<sup>151</sup> Kotula responded to Orlando:

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<sup>141</sup> Tr. 282-84; CX-14.

<sup>142</sup> Tr. 284-87; JX-7; JX-8.

<sup>143</sup> Tr. 381.

<sup>144</sup> Tr. 352; CX-28.

<sup>145</sup> Tr. 352-53.

<sup>146</sup> Tr. 349-50, 356; CX-25.

<sup>147</sup> Tr. 350-51.

<sup>148</sup> Tr. 353.

<sup>149</sup> Tr. 361.

<sup>150</sup> Tr. 360.

<sup>151</sup> Tr. 364.

So I had explained to him that there's a protocol that you can go on the portal when you're dealing with diminished capacity or elder abuse, as well as our Special Investigation Unit can look into stuff, and communicated to him that that's a protocol he could follow.<sup>152</sup>

Orlando never reported suspected elder abuse by KW and WW to Kotula or any other manager at MetLife.<sup>153</sup> Nor did he ever report his suspicions to the police or a social service agency.<sup>154</sup>

MetLife investigator Timothy Thomas ("Thomas") began investigating Orlando soon after September 24, 2014.<sup>155</sup> He attempted but could not reach Orlando by telephone. Eventually, through an administrative assistant in Orlando's office, Thomas scheduled an in-person meeting with Orlando for December 8, 2014.<sup>156</sup> Orlando did not attend the meeting and instead resigned from MetLife on December 8.<sup>157</sup> After Orlando resigned, Thomas requested Orlando's customer files.<sup>158</sup> In one of Orlando's customer files, he found two blank forms signed by DW—a variable annuity withdrawal form and a request for electronic transfer of funds form.<sup>159</sup> In MetLife's electronic files, Thomas found what he believed to be the pre-signed electronic transfer of funds form fully completed.<sup>160</sup>

#### **IV. Findings of Violation**

##### **A. Cause One – Assuming Financial Control of an Elderly Customer**

Cause one alleges that Orlando used his position of trust with DW to become the executor of her will, the primary beneficiary of her will, the beneficiary of her bank account, and her healthcare and financial power of attorney. Cause one alleges that, in doing so, Orlando acted unethically and violated FINRA Rule 2010. We find that Orlando acted unethically, in violation of FINRA Rule 2010.

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<sup>152</sup> Tr. 365.

<sup>153</sup> Tr. 168-70, 365-66.

<sup>154</sup> Tr. 170. Orlando testified that he told Spicuzza his concerns about elder abuse related to DW. Tr. 171. Spicuzza testified that although he knew WW, he knew nothing about DW. He did not even know that DW was Orlando's client before WW called him to Capital Ridge. Tr. 426-27.

<sup>155</sup> Tr. 461.

<sup>156</sup> Tr. 463-64.

<sup>157</sup> Tr. 165-66, 378, 464-65; Stip. ¶ 23.

<sup>158</sup> Tr. 465.

<sup>159</sup> Tr. 466, 471; CX-34, at 13-19.

<sup>160</sup> Tr. 480-81; CX-34, at 18-19. MetLife allowed Orlando to continue working during the investigation. When Orlando resigned, Thomas completed his report (CX-34) and the firm closed the investigation. Tr. 481-88.



FINRA Rule 2010 requires member firms and associated persons to observe “high standards of commercial honor and just and equitable principles of trade.”<sup>161</sup> The rule enables FINRA to regulate the ethical standards of its members and associated persons and serves “as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly.”<sup>162</sup> In interpreting FINRA’s and other self-regulatory organizations’ just-and-equitable rules, the Securities and Exchange Commission has applied a disjunctive bad faith or unethical conduct standard.<sup>163</sup> Thus, motive is not required, “and a showing of unethical conduct, even if not in bad faith, can be sufficient to establish liability.”<sup>164</sup> A member firm’s internal policies and procedures “provide guidance to regulatory authorities who must determine whether specific actions violate the standards of ethical conduct mandated by Rule 2010.”<sup>165</sup>

During the relevant period, MetLife had a blanket prohibition against its registered representatives serving as fiduciaries for non-family members or being beneficiaries on the bank accounts of non-family members.<sup>166</sup> The prohibition applied regardless of the mental capacity and desires of the individual and the conduct of the individual’s family members. Additionally, the duration of the fiduciary role and the extent to which the registered person actually exercised fiduciary powers do not affect the prohibition. Orlando ignored these prohibitions. “[T]he failure to follow firm procedures, particularly those designed to protect customers” is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.<sup>167</sup>

Moreover, Orlando’s conduct was unethical. He used his position of trust to lead DW, an 81-year-old woman with whom he previously had nothing more than a customer/broker relationship, into giving him authority to make medical decisions for her. He also encouraged her to grant him power of attorney for financial matters, name him as executor in her will, and name

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<sup>161</sup> FINRA Rule 2010 states that a “member,” in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 0140 states that persons associated with a member, like Orlando, shall have the same duties and obligations as a member under FINRA’s rules.

<sup>162</sup> *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at \*19 (Jan. 9, 2015) (citations omitted).

<sup>163</sup> *See West*, 2015 SEC LEXIS 102, at \*20; *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54, at \*17 (Jan. 6, 2012) (holding that “just and equitable” rules focus on the ethical implications of an associated person’s misconduct). *See also Heath v. SEC*, 586 F.3d 122, 132-33 (2d Cir. 2009) (holding that, to find a violation of just and equitable principles of trade, FINRA must show either that a respondent acted unethically or that he acted in bad faith), *cert. denied*, 210 U.S. 3029 (2010).

<sup>164</sup> *DiFrancesco*, 2012 SEC LEXIS 54, at \*18.

<sup>165</sup> *Dep’t of Enforcement v. Keath*, No. 2015044489701, 2017 FINRA Discip. LEXIS 35, at \*26 (OHO July 10, 2017).

<sup>166</sup> Tr. 368-69, 370-77; CX-18, at 12-13; CX-19, at 12-13; CX-20, at 19.

<sup>167</sup> *Dep’t of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 19, at \*7 (OHO Jan. 11, 2013), *aff’d in relevant part*, 2013 FINRA Discip. LEXIS 45 (NAC Dec. 31, 2013).

him as primary beneficiary of her will. He drove her to her bank and accompanied her inside when she made him the beneficiary of her bank accounts. Before these events, he was merely her broker. We find that Orlando exerted an inordinate amount of influence over DW.

Orlando claimed to have acted as he did to protect DW against the evil intentions of her sons. Orlando admitted, however, that he had no evidence that WW or KW had done anything improper with DW's money.<sup>168</sup> He offered that he nonetheless suspected wrongdoing because he observed KW at the family pool giving his girlfriend DW's belongings without DW being present.<sup>169</sup> He also believed WW was a "gambler."<sup>170</sup> None of Orlando's uncorroborated suppositions warrants his actions. If he truly worried that DW's sons intended to harm her, he should have reported it through the proper channels. Orlando could have talked to Kotula, requested that MetLife investigate DW's situation, report his concerns on the firm's intranet system, or contact the police or a social service agency.<sup>171</sup> He did none of that; he instead took matters—his customer's finances—into his own hands.

Other aspects of Orlando's conduct support our conclusion that he acted unethically. For instance, Orlando surreptitiously drove DW to two attorneys she did not know rather than explain his concerns about KW and WW to DL, DW's long-time legal advisor. Then he talked about DW with both attorneys—outside of DW's presence. Furthermore, Orlando, not DW, directed the S&H law firm to make Orlando's wife, whom DW had never met, the primary beneficiary of DW's estate if Orlando predeceased DW.<sup>172</sup> This conduct is not that of a trusted confidant who was trying to protect his customer. Rather, we find it to be the unethical actions of an individual exploiting an easily influenced elderly person.<sup>173</sup>

Orlando held the position of DW's medical power of attorney for approximately 30 days.<sup>174</sup> He was DW's power of attorney for financial matters for about 12 days.<sup>175</sup> In addition, he was the primary beneficiary in her will and the beneficiary on her bank account, and his wife was the secondary beneficiary on her will, for approximately 30 days.<sup>176</sup> If DW died or became incapacitated, Orlando held considerable power over her healthcare decisions and all of her assets, and he stood to gain substantially from his position. We find it was unethical for Orlando

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<sup>168</sup> Tr. 662, 690.

<sup>169</sup> Tr. 690-92.

<sup>170</sup> Tr. 667.

<sup>171</sup> Indeed, when Orlando did contact the police, he did so for his own protection, rather than DW's, as he claimed to be afraid of her sons physically harming him.

<sup>172</sup> See CX-38, at 6-7.

<sup>173</sup> See *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at \*26 (June 2, 2016) (holding that Rule 2010 prohibits dishonest practices even if those practices may not be illegal or violate a specific rule).

<sup>174</sup> Tr. 674.

<sup>175</sup> Tr. 674.

<sup>176</sup> Tr. 677-78.

to persuade DW to bestow this power on him without her family's knowledge, without the firm's knowledge, and without oversight or guidance.<sup>177</sup> We find that Orlando's conduct violated FINRA Rule 2010 as alleged in cause one of the Complaint.

## **B. Cause Two – Unsuitable Recommendation to Surrender Variable Annuity**

Cause two alleges that Orlando recommended that DW surrender the MetLife VA without having a reasonable basis to believe it was suitable, in light of the \$30 sales charge, \$479 GMIB charge, and \$3,440 surrender fee she incurred. Cause two also alleges that DW's loss of a monthly \$626.91 payment and the opportunity for future income added to the unsuitable nature of Orlando's recommendation and that Orlando's conduct violated FINRA Rules 2111 and 2010. We find that Orlando's August 11, 2014 recommendation that DW surrender the MetLife VA was not suitable, in violation of FINRA Rules 2111 and 2010.

FINRA Rule 2111 states that an associated person must have a reasonable basis to believe that a recommended transaction is suitable for the customer, based on information the associated person obtained through reasonable diligence to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information provided by the customer. FINRA General Principle 2111.01 states that the fundamental responsibility for fair dealing is implicit in all relationships between associated persons and customers. "Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct."<sup>178</sup> A violation of any FINRA rule, including Rule 2111, is a violation of FINRA Rule 2010.<sup>179</sup>

Orlando admittedly told DW to surrender the MetLife VA so that he could assume power of attorney for her financial and healthcare matters.<sup>180</sup> Orlando calculated that, over the course of ten years, DW would pay between \$12,000 and \$40,000 in fees and costs if she held the MetLife

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<sup>177</sup> Orlando argues that, if DW was competent to ask DL to make PW power of attorney in September 2014, she was competent to name Orlando as power of attorney in August 2014. This argument misses the mark. DW's competence is not the issue. The issue is that Orlando took unfair advantage of DW when she felt alienated from her sons and was grieving the loss of her husband. Rather than get her the assistance she needed, he instead convinced her to transfer assets and authority over her finances and healthcare to him.

<sup>178</sup> Supplemental Material to FINRA Rule 2111, General Principle 2111.01.

<sup>179</sup> See *Dep't of Enforcement v. Lim*, No. 2014039091903, 2017 FINRA Discip. LEXIS 25, at \*45 (OHO June 2, 2017) (holding that violation of FINRA Rule 2111 also violates FINRA Rule 2010). See also *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at \*11 n.7 (NAC May 26, 2017) (holding that a violation of any FINRA rule is also a violation of FINRA Rule 2010).

<sup>180</sup> Supplement to Answer, at 15.

VA.<sup>181</sup> Thus, he argued, DW's more than \$3,900 in surrender fees and costs were relatively minimal. Orlando failed, however, to factor into his analysis the potential benefit offered by the MetLife VA. FINRA Investigative Attorney Moore reviewed DW's quarterly statements for the MetLife VA.<sup>182</sup> Factoring in the fees that DW paid, she determined that the variable annuity earned about \$2,500 per quarter on average.<sup>183</sup> Although past performance may differ from future performance, the MetLife VA appeared to be a well-performing investment. By surrendering it as Orlando recommended, DW incurred surrender fees and costs of more than \$3,900.<sup>184</sup>

Orlando also failed to offer DW an equally beneficial alternate investment when he recommended she surrender the MetLife VA. DW received approximately \$57,806 upon surrender.<sup>185</sup> At Orlando's urging, DW deposited the funds into her bank account. At the time, DW's bank account earned only .01% interest, which presumably was much less than she would have earned from the MetLife VA.<sup>186</sup>

Orlando argued that, because MS withdrew funds from the MetLife VA, it no longer offered a sufficient return and it made sense for DW to sell it even though she incurred surrender fees and costs. Although MS unexpectedly withdrew funds from the variable annuity, it continued to provide a good return, and DW's other financial circumstances had not changed. DW was willing to accept the risk associated with the MetLife VA when she agreed to the purchase in 2011, and she and her family reinstated it in January 2015, suggesting that DW's risk tolerance had not changed. Given the MetLife VA's past good performance, the surrender charges incurred, and DW's continued need for regular monthly income, we do not find Orlando's recommendation to surrender the MetLife VA suitable, even in light of MS's withdrawals.

We find that, by making an unsuitable recommendation to DW, Orlando violated FINRA Rules 2111 and 2010, as alleged in cause two of the Complaint.

### **C. Cause Three – Maintaining Blank Pre-Signed Customer Forms**

Cause three alleges that Orlando violated FINRA Rule 2010 by maintaining in his customer file for DW two signed, blank forms. The evidence supports the allegations of cause three.

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<sup>181</sup> Tr. 666.

<sup>182</sup> Tr. 563-64; JX-5.

<sup>183</sup> Tr. 564-65; JX-5.

<sup>184</sup> See CX-13. Furthermore, DW lost the \$626 monthly payment she relied on.

<sup>185</sup> CX-13.

<sup>186</sup> Tr. 570-72; CX-13.

MetLife’s investigator testified unequivocally that he found in one of Orlando’s customer files two blank forms signed by DW—a variable annuity withdrawal form and a request for electronic transfer of funds form. Orlando suggested various explanations for the signed, blank forms. He stated that Thomas was mistaken and that someone else planted the signed, blank forms in his files. He offered no evidence, however, to support these claims. “As a registered representative, [Orlando] should have known that the accuracy of a brokerage firm’s records is one of the bedrocks upon which the public trust in the financial markets is built.”<sup>187</sup> Even if MetLife’s procedures had not forbidden the conduct, which they did, Orlando “should have known that customers should not be signing blank documents . . . because of the risk that such documents would contain inaccurate, misleading, or deceptive information.”<sup>188</sup>

We find that Orlando violated FINRA Rule 2010 as alleged in cause three of the Complaint.

## V. Sanctions

We begin our consideration of sanctions by consulting FINRA’s Sanction Guidelines (“Guidelines”).<sup>189</sup>

There are no Guidelines generally applicable to the unethical conduct alleged in cause one—assuming financial control of an elderly customer and abusing customer trust. When the Guidelines do not specifically address a violation, the Guidelines encourage adjudicators to look to Guidelines for analogous violations.<sup>190</sup> We considered the Guidelines for failure to comply with a firm’s procedures for outside business activities,<sup>191</sup> which recommend a fine of up to \$73,000 and a suspension.<sup>192</sup> The Guidelines state that, where aggravating factors predominate, the adjudicator should consider a suspension of up to two years or a bar.<sup>193</sup>

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<sup>187</sup> *Dep’t of Enforcement v. Hill*, No. C8A050060, 2006 NASD Discip. LEXIS 47, at \*29 (OHO Nov. 14, 2006).

<sup>188</sup> *Id.* at \*29-30.

<sup>189</sup> See *Success Trade Sec., Inc.*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at \*80 (Sept. 28, 2017) (holding that FINRA’s Sanction Guidelines serve as a benchmark for determining sanctions); FINRA Sanction Guidelines (2018), [http://www.finra.org/industry/sanction\\_guidelines](http://www.finra.org/industry/sanction_guidelines). In May 2018, FINRA revised its Guidelines by amending General Principle No. 2 to instruct adjudicators in disciplinary proceedings to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. These revisions apply only to complaints filed on or after June 1, 2018. See Guidelines at 2-3. FINRA made no other revisions to the Guidelines in May 2018. See FINRA Regulatory Notice 18-17 (May 2018), <http://www.finra.org/industry/notices/18-17>. Accordingly, we rely on General Principle No. 2 as it read prior to the May 2018 revision.

<sup>190</sup> Guidelines at 1.

<sup>191</sup> *Id.* at 13.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

The Guidelines contain Principal Considerations in Determining Sanctions that apply to all types of rule violations. Here, we find several aggravating factors. First, we find it aggravating that Orlando acted intentionally and that he stood to benefit financially from his misconduct.<sup>194</sup> DW was a vulnerable customer. If Orlando believed her sons posed a danger to her, as he contends, the proper recourse was for him to report the matter to his manager and alert the firm through its intranet system. He could have also contacted the police or local social service agencies. He took none of those actions and instead embarked upon a course of conduct that placed him at a significant advantage. Indeed, had DW died during the roughly month-long period when Orlando was beneficiary on her bank account and primary beneficiary in her will, he would have inherited essentially all of her money, jewelry, art, and real property. Had DW become incapacitated during the month or so that Orlando held medical power of attorney for her, he could have excluded her children and grandchildren from making life and death decisions about her health care. At a minimum, Orlando's course of conduct was reckless and placed DW in a position of risk. We therefore conclude that Orlando acted intentionally and to his own benefit, and that these are significantly aggravating factors.

Second, we find it aggravating that Orlando exercised undue influence over a financially unsophisticated and vulnerable customer who placed significant trust in him.<sup>195</sup> Orlando abused her trust by convincing her to take actions that were contrary to her welfare and made little sense. Orlando did not regularly transport DW to doctor visits or monitor her health.<sup>196</sup> Yet, for nearly a month, Orlando held DW's healthcare power of attorney. DW had never met Orlando's spouse, yet she would become the primary beneficiary of DW's will if Orlando predeceased DW. DW's will read as such for approximately one month. In all, Orlando used DW's lack of sophistication to push her to take unwise actions that benefitted Orlando, not DW and her family.

We also find it aggravating that Orlando went to great lengths to conceal his misconduct from MetLife.<sup>197</sup> Even if Orlando believed his course of action to be proper, a supervisor from his member firm could have intervened to disabuse him of that notion. Proper supervision is a cornerstone of the securities industry's self-regulatory system.<sup>198</sup> Orlando's concealment of his actions from MetLife prevented the firm from exercising its supervisory authority and protecting DW. We find Orlando's concealment to be an aggravating factor.

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<sup>194</sup> *Id.* at 8 (Principal Consideration Nos. 13, 16).

<sup>195</sup> *Id.* at 8 (Principal Consideration Nos. 18, 19).

<sup>196</sup> WW and PW testified that they or other family members accompanied DW to doctor visits. Tr. 182, 188, 255, 259-61, 277, 288. Orlando testified that, when he held power of attorney for DW, he paid his relative from DW's account to transport DW to appointments, including doctor visits. Tr. 155-58. Orlando did not claim that he ever transported DW to doctor visits.

<sup>197</sup> Guidelines at 7 (Principal Consideration No. 10).

<sup>198</sup> *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at \*33 (Dec. 19, 2008) ("Assuring proper supervision is a critical component of broker-dealer operations.").

Further aggravating Orlando's misconduct is the harm his actions caused and could have caused to DW and her family.<sup>199</sup> In the end, DW lost almost \$4,000 because of Orlando's misconduct.<sup>200</sup> MetLife reinstated the MetLife VA, refunded the surrender fees and charges, and placed DW in the position she would have been in had Orlando not recommended she surrender the MetLife VA. The losses Orlando's misconduct created were limited, but only because DW's family learned of Orlando's actions and intervened. Had they not intervened, Orlando's full access to DW's money would have persisted. If DW had died, Orlando would have received the majority of DW's estate and her family would have received very little. We consider DW's \$4,000 loss and the potential harm Orlando's actions caused to be aggravating.

Enforcement encourages us to consider uncharged misconduct in our sanctions analysis. Enforcement argues that we should consider that Orlando considered becoming DW's conservator,<sup>201</sup> wrote more than \$1,000 in checks from DW's account to his family members,<sup>202</sup> accepted license plates from DW without reporting them to MetLife as gifts,<sup>203</sup> and used his personal email address to discuss customer business away from MetLife.<sup>204</sup> Although we acknowledge that case law allows us, under certain circumstances, to consider uncharged misconduct in connection with sanctions,<sup>205</sup> we have not done so here. The significance of the misconduct alleged in the Complaint fully support the sanctions that we impose.

The specific Principal Considerations applicable to outside business activities recommend that we consider whether (1) the outside activity involved a customer of the firm, (2) the respondent misled his employer, and (3) the misconduct caused injury to the customer.<sup>206</sup> As we explained above, all of these factors aggravate Orlando's misconduct in that DW was a MetLife customer, Orlando concealed his actions from MetLife, and Orlando caused injury to DW and her family. Additionally, Orlando's misconduct created the potential for additional injury to DW and her family. Furthermore, Orlando violated his customer's trust. DW was a vulnerable client whose husband had recently passed. She was susceptible to Orlando's suggestions that her sons were mishandling her money and placed significant authority in his

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<sup>199</sup> Guidelines at 7 (Principal Consideration No. 11).

<sup>200</sup> Orlando caused DW unnecessarily to pay \$2,000 each to two attorneys for legal work DW's family ultimately reversed.

<sup>201</sup> Tr. 96; Stip. ¶ 17.

<sup>202</sup> Tr. 155; CX-3.

<sup>203</sup> Tr. 657; JX-2, at 23; CX-31.

<sup>204</sup> Tr. 140-41, 144-45.

<sup>205</sup> See *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at \*38 (Sept. 12, 2011) (“[A]n adjudicator may consider matters that fall outside the underlying rule violation when determining whether the sanction serves a remedial purpose that will deter future misconduct and improve overall standards in the securities industry.”); *Dep't of Enforcement v. Connors*, No. 2012033362101, 2016 FINRA Discip. LEXIS 1, at \*35 n.102 (NAC Jan. 15, 2016) (“Evidence of misconduct that is not alleged in a complaint, but is similar to the misconduct charged in a complaint, is admissible to determine sanctions.”).

<sup>206</sup> Guidelines at 13 (Outside Business Activities Principal Consideration Nos. 1, 2, 3).

hands. Rather than use that authority to help DW, he helped himself. Orlando points to DW's failure to complain as proof of his good intentions. But a customer's failure to complain is never mitigating.<sup>207</sup> In any event, DW's family complained on her behalf immediately upon learning of Orlando's actions. In light of the many aggravating factors and dearth of mitigating factors in this case, we find that a bar in all capacities is necessary to protect the investing public from a recurrence or similar misconduct.<sup>208</sup>

We have also considered, as directed by the General Principles Applicable to All Sanction Determinations, that adjudicators should order restitution where appropriate.<sup>209</sup> FINRA may order restitution when an identifiable person has suffered a quantifiable loss caused by a respondent's misconduct.<sup>210</sup> We find that Orlando's misconduct proximately caused DW to pay \$4,000 to two law firms for unnecessary legal work that did not benefit DW. Significantly, some of that legal work resulted in monetary benefit to Orlando, as he became DW's financial power of attorney and the primary beneficiary of her will. We therefore order Orlando to pay restitution of \$4,000 plus interest to DW.

For Orlando's misconduct under cause one of the Complaint—assuming financial control of an elderly customer and abusing customer trust—we bar Orlando from associating with any member firm in any capacity. We also order Orlando to pay restitution of \$4,000 to DW, plus interest from the date of this decision.<sup>211</sup>

In light of the bar for misconduct under cause one, we do not impose additional sanctions for Orlando's misconduct under causes two and three. We nonetheless discuss the misconduct under causes two and three briefly below.

Under cause two, we find that Orlando recommended that DW surrender the MetLife VA without a reasonable basis to believe that the recommendation was suitable. The Guidelines for unsuitable recommendations recommend a fine of \$2,500 to \$110,000 and a suspension of ten business days to two years.<sup>212</sup> We also consider the many aggravating factors present here and that Orlando engaged in this misconduct in furtherance of his efforts to take unfair advantage of

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<sup>207</sup> *Dep't of Enforcement v. Noard*, No. 2012034936101, 2017 FINRA Discip. LEXIS 15, at \*29 (NAC May 12, 2017) (stating that a customer's failure to complain is not mitigating).

<sup>208</sup> We note that Orlando fails to grasp the grievous nature of his misconduct and claims his actions were justified by WW's and KW's perceived vices. If Orlando truly believed KW and WW posed a threat to DW, he should have secured assistance for her, not taken control of her finances, healthcare, and estate planning.

<sup>209</sup> Guidelines at 4 (General Principle No. 5).

<sup>210</sup> *Success Trade Sec.*, 2017 SEC LEXIS 3078, at \*89 (holding that restitution is appropriate in FINRA proceedings to return customers to the prior positions by restoring the funds of which they were wrongfully deprived).

<sup>211</sup> The Guidelines recommend that adjudicators consider requiring the payment of interest on restitution, calculated at the rate established for the underpayment of federal income tax in Section 6621 of the Internal Revenue Code, 26 U.S.C. Section 6621(a)(2). Guidelines at 11.

<sup>212</sup> Guidelines at 95. The Guidelines for unsuitable recommendations do not include additional principal considerations.



an elderly customer. If we had not barred Orlando from associating with any member firm in any capacity, we would have fined him \$10,000 and suspended him for 30 business days. In light of the bar, however, we do not impose these sanctions for his misconduct.

Under cause three, we find that Orlando maintained two blank forms signed by DW in his customer files. No Guidelines directly apply, but we considered the Guidelines for Falsification of Records.<sup>213</sup> These Guidelines recommend a fine of \$5,000 to \$10,000 and a suspension of ten business days to six months. The Guidelines also recommend that we consider the nature of the documents at issue. Here, the documents were a variable annuity withdrawal form and a request for electronic transfer of funds form,<sup>214</sup> which are significant because, if they were misused, the repercussions could have been dire for DW. The Guidelines also recommend that we consider whether the respondent had a good-faith, but mistaken, belief of express or implied authority.<sup>215</sup> There is no evidence to support such a finding. In light of the bar in all capacities that we impose under cause one, we do not impose additional sanctions for misconduct under cause three. If we had not barred Orlando, we would have fined him \$5,000 and suspended him for 30 business days for misconduct under cause three.

## **VI. Order**

We find that Peter Orlando betrayed the trust and assumed financial control of an elderly customer, in violation of FINRA Rule 2010.<sup>216</sup> For this violation, we bar Orlando from associating with any FINRA member firm in any capacity and order him to pay \$4,000 restitution plus interest to customer DW. The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding. Interest will accrue as of the date of this decision and will be calculated at the rate established for the underpayment of federal income tax. We also find that Peter Orlando recommended that a customer surrender a variable annuity without having a reasonable basis to believe that the recommendation was suitable, in violation of FINRA Rules 2111 and 2010. We further find that Peter Orlando maintained in his customer files pre-signed blank customer forms, in violation of FINRA Rule 2010. In light of the bar, however, we impose no additional sanctions for this misconduct.

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<sup>213</sup> *Id.* at 37.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> The Hearing Panel considered and rejected without discussion all other arguments by the parties.

We also order Orlando to pay hearing costs of \$7,693.86, which includes a \$750 administrative fee and \$6,943.86 for the cost of the hearing transcript. 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.

**SO ORDERED.**



Carla Carloni  
Hearing Officer  
For the Hearing Panel

Copies: Peter Orlando (by email, overnight courier, and first-class mail)  
Jessica Zetwick-Skryzhynskyy, Esq. (by email and first-class mail)  
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