BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Joseph R. Butler Brandywine, MD, Respondent.	DECISION Complaint No. 2012032950101 Dated: September 25, 2015

Registered representative converted customer funds and submitted a false annuity beneficiary change request. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Jeffrey Pariser, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Todd K. Pounds, Esq.

Decision

Joseph R. Butler ("Butler") appeals a July 8, 2014 Hearing Panel Decision.[1] The Hearing Panel barred Butler in all capacities for converting a customer's funds and submitting a false annuity beneficiary change request, in violation of FINRA Rule 2010.[2] The Hearing Panel also

[1] In his opening brief, Butler also moved to dismiss this proceeding. Such a motion is not permitted under FINRA rules at this point in the proceedings. We treat Butler's submission as an appeal of the Hearing Panel decision pursuant to the FINRA Rule 9300 series.

[2] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

ordered Butler to pay his customer restitution in the amount of $170,408.18 plus interest, and costs in the amount of $4,135.79.

After an independent review of the record, we affirm the Hearing Panel's findings and sanctions. The record shows that Butler took control of the finances of an elderly woman who was suffering from declining mental health, eventually converting more than $170,000, and named himself as her primary heir and beneficiary on the annuity policy he had sold her. Butler's defenses here, which rely on his self-serving testimony that the Hearing Panel found not credible, are without merit. Butler's intentional exploitation of an elderly customer for his personal benefit constitutes a serious violation of one of the most important ethical standards applicable to associated persons and warrants a permanent bar from the industry.

I. Background

Butler entered the insurance industry in 1967 and has owned his own insurance agency, J.R. Butler & Associates, for approximately 35 years. In January 1994, Butler registered with Woodbury Financial Services, Inc. ("Woodbury") as an investment company and variable contracts products limited representative. Butler remained associated with Woodbury until August 2, 2012, when he was discharged for failing to disclose that he was listed as the beneficiary on multiple customer accounts and for taking control of a customer's personal banking accounts. Butler is currently associated with another FINRA-member firm.

II. Procedural History

On August 2, 2013, FINRA's Department of Enforcement ("Enforcement") filed a five-cause complaint against Butler. The complaint alleged that Butler converted customer funds in violation of FINRA Rule 2010. Specifically, the complaint alleged that after becoming a joint account holder on an elderly customer's personal banking accounts, Butler used the accounts to pay his state taxes and withdrew an additional $26,000 from the accounts through checks made payable to "cash" and an electronic transfer to his own account. The complaint also alleged that Butler violated FINRA Rule 2010 by violating various Woodbury policies, taking unfair advantage of an elderly customer who was in declining mental health, and submitting a false annuity beneficiary change request form making himself the primary beneficiary on his customer's annuity.

Butler denied the alleged violations and argued that all the withdrawals from his customer's account were made with her authorization and were used for her benefit. With respect to the false beneficiary change form, Butler admitted that he falsely stated on the form that he was his customer's "son," but said this was done at his customer's direction because she considered him like a son.

After learning of numerous additional withdrawals by Butler from his customer's bank accounts, Enforcement filed an amended complaint on December 20, 2013.[3] The amended complaint alleged that Butler: (1) drew two checks on his customer's account totaling $29,108.18 to pay his state and federal tax liabilities; (2) drew 15 other checks on his customer's account made payable to "cash" or to himself totaling $114,250;[4] (3) withdrew $5,000 from the account through electronic funds transfers to his personal bank account; and (4) violated FINRA Rule 2010 by violating Woodbury policies and submitting a false beneficiary change form making himself the primary beneficiary of his customer's annuity.[5]

After a two-day hearing, the Hearing Panel issued a decision finding that Butler had converted customer funds and submitted a false annuity beneficiary change form in violation of FINRA Rule 2010. This appeal followed.

III. Facts

A. Butler Befriends LW and Sells LW a Variable Annuity

In approximately mid-2006, Butler began to communicate regularly with and befriended LW, his neighbor of approximately 30 years. LW was an elderly widow living alone. Her husband had died in 2005 and her only child, a son, had also died. Her immediate family consisted of two elderly sisters and two granddaughters.

In November 2007, Butler sold LW a $453,000 variable annuity, which LW funded with the proceeds of several certificates of deposit that she liquidated. Butler completed, signed, and submitted LW's account opening documents. The account opening documents indicated that LW was almost 77 years old and retired. Butler recorded her net worth as $900,000, consisting of $450,000 cash, $100,000 in annuities, and $400,000 in personal property, excluding her primary residence, and her annual income as $88,000. Butler testified that LW also owned a residence worth approximately $250,000. The annuity application indicated that LW was interested in monthly income. LW named her two granddaughters as equal beneficiaries of the annuity.

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[3] Butler did not oppose Enforcement's motion to file the amended complaint and the Hearing Officer's order provided that Butler would not be obligated to file an amended answer.

[4] In the amended complaint, Enforcement appears to have inadvertently double counted a check for $3,000. The record reflects that Butler actually drew 14 checks on the account totaling $111,250.

[5] The amended complaint also alleges, in the alternative, that Butler violated FINRA Rule 2010 by failing to retain any receipts or other documentation for expenses he claimed to have incurred on his customer's behalf and for which he purportedly was reimbursing himself.

After LW became his customer, Butler began to have more frequent contact with LW and began assisting her with daily tasks. Butler testified that he drove her to doctor's appointments, church, the grocery store, and the beauty parlor, and that he took her to lunches and dinners. Butler also claimed to have helped her with household tasks and repairs. Butler testified that he told LW's doctors and family members that LW's health was declining and she was becoming increasingly dependent on him.

B. Butler Takes Control of LW's Finances as LW's Mental Health Declines

In 2009, Butler noticed signs that LW's mental health was declining and that she was having trouble taking care of her finances. Butler testified that he found unpaid bills lying around LW's house. In one incident, he discovered a notice indicating that LW's house was due to be auctioned because she had failed to pay her taxes. Butler testified that he quickly arranged for payment of the taxes and prevented the sale. Because of LW's increasing forgetfulness, Butler testified that he and LW agreed that he would help her pay her bills, and on April 16, 2009, Butler was added as a joint account holder on LW's bank accounts. That same day, Butler transferred $25,000 from LW's account to his own account. In 2009, Butler wrote and cashed three checks from LW's account, all payable to cash, totaling $34,250. Butler never deposited his own money into LW's accounts and testified that he was added to the account for the sole purpose of helping LW pay her bills.

During the next two and a half years, LW's mental and physical health continued to decline. In June 2009, just two months after being added to her bank accounts, Butler applied for the "meals-on-wheels" senior food delivery program for LW because Butler had noticed that LW was forgetting to eat and was losing weight. The meals-on-wheels paperwork indicated that Butler cited "forgetting to eat" as the reason for the application.

On Thanksgiving Day in 2009, Butler became concerned when he could not locate LW. He later learned that she had gotten lost driving to the grocery store she had frequented for years. In early 2010, Butler noticed some damage on LW's car. LW told him the she had backed into the garage. After this incident, LW no longer drove.

During 2010, Butler took additional steps to deal with LW's declining mental health. Butler attached LW's pill box to her kitchen table with Velcro because she often forgot to take her medications. Butler called LW as often as three times a day to remind her to take her pills. Butler also disabled LW's gas stove because he felt it was not safe for her to use it and stated that LW was unable to work her microwave to heat her meals. During this period, Butler claimed that he learned that LW's granddaughter had taken and been using LW's credit card without her knowledge, further indicating LW's inability to manage her finances.

As LW's mental state continued to decline, Butler took LW to at least three visits with her doctor during which her mental state was evaluated. In the later part of 2010, Butler told LW's doctor that she was getting more forgetful. In a survey conducted by meals-on-wheels in September 2010, Butler indicated that LW was suffering "some dementia."

While the signs of LW declining mental health and the onset of dementia continued to mount, Butler continued to write and cash checks drawn on LW's accounts. In 2010, Butler wrote six checks drawn on LW's accounts. Five of these checks totaling $52,500 were made payable to cash or to Butler and were cashed by him. A sixth check for $18,846 was written to pay Butler's federal taxes.

C. Butler Takes LW to an Attorney and Becomes Her Attorney-In-Fact, Personal Representative and Primary Beneficiary Under Her Will

In approximately June 2010, Butler took LW to his attorney to discuss preparing her last will and testament.[6] Butler brought LW to his own attorney with whom LW had not had a previous relationship. On June 9, 2010, Butler took LW back to his attorney to sign the documents that had been prepared, which included a Last Will and Testament, a Durable Power of Attorney naming Butler her attorney-in-fact, and a health care directive allowing Butler and LW's sister to make health care decisions for her.

The Last Will and Testament made Butler the primary beneficiary of LW's estate. Under its terms, Butler would inherit LW's home and the remainder of her estate with the exception of her personal property, which was left to her granddaughters, and some small charitable gifts.

D. Butler Continues to Withdraw Money from LW's Accounts and Makes Himself the Beneficiary of Her Annuity After She Is Diagnosed with Dementia

In January 2011, Butler brought LW to see her family doctor who diagnosed her with dementia. The report of a cat scan ordered by LW's doctor at the same time also noted a history of possible dementia. Around the same time, Butler arranged to have LW's monthly bank account statements delivered to his home address. He claimed that he did this because LW misplaced bills and could not reconcile her accounts.

After LW's dementia diagnosis, Butler continued to withdraw money from her accounts. From January 2011 through January 2012, Butler wrote and cashed six checks totaling $24,500. He also electronically transferred $5,000 from LW's account to his account, and wrote a check for $10,262 from LW's account to pay his own state taxes.

On May 20, 2011, Butler submitted an annuity beneficiary change form for LW's annuity, removing her granddaughters as beneficiaries and naming Butler the 90% beneficiary. Butler filled out the form and in the section asking for his relationship to LW, Butler wrote that he was LW's "son."

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[6] Butler took LW to meet with Todd K. Pounds to prepare LW's will. Pounds represents Butler in these proceedings.

E. LW Is Hospitalized and Her Family Intervenes

In December 2011, Butler brought LW back to her family doctor. The doctor's notes indicate that by this point LW was suffering from "advanced dementia" and that he was to follow-up with Butler concerning her estate and affairs. Butler testified that he had asked the doctor about taking the next step because LW could no longer live alone.

When LW's doctor failed to follow-up, Butler brought LW to see another doctor, who admitted LW into the hospital. The doctor's referral indicated that LW was suffering from dementia and experiencing memory loss. During LW's hospitalization, Butler made arrangements to have her moved to an assisted living facility. However, soon afterwards LW's family members became involved and Butler's power of attorney was revoked. Butler had no further contact with LW after this point. LW was subsequently diagnosed with dementia and Alzheimer's disease and was placed under 24 hour care.

F. Woodbury's and FINRA's Investigations

On May 29, 2012, a friend of LW's complained to FINRA and Woodbury on behalf of LW, her sister, and her granddaughters (the "Complaint Letter"). The Complaint Letter alleged that Butler had: (1) sold LW an unsuitable annuity; (2) had himself added to LW's bank accounts and used her funds for his own personal expenses; and (3) submitted a beneficiary change form for LW's annuity naming himself as the beneficiary and falsely representing himself as LW's son. The Complaint Letter stated that the family was concerned that Butler had taken advantage of LW while she was in poor health. Woodbury and FINRA each began investigations.

1. Woodbury's Investigation

On June 7, 2012, Woodbury forwarded the Complaint Letter to Butler and asked him to submit a detailed written statement responding to the allegations, along with supporting documentation. On June 11, 2012, Butler submitted a statement to Woodbury ("Butler's Statement"). In it, he explained that LW had become dependent on him "for everything." Butler stated that he noticed changes in her condition and that she had "begun becoming negligent on [sic] paying her bills." In one incident, Butler says LW showed him a notice that her house was going to be auctioned off in just a few days for failure to pay her taxes. Butler says he quickly arranged to pay the taxes and prevented the auction of LW's home. After this, Butler said LW asked him to pay her bills. In doing so, he said he discovered that one of LW's granddaughters had been making numerous unauthorized charges on LW's credit cards. Butler said he canceled the cards and had new ones issued. After a subsequent incident, in which Butler says this same granddaughter again "stole" one of LW's credit cards, Butler said LW added his name to her bank accounts. Significantly, Butler stated that he was added to the account to "pay [LW's] bills." Butler also claimed that it was LW's wish to name him as beneficiary of her will and annuity and to give him a power of attorney.

2. FINRA's Investigation

FINRA simultaneously began its own investigation of Butler's conduct with respect to LW. In June 2012, FINRA sent Rule 8210 requests to both Woodbury and Butler. In July, 2012, Butler submitted a written response to FINRA's request through counsel. In his response, Butler admitted that he did not inform Woodbury that he had been added as a joint account holder to LW's accounts or that she had given him a power of attorney. He also claimed that he wrote "son" on the annuity beneficiary change form because LW called him her son. While he claimed to have used all the money withdrawn from LW's account for her benefit, Butler said that he had not retained any receipts for expenses that he had allegedly incurred on LW's behalf.

a. Butler's First OTR

In September, 2013, Butler appeared for his first on-the record interview (the "First OTR") with FINRA investigators. At this point, FINRA was aware of only five checks totaling $21,500 that Butler had written and cashed from LW's account, and a $5,000 wire transfer. FINRA also knew of the $10,262.00 check drawn for Butler's taxes, but appears to have mistakenly assumed that it was to pay LW's taxes.

During the First OTR, Butler claimed that all the checks he had cashed were to reimburse himself for expenses he had incurred on LW's behalf. He claimed he would often pay LW's bills and household expenses with his own cash, and then write a check to reimburse himself. He claimed to have incurred a number of expenses on LW's behalf, including repair of a furnace and replacement of carpet, but had no receipts for these expenses and could not recall the people or companies who had provided the services. Significantly, Butler stated that he had never been compensated by LW for anything he had done for her, and he had never received any cash gifts from her. In short, Butler's testimony was unequivocal that every withdrawal from LW's account had been made for her benefit.

Shortly after the First OTR, FINRA sent a follow-up Rule 8210 request to Butler's counsel asking about the $10,262.00 check paid to the Maryland comptroller. In the response Butler submitted through counsel, Butler admitted that the check had been written to pay his own state taxes. He claimed that it was written with LW's approval and that it had been a gift to thank him for his assistance. Contrary to his unequivocal testimony in the First OTR, Butler now claimed that LW did "at times [] endow him with gifts." Butler also submitted a list of items that he claimed to have purchased for LW and which were reimbursed to him totaling approximately $30,000. While Butler did not provide any receipts or other documentation to support his claims of expenses, his list purported to account for the total amount of money withdrawn that FINRA was aware of at the time.

b. FINRA Obtains Evidence of Numerous Additional Withdrawals

In October 2013, FINRA received copies of additional checks and copies of medical records from the attorney who had been appointed LW's guardian. FINRA served Butler with a Rule 8210 request asking about these checks. Butler responded in writing through his attorney

that while he could not recall the specific purpose of any check, they were all written with the consent of LW.

In May 2013, Butler appeared for a second on-the-record interview with FINRA (the "Second OTR"). During the Second OTR, Butler continued to maintain that all the amounts he had withdrawn from LW's accounts were to pay her bills or reimburse himself for expenses he had incurred on her behalf. He claimed that the only gift she had ever given him was the payment of his Maryland state taxes.

As described below, Butler changed his story at the hearing and for the first time claimed that some of the withdrawals of cash from LW's account were gifts because LW would tell him to "treat" himself to some cash to thank him for caring for her.

IV. Discussion

On appeal, Butler argues that LW authorized all the withdrawals from her account, that LW had the capacity to do so, and that all withdrawals were either reimbursements for expenses Butler incurred on LW's behalf or were gifts from LW. For the reasons discussed below, we reject these arguments and affirm the decision of the Hearing Panel.

A. Butler's Hearing Testimony Was Not Credible

Because LW did not testify at the hearing, the outcome of this matter rests largely on our assessment of Butler's credibility. The Hearing Panel unequivocally found that Butler's testimony concerning LW's competence to manage her financial affairs and the purpose of the withdrawals was not credible. While we conduct a de novo review of the Hearing Panel's decision, we give substantial weight and deference to the Hearing Panel's credibility findings. *See Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000). It is well settled that the "credibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference, and can be overcome only where the record contains substantial evidence for doing so." *John Montelbano*, 56 S.E.C. 76, 89 (2003). We find no substantial evidence in the record to warrant overturning the Hearing Panel's credibility determinations. To the contrary, the record amply supports those findings, and we affirm them.

1. Butler's Claim That He Believed LW Was Competent to Handle Her Financial Affairs Is Not Credible

Butler's assertion at the hearing that he believed LW was competent to handle her financial affairs is contradicted by Butler's contemporaneous conduct, his statements during FINRA's investigation, and the documentary evidence. In the First and Second OTRs, Butler testified that he saw signs as early as 2009 that LW was having trouble paying her bills and reconciling her accounts. Indeed, it was for this very reason that Butler stated that he was added to LW's accounts and had the statements sent to his home. He testified that LW was misplacing and failing to pay bills. Butler also testified he discovered that LW's granddaughter had taken her credit card and was making unauthorized charges without LW's knowledge. Finally, Butler

testified that LW nearly lost her home because she failed to pay her taxes. Butler's own testimony establishes that he knew LW was not competent to manage her financial affairs.

Butler also testified about various steps he took to address LW's declining mental health. He arranged for meals-on-wheels because she was not eating properly, he disabled her gas stove, and he regularly reminded her to take her medications. Butler took LW to several doctor's visits during which her mental state was evaluated, and the notes of these visits support that LW was suffering from symptoms of dementia, and eventually, dementia.

Butler repeatedly claimed that he took control of LW's finances because she could not manage on her own. He knew of her diminished mental health and inability to monitor and reconcile her accounts. We agree with the Hearing Panel that Butler's claim that LW was competent to authorize the checks he wrote, including the gifts he claims she made to him, is not credible.

2. Butler's Testimony Concerning the Withdrawals Is Not Credible

At the hearing, Butler testified that the withdrawals were either reimbursements for expenses he incurred on LW's behalf or gifts she made to him. The Hearing Panel found Butler's testimony not credible. On appeal, Butler has not provided substantial evidence sufficient to overturn this credibility determination.

With respect to the supposed $30,000 in total expenses he supposedly incurred on LW's behalf, Butler was unable to provide a single receipt or any other documentary support. Butler claimed that he paid for all of these expenses in cash. Remarkably, he also was unable to recall a single person or company who provided any of the services for which he claimed to have paid. Moreover, his testimony with respect to these expenses was contradictory. For example, with respect to certain of his claimed expenses, he later admitted that LW paid for them directly before he was added as a joint account holder and, accordingly, they could not have been included in the expenses for which he was supposedly reimbursed.

There was also testimony at the hearing directly contradicting one of Butler's purported expenses. Butler claimed to have spent approximately $4,800 replacing the carpet in LW's house. The investigator for LW's guardian testified, however, that when she visited the home the carpet was old and dirty and she arranged to have it cleaned. Based on this evidence, along with Butler's contradictory testimony and complete lack of documentary support, we agree with the Hearing Panel that Butler's claims of reimbursements for expenses are not credible.

At the hearing, Butler also testified that LW made cash gifts to him, telling him to "treat" himself. This claim, however, is directly contradicted by his earlier sworn testimony in the First and Second OTR that he never received cash gifts from LW. Given the amounts at issue here, it defies belief that Butler would have forgotten such generous gifts, and that LW would have made such gifts. Moreover, the timing of Butler's claim that he received gifts, coming after FINRA learned of numerous additional withdrawals that could not be accounted for by his claimed expenses, further supports that Butler fabricated this claim to conceal his conversion. As the Hearing Panel noted, the amount, timing and pattern of the withdrawals is also inconsistent with

these being gifts. For example, in May 2011, Butler withdrew a total of $13,000 from LW's account over the course of 10 days—$2,000 on May 2, $7,000 on May 9, and $4,000 on May 12. For all these reasons, we agree with the Hearing Panel that Butler's testimony concerning gifts from LW was not credible.

B. Butler Converted LW's Funds

FINRA Rule 2010 requires associated persons to conduct their business in accordance with "high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 encompasses all unethical, business-related conduct, even if that conduct is not in connection with a securities transaction. *See Denise M. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. of Governors May 9, 2014), *appeal docketed*, Admin. Proceeding File No. 3-15916 (SEC June 9, 2014); *see also Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (affirming the SEC's finding that an associated person violated just and equitable principles of trade by misappropriating funds from a political organization for which he served as the treasurer).

Conversion is defined as "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012). It is well-settled that conversion violates FINRA Rule 2010. *See Olson*, 2014 FINRA Discip. LEXIS 7, at *8 (finding that a registered representative's conversion of firm funds violated Rule 2010); *Mullins*, 2012 SEC LEXIS 464, at *56, *73-74 (finding that a registered representative's conversion of the funds of a foundation for which he served as an officer violated NASD Rule 2110, the predecessor to FINRA Rule 2010).

It is undisputed that Butler withdrew $170,408.18 from LW's accounts, consisting of 14 checks that he wrote and cashed totaling $111,300, $30,000 in wire transfers from LW's accounts to his account, and $29,108.18 for payment of his state and federal taxes. Butler's defense is that LW approved and authorized every withdrawal and was competent to do so. As discussed above, Butler's claim is undermined by the evidence and the Hearing Panel found his testimony to be not credible. Accordingly, we find that Butler's taking of LW's funds was unauthorized and therefore conversion in violation of FINRA Rule 2010.

On appeal, Butler argues that because LW did not testify and the Hearing Panel discredited his testimony, there is essentially no direct evidence that the withdrawals were unauthorized. We disagree.

It is well established that circumstantial evidence may be probative and reliable and sufficient to prove a violation. *See Dep't of Market Regulation v. Geraci*, Complaint No. CMS020143, 2004 NASD Discip. LEXIS 19, *29-30 (NASD NAC Dec. 9, 2004). In *Geraci*, the respondent argued that the insider trading claims against him should fail because there was no direct evidence introduced that he was tipped. *Id.* at *29. The Hearing Panel found that Geraci's testimony was self-serving and not credible, and based its finding that he was tipped on inferences drawn from other circumstantial evidence. *Id.* at *31-32; s*ee also Mullins*, 2012 SEC LEXIS 464, at *33-34 (rejecting respondent's claim that he had authorization to use certain gift

cards based on circumstantial evidence and his lack of credibility where the person allegedly giving authorization did not testify).

Here, Butler's own testimony and other evidence establishes that he converted LW's funds, that LW was in no position to authorize Butler's numerous withdrawals, and that Butler's purported rationale for his withdrawals was without support. Butler was added as a joint account holder (and thus was able to make numerous improper withdrawals from LW's accounts) for the purpose of helping LW pay her bills because of declining mental health. Additional evidence, some of which comes directly from Butler, further establishes that LW's mental health declined during this period. Moreover, it is undisputed that during the time he controlled LW's accounts, Butler withdrew more than $170,000. Butler has provided no credible explanation for the purpose of theses withdrawals, and the record shows that he used at least a portion of these funds for his own benefit. Indeed, Butler provided shifting and contradictory explanations for the purposes of the withdrawals, which were not credible, and Butler's testimony appears to have been a fabrication to conceal his misconduct. It is reasonable to infer from these facts that Butler converted LW's funds.

C. Butler Falsified an Annuity Beneficiary Change Request Designating Himself the Primary Beneficiary of LW's Annuity

We find that Butler violated FINRA Rule 2010 when he submitted an annuity beneficiary change form falsely claiming to be LW's son. As discussed above, FINRA Rule 2010 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade." The submission of false information on a variable annuity application violates Rule 2010. *See Dep't of Enforcement v. Skiba*, Complaint No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (FINRA NAC Apr. 23, 2010); *Dep't of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *6 (NASD NAC Dec. 18, 2000).

Butler admitted the underlying misconduct. He acknowledged that he filled out the beneficiary change form which made him the 90% beneficiary of the annuity and falsely claimed to be LW's son when, in fact, he is not related to LW. Butler, however, attempts to excuse his misconduct by claiming that LW considered him a son and that she directed him to write "son" on the form. Even if it were true that LW directed him to write "son," it would not excuse his violation. Accordingly, we find the Butler violated FINRA Rule 2010 when he submitted this false form.

V. Sanctions

The Hearing Panel barred Butler in all capacities for his violations of FINRA Rule 2010, and ordered him to pay restitution to LW. We have considered FINRA's Sanction Guidelines ("Guidelines"),[7] including the Principal Considerations in Determining Sanctions (the "Principal

[7] *See FINRA Sanction Guidelines* (2015), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

Considerations"), in determining the appropriate sanctions for Butler's violations. For the reasons set forth below, we affirm the bars and order of restitution.

A. Conversion

The Guidelines direct that the standard sanction for conversion is a bar, regardless of the amount converted.[8] The conversion of customer assets is one of the most serious violations that can be committed by an associated person. Conversion is antithetical to the ethical principles that underpin the self-regulation of securities professionals, and it is misconduct that "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry, and a bar is therefore an appropriate remedy." *Mullins*, 2012 SEC LEXIS 464, at *74. Barring Butler for his conversion is supported by the presence of numerous applicable aggravating factors.[9] We find that Butler's misconduct was egregious and a bar in all capacities an appropriate sanction.

We find it aggravating that Butler intentionally took advantage of an elderly woman who trusted him and whose declining mental health caused her to be unable to manage her financial affairs.[10] We also find it aggravating that Butler attempted to conceal his misconduct.[11] Butler concealed the fact that he had taken control of LW's finances by falsely claiming to be her son on a form submitted to the annuity insurance company and having LW's bank statements sent directly to him. Later, he continued to conceal his conversion by falsely claiming in his sworn on-the-record testimony that he had used all the money withdrawn from LW's accounts for her benefit and never received any gifts from her. When the amount of money at issue became too large to be accounted for by the expenses claimed by Butler, he was forced to admit that he had taken money for himself and concocted a new rationale that LW had made numerous gifts to him. It is further aggravating that Butler's conversion of funds occurred over the course of more than three years, involved multiple withdrawals from LW's accounts, and resulted in financial gain to Butler of more than $170,000.[12] Finally, we find it aggravating that Butler has neither taken any responsibility for his misconduct, nor attempted to make any restitution to LW.[13] To the contrary, Butler has throughout attempted to place blame on others, including on Woodbury

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8 *Id.* at 36.

9 We have reviewed the record, and find no applicable mitigating factors.

10 *Guidelines*, at 7 (Principal Considerations, Nos. 13, 19).

11 *Id*. at 6 (Principal Considerations, No. 10).

12 *Id.* at 6 (Principal Considerations, Nos. 2, 4).

13 *Id.* at 6 (Principal Considerations, Nos. 2, 4).

for not catching his false representations on the annuity beneficiary change form, and on LW's family members for not assisting LW.

Butler's violations are so antithetical to the conduct required of securities professionals that we find him unfit for continued employment in the securities industry. We find that a bar is necessary to protect the investing public. Accordingly, we affirm the sanction of a bar in all capacities for Butler's conversion of LW's funds.

B. Falsification of Annuity Beneficiary Change Request

For Butler's violation of Rule 2010 by submitting a false annuity beneficiary change form, we consider the Guidelines for forgery and/or the falsification of records.[14] In addition to the Principal Considerations, the Guidelines direct us to consider the nature of the document falsified, and whether the respondent had a good faith belief of express or implied authority. The Guideline provides for a monetary sanction of $5,000 to $146,000, and, in egregious cases, provides that we consider a bar.

We find that Butler's misconduct here was egregious and, accordingly, a bar is appropriate. The document in question and the falsehood on it were important. By claiming to be LW's son, Butler was able to avoid any scrutiny that the insurance company might otherwise have given the document had he been truthful. Moreover, Butler's falsehood on this document was part of a larger pattern of misconduct, which included his conversion of LW's funds. The falsehood on this document concealed that Butler has taken control of LW's finances, was converting large amounts of money, and was making himself the beneficiary of her annuity and estate. Butler's conduct demonstrates that he is unfit for the securities industry and that a bar is necessary to protect the investing public.

C. Restitution

We affirm the Hearing Panel's order that Butler pay restitution to LW in the amount of $170,408.18. Restitution is "used to restore the status quo ante where a victim otherwise would unjustly suffer loss."[15] The Guidelines provide that restitution may be ordered when an identifiable person has suffered a quantifiable loss proximately caused by respondent's misconduct.[16]

Restitution is appropriate to remediate Butler's misconduct. LW suffered a significant loss as a direct result of Butler's conversion of her funds. The record clearly identifies the amount of this loss. Accordingly, an order of restitution is appropriate to compensate her.

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14 *Id.* at 37.

15 *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

16 *Id.*

Accordingly, we order Butler to pay restitution to LW in the amount of $170,408.18, plus prejudgment interest.

Conclusion

We find that Butler converted customer funds and we impose a bar for this violation of FINRA Rule 2010. We also find that Butler also violated FINRA Rule 2010 by submitting a false annuity beneficiary change form, and that a bar in all capacities in also appropriate for this violation. We further order Butler to pay $170,408.18 in restitution, plus prejudgment interest from January 20, 2012 and we affirm the Hearing Panel's order that Butler pay hearing costs of $4,135.79, and order him to pay appeal costs in the amount of $1,490.26.[17]

On behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary

[17] The bar is effective as of the date of this decision.