BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of Department of Enforcement, Complainant, v. Respondent 1 Respondent.	DECISION Complaint No. C9A980032 Dated: June 19, 2000

Where Hearing Panel had found that the evidence did not prove the allegation that a registered representative had committed forgery, but that the evidence did prove the allegation that the representative had given false and/or misleading testimony to the NASD, held: dismissal of forgery allegation affirmed; finding that representative gave false and/or misleading testimony to the NASD reversed; and sanctions set aside.

Respondent 1 has appealed a 1999 decision issued by a Hearing Panel.[1] After a review of the entire record in this matter, we affirm the Hearing Panel's dismissal of cause one of the complaint, regarding forgery, and we reverse the Hearing Panel's finding under cause two that Respondent 1 provided false and/or misleading testimony to the NASD. We set aside the sanctions imposed by the Hearing Panel.

Background

Respondent 1 entered the securities industry in 1986. From January 25, 1993 until October 7, 1994, he was registered as a general securities representative with Firm A. From April 10, 1995 until

[1] Respondent 1 appealed the Hearing Panel's finding of violation as to cause two. The Department of Enforcement did not appeal the Hearing Panel's dismissal of the forgery allegation in cause one of the complaint. We nonetheless have examined the record as to cause one in order to satisfy ourselves that the evidence supports the Hearing Panel's decision to dismiss that cause.

August 22, 1996, Respondent 1 was registered as a general securities representative with Firm B. Respondent 1 currently is not associated with an NASD member firm. The Department of Enforcement ("Enforcement") filed the instant complaint in 1998, following the receipt of a written complaint from customer JF about Respondent 1's alleged mishandling of funds that JF originally had invested with Respondent 1 while he was employed at Firm A. JF's complaint letter did not allege that Respondent 1 had forged JF's signature to any documents.

Jurisdiction

Respondent 1 contested the exercise of jurisdiction over him by NASD Regulation, Inc. ("NASD Regulation"). We affirm the Hearing Officer's determination that NASD Regulation appropriately exercised jurisdiction in this matter.

Article V, Section 4(a) of the NASD By-Laws provides that a person whose association with a member has terminated remains subject to the filing of a complaint for two years after the effective date of termination. Respondent 1 argued that he was terminated from Firm B on August 15, 1996 because he left the firm on that date and also because his counsel directed a letter on that date to the Regional Counsel for NASD District No. 9 and stated that Respondent 1 had terminated his association. The NASD, however, did not receive a Uniform Termination Notice for Securities Industry Registration ("Form U-5") for Respondent 1 from Firm B until August 22, 1996, and Respondent 1's registration was terminated on the same date.

It has long been established that the Association's jurisdiction is determined not by the termination of an individual's employment or association with a firm, but by the effective date of termination of the individual's registration, which is the date of the NASD's receipt of a Form U-5. In re Donald M. Bickerstaff, 52 S.E.C. 232, 234 (1995); In re Richard Greulich, 50 S.E.C. 216, 218 (1990). See also, In re Eliezer Gurfel, Exchange Act Rel. No. 41229 (Mar. 30, 1999), aff'd, Eliezer Gurfel v. SEC, No. 99-1199 (D.C. Cir. March 7, 2000) (also holding that the NASD retains jurisdiction over a registered person for two years from the effective date of the termination of that person's registration with any NASD member).

Accordingly, Respondent 1 remained registered as a general securities representative with Firm B until the termination of that association by the NASD on August 22, 1996. The instant complaint was filed on August 21, 1998, within the two-year jurisdictional period. These facts satisfy the jurisdictional requirements of Article V, Section 4(a) and NASD Regulation therefore properly exercised jurisdiction over Respondent 1.

Hearing Panel Proceedings

The Hearing Panel conducted two hearing sessions, on February 4, 1999 and May 20, 1999. The Hearing Panel ordered that Respondent 1 be barred, fined $50,000, and assessed costs for the violation that the Hearing Panel found under cause two.

Facts

Cause One. During Respondent 1's association with Firm A, he assisted his customer JF in establishing a securities account at a Canadian brokerage firm, Firm C.[2] On March 18, 1994, Firm C issued a check drawn on an account at The Bank of Montreal payable to JF in the amount of $15,433.73. On March 22, 1994, Firm C issued another check drawn on the account at The Bank of Montreal payable to JF in the amount of $16,269.41 (collectively "the Firm C Checks"). Somebody signed JF's name to each of the checks and endorsed them over to an unrelated third party, UF. Someone also signed UF's name to the checks and cashed them.

Cause one of the complaint alleged that Respondent 1, without the knowledge or authorization of JF, wrote or caused to be written on the Firm C Checks "Pay to the order of [UF]"; forged JF's signature; transmitted the checks to UF or obtained her endorsement on them; disposed of the two checks; and failed to deliver the checks or any portion of the proceeds thereof to JF, thereby depriving JF of his rights and interest in the funds.

The record included JF's affidavit stating that he did not sign the Firm C Checks and that he did not authorize anyone to do so. JF testified that he thought he met UF once, at JF's store. There was no evidence from UF; Enforcement staff stated that she was not under NASD's jurisdiction. Respondent 1 testified at the hearing below that he might have signed JF's name to the Firm C Checks, but that if he had done so, he had acted with JF's authorization.

Cause Two. On September 18, 1996, Respondent 1 appeared in Washington, D.C., in response to a request issued pursuant to NASD Procedural Rule 8210, to provide testimony under oath to Enforcement staff. The matters about which Respondent 1 was questioned included the Firm C Checks. Copies of the front and back of the two checks were marked as exhibits during the testimony

[2] The record contains two different explanations for the opening of that account. Respondent 1 testified before Enforcement staff that JF requested such an account, whereas testimony given by JF in an investigation conducted by staff of the Securities and Exchange Commission ("Commission") indicates that Respondent 1 asked JF to open the account for the benefit of Respondent 1 .

and were shown to Respondent 1 in connection with the questioning. Respondent 1 was also questioned about his knowledge of and familiarity with UF.

Cause two alleged that certain portions of Respondent 1's testimony were "false and/or misleading," including the "extent of his familiarity with [UF], how he knew [UF], how he met [UF]." Cause two further alleged that at the time of his investigative testimony before Enforcement staff, and as of March, 1994, "[UF] was well known to Respondent 1, he had known [UF] for several years, and he had interacted with her socially and otherwise on numerous occasions." Cause two alleged that Respondent 1 "knowingly and intentionally gave false and/or misleading testimony" or "gave the testimony in reckless disregard for whether the responses were true or false . . . in an effort to mislead the Association or impede its investigation," and that he "knew or should have known the false and/or misleading testimony would impede the investigation."[3]

The questions and answers of the September 18, 1996 testimony that are at issue here are as follows:

> NASD staff attorney: Do you know [UF]?
>
> Respondent 1: I think it's a friend of his [JF's]. I may have met her once. I'm not sure.
>
> * * * *
>
> NASD Examiner 1: How about [UF], would you have signed her name?
>
> Respondent 1: Would I have signed her name? I didn't know her really. [JF] was a friend that I had known and, you know, trusted.
>
> NASD Staff Attorney: Have you ever met [UF]?
>
> Respondent 1: Like I said, I think I met her once and talked to her.

---

[3] Cause two also alleged that Respondent 1 had testified falsely as to his involvement with the endorsement of the Firm C Checks and the distribution of the funds therefrom. The Hearing Panel dismissed the cause one forgery allegations and found that there was insufficient evidence to conclude that Respondent 1 had made any false statements regarding the checks, and the Hearing Panel also dismissed the false testimony allegations relating specifically to the forgery. Enforcement did not appeal those findings, but in connection with our de novo review, we have examined the record in order to determine that the evidence supports those findings by the Hearing Panel.

* * * *

NASD Examiner 1: You just mentioned that you didn't know [UF].

Respondent 1: Right.

* * * *

NASD Staff Attorney: Did you ever have any conversation with [UF]?

[Respondent 1's counsel: I thought he testified he had one.

Respondent 1: Yes, I talked to her.

NASD Staff Attorney: What was that about?

Respondent 1: I met her and just, hi, how are you; nice to meet you.

NASD Examiner 2: Where did you her? [sic]

Respondent 1: Either at the store or - I believe it was at the store or his [JF's] house.

* * * *

NASD Examiner 1: Did [JF] introduce you?

Respondent 1's Attorney: To who, [Ms. UF]?

NASD Examiner 1: Yes.

Respondent 1: Yeah.

Enforcement argued, and the Hearing Panel found, that Respondent 1's answers as to the extent of his familiarity with UF were false and/or misleading. This finding was based on several factors. The first factor was two alleged "judicial admissions" by Respondent 1's former attorney. The first alleged judicial admission was in that attorney's opening statement at the first hearing session before the Hearing Panel:

> And lastly, I'd like to say a word about the Staff's other allegation, which I would characterize as a tagalong allegation, that [Respondent 1] misled the NASD Staff and impeded their investigation when he testified in a way that, that his, that he did not have, he understated his familiarity with [UF] . . . well, what is [Respondent 1's] explanation for making that statement. It's simple. And it's not an excuse. He choked. He was compelled to testify about an event that occurred more than two years earlier. He was confronted with an accusation that he endorsed these two particular checks without [JF's] authorization and instruction. He was told that the proof of the pudding was that [UF] a person that he knew, also appeared on the endorsement. And he choked . . . And he wanted to make a truthful denial of wrongdoing. And in doing so he understated his familiarity with [UF].

The second alleged judicial admission occurred during the testimony of Respondent 1's friend and former co-worker, ("Employee 1"), who testified before the Hearing Panel that he had dated UF on and off for several years. Respondent 1's prior counsel said:

> [B]ut I would restate, just so we are all clear, that there's not going to be any contest that [Respondent 1] knew [UF], knew her pretty well, socialized with her in the context of other brokers, and so forth; . . . [there was no need for "dragging" in [Respondent 1's friends and co-workers and that he would] stipulate . . . that he knew her, he had socialized with her, she had been at his wedding.[4]

Enforcement also argued, and the Hearing Panel found, that the testimony of Employee 1 and two other former co-workers of Respondent 1 supported the finding that Respondent 1 gave false and/or misleading testimony about UF. Employee 1's testimony was: that he had worked with Respondent 1 from late 1986 through March of 1994; that he had dated UF "off and on" for several of those years; that he and UF had attended Respondent 1's wedding together in 1992; that UF also knew Respondent 1's wife; and that, in his opinion, Respondent 1 and UF "knew each other" in March 1994, when the questionable endorsements on the Firm C Checks occurred. Another broker, Employee 2, who had also worked with Employee 1 and Respondent 1 , testified that he had known UF to be Employee 1's girlfriend, and when Employee 2 was asked whether he believed that Respondent 1 knew UF, he testified: "I believe he had to have met her the same way I did, yes. I mean specifically I

---

[4] No such stipulation was reached. Enforcement staff completed its questioning of Employee 1 and called two witnesses, in addition to Employee 1, to adduce testimony on the extent of Respondent 1's familiarity with UF.

couldn't tell you when he might have, you know, met her. But it was a pretty close knit office there for a while." Employee 2 also testified, however, that he had no specific recollection of any occasion during which he, UF, and Respondent 1 were all present.

The former supervisor of both Employee 1 and Respondent 1 ("Supervisor 1"), testified that he remembered UF as "a girlfriend of one of the brokers in the office." Supervisor 1 also stated that UF might have attended an office happy hour or a softball game. Supervisor 1 did not recall any specific occasions during which Respondent 1 and UF were present together. Supervisor 1 also testified that he had attended Respondent 1's wedding, but that he did not recall whether UF had been present.

Respondent 1 argued that he did not provide false and/or misleading testimony to Enforcement staff because he had testified that he knew UF slightly and that if he had not recalled the exact circumstances by which he came to know her, it was because of the passage of time and the fact that UF was only a very casual acquaintance and of no significance to him.

Discussion

Cause One. We conclude that the record supports the Hearing Panel's dismissal of cause one. The preponderance of the evidence adduced by Enforcement did not show that Respondent 1 forged JF's name on the Firm C Checks. JF did not appear at the hearing.[5] In lieu of his testimony, Enforcement introduced an affidavit from JF that stated that the endorsements of his name on the checks were made without his "knowledge, consent, or authority." Enforcement also presented testimony from an NASD investigator who stated that JF had told him that the signatures were not JF's, and a transcript of investigative testimony given by JF to Commission staff stating that the signatures were forgeries.[6]

Respondent 1 did not deny that he might have signed JF's name to the Firm C Checks, but he stated that if he had done so, he had acted with JF's authorization. We find that in the face of this outright denial of forgery by Respondent 1, the hearsay declarations by JF are insufficient to support the allegation of forgery. The Hearing Panel carefully analyzed the hearsay evidence "to evaluate its probative value and reliability, and the fairness of its use." In re Charles D. Tom, 50 S.E.C. 1142,1145 (1992). The Hearing Panel considered the appropriate factors in its analysis of the hearsay evidence:

---

[5] JF was listed as an Enforcement witness because he initially informed Enforcement that he would testify, but he failed to appear for the hearing.

[6] The record indicates that the Commission had also conducted an investigation regarding Firm C, JF, and Respondent 1, but no complaint was ever issued.

> the possible bias of the declarant, the type of hearsay at issue, whether the statements are signed and sworn to rather than anonymous, oral or unsworn, whether the statements are contradicted by direct testimony, whether the declarant was available to testify, and whether the hearsay is corroborated. Id. at 1145.

The Hearing Panel determined that: there was evidence of potential bias by JF against Respondent 1;[7] JF's testimony was contradicted by direct hearing testimony from Respondent 1 (which was consistent with Respondent 1's investigative testimony); and JF was available to testify. The Hearing Panel also found that no evidence corroborated JF's hearsay claim that he did not authorize Respondent 1 to sign JF's name to the Firm C Checks. The Hearing Panel rejected Enforcement's argument that certain evidentiary items, such as Respondent 1's acknowledgement that he might have signed the checks or the supposed similarities between Respondent 1's handwriting and the handwriting on the backs of the checks, were corroborating, because the Hearing Panel found that such evidence did not address the question of whether Respondent 1 was authorized to sign the checks.[8] Enforcement did not appeal the Hearing Panel's dismissal of cause one, and we see no reason to disturb the Hearing Panel's conclusion that, given all of these factors, the hearsay statements from JF were unreliable and the preponderance of the evidence did not support the conclusion that Respondent 1 had forged JF's name to the Firm C Checks.

Cause Two. The Hearing Panel found, under cause two, that Respondent 1 gave false and/or misleading testimony to Enforcement staff about the extent of his familiarity with UF during his investigative testimony in September 1996, in violation of Conduct Rule 2110 and Procedural Rule 8210. We do not agree with this finding. To the contrary, we conclude that the evidence in this record fails to demonstrate that UF was anything other than a casual social acquaintance of Respondent 1, which he admitted in his testimony.

We find that the evidence in this matter demonstrates, at most, that UF was a distant acquaintance of Respondent 1's, which is not substantively different from Respondent 1's allegedly false testimony. Respondent 1's allegedly false testimony given in September 1996 was given in the

---

[7] JF and Respondent 1 had had arguments in the past about a $9,000 loan by JF to Respondent 1, which was repaid in 1996. Further, JF and Respondent 1 had previously settled an arbitration action brought by JF against Respondent 1. According to Respondent 1, he agreed to the $30,000 settlement ($29,000 of which was paid by his insurance company) to avoid further legal proceedings and not because he admitted any wrongdoing with JF's funds.

[8] The Hearing Panel also noted that certain statements by JF raised questions about his "sensitivity to the truth."

course of a session that lasted several hours and resulted in a transcript of 200 pages. In response to questioning by Enforcement staff, Respondent 1 testified that he might have met UF once and that he might have been introduced to her at JF's store or home. He stated that he had talked to her in a very brief, casual manner, such as "Hi, how are you; nice to meet you" and that JF had introduced him to UF. Thus, Respondent 1 did not deny that he knew UF.

We disagree with the Hearing Panel's determination that the purported "judicial admissions" by Respondent 1's former counsel demonstrated that Respondent 1 actually knew UF "well" when he testified before Enforcement staff in September 1996. A judicial admission is an express unilateral statement made during a proceeding by a party or his or her counsel that conclusively establishes a fact, thereby withdrawing it from contention. Keller v. United States, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995). The first such alleged admission was part of Respondent 1's former counsel's opening statement at the hearing below, in which he said that Respondent 1 had "choked," and had "understated his familiarity with UF." In the very next line, counsel stated, "And that's not an excuse, I grant you, but it is an explanation." We find that this alleged admission was not meant to be a binding stipulation or any statement of a factual or evidentiary nature, but rather that it was offered as an "explanation" of Respondent 1's behavior by his counsel. Respondent 1 never testified as to such an explanation. We cannot find that these ambiguous statements by Respondent 1's former counsel (e.g., what is the precise meaning of the phrase "he choked?") in the course of his opening statement constitute binding judicial admissions.

Similarly, we also reject the Hearing Panel's conclusion that the second set of words spoken by Respondent 1's former counsel should be construed as a judicial admission. Those words were spoken by counsel at the first session before the Hearing Panel, during the testimony of Employee 1, when Respondent 1's former counsel was attempting to reach a stipulation with Enforcement counsel about the necessity of bringing in other friends and acquaintances of Respondent 1 to testify as to his familiarity with UF. Counsel stated that there was no need for "dragging" in Respondent 1's friends and co-workers, that Respondent 1 "knew [UF] pretty well" and that counsel would stipulate "that [Respondent 1] knew her, he had socialized with her, she had been at his wedding." This stipulation was never agreed upon, however, and Enforcement not only continued with its questioning of Employee 1, but also introduced the testimony of Employee 2 and Supervisor 1 in an attempt to show that Respondent 1 had greater familiarity with UF than that to which he testified. Accordingly, we reject the Hearing Panel's finding that counsel's second set of statements constitutes a judicial admission, and we turn, instead, to the evidence adduced regarding Respondent 1 and his investigative testimony as to his knowledge of UF.

At the hearing below, Employee 1's testimony indicated that he had dated UF on and off for a long time and that he and UF had a "rocky relationship." Although Employee 1 was questioned

repeatedly by Enforcement staff at the hearing, he could not recall any specific times when UF had engaged in social activities with him and Respondent 1:

> NASD Staff Attorney: Did you at [any] time during the period when you dated [UF] engage in social activities in which you and [UF] and [Respondent 1]were all involved?
>
> Employee 1: I can't recall any specific. I mean we all, the brokers would all socially go out, but not necessarily with our wives, maybe just with each other. So I can't really, I don't know the configurations of the social structure, when we went to a bar who was there.
>
> NASD Staff Attorney: Were there occasions in which you engaged in social activities when you and [Respondent 1] and [UF] were all at those activities?
>
> Employee 1: I'm assuming that we had occasions. But I can't specifically say yeah, this is one time that we were together.
>
> NASD Staff Attorney: Is there any doubt in your mind they [Respondent 1 and UF] knew each other reasonably well?
>
> Employee 1: I don't know how well really. I mean she knew [Respondent 1's wife]. [UF] is a hard woman to figure out who she talked to.
>
> * * * *
>
> NASD Staff Attorney: Now, you've indicated you don't have any current specific recollection of having engaged in social activities where it was just the four of you, [Respondent 1's wife,], [Respondent 1], [UF] and yourself?
>
> Employee 1: Just the four of us, nobody else, I can't vividly recall one time. We might have.
>
> NASD Staff Attorney: No specific recollection of any such occasion?
>
> Employee 1: No. Like going out to a dinner where it was just the four of us? I can't recall it. (Emphasis supplied).

Employee 1 also stated that he did not think that UF ever came into the office where he and Respondent 1 were co-workers. Although Employee 1 agreed that he had attended Respondent 1's wedding in 1992 with UF, he did not testify that Respondent 1 conversed with UF or was even aware that she was present. Employee 1's testimony does not establish any specific conversation between Respondent 1 and UF, or any interaction at any time in any particular manner. At most, his testimony shows a casual acquaintance between Respondent 1 and UF, which Respondent 1 has never denied.

Enforcement also presented testimony at the hearing below from Supervisor 1 . Supervisor 1 stated only that he remembered UF as "a girlfriend of one of the brokers in the office," and that he could not recount any specific instance when UF and Respondent 1 were together:

> NASD Staff Attorney: Were there times that you were at social activities that [UF] attended?
>
> Supervisor 1: Social? Happy hour maybe. An office happy hour.
>
> NASD Staff Attorney: Any other type of social activities that she attended that you were present?
>
> Supervisor 1 : Not that I can think.
>
> NASD Staff Attorney: Office picnics, or softball games, or anything of that nature?
>
> Supervisor 1: We never had an office picnic. Softball games, she might have attended with [Employee 1].
>
> NASD Staff Attorney: Do you believe [UF] and [Respondent 1] knew each other?
>
> Supervisor 1: Probably the same, the same way.
>
> NASD Staff Attorney: And what way is that?
>
> Supervisor 1: Just from reference from [Employee 1]. [Employee 1] worked in our office, and we knew most of, you know, girlfriends.
>
> NASD Staff Attorney: Do you recall any specific occasions or instances when you were involved in an activity at which both [UF] and [Respondent 1] were present?

Supervisor 1: None specific. But possible happy hour or something. (Emphasis supplied).

Supervisor 1 also had no independent recollection of UF's having been at Respondent 1's wedding.

NASD Staff Attorney: Did you attend Respondent 1's wedding?

Supervisor 1: Yes.

NASD Staff Attorney: You did?

Supervisor 1: (Indicating affirmatively.)

NASD Staff Attorney: Do you have any recollection of [UF] being there?

Supervisor 1: If [Employee 1] was there, I would say probably. I don't know. That was what, seven years ago.

NASD Staff Attorney: Do you have any recollection of [Employee 1] being at the wedding?

Supervisor 1: I had a lot to drink. I think, yeah, I think [Employee 1] was there. (Emphasis supplied).

Employee 2 was the last of Respondent 1's co-workers to testify at the hearing below. He stated that he had shared an office with Employee 1 for approximately six months. When asked if he had "any specific recollection of any occasion when you, [UF] and [Respondent 1] were all present," Employee 2 replied, "No, nothing specific." Employee 2 did not testify as to any conversation or other interaction between Respondent 1 and UF, nor did he testify to a specific time when the two were together in the same room. Employee 2's answer to the direct question regarding Respondent 1's knowledge of UF was a speculative, not conclusive, response:

NASD Staff Attorney: Do you have any specific recollection of any occasion when you, [UF] and [Respondent 1] were all present?

Employee 2: [Respondent 1], [UF] and myself?

NASD Staff Attorney: Yes.

Employee 2: No, nothing specific.

NASD Staff Attorney: Do you believe he, [Respondent 1] knew [UF]?

Employee 2: I believe he had to have met her the same way I did, yes. I mean specifically I couldn't tell you when he might have, you know, met her. But it was pretty close knit office there for a while. Back at [name redacted]I'm referring to. (Emphasis supplied).

Thus, Employee 2's testimony, like that of Employee 1and the Supervisor, shows at most the possibility of some familiarity between Respondent 1 and UF, and is speculative.

We also find that Respondent 1's testimony before the Hearing Panel did not establish that his 1996 testimony was false and/or misleading. At the second session before the Hearing Panel, Respondent 1 was called as an adverse witness by Enforcement. In answer to direct questions, he denied that he had ever received any money or anything of significant value from UF in March of 1994, or that he ever had discussed anything relating to the Firm C Checks with UF. Respondent 1 also stated that when he testified before Enforcement staff in September of 1996, he did not know where UF lived, or whether or how she was employed. Respondent 1 did not testify as to any conversations with UF prior to the 1996 investigative testimony or to any transactions or interactions with UF. By the time of the second session before the Hearing Panel, Respondent 1 did recall that UF had been an "acquaintance, I guess girlfriend of one of the brokers that worked in the office, [Employee 1]" and he verified that UF had been at his wedding on October 24, 1992, which was four years prior to the investigative testimony in September 1996. Respondent 1 did not recall how he had first met UF, and other than stating that he had met UF before she attended his wedding, he testified to no other encounters between him and UF before he testified to Enforcement staff in September 1996. Respondent 1 did not testify that he had "choked" at the Enforcement investigative testimony.

We find that the evidence does not support the finding of the Hearing Panel that Respondent 1 knew UF "fairly well" and had therefore provided false and/or misleading testimony to Enforcement staff in September 1996. The concept of describing "how well" one person believes that he or she may know another person is largely subjective. During his investigative testimony, Respondent 1 was being questioned about his knowledge of UF in connection with the Firm C Checks and he implied in his testimony that he did not know UF well -- certainly not well enough to feel comfortable in signing her name to checks. There was no evidence that any substantive conversations had occurred between UF and Respondent 1 prior to the date of the investigative testimony, nor even that he had spoken to UF at his wedding.

Given the dearth of inculpating evidence, we have affirmed the Hearing Panel's dismissal of the cause one forgery allegations and the allegations that Respondent 1 had been involved in the endorsement of UF's name to the Firm C Checks and the distribution of the funds therefrom. As to the remaining allegations in cause two regarding the subjective area of the degree of familiarity between Respondent 1 and UF, we cannot find, based on this record, that Respondent 1 gave false and/or misleading testimony to Enforcement staff during his investigative testimony in September 1996. Accordingly, we reverse the Hearing Panel's finding of violation and dismiss cause two of the complaint.[9]

Conclusion

Both causes of the complaint being dismissed, we hereby set aside the sanctions imposed by the Hearing Panel upon Respondent 1.

On behalf of the National Adjudicatory Council,

_____

Joan C. Conley
Senior Vice President and Corporate Secretary

[9] We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.