

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

Department of Enforcement,

Complainant,

vs.

Marylan Taylor
Aurora, OH,

Respondent.

DECISION

Complaint No. C8A050027

Dated: February 27, 2007

Respondent falsified a document that she submitted to Ohio state insurance regulators, failed timely to update her Form U4, and provided false testimony to NASD in an on-the-record interview. Held, findings and sanctions modified.

Appearances

For the Complainant: UnBo Chung, Esq., Marcletta Kerr, Esq., and Leo F. Orenstein, Esq.,
Department of Enforcement, NASD

For the Respondent: Christopher M. DeVito, Esq., and Laurel G. Stein, Esq.

Decision

Pursuant to NASD Procedural Rule 9311, Marylan Taylor (“Taylor”) appeals from a December 30, 2005 Hearing Panel decision. The Hearing Panel found that Taylor violated NASD Conduct Rule 2110 and Procedural Rule 8210 by: 1) submitting falsified documents to the insurance divisions of Kentucky and Ohio; 2) affixing her name as the beneficiary of customer ES’s annuity, without the knowledge or consent of ES; 3) failing to timely update her Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to reflect felony criminal charges against her in Kentucky; and 4) failing to respond truthfully during an NASD on-the-record interview. The Hearing Panel barred Taylor in all capacities for submitting false documents to Kentucky and Ohio’s insurance divisions and for placing her own name as beneficiary on ES’s annuity without ES’s consent. The Hearing Panel also imposed a separate bar in all capacities for Taylor’s failure to provide truthful testimony to NASD during an on-the-record interview. In light of the bars, the Hearing Panel did not impose any sanction for Taylor’s failure to file timely amendments to her Form U4.

After a complete review of the record, we affirm the Hearing Panel's finding that Taylor submitted a false document to the insurance division of Ohio, failed to timely amend her Form U4, and failed to provide truthful testimony to NASD at the on-the-record interview. We reverse and dismiss the Hearing Panel's findings that Taylor submitted a false document to Kentucky state insurance regulators and a third falsified document that was not alleged in the complaint. Further, due to insufficient evidence, we reverse the Hearing Panel's finding that Taylor placed her own name as beneficiary on ES's annuity without ES's consent. We affirm the Hearing Panel's imposition of a bar on Taylor for the submission of the false document to Ohio, and a separate bar for Taylor's untruthful testimony to NASD in the on-the-record interview. We also conclude that it is appropriate to order that Taylor be suspended for 30 days in all capacities for her failure to timely amend her Form U4, but in light of the bar imposed, we decline to impose the suspension.

I. Background

Taylor obtained life and health insurance licenses in 1992 from Kentucky, the state in which she then resided. In 1996 she moved from Kentucky to Ohio to rejoin her husband, who had relocated earlier. Taylor did not work from 1996 until March 2000, when she began employment with Financial Network of America Ltd. ("Financial Network" or "the Firm").¹ In order to work for Financial Network,² Taylor obtained an Ohio non-resident insurance license, which was dependent upon the good standing of her Kentucky insurance licenses. In November 2000, Taylor passed the investment company products/variable contracts limited representative qualification examination (Series 6). Taylor has not been registered or associated with any member firms since March 18, 2005.

II. Facts

A. Falsified Documents

1. Submission to the Kentucky Department of Insurance

On December 14, 2000, the Kentucky Department of Insurance ("Kentucky Insurance") notified Taylor that its records indicated that she had not completed the state's required 24 hours of continuing insurance education for the two-year period ending June 30, 2000. The notice advised Taylor to check Kentucky Insurance's website listing of her continuing education credits and to provide any missing certificates of completion that she possessed to show that she was in

¹ Taylor testified before the Hearing Panel that she had intended to cease working when she moved to Ohio. Her plans changed, however, due to the failure of her marriage, and she therefore sought employment in late 1999 and 2000.

² Taylor actually worked for WRP Investments, Inc., a broker-dealer that is affiliated with Financial Network. For the purposes of this decision, we will refer to Taylor's employer as Financial Network.

compliance with the continuing education requirements. The notice admonished Taylor that, if she failed to do so, her Kentucky insurance licenses would be terminated retroactively as of December 1, 2000.

Taylor testified that the Kentucky Insurance website showed that she had only 19 hours of continuing education for the relevant two-year period. Taylor maintained, however, that she actually had 39 credit hours of continuing education for the relevant period. Therefore, on January 8, 2001, she completed a facsimile cover sheet to Kentucky Insurance stating that she had 39 credit hours for 2000 and directed an employee of Financial Network to attach and send documents via facsimile to Kentucky Insurance to substantiate her claim of 39 credit hours. There is no evidence in the record from this employee, who no longer worked at the Firm at the time of the hearing before the Hearing Panel. At the hearing, Taylor identified certain certificates of completion for Financial Network courses as being among those that were sent to Kentucky Insurance. The documents that Taylor identified were for four courses provided by Financial Network in 2000 that totaled only 16 hours of credit and were not approved for continuing education credit in Kentucky.

Taylor testified at the hearing that she could not account for the other four credit hours that she maintained she had at that time. The record includes a certification of records from Kentucky Insurance dated August 18, 2005, that attaches a package of materials containing documents from Taylor's file at Kentucky Insurance. Included in these materials is a document that Kentucky Insurance certifies it received on January 8, 2001. This document indicates that it is page four out of eight pages sent via facsimile from Financial Network on January 8, 2001, and it is entitled "Certificate of Completion" for a continuing education course entitled "Business Life" (course #00089) purportedly taken by Taylor on "6/16/00." The last two handwritten numbers listed on that date, however, the two zeros, appear to have overwritten another date. This course was listed as being worth four credits. Taylor denied that this document was included with her facsimile cover sheet dated January 8, 2001 to Kentucky Insurance. After receiving the January 8, 2001 facsimile, Kentucky Insurance contacted the course provider, who advised in a letter dated January 30, 2001, that it last taught the "Business Life" course 00089 class in 1998. Kentucky Insurance thereafter declared Taylor's Kentucky insurance licenses "Inactive" as of December 1, 2000.

2. Submission to the Ohio Department of Insurance

On March 19, 2003, Taylor applied to the Ohio Department of Insurance ("Ohio Insurance") for continued licensure as a non-resident Ohio insurance agent. To further this process, on June 13, 2003, Taylor wrote a letter to Kentucky Insurance requesting two copies of a letter of clearance and certification to show Ohio that she had active insurance licenses in Kentucky. The record contains several copies of letters of clearance and certification from Kentucky Insurance, addressed to Taylor at her old Kentucky address, stating that her Kentucky insurance licenses were "Inactive" because of her failure to comply with continuing education requirements. Taylor testified, however, that in response to her June 13, 2003 request, she received from Kentucky Insurance, and forwarded to Ohio Insurance without any changes, a

letter of clearance and certification dated June 18, 2003, stating that her Kentucky insurance licenses were “active.”³ The August 18, 2005 certification of records from Kentucky Insurance includes a report it received from a consultant who analyzed the letter of clearance and certification that Taylor claimed to have received from Kentucky Insurance in June 2003. The report concludes that the letter had been altered and notes at least six discrepancies between the form of the letter that Taylor claims to have received and the form of an authentic letter used by Kentucky Insurance at the time, including that the word “Inactive” has been altered several times to appear as “active.”

At the hearing, Taylor denied that she had provided any altered documents to either Kentucky Insurance or Ohio Insurance. She stated that she had seen the alleged altered document for the first time on or about August 4 or 5, 2003, when Joe Randazzo, then vice-president of Financial Network, confronted her with them during an angry interaction they had concerning her departure from Financial Network.

Joe Randazzo, on the other hand, testified that he became aware of Taylor’s difficulties with insurance registration in Kentucky in the spring of 2003. He stated that he requested updates from Kentucky Insurance on the status of its investigation, and was informed in July 2003 that Kentucky Insurance had received a course completion certificate from Taylor that appeared to be altered. According to Joe Randazzo, he asked Taylor in July 2003 about the allegedly altered documents, and she told him that her ex-husband must have submitted them because he was attempting to ruin her career in Kentucky. Joe Randazzo testified that he supported Taylor’s position at that time, but he decided to suspend her from working while the matter was under investigation. Joe Randazzo stated, however, that he learned by late July, early August 2003 that Taylor had requested access to the Firm’s offices to clean out her desk. He concluded at that time that Taylor apparently intended to leave Financial Network and that he therefore would not continue to support her battle with Kentucky Insurance.

Taylor testified that she believed that Joe Randazzo and his father, Charles Randazzo, who was then the Chief Executive Officer of Financial Networks, were attempting to sabotage her career and had submitted false documentation to Ohio Insurance on her behalf. Taylor

³ Taylor testified that Kentucky Insurance sent the letter of clearance and certification dated June 18, 2003, to Taylor’s former address in Kentucky. When she testified at her on-the-record interview before NASD staff on August 26, 2004, Taylor indicated that she did not know the person who lived at that address at that time who had forwarded the letters to her in Ohio. She stated that the person was “not family.” At the hearing below, however, Taylor stated that her stepdaughter lived there at the time and had forwarded the Kentucky Insurance letter to Taylor’s address in Ohio. Taylor testified that her stepdaughter subsequently forwarded to her the second copy of the letter of clearance and certification that she had requested and Taylor also forwarded that copy, as she had received it, to Ohio Insurance.

testified that her relationship with the Randazzos had never been particularly good, but that it “really started going south April, May 2003.”⁴

On June 2, 2004, Ohio Insurance notified Taylor that it intended to suspend or revoke her Ohio license for submitting altered documents. Following a hearing on August 24, 2004, an Ohio Insurance Hearing Officer found that Taylor had submitted an altered clearance and certification letter and course completion certificate. On May 26, 2005, Ohio’s Superintendent of Insurance upheld the Hearing Officer’s conclusions, permanently revoked Taylor’s non-resident insurance agent’s license, and denied her application to become an Ohio resident insurance agent for obtaining or attempting to obtain a license through misrepresentation or fraud. On April 14, 2006, an Ohio court vacated the Ohio Insurance decision and remanded the matter to Ohio Insurance.⁵ Ohio Insurance conducted a supplemental evidentiary hearing on June 28, 2006. On August 1, 2006, an Ohio Insurance Hearing Officer found that Taylor submitted altered documents to Ohio Insurance. On October 11, 2006, Ohio’s Superintendent of Insurance upheld the Hearing Officer’s conclusions, permanently revoked Taylor’s non-resident insurance agent’s license, and denied her application to become an Ohio resident insurance agent. Taylor appealed Ohio Insurance’s October 2006 decision to an Ohio state court on October 26, 2006, where it remains pending.

3. Change of Beneficiary Form

Joe Randazzo testified that in July 2003 he received a call from ES, one of Taylor’s customers.⁶ ES informed him that on February 25, 2003, she had signed a blank change of

⁴ A former employee of Financial Network, Joseph Shumar (“Shumar”), testified that Taylor and Joe Randazzo began to have an unpleasant relationship in the fall of 2002. Taylor also testified at the hearing below that she received a threatening phone call from Charles Randazzo on August 10, 2003, wherein he “declared war” on her and stated that “[t]he wrath of Charles J. is going to start now.” Previously, at her August 26, 2004 on-the-record interview, Taylor’s counsel indicated that the message from Charles Randazzo had been left on Taylor’s home voice mail in November 2003. In any case, the record is clear that the message occurred long after the submission of the allegedly altered documents to Kentucky Insurance and Ohio Insurance.

⁵ The Ohio court stated that Ohio Insurance’s decision to permanently revoke Taylor’s insurance licenses was “not based upon reliable, probative and substantial evidence.” In reaching its determination, the Ohio court noted that Taylor had been denied the opportunity to view documents in evidence from Kentucky Insurance regarding the format of clearance and certification letters or course completion certificates prior to the Ohio Insurance hearing. The Ohio court therefore determined that Taylor had been “blind-sided” and had not had sufficient time to find additional evidence that “would have been reliable, probative and substantial on the issue of whether the documents were altered.”

⁶ ES was a 92 year-old widow who died five days before the hearing in this matter.

beneficiary form for one of her annuities with North American Insurance Company. ES stated that she told Taylor to change the beneficiary on this annuity to ES's daughter, and that Taylor stated that she would complete the rest of the form in accordance with ES's instructions. According to Joe Randazzo, ES was upset in July 2003 because she had recently received a confirmation from the annuity company that indicated that Taylor's name had been inserted as beneficiary, and not ES's daughter. Joe Randazzo stated that he met with Taylor about this issue in late July 2003, at which time Taylor stated that ES had not been happy with her daughter and had wanted to acknowledge her friendship with Taylor by making her the beneficiary on this specific annuity. Joe Randazzo also testified that ES told him that Taylor later went to ES's home and apologized for the mistake but claimed that someone else in Financial Network's office had put Taylor's name down as beneficiary on the annuity form. Joe Randazzo stated that more than one year after his discussions with ES, he drafted a complaint letter dated August 26, 2004, that summarized ES's complaints against Taylor.

At the hearing, Taylor denied that she had completed the change of beneficiary form to designate herself the beneficiary of ES's annuity. Taylor also denied that her printing appears on the change of beneficiary form. Taylor maintained that she had a good relationship with ES as a customer, and that she first saw the alleged altered change of beneficiary form when Joe Randazzo presented it to her during a confrontation they had on August 4 or 5, 2003, when she was terminating her relationship with Financial Network. Taylor testified that she informed Joe Randazzo at that meeting that she did not know anything about the change of beneficiary form.

B. Failure to Timely Amend Form U4

Joe Randazzo testified that he suspended Taylor from Financial Network in July 2003 after he learned that there were issues concerning Taylor's insurance licenses in Kentucky. The record contains a copy of a letter dated August 1, 2003, that Joe Randazzo claims to have sent to numerous customers of Taylor's, explaining that she was "taking a leave of absence for personal reasons from Financial Network." On August 8, 2003, Financial Network terminated Taylor, stating on her Uniform Termination Notice for Securities Industry Registration ("Form U5") that "certain insurance documents . . . from the state of Kentucky appear to have been altered in order to obtain a variable annuity license from the state of Ohio. Currently, the insurance departments of Kentucky and Ohio are investigating this matter."

In October 2003, Taylor applied to work for a different member firm, The Legend Group ("Legend"). James Halvosa ("Halvosa"), Legend's chief compliance officer, testified at the hearing below. He stated that because he was concerned about the issues cited on Taylor's Form U5 from Financial Network, he requested her to provide further information. On October 3, 2003, Taylor sent a letter to Legend, stating that "[f]or the past twenty-four months, [she had] been consistently trying to resolve an issue with the State of Kentucky Department of Insurance regarding the application of [her] Continuing Education credits for the period ending December 31, 2000." Taylor further asserted in the October 3, 2003 letter that she had made multiple trips to Kentucky to try to settle the questions, but that "[i]nstead, the Licensing Department took it

upon themselves to declare [her] license inactive without any written notification to [her].”⁷ Halvosa testified that he accepted Taylor’s version of the events and believed at that time that she was experiencing minor problems regarding receiving credit for insurance continuing education requirements. Legend hired Taylor on October 23, 2003.

1. Kentucky Criminal Complaint #1

On December 4, 2003, Taylor was served with a summons to appear before a state court in Kentucky in January 2004 to answer the felony charge of criminal possession of a forged instrument. The complaint charged that on January 8, 2001, Taylor sent Kentucky Insurance an altered course completion certificate indicating that she had completed a “Business Life” continuing education course on June 16, 2000. Taylor appeared before the Kentucky court on January 20, 2004, and pled not guilty. On March 2, 2004, the Kentucky court dismissed the case for lack of probable cause. Taylor did not advise Legend of the criminal charge against her until March 5, 2004, when she sent Legend a letter via facsimile stating that the criminal case had been dismissed, but she did not provide any description of the charges against her. Taylor further failed to provide requested court documentation to Legend to amend her Form U4 and substantiate the nature of the criminal charge against her until April 13, 2004.

2. Kentucky Criminal Complaint #2

On August 2, 2004, Taylor was served with a second summons to appear before a Kentucky court on September 28, 2004, to answer to a second felony charge of forgery in the second degree. The second criminal complaint alleged that Taylor fraudulently completed a course completion certificate indicating that she had completed a “Business Life” continuing education insurance course on June 16, 2000, and sent it to Kentucky Insurance. Taylor failed to appear before the Kentucky court as ordered on September 28, 2004. As a result, the Kentucky court issued a bench warrant for Taylor, and she was arrested in Ohio on October 1, 2004.

Halvosa testified that on November 15, 2004, he received a letter from Taylor dated October 25, 2004, requesting that her Form U4 be updated.⁸ Taylor appended to the letter a Form U4 with handwritten notes indicating that she did not appear in the Kentucky court to

⁷ At the hearing below, Taylor maintained that she had not been aware when Legend hired her in October 2003 that her Kentucky Insurance license was inactive. In response to cross-examination, Taylor was unable to reconcile her hearing testimony with her statement in the letter dated October 3, 2003, about how “the [Kentucky] licensing department took it upon themselves to declare my license inactive.” Taylor stated that she “[did not] know how to answer that.”

⁸ Taylor’s October 25, 2004 letter references a previous letter to Legend dated September 6, 2004, requesting amendments to her Form U4. Halvosa testified that he performed a search of Taylor’s file at Legend and confirmed that he had not received a September 6, 2004 letter from Taylor.

answer the second criminal charge against her based on advice from her attorney. She also noted that the Kentucky court had issued a bench warrant because she failed to appear, but she stated that she was confident that the charge would be dismissed for lack of probable cause. Halvosa stated that he asked Taylor to provide further documentation to substantiate these events, but Taylor did not comply.

On December 28, 2004, the Kentucky court found probable cause and bound over to the grand jury the second criminal case against Taylor. On March 3, 2005, Halvosa received a copy of a letter sent to Taylor from NASD, which included information about the second criminal charge. Halvosa therefore requested more information about the second criminal charge from Taylor and told her to cease all business activity for Legend until he could “get to the bottom of the matter.” Halvosa received a letter from Taylor’s attorney dated March 11, 2005, regarding the charges against Taylor. Halvosa testified that he found the attorney’s letter “confusing” and did not fully realize that Taylor had been charged with a second felony, arrested for failing to appear in a Kentucky court, and suspended by Ohio Insurance until he received documents from NASD on March 17, 2005. On the following day, March 18, 2005, Halvosa updated Taylor’s Form U4 and terminated her employment with Legend, citing “lack of production” in the section on the Form U5 entitled “Reason for Termination.”⁹

C. False Testimony to NASD in on-the-Record Interview

On August 26, 2004, Taylor provided sworn testimony to NASD in an on-the-record interview conducted pursuant to NASD Procedural Rule 8210. Taylor testified that there was no litigation pending against her at that time. Taylor further testified that: 1) her Kentucky licenses had never been suspended or become inactive for any reason; 2) her Kentucky licenses were still active as of the day of the on-the-record interview; and 3) she was current with all of her continuing education requirements for Kentucky.

III. Procedural History

Enforcement began an investigation of Taylor’s conduct in September 2003, following its receipt of the Form U5 submitted by Financial Network when it terminated Taylor’s employment in August 2003. On April 28, 2005, Enforcement issued a four-cause complaint alleging that Taylor: 1) submitted a falsified document to Kentucky Insurance and another falsified document to Ohio Insurance; 2) made herself the beneficiary of ES’s annuity without ES’s knowledge or consent; 3) failed to amend her Form U4 to disclose that, on two separate occasions, she was charged with a felony in Kentucky;¹⁰ and 4) failed to testify truthfully in an NASD on-the-record

⁹ The second Kentucky criminal case against Taylor did not end until June 29, 2005, when the Kentucky grand jury returned a “no true bill,” which amounted to a dismissal of the charges against Taylor.

¹⁰ The complaint initially also alleged that Taylor failed to update her Form U4 to disclose an Ohio Insurance administrative proceeding against her. Enforcement withdrew this allegation at the opening of the hearing in this case.

interview. Taylor filed an answer to the complaint, admitting jurisdiction but denying all substantive allegations. The Hearing Panel held a one-day hearing on September 20, 2005, and issued its decision on December 30, 2005. Taylor appealed the Hearing Panel's decision.

IV. Discussion

A. Falsification of Documents

NASD Conduct Rule 2110 requires that members “shall observe high standards of commercial honor and just and equitable principles of trade.”¹¹ NASD's disciplinary authority under Conduct Rule 2110 is “broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.” *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (*per curiam*)); see also *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) (“Although [respondent's] wrongdoing in this instance [forging signatures on insurance applications to obtain commissions] did not involve securities . . . NASD could justifiably conclude that on another occasion it might.”).

The rule is violated when a respondent engages in unethical conduct. See *Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).¹² The principal consideration is whether the misconduct reflects on an associated person's ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public. See *James A. Goetz*, 53 S.E.C. 472, 477 (1998). Falsifying documents is a prime example of misconduct that adversely reflects on a person's ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade. *Ramiro Jose Sugranes*, 52 S.E.C. 156, 157 (1995); *Jeffrey Michael Miller*, 51 S.E.C. 1027, 1029 (1994); see also *Dep't of Enforcement v. Salaverria*, Complaint No. C07040077, 2005 NASD Discip. LEXIS 10, at *16-17 (NAC Dec. 12, 2005) (stating that knowingly providing a member firm with a fictitious score report that falsely represents that an associated person has passed a registration examination is conduct that falls within the broad ethical principle included in Conduct Rule 2110).

¹¹ NASD Rule 115 extends NASD rule requirements to persons associated with a member.

¹² The 1938 Maloney Act Amendments to the Securities Exchange Act of 1934, which authorized the creation of self-regulatory organizations, allow NASD “to regulate itself by prohibiting and preventing fraud and unethical conduct by its members and by promoting in them professionalism and technical proficiency.” *Jones v. SEC*, 115 F.3d 1173, 1182 (4th Cir. 1997); see also *First Jersey Sec., Inc. v. Bergen*, 605 F.2d 690, 698 (3d Cir. 1979) (noting that the Maloney Act sought to promote self-regulation of the securities industry to guard against both unethical and illegal practices).

The Hearing Panel found that Taylor falsified all three documents that are at issue in this case:¹³ 1) a course completion certificate for a continuing education course entitled “Business Life” that was submitted to Kentucky Insurance on January 8, 2001; 2) a letter of clearance and certification from Kentucky Insurance that was submitted to Ohio Insurance on or about June 24, 2003; and 3) a change of beneficiary form for ES’s annuity that was completed on or after February 25, 2003. We find that there is significant evidence in the record, including Taylor’s own testimony, to support the Hearing Panel’s findings as to the false letter of clearance and certification that was submitted to Ohio Insurance on June 24, 2003, but not as to the falsified course completion certificate submitted to Kentucky Insurance on January 8, 2001 or the change of beneficiary form for ES’s annuity. We will address each document in turn.

1. Taylor Submitted an Altered Kentucky Letter of Clearance and Certification to Ohio Insurance

A preponderance of the record evidence establishes that Taylor violated Rule 2110 by submitting an altered Kentucky letter of clearance and certification to Ohio Insurance on or about June 24, 2003. Taylor testified that she applied to Ohio Insurance on March 19, 2003, to continue her licensure as a non-resident Ohio insurance agent. Taylor knew that her Ohio license depended on her having a Kentucky insurance license in good standing. She requested, by letter dated June 13, 2003, that Kentucky Insurance send to her two copies of a letter of clearance and certification to show Ohio that she had active insurance licenses in Kentucky. The record shows that Taylor’s insurance licenses in Kentucky had been declared inactive as of December 1, 2000, due to her failure to comply with the continuing education requirements. Yet Taylor testified at the hearing below that Kentucky Insurance mailed to her stepdaughter’s address in Kentucky in June 2003 two letters of clearance and certification stating that her licenses were active. Taylor admits to having had the letters of clearance and certification in her possession in June 2003. She testified that she barely looked at the letters that her stepdaughter mailed to her and that she forwarded them, untouched, to Ohio Insurance on or about June 24, 2003. Our reading of the Hearing Panel’s decision indicates that it rejected Taylor’s testimony on these points as not credible when it found her to be liable on this allegation. We agree that Taylor’s testimony on this point lacks credibility because she initially stated in her on-the-record testimony to NASD on August 26, 2004, that she did not know the person who resided at her old Kentucky address, where the letter was sent by Kentucky Insurance in June 2003. Taylor denied in her on-the-record testimony that this person was “family.” Yet she contradicted her prior statement at the hearing when she admitted that her stepdaughter lived at that address at the time and forwarded the letters to Taylor in Ohio.

The record also includes the report that accompanied the August 18, 2005 Kentucky Insurance certification, which analyzed the letter of clearance and certification with the word “active” on it that Taylor asserted she had received from Kentucky Insurance and forwarded to

¹³ As noted above, the Hearing Panel also found that Taylor had altered a course completion certificate to Ohio Insurance in April 2001, but that is not at issue in this matter. We therefore reverse and dismiss this finding by the Hearing Panel.

Ohio Insurance in June 2003. That report states that at least six discrepancies exist between the letters that Taylor claimed to have received in June 2003 and the format of an actual letter that Kentucky Insurance used at that time. The main discrepancy was that Kentucky Insurance always capitalized the first letter of the words “Inactive” or “Active,” but the document produced by Taylor had the word appearing as “active” in several places, indicating that the first two letters “In” had been removed. Other letters of clearance and certification for Taylor that appear in Kentucky Insurance’s certified file records, including one dated August 7, 2003, clearly state that Taylor’s licenses are “Inactive” as of “12/01/00,” whereas the document produced by Taylor had the word “active” as of “12/01/00.” We conclude, as did the Hearing Panel, that Taylor altered the letter of clearance and certification by changing the word “Inactive” to “active.”

Taylor argues that the Ohio state court’s April 14, 2006 remand of Ohio Insurance’s denial of Taylor’s insurance application should control the outcome here.¹⁴ Taylor asserts that the Hearing Panel “blindly rel[ied]” on Ohio Insurance’s conclusion and did not do any independent evaluation of the evidence. This argument fails. It is irrelevant to NASD’s case that an Ohio state court remanded Ohio Insurance’s decision as to Taylor. As of the date of this decision, the Ohio state court has not decided the matter on the merits and thus the decision has no preclusive effect here.

Moreover, we have no need to rely upon Ohio Insurance’s decision as we find that a preponderance of independent evidence shows that Taylor violated Rule 2110 by submitting an altered letter of clearance and certification to Ohio Insurance in June 2003.

2. The Evidence is Not Sufficient to Show that Taylor Submitted an Altered Course Completion Certificate to Kentucky Insurance

We find that there is not a preponderance of evidence to show that Taylor submitted an altered course completion certificate to Kentucky Insurance on January 8, 2001. Taylor denies that she provided false documentation to Kentucky Insurance.¹⁵ She testified that she received

¹⁴ When Taylor last filed a brief in the instant matter, Ohio Insurance had not yet held its supplemental evidentiary hearing and issued its October 2006 decision revoking her Ohio insurance license.

¹⁵ Taylor also asserts that she should be exonerated from this allegation because Kentucky failed to proceed with the criminal charges against her for falsifying this document. Taylor’s argument is wrong. NASD’s action against Taylor was independently charged and investigated. NASD is not bound by a Kentucky prosecutor who failed to establish probable cause or a Kentucky grand jury that declined to return an indictment. First, those outcomes were not adjudications on the merits. Second, even if Taylor had been tried and acquitted on criminal charges that were identical to the issues raised here, that outcome would have no bearing on this proceeding. Such a judgment would lack binding effect because a more rigorous standard of proof applies in criminal actions. Similarly, there is also no merit to Taylor’s assertion that the Hearing Panel “ignored” the testimony of Taylor’s criminal attorney regarding the outcome of

Kentucky Insurance's December 14, 2000 notice letter informing her that she had not completed the requisite number of hours of continuing education for the two years ending June 30, 2000. She was aware that her Kentucky license would be terminated effective December 1, 2000, unless she could document that she had satisfied the continuing education requirement. She stated that she checked Kentucky Insurance's website and found that it had credited only 19 hours of continuing education to her during the period in question.

Taylor maintained that she had amassed a total of 39 hours of continuing education during that period, and that she attempted to document this to Kentucky Insurance. Taylor admitted that she completed a facsimile cover sheet to Kentucky Insurance dated January 8, 2001, that states that she was attaching certificates to show that she had completed 39 hours of continuing education in 2000. The facsimile cover sheet shows that it was transmitted from Financial Network on January 8, 2001. Taylor also testified that she requested an employee of Financial Network to attach course completion certificates and forward the material to Kentucky Insurance. Taylor identified documents in the record as those that the employee should have forwarded to Kentucky Insurance on January 8, 2001, indicating that Taylor had completed 16 hours of courses at Financial Network during 2000. Taylor denied that the altered course completion certificate would have been part of the package of materials she sent with her January 8, 2001 facsimile.

Enforcement argues that Taylor had the motive to supply such a document because, in fact, she lacked the required number of hours of continuing education. While we agree, we find lacking any evidence establishing that Taylor submitted the altered course completion certificate to Kentucky Insurance. Accordingly, we find that the evidence is not sufficient to show that Taylor had possession of or provided an altered course completion certificate to Kentucky Insurance in January 2001, and we reverse and dismiss the Hearing Panel's finding of violation on this allegation.

3. The Evidence is Not Sufficient to Show that Taylor Falsified the Change of Beneficiary Form

We also find that the record does not support the Hearing Panel's conclusion that Taylor affixed her own name as the beneficiary of ES's annuity, instead of ES's daughter, without ES's knowledge and consent. The Hearing Panel's finding of violation on this allegation is not based on independent documentary evidence, but relies considerably on the testimony of Joe Randazzo. Yet the Hearing Panel did not make a specific finding that it found Joe Randazzo's testimony more credible on this issue than Taylor's.

Moreover, there is substantial reason to reverse the Hearing Panel's finding of liability on this allegation. Joe Randazzo's testimony on this issue is hearsay. There are no statements from

[cont'd]

the Kentucky criminal investigations in which he represented her. This testimony was irrelevant to NASD's allegations against Taylor.

ES, who died five days before the hearing, or her daughter in the record. Moreover, Joe Randazzo admitted that he drafted the complaint letter for ES on August 26, 2004, more than one year after ES's alleged complaints about Taylor. Although hearsay is admissible evidence in NASD proceedings, we note that hearsay must be evaluated for "its probative value, reliability, and the fairness of its use." *Mark James Hankoff*, 50 S.E.C. 1009, 1012 (1992). *See, e.g., Gary L. Greenberg*, 50 S.E.C. 242, 245 (1990) (citing *Richardson v. Perales*, 402 U.S. 389, 407-408 (1971)); *Allen Mansfield*, 46 S.E.C. 356, 357-358 (1976); *Lawrence H. Ripp*, 46 S.E.C. 771, 772 n.2 (1977). Among the factors to be considered in determining whether to credit hearsay are the possible bias of the declarant; whether or not the statements are contradicted by direct testimony; the type of hearsay at issue; whether the missing key witness was available to testify; and whether or not the hearsay is corroborated. *Greenberg*, 50 S.E.C. at 245. The Hearing Panel did not undertake this analysis.

Here, while we agree that Randazzo's testimony was admissible, we give it little weight because Taylor's assertion that Randazzo was biased is colorable. Taylor denies that she put her name on the change of beneficiary form in question, and she denies that any of her handwriting or printing appears on that document. The record on this issue therefore contains insufficient evidence for us to find that Taylor defied the wishes of ES and placed her own name on the change of beneficiary form, as alleged in the complaint. Accordingly, we reverse the finding of the Hearing Panel and dismiss the allegation that Taylor substituted her own name for that of ES's daughter on a change of beneficiary form for one of ES's annuities.

B. Taylor Failed to Timely Supply Information to Amend Her Form U4

Article V, Section 2(c) of the NASD By-Laws requires that Forms U4 be "current at all times," and that amendments to Forms U4 be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." The Form U4 "serves as a vital screening device for hiring firms and the NASD against individuals with 'suspect history.'" *Dist. Bus. Conduct Comm. v. Jones*, Complaint No. C02970023, 1998 NASD Discip. LEXIS 60, at *9 (NAC Aug. 7, 1998). Failing to file prompt amendments to a Form U4 is a violation of Rule 2110. *See* NASD's Membership, Registration and Qualification Requirements, IM-1000-1 (providing that an incomplete or inaccurate filing of information with NASD by a registered representative "may be deemed to be conduct inconsistent with just and equitable principles of trade").

Taylor, as a registered representative, was responsible for knowing the rules of the securities industry and for providing information about her Kentucky felony charges to Legend on a timely basis to update her Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table format) ("Every person submitting registration documents [to NASD] has the obligation to ensure that the information printed therein is true and accurate."). The record shows that Taylor did not fulfill this responsibility.

Legend hired Taylor on October 23, 2003. On December 4, 2003, Taylor was served with a summons from a Kentucky court to answer the first criminal felony charge of possession of a forged instrument. Taylor appeared before a Kentucky court on January 20, 2004 and pled not guilty. On March 2, 2004, the Kentucky court dismissed the case for lack of probable cause.

On March 5, 2004, Taylor gave Legend its first notice of this criminal charge by sending a facsimile letter stating that the criminal case had been dismissed, but she did not provide any description of the criminal charge against her. Legend requested further documentation from Taylor on this issue in order to be able to properly amend her Form U4. Yet Taylor failed to provide the requested court documentation until April 13, 2004, a full four months after she had been served with the summons.

There is no merit to Taylor's argument that she did not violate NASD rules because she was not aware that she was required to disclose a "frivolous criminal charge," as she describes the first criminal charge against her in Kentucky, "especially when it was dismissed for lack of probable cause." Question 14A on the Form U4 is unqualified. It asks whether the registered representative has "ever been charged with any felony." The Form U4 allows registered representatives to describe in another section of the form what the resolution of a felony charge was. Thus, Taylor failed to act promptly to supply Legend with sufficient information to timely update her Form U4 with the information regarding the first criminal charge against her in Kentucky.

Taylor similarly failed to act in a prompt manner with respect to the second felony criminal charge against her. She was served with a second Kentucky court summons on August 2, 2004, to answer to a felony charge of forgery. Taylor failed to appear in a Kentucky court on the ordered date and the judge issued a bench warrant for her arrest. Taylor was arrested in Ohio on October 1, 2004, for failing to appear in the Kentucky court, but she did not promptly inform Legend of the events surrounding this second felony charge. Indeed, Taylor did not forward a letter to Halvosa until November 15, 2004, three months after the issuance of the second criminal summons. She attached to the November 15, 2004 letter a "corrected" Form U4 that contained her admittedly handwritten notes indicating that in March 2004, she was aware that her "ex firm" had the same charges filed against her in Kentucky, and that this second criminal charge "will too be dismissed for lack of probable cause." Yet Taylor did not respond when Halvosa asked for further information to substantiate the incidents described in her handwritten notes.

On December 28, 2004, the Kentucky court found probable cause and bound the second criminal case against Taylor over to the grand jury. Once again, Taylor neglected to inform Legend of this event. On March 3, 2005, Halvosa received a copy of a letter that NASD sent to Taylor, which included information about the second criminal charge. On the basis of this letter, Halvosa again asked Taylor to supply missing documents and court information and told her to cease all business activity for Legend while he investigated the matter. Yet Halvosa testified that it was not until March 17, 2005, when he received documents from NASD, that he fully understood the facts about the second felony charge against Taylor, her arrest, and her suspension by Ohio Insurance.¹⁶ One day later, on March 18, 2005, Halvosa updated Taylor's Form U4 and filed a Form U5, terminating her employment with Legend.

¹⁶ In the interim, Taylor's criminal attorney wrote to Halvosa on March 11, 2005, attempting to explain the various criminal charges against Taylor. Halvosa testified, however, that he found this letter "confusing," and was waiting for documentation to be supplied by Taylor.

We find that the preponderance of the evidence shows that Taylor did not fulfill her obligation to timely update her Form U4 with information about the two criminal charges against her in Kentucky, in violation of Rule 2110 and IM 1000-1.

C. Taylor Testified Untruthfully at the August 26, 2004 on-the-Record Interview

Procedural Rule 8210 gives NASD the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The rule further states that no member or person shall fail to provide such information. It is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to NASD in connection with an examination or investigation. See *John Montelbano*, Exchange Act Rel. No. 47227, 2003 SEC LEXIS 153, at *36-38 (Jan. 22, 2003) (upholding NASD's finding that respondents violated Procedural Rule 8210 by giving false testimony during an on-the-record interview); *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996) ("Providing misleading and inaccurate information to the NASD is conduct contrary to high standards of commercial honor and is inconsistent with just and equitable principles of trade."), *aff'd*, 112 F.3d 516 (9th Cir. 1997) (table format).

Full and accurate responses to Rule 8210 requests are critical to NASD's ability to effectively regulate the securities industry. *Robert Fitzpatrick*, 55 S.E.C. 419, 434 (2001) ("The violation charged by NASD is serious because, if members and their associated persons do not comply with Procedural Rule 8210, the NASD's ability to fulfill its regulatory responsibilities suffers.").

On August 26, 2004, Taylor gave sworn testimony in an NASD on-the-record interview conducted pursuant to NASD Procedural Rule 8210. She testified "none," in response to a question as to whether there was any litigation pending against her. When reminded by the Enforcement attorney that Ohio Insurance was conducting an inquiry concerning her insurance license, she acknowledged this and testified "no, sir," in response to a question as to whether there were "any other proceedings against her." These responses were clearly untruthful as Taylor was aware that a second criminal charge was pending against her in Kentucky as the summons was issued on August 2, 2004. Moreover, the handwritten notes that were included on the corrected Form U4 that she supplied to Legend by letter on November 15, 2004, indicated that she had been aware as early as March 7, 2004, that a second criminal charge was going to be filed against her in Kentucky. Taylor's denial of any current litigation against her was false because the second criminal charge from Kentucky was pending.

Further, Taylor responded "no, sir," when asked if her Kentucky insurance licenses had been declared inactive at any time. After the Enforcement attorney reminded Taylor that she had not worked from 1996 until 1998, Taylor amended her answer to say that her Kentucky insurance license had been inactive during that time. Taylor maintained through the remainder of her on-the-record testimony, however, that her Kentucky licenses had remained active from the time she retook and passed the Kentucky health and life insurance examinations in January 1999 to date. The record shows this testimony to be false. Kentucky Insurance documents show that the last course for which Taylor received credit in Kentucky was the Series 6 examination in

April 2000, and that her Kentucky licenses had been inactive since December 1, 2000. Further, Taylor's own letter to Legend on October 3, 2003, reveals her knowledge of the inactive status of her Kentucky licenses when she states that "the [Kentucky] Licensing Department took it upon themselves to declare my license inactive." Despite Taylor's written acknowledgement in October 2003 of this status of her Kentucky licenses, she testified at the hearing below that she did not know when Legend hired her in October 2003 that her Kentucky licenses were inactive. When Taylor was asked on cross-examination how she could reconcile these disparate statements, she replied that she "[did not] know how to answer that."

Accordingly, we find that Taylor provided two false answers to NASD at the on-the-record interview on August 26, 2004, in violation of Procedural Rule 8210 and Conduct Rule 2110.¹⁷

V. Sanctions

A. Falsification of Documents

The NASD Sanction Guidelines ("Guidelines") for forgery and/or falsification of records¹⁸ recommend a fine of \$5,000 to \$100,000 and, where mitigating factors exist, a suspension of up to two years. In egregious cases, the Guidelines recommend that a bar be considered. The principal considerations are the nature of the documents forged and whether the respondent had a good faith, but mistaken, belief of authority to make the entries.

The Hearing Panel concluded that Taylor's submission of the falsified letter of clearance and certification to Ohio Insurance in June 2003 was egregious, and we agree. There are no mitigating factors in the record to suggest that Taylor had a good faith belief of authority to submit the false document in question. The document that Taylor supplied to Ohio Insurance was material to the status of Taylor's insurance licenses and her ability to work with the investing public. Further, Taylor's willingness to supply a false document to a state insurance regulator evidences a lack of respect for all regulated industries and their rules and regulations. We therefore bar Taylor in all capacities from the securities industry for violating Rule 2110 by supplying a false letter of clearance and certification to Ohio Insurance.

¹⁷ A violation of Rule 8210 is a violation of Conduct Rule 2110. *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

¹⁸ *NASD Sanction Guidelines* 39 (2006), http://www.nasd.com/web/groups/enforcement/documents/enforcement/nasdw_011038.pdf [hereinafter *Guidelines*].

B. Failure to Timely Amend Form U4

The Guidelines for untimely filing of amendments to Forms U4 provide for a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for five to 30 business days.¹⁹ Egregious violations may be sanctioned by a suspension of up to two years or a bar, and are defined as those involving repeated failures to file; failure to disclose a statutory disqualification event or customer complaint; or failure to disclose information that results in delaying regulatory investigation of terminations for cause. The principal considerations listed in the Guidelines are: the nature and significance of the information at issue; whether the failure to report resulted in a statutorily disqualified person remaining associated with a firm; and whether the misconduct resulted in harm to a registered person, another member firm or any other person or entity.

Although the Hearing Panel found that Taylor violated Rule 2110 by failing to provide timely updates for her Form U4, it declined to designate a specific sanction for this violation due to the imposition of bars on Taylor for other violations. We disagree with the Hearing Panel's conclusion on this issue and hereby impose a sanction on Taylor for this violation. We have considered that the information that Taylor failed to report concerned two felony criminal charges against her in Kentucky. While we find that such information is highly significant to potential investors and employers, we do not consider Taylor's failure to be egregious. The felony charges alone did not result in Taylor's being statutorily disqualified, did not concern customer complaints, and did not result in harm to a registered person, another member firm or any other person or entity. We therefore conclude that it is appropriate to order that Taylor be suspended in all capacities of 30 days for this violation, but in light of the bar imposed, we decline to impose the suspension.

C. Failure to Testify Truthfully

For failure to respond truthfully to requests for information made pursuant to Procedural Rule 8210, the Guidelines recommend a fine of \$25,000 to \$50,000 and, where mitigation exists, a suspension of up to two years.²⁰ In egregious cases, the Guidelines provide for a bar.

The Hearing Panel found that Taylor's untruthful testimony warranted the imposition of a bar and we agree. The Guidelines list two principal considerations for cases involving untruthful testimony: (1) the "[n]ature of the information requested;" and (2) "[w]hether the requested information has been provided and, if so, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response." We also look for guidance to the Principal Considerations in Determining Sanctions in the Guidelines. Principal Consideration Number 12 instructs us to inquire as to "[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, to

¹⁹ *Guidelines*, at 75.

²⁰ *Id.* at 35.

conceal information, or to provide inaccurate or misleading testimony or documentary information to NASD.”²¹

We find that these considerations support the imposition of a bar on Taylor. The nature of the information requested of Taylor at the on-the-record interview went to the heart of NASD’s investigation—whether she was providing false information to regulators regarding her insurance licenses and thereby maintaining her employment in the insurance and securities industries through deceitful means. Indeed, one of Taylor’s false answers—that her Kentucky insurance licenses had remained active since 1999—was designed to cover up her responsibility for falsification of the Kentucky Insurance letter of clearance and certification. In total, Taylor’s untruthful responses at the interview in August 2004 interfered with NASD’s investigation and ultimately led to the filing of the complaint against her in April 2005. The record shows that Taylor knew her answers were false, and there are no mitigating circumstances. Accordingly, we find that her false testimony was egregious and we impose a bar in all capacities for this violation.

VI. Conclusion

We affirm the Hearing Panel’s findings that Taylor provided a false letter of clearance and certification to Ohio Insurance in June 2003, in violation of Conduct Rule 2110. We reverse and dismiss the Hearing Panel’s findings that Taylor also provided a false course completion certificate to Kentucky Insurance in January 2001 and to Ohio Insurance in April 2001. For the submission of the false document to Ohio Insurance, we impose a bar in all capacities.

We reverse and dismiss the Hearing Panel’s finding that Taylor affixed her name to ES’s change of beneficiary form without the knowledge or consent of ES.

We affirm the Hearing Panel’s findings that Taylor failed to provide timely information to update her Form U4, in violation of Conduct Rule 2110 and IM-1000-1. For this violation, we order a 30-day suspension in all capacities, but in light of the bar imposed, we decline to impose the suspension.

Finally, we affirm the Hearing Panel’s finding that Taylor provided false testimony to NASD in an on-the-record interview on August 26, 2004, in violation of Conduct Rule 2110 and Procedural Rule 8210. We impose a bar in all capacities for this violation. We also affirm the Hearing Panel’s assessment of \$3,055.46 in costs for the hearing below.

²¹ See *Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 12).

The bars are effective upon service of this decision.²²

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith, Vice President
and Deputy Corporate Secretary

²² We have also considered and reject without discussion all other arguments advanced by the parties.