BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of Department of Market Regulation, Complainant, vs. Nicholas R. Sciascia Howard Beach, NY, Respondent.	DECISION Complaint No. CMS040069 Dated: August 7, 2006

Respondent failed to appear for two on-the-record interviews scheduled by NASD staff pursuant to NASD Procedural Rule 8210. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Michael J. Dixon, Esq., Department of Market Regulation, NASD

For the Respondent: Dino J. Lombardi, Esq.

Decision

Pursuant to NASD Procedural Rule 9311(a), Nicholas R. Sciascia ("Sciascia") appeals a January 21, 2005 Hearing Panel decision barring him from associating with any member firm in any capacity for failing to appear and provide testimony at an on-the-record interview (an "OTR") scheduled by NASD staff pursuant to NASD Procedural Rule 8210. After a complete review of the record, we affirm the Hearing Panel's findings of violations and its imposition of a bar on Sciascia.

I. Factual and Procedural History

A. Sciascia

Sciascia first entered the securities industry in August 1997 when he registered as a general securities representative. After being employed with several firms in the interim, Sciascia registered with Shelman Securities Corp. ("Shelman") on March 26, 2003, as a general securities representative. During his entire time with Shelman, Sciascia worked in the Hicksville, New York office. Sciascia left Shelman in October 2003 and has not been associated with an NASD member firm since that time.[1]

B. NASD Requests for Sciascia's Testimony

In 2003, NASD's Department of Market Regulation ("Market Regulation") conducted an investigation into unusual trading activity in two over-the-counter securities: Centurion Gold Holdings ("Centurion Gold") and Natalyma Industries ("Natalyma"). During the course of the investigation, Market Regulation staff noted a volume concentration in these two securities in Shelman's Hicksville, New York branch office and, in November 2003, conducted an on-site examination of the office.

On December 8, 2003, Market Regulation staff sent five letters to Shelman's Hicksville, New York office requesting on-the-record interviews of five individuals, including Sciascia. Market Regulation sought Sciascia's testimony in an effort to collect information regarding his participation, if any, in the sale of Centurion Gold and Natalyma securities to the public. The letter addressed to Sciascia, which was sent via certified mail, was received at Shelman on December 10, 2003. The certified mail receipt indicates that the letter was signed for by Michael Joie ("Joie"), the branch office manager of Shelman's Hicksville office. Joie indicated to Market Regulation staff that he delivered the letters to the intended recipients, including Sciascia. Sciascia, however, denies receiving the December 8, 2003 letter.

The December 8, 2003 letter requested that Sciascia appear for an OTR on January 29, 2004, at 9:00 a.m. at NASD's offices in Rockville, Maryland. The letter noted that Sciascia was obligated to attend; however, it stated that if the OTR location presented a hardship for him or if he would be unable to attend, he should notify Market Regulation staff. Included with the letter was an addendum that included the following warning: "If you fail to appear and testify at the OTR you may be subject to an NASD disciplinary action and the imposition of sanctions, including a bar from the securities industry, suspension, censure and/or fine."

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[1] Shelman was expelled from NASD membership on December 31, 2003, and Sciascia's Central Registration Depository ("CRD"®) record indicates that his registration with Shelman terminated on December 31, 2003. Sciascia, however, asserts that he faxed a resignation letter to Shelman in October 2003 and thereafter had no further contact or communications with any Shelman employee. There is no indication in the record that Shelman filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Sciascia before Shelman was expelled from membership.

On December 17, 2003, Market Regulation staff sent, via certified mail, an identical letter to Sciascia at his residential address as shown on CRD (the "CRD Address"), which reflected Sciascia's street number as "79-04." The letter was returned to NASD as undeliverable as addressed. On December 23, 2003, Market Regulation staff then mailed, via certified mail, the same letter—without changing the date or the address on the letter itself—in a different envelope to the CRD Address without the dash in the street number (i.e., the envelope listed Sciascia's street number as "7904"). On January 10, 2004, the letter was again returned as undeliverable as addressed.

On January 7, 2004, Market Regulation staff mailed, via certified mail, another copy of the same letter to an old address reflected on Sciascia's CRD report (the "Old Address").[2] The certified mail receipt indicates that the letter was received; however, the signature is illegible, and the receipt is not dated. Sciascia stated that he ceased living at the Old Address in 2002 and that his mother sold that house the same year. Sciascia denied receiving the letter sent to the Old Address.

On or about January 27, 2004, Market Regulation staff called a telephone number that the staff had obtained over the Internet for the Old Address. The individual who answered the call did not identify himself; however, when Market Regulation staff asked to speak to Sciascia, the individual replied that Sciascia was in Mexico and could not be reached.[3] Market Regulation staff then left a message with the unidentified individual stating that Sciascia should call NASD regarding an important matter that involved his securities registration.

In his answer, Sciascia stated that he received a phone call from his father on or about January 27, 2004. According to Sciascia, his father informed him that NASD staff needed to speak with him regarding his NASD registration. The following day, Sciascia visited his father and, while there, obtained a letter from NASD requesting that he appear for an OTR on January 29, 2004.[4] Sciascia did not appear for the OTR on January 29, 2004.

On January 29, 2004, Sciascia called Market Regulation staff to discuss the OTR and initially left a voice-mail message. Market Regulation staff returned Sciascia's call later that day at the phone number he left. During that call, Market Regulation staff explained to Sciascia why they wanted Sciascia to appear for an OTR and informed him that he was obligated to appear

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[2] Counsel for Market Regulation stated during the hearing that, on occasion, NASD staff sends correspondence to an old address, particularly with younger registered persons, because the old address may be a family address.

[3] The record indicates that Sciascia's brother, not Sciascia, was in Mexico at the time.

[4] In his answer, Sciascia denied receiving either the December 8, 2003 letter or the January 7, 2004 letter. However, Sciascia admits that he obtained from his father a letter addressed to him from NASD. Despite the denial in his answer, the record indicates that Sciascia ultimately received the January 7, 2004 letter sent to the Old Address.

because he was registered with NASD. Sciascia was also informed that NASD had the authority to proceed against him, and could seek to have him barred, for his failure to appear earlier in the day for the OTR. During the conversation, Market Regulation staff informed Sciascia that the CRD Address should be updated, and Sciascia supplied the staff with two alternate addresses where he could be reached and a phone number.[5] During the course of the conversation, Sciascia indicated that he would not be able to attend an OTR in Rockville, Maryland, until March. Market Regulation staff then informed Sciascia that they would be in touch with him to reschedule the OTR, and Sciascia testified that he was left with the impression that the communication would occur fairly soon.

On February 4, 2004, approximately one week after the phone conversation between Market Regulation staff and Sciascia, the staff called the phone number supplied by Sciascia and left a message for Sciascia. Sciascia never returned the call, and he asserts that he did not receive the message.[6]

On February 25, 2004, Market Regulation staff sent Sciascia a letter rescheduling the OTR for March 18, 2004, at NASD's offices in Rockville, Maryland. The letter notes that, on February 4, 2004, Market Regulation staff left a phone message for him and that Sciascia had not returned the call. The letter also stated that the OTR request was being made pursuant to NASD Procedural Rule 8210 and included the addendum informing Sciascia that, if he failed to appear, he may be subject to NASD disciplinary action and the imposition of sanctions, which could include a bar from the securities industry. The letter was sent, via certified mail, to five separate addresses for Sciascia:[7] the CRD Address and two versions of each of the two addresses Sciascia provided during the January 29, 2004 phone conversation.[8] Two of the letters were returned as undeliverable, and three letters were returned as "unclaimed." Sciascia did not appear for the March 18, 2004 OTR.

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[5] There is some dispute as to whether Sciascia informed the staff that he was receiving mail at these two addresses or whether he merely identified one address as a location at which he was receiving mail. The distinction, however, is immaterial because Market Regulation staff eventually sent notices to both addresses.

[6] While Sciascia stated in his answer that he "was never told that the NASD would attempt to schedule an interview time via a telephone call," he later testified that NASD staff told him during the phone conversation that they would contact him via mail or telephone.

[7] Despite being told during the January 29, 2004 phone conversation that he was required to update and keep current his CRD information, Sciascia failed to update the information.

[8] For the first address, Market Regulation staff addressed one envelope to street number "88-11" and another to number "8811." For the second address, the staff mailed it to the same street address using different zip codes, one of which was provided by Sciascia and one of which the staff obtained using the U.S. Postal Service's web site.

C. Procedural History

Market Regulation filed a one-cause complaint against Sciascia on May 12, 2004. The complaint alleged that, by failing to appear for two scheduled OTRs, Sciascia violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.[9] Sciascia filed an answer to the complaint on July 9, 2004, in which he admitted not attending the OTRs but denied that the failures were intentional. Sciascia also denied receiving Market Regulation's phone message left on February 4, 2004, or any of the five letters mailed on February 25, 2004.

II. Discussion

NASD Procedural Rule 8210 requires persons associated with a member to "provide information orally [or] in writing . . . with respect to any matter involved in [an NASD] investigation." As has often been observed, "because [NASD] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate." *Dep't of Enforcement v. Bello*, Complaint No. CAF000030, 2002 NASD Discip. LEXIS 10, at *9 (NAC June 3, 2002); *accord Joseph G. Chiulli*, 54 S.E.C. 515, 524 (2000). Indeed, "Procedural Rule 8210 is widely accepted as one of [NASD's] most important tools for investigating potential wrongdoing." *Dep't of Enforcement v. Baxter*, Complaint No. C07990016, 2000 NASD Discip. LEXIS 3, at *26 (NAC Apr. 19, 2000); *accord Richard J. Rouse*, 51 S.E.C. 581, 584 (1993) (noting that Rule 8210 "is a key element in the NASD's effort to police its members").

An associated person violates Rule 8210 "when he fails to provide full and prompt cooperation when a request for information and documents is made." *Dep't of Enforcement v. Hoeper*, Complaint No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001). Failure to attend an OTR falls squarely within the scope of conduct that violates Rule 8210. *See, e.g., Toni Valentino*, Exchange Act Rel. No. 49255, 2004 SEC LEXIS 330, at *9 (Feb. 13, 2004); *Dist. Bus. Conduct Comm. v. Rudi*, Complaint No. C9A970019, 1997 NASD Discip. LEXIS 59, at *8-11 (NBCC Dec. 22, 1997). For the reasons set forth below, Sciascia's attempts to defend the failures to attend—on two separate occasions—are of no moment.

Paragraph (d) of Rule 8210 provides that "[a] notice under [Rule 8210] shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to . . . the last known residential address of the person as reflected in the Central

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9 A violation of NASD Procedural Rule 8210 constitutes a violation of NASD Conduct Rule 2110. *Paz Sec., Inc.*, Exchange Act Rel. No. 52693, 2005 SEC LEXIS 2802, at *1 n.1 (Oct. 28, 2005), *petition for review filed*, No. 05-1467 (D.C. Cir. Dec. 22, 2005). Rule 2110 requires that "a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 115 provides that NASD rules apply to all members and persons associated with a member and that such persons have the same duties and obligations as a member under the rules.

Registration Depository."[10] If, however, NASD staff learns of a more current address, the staff is obligated to transmit notices to that address as well. *See* NASD Procedural Rule 8210(d).

Market Regulation staff sent the notice of the January 2004 OTR to two different versions of the CRD Address and to the Old Address (in addition to sending the notice to Sciascia's former firm). At the time, the staff had no knowledge of any other address for Sciascia. Consequently, Market Regulation staff properly transmitted the request pursuant to Rule 8210(d), and Sciascia is deemed to have received it. Moreover, Sciascia admits to having received one of the letters on the day before the scheduled OTR; thus, Sciascia also had actual notice of the January 29, 2004 OTR. While Sciascia objects to the Hearing Panel's finding that he failed to appear for the January 29, 2004 OTR, in his answer, Sciascia admitted to the failure. In any event, his phone call to the staff on the day of the OTR to advise the staff of his inability to attend and to request to reschedule does not amount to compliance with Rule 8210. *Cf. Toni Valentino*, 2004 SEC LEXIS 330, at *9-16 (affirming NASD's bar of a respondent who requested rescheduling of an on-the-record interview).

With respect to the second OTR request, Sciascia argues that he did not receive actual notice of the March 2004 OTR and that his failure to appear was the result of Market Regulation's failure to address the notice properly. When Market Regulation staff sent the notice to Sciascia scheduling the March 18, 2004 OTR, the staff had learned that the CRD Address was outdated. As a result, the staff transmitted the notice to five separate addresses, including the CRD Address and two versions of each of two addresses Sciascia mentioned during the January 29, 2004 phone conversation. This amply satisfies the notice provision of Rule 8210.

Sciascia argues for the first time in his brief on appeal that he advised the staff during the January 29, 2004 phone conversation that one of the addresses that he supplied during that conversation belonged to his girlfriend. Sciascia argues that the staff's failure to address the letter as "care of" his girlfriend demonstrates that the staff failed to meet its obligations under Rule 8210(d). There is nothing in the record to support Sciascia's claim that he informed the Market Regulation staff that any correspondence should be addressed "care of" his girlfriend or even that the address was his girlfriend's. Sciascia did not mention this during the hearing (or at any time previously), and we find no support in the record for this claim. Consequently, we reject this argument on evidentiary grounds and do not reach the question of whether a notice that failed to include a "care of" designation on the correspondence would have been proper notice under Rule 8210.

The Hearing Panel found that, by failing to appear for the January 29, 2004 OTR and the March 18, 2004 OTR, Sciascia violated NASD Rules 8210 and 2110. We affirm the Hearing Panel's findings.

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[10] It is a registered person's obligation to ensure that his or her CRD information, including residential address, is current and correct. *See* NASD By-Laws, Art. V § 2(c) ("Every application for registration filed with the NASD shall be kept current at all times . . . ."); *David I. Cassuto*, Exchange Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *10 (June 25, 2003).

III. Sanctions

The NASD Sanction Guidelines (the "Guidelines") state that, if a person does not respond to an NASD request for information in any manner, a bar should be the standard sanction.[11] If there are mitigating factors present, adjudicators should consider suspending the individual in any or all capacities for up to two years.[12] Here, there are no mitigating factors; indeed, there are several aggravating factors that support barring Sciascia for the violations.

The Guidelines list two relevant principal considerations for adjudicators to consider specifically with respect to Rule 8210 violations: the nature of the requested information and whether the requested information has been provided.[13] Both of these factors weigh against Sciascia. First, the investigation by Market Regulation was undertaken in response to unusual trading patterns in two securities, which can be an indication of serious wrongdoing, including fraud or market manipulation. Market Regulation was attempting to investigate whether substantial securities violations had occurred, and Sciascia's failure to provide testimony hampered that investigation. *See Bello*, 2002 NASD Discip. LEXIS 10, at *12 (considering, as an aggravating factor, that "the requested documents were of material importance to [the NASD] staff's efforts"); *Hoeper*, 2001 NASD Discip. LEXIS 37, at *7-8 (finding that the respondent's "failure to respond prevented NASD Regulation staff from proceeding with its investigation, thereby undermining the Association's ability to carry out its self-regulatory function"); *Rudi*, 1997 NASD Discip. LEXIS 59, at *12. Second, Sciascia never appeared for an OTR.

There are other aggravating factors present as well. One of the Principal Considerations in Determining Sanctions set forth in the Guidelines is "[w]hether the respondent provided substantial assistance to NASD . . . in its examination and/or investigation of the underlying misconduct, or *whether the respondent attempted to delay [NASD's] investigation*."[14] *See Rouse*, 51 S.E.C. at 588 ("Delay and neglect on the part of members and their associated persons undermine the ability of the NASD to conduct investigations and thereby protect the public interest."). The Hearing Panel concluded that Sciascia "engaged in dilatory tactics" in the hopes that the problem would go away. There is ample support in the record to affirm this conclusion. For example, when Sciascia was asked whether he was checking his mail daily after speaking with Market Regulation staff on January 29, 2004, with the knowledge that the staff would be contacting him, Sciascia responded: "I was, I was sort of hoping I wasn't going to have to deal with it. I was hoping that the investigation against the firm was going to be closed."

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11 *NASD Sanction Guidelines* 35 (2006), http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf [hereinafter *Guidelines*].

12 *Id.*

13 *Id.*

14 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 7) (emphasis added).

Adjudicators are also instructed to consider whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence.[15] While Sciascia asserts that there has been no showing of willfulness or intentional avoidance of his obligation to respond, the Hearing Panel found that Sciascia intentionally chose not to pick up the certified mailings scheduling the March 2004 OTR and did not find his denial of having received notice of the mailings to be credible. We see no reason to upset the Hearing Panel's credibility determination, which is entitled to substantial deference and can only be overcome when there is "substantial evidence" for doing so. *See Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684, at *11 & n.6 (Oct. 23, 2002); *Dep't of Enforcement v. Apgar*, Complaint No. C9B020046, 2004 NASD Discip. LEXIS 9, at *10 n.9 (NAC May 18, 2004).

Sciascia observes that the record indicates that he did not receive actual notice of the March 2004 OTR.[16] As discussed above, actual notice is not required. Sciascia was informed that he needed to update his CRD information so that it reflected his current contact information, and he failed to do so. Market Regulation staff met its obligations in attempting to provide Sciascia with notice.

Sciascia also argues that his communications with the staff—including phoning the staff on the date of the first OTR and providing the staff with updated contact information—warrant mitigating the sanctions because they indicate some degree of effort to cooperate. We disagree that these actions are mitigating. Telephoning the staff on the day of a scheduled interview merely to inform the staff that you will not attend is not mitigating. *See Dep't of Enforcement v. Carcaterra*, Complaint No. C10000165, 2001 NASD Discip. LEXIS 39, at *11 (NAC Dec. 13, 2001) (barring a respondent for violating Rule 8210 even though the respondent had previously phoned the Department of Enforcement and attempted to reschedule the OTR); *Rudi*, 1997 NASD Discip. LEXIS 59, at *10-12. Indeed, we have previously held that even partial compliance with requests for information—which is substantially more cooperation than Sciascia demonstrated—is not mitigating. *See Bello*, 2002 NASD Discip. LEXIS 10, at *16 (finding that the respondent's partial production of documents in an untimely manner was not evidence of mitigating conduct); *Baxter*, 2000 NASD Discip. LEXIS 3, at *24 (stating that a respondent "cannot excuse his failure to respond with an assertion that, although he did not provide the requested information, he had provided staff with other information"). While Sciascia did not entirely ignore NASD's request, the fact remains that he failed to respond. As the Commission has repeatedly stated, "NASD should not have to resort to filing a complaint . . . in order to elicit a response to its request." *Paz Sec.*, 2005 SEC LEXIS 2802, at *13; *accord Charles R. Stedman*, 51 S.E.C. 1228, 1232 (1994).

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[15] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

[16] Sciascia also claims that he was unaware of the possibility of a bar or severe sanctions for a failure to testify. However, the letter Sciascia admits receiving—and reading—clearly states that a failure to respond can result in being barred. In addition, one of the NASD staff members who was on the phone conversation with Sciascia on January 29, 2004, testified that the staff informed Sciascia during the call that he could be barred as a result of his failure to appear.

Sciascia asserts that we should find that his seven-year record in the securities industry without a disciplinary action and that his familial turmoil and residential impermanence during the time period should weigh in favor of mitigating the sanctions. We have stated often, and repeat again here, that the lack of a disciplinary history is not a mitigating factor. *See, e.g.*, *Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *21 (NAC Dec. 21, 2004), *aff'd*, *Mark F. Mizenko*, Exchange Act Rel. No. 52600 (Oct. 13, 2005); *Dep't of Enforcement v. Roethlisberger*, Complaint No. C8A020014, 2003 NASD Discip. LEXIS 48, at *18 (NAC Dec. 15, 2003). We, and the Commission, have also consistently rejected personal problems and residential impermanence as factors mitigating a failure to comply with NASD rules. *See, e.g.*, *Jeffrey A. King*, Exchange Act Rel. No. 52571, 2005 SEC LEXIS 2516, at *9 (Oct. 7, 2005) (stating that "neither King's divorce difficulties, nor the time he claims he spent in jail, mitigate his failure to comply with NASD's procedures"); *Hoeper*, 2001 NASD Discip. LEXIS 37, at *6; *cf. Paz Sec.*, 2005 SEC LEXIS 2802, at *21 ("Although aware of the disciplinary matter, [the respondent], the president of a member firm, did not keep the CRD apprised of a forwarding address, delegate anyone to assume compliance with NASD's requests, or remain apprised of the status of the proceeding.").

Finally, Sciascia argues that, taking all of the facts present in the case together, a bar is unnecessarily punitive rather than remedial. To buttress this argument, Sciascia points to three particular factors he argues are present: the violation was negligent, his conduct did not injure the public, and Sciascia did not gain from the violation. We disagree with all three contentions. As we noted above, we affirm the Hearing Panel's finding that Sciascia's conduct was willful, not negligent. Second, while Sciascia's failure to respond to both OTR requests did not, itself, injure the public, it impeded NASD's investigation into potentially violative conduct. *See Dep't of Enforcement v. Dieffenbach*, Complaint No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 (NAC July 30, 2004), *aff'd*, *Michael A. Rooms*, Exchange Act Rel. No. 51467 (Apr. 1, 2005), *aff'd*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006). The Commission has recently repeated its conclusion that barring a respondent for violations of Rule 8210 "protects investors by encouraging the timely cooperation that assists in the prompt discovery and correction of wrongdoing." *Elliot M. Hershberg*, Exchange Act Rel. No. 53145, 2006 SEC LEXIS 99, at *9 (Jan. 19, 2006), *petition for review filed*, No. 06-1086 (2d Cir. Mar. 9, 2006); *accord Paz Sec.*, 2005 SEC LEXIS 2802, at *20 (noting that the imposition of a bar for violations of Rule 8210 "will serve as a deterrent to others who may be inclined to ignore NASD's information requests").[17] Finally, by refusing to testify, Sciascia may have benefited in that, by failing to testify, he could have avoided sanctions if he had engaged in violations of NASD rules or the federal securities laws.[18] We refuse to erect a scheme whereby wrongdoers could receive a

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[17] The Guidelines also note that "[a]djudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices." *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

[18] There is no indication in the record, and we do not imply, that Sciascia was personally involved in any underlying wrongdoing or misconduct.

lesser sanction by refusing to cooperate than they may receive if their conduct came to light, yet this is precisely the scheme we would be left with if we were to adopt Sciascia's rationale.

Sciascia failed, on two separate occasions, to attend OTRs requested by NASD staff pursuant to Rule 8210. The Guidelines provide that, if there are no mitigating factors present, a bar should be standard. As discussed above, we find that there are no mitigating factors present here, and, in fact, there are several aggravating factors. Moreover, barring Sciascia will serve as a deterrent to others who may seek to avoid providing NASD with testimony. Consequently, for his violations of NASD Rules 8210 and 2110, we bar Sciascia.[19]

IV. Conclusion

We affirm the Hearing Panel's finding that Sciascia violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to provide testimony at two on-the-record interviews scheduled pursuant to Rule 8210. We also affirm the Hearing Panel's conclusion that there are no mitigating factors present in this case. Accordingly, we bar Sciascia for his violations of Rules 8210 and 2110. We also impose appeal hearing costs of $1,000 and transcript costs of $807.15. The bar will be effective immediately upon service of this decision.[20]

On behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President
and Corporate Secretary

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[19] The Hearing Panel found that Sciascia violated Rules 8210 and 2110 "[b]y failing to appear for both the January 29, 2004 and the March 18, 2004 on-the-record interviews requested by NASD staff"; however, the Hearing Panel barred Sciascia only for failing to appear for the March 18, 2004 interview. The decision states that the Hearing Panel "did not determine whether [Sciascia's] failure to appear for the January 29, 2004 on-the-record interview warranted a separate bar." While the Hearing Panel approached the violations separately, the complaint contained only a single cause of action. We impose a bar based on the cause of action, rather than bifurcating the cause of action into two separate violations.

[20] We also have considered and reject without discussion all other arguments of the parties.