

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9B020032
v.	:	
	:	Hearing Officer - AWH
ROONEY A. SAHAI	:	
(CRD #1551326)	:	
	:	Hearing Panel Decision
Ridgewood, NJ	:	
	:	
Respondent.	:	June 23, 2003

Registered representative caused the signatures of two customers to be forged on documents pertaining to investments, engaged in an unauthorized transaction on behalf of one of those customers, and failed to respond to information requests issued during an investigation of the forgeries and unauthorized transaction, all in violation of NASD Conduct Rule 2110. Respondent barred for those violations, and assessed costs. Respondent found not liable for engaging in outside business activity without proper notice to his member firm.

Appearances:

David B. Klafter, Esq., and Michael J. Newman, Esq.,
for the Department of Enforcement

Eric S. Hutner, Esq., for Rooney A. Sahai

DECISION

Introduction

On April 12, 2002, the Department of Enforcement (“Enforcement”) issued a five-cause Complaint in this matter against Rooney A. Sahai (“Sahai” or “Respondent”), alleging that he forged, or caused to be forged the signatures of two customers on documents pertaining to investments; that he engaged in an unauthorized transaction on behalf of one of those customers; that he engaged in outside business activities without

proper notice to his member firm; and that he failed to provide information to the NASD staff in response to written requests. Respondent was granted an extension of time within which to file his Answer to the Complaint, and on June 13, 2002, his newly retained counsel filed such an Answer and requested a hearing.

On October 4, 2002, Attorney Andrew Seewald entered an appearance for Respondent.¹ The proceeding was scheduled for a hearing beginning on November 6, 2002. Attorney Seewald unsuccessfully sought a postponement of the hearing on grounds that “[n]ew evidence is weekly appearing which changes the complexion” of the case. On October 31, 2002, Attorney Eric S. Hutner entered an appearance of behalf of Respondent.² On that same date, Attorney Hutner filed an Emergency Motion to Postpone the hearing, citing deficiencies in Seewald’s representation of Sahai.³ Following a pre-hearing conference on the Emergency Motion and Enforcement’s continued opposition to any further delay in the proceedings, the Emergency Motion was denied. On the eve of the November 6, 2002, hearing, Sahai requested a continuance of the hearing due to a claimed medical condition. The request for a continuance was granted, subject to certain conditions, including a physician’s statement indicating when Sahai first would be physically able to attend a hearing. The hearing was then rescheduled for, and held on, January 16 and 17, 2003, before a hearing panel composed of the Hearing Officer and two members of the District 9 Committee. Both parties filed post-hearing briefs on March 28, 2003.

¹ Seewald is the fourth attorney to represent Sahai in this matter.

² To this date, Attorney Seewald remains as a counsel of record for Respondent.

³ The Emergency Motion referred to Seewald’s lack of experience, his failure to file a pre-hearing memorandum, and his “incomplete or unfocused presentation” in responding to a motion to exclude certain witnesses.

Findings of Fact⁴

Respondent

Rooney A. Sahai first became registered with NASD as a Series 6 Investment Company and Variable Contracts Representative in 1986. He was registered through The Key Group, Inc. (“Key Group”) from April 24, 1999, until February 29, 2000, when Key Group filed a Form U-5 on behalf of Sahai, voluntarily terminating his employment. On April 26, 2000, Key Group filed an amended Form U-5, disclosing that Key Group had received a complaint from customer SI that Sahai had forged her name on an application for an account. After the termination of his association with Key Group, Sahai registered through other firms until, on November 14, 2001, his most recent employer filed a Form U-5 terminating his registration. Sahai is not currently registered through any NASD member firm. Complaint ¶¶ 1-8; Respondent’s Answer ¶¶ 1-8.

While he was registered with Key Group, Sahai worked out of an office he maintained in his home. Tr. 46, 357. Primarily, he hired part-time employees to handle administrative functions and paper work for his securities and insurance businesses. Tr. 363-65.

Outside Business Activities

While Sahai was registered through Key Group, he owned and was the president of Amer-Asian Securities Corp. and Physicians Financial Services, Inc. Tr. 302. Both entities were incorporated under the New Jersey Business Corporation Act. CX 9, 10. Both were ostensibly formed to conduct insurance business. However, up until the time of the hearing, Physicians Financial Services, Inc. had not transacted any business. Tr.

⁴ References to Enforcement’s exhibits are designated as CX_; Respondent’s exhibits, as RX_; and the transcript of the hearing, as Tr._.

303. Sahai used Physicians Financial Services, Inc., only as a trade name, and not to conduct any independent business. *Id.*

When Sahai joined Key Group, he disclosed on a Form U-4 that he was currently engaged in life insurance sales. CX 2. On the Outside Business Activity Notification Form that was provided to him by Key Group, Sahai disclosed that he was engaged in life insurance sales, that he was paid by commission on those sales, and that he spent half of his time in activities involved in insurance sales. CX 3. He did not provide the name of either Amer-Asian Securities Corp. or Physicians Financial Services, Inc., on the form. However, both the President, who was also the Compliance Director, and the Vice-President of Key Group were satisfied that, from the information that was disclosed on the Outside Business Activity Notification Form, they were informed of what they had to know about Sahai's outside business activity, and they did not ask him for any additional information beyond what he had provided in writing. Tr. 37-45, 55-60, 357-62.

As more fully detailed below, Sahai used the letterhead of Physician's Financial Services, Inc., to correspond with one client, MC, with whom he conducted both insurance and securities business. CX 38. He also sent information on securities transactions to MC, using a fax transmittal sheet of Physician's Financial Services, Inc., and he gave MC a business card of Physician's Financial Services, Inc., that displayed his name and the words "insurance and investment management." CX 7, 8. Sahai also sent to SI, a securities customer, a letter on the letterhead of Physician's Financial Services, Inc., and a package bearing the name Amer-Asian Securities Corp. Tr. 71-72. Neither the business card nor the letters were submitted for approval by Key Group, although Key Group required that all outgoing correspondence be approved. Because the business

card referred to investments and did not refer to Key Group, it would not have been approved. Tr. 53, 61-62, 64. However, the Complaint does not charge Sahai with issuing unapproved correspondence. Nor does the Complaint allege, and there is no evidence to prove, that Sahai engaged in private securities transactions away from Key Group or that he received any compensation for securities transactions through either of his corporations. The applications and transactions at issue specifically note that Key Group was the firm through which they were processed. CX 17, 18, 22.

Forgery of Customer MC's Signature

In early 1999, MC, a physician, bought health insurance from Sahai. MC understood that Sahai worked for himself in the insurance business and that the name of his company was Physicians Financial Services. Tr. 129. In December 1999, MC discussed possible securities transactions with Sahai who represented that he was with Key Group. Tr. 130. MC had received a stock certificate from a medical association that had recently gone public. Sahai recommended, and MC agreed, that Sahai would liquidate the stock certificate through Bear Stearns, Key Group's clearing firm, and then invest the proceeds in an account at American Skandia Advisors Fund ("American Skandia"). Tr. 131-32. MC gave Sahai the certificate on December 3, 1999. On December 16, 1999, the stock certificate was liquidated. Tr. 169-70. During the interim, the price of the stock declined. Tr. 170. There was a further delay in moving the proceeds from Bear Stearns to American Skandia. As a result, MC's wife called Bear Stearns and was told that Bear Stearns had had to wait for a signed W-9 tax form to be submitted before it could liquidate the stock certificate. MC testified that the person to whom MC's wife spoke at Bear Stearns said that Bear Stearns had faxed a W-9 to Sahai,

and that Sahai had informed Bear Stearns that MC was sitting in his office, that MC would sign the W-9, and that Sahai would fax the signed W-9 back to Bear Stearns. Because MC had never signed a W-9 form, he asked Bear Stearns to send him a copy of the W-9 that it had in its file. The signature on that W-9 was not his, although, to MC, it looked “close” to his signature. Tr. 133, 135-36; CX 20, at 4.

After receiving the forged W-9, MC called Sahai’s office, spoke with one of Sahai’s employees, and requested copies of all documents in Sahai’s files pertaining to MC. Tr. 137-38. Among those documents was a handwritten note, purportedly signed by MC, that stated, “Please invest the entire proceeds in my account at American Skandia” CX 20, at 8. MC did not write or sign the note, nor did he authorize anyone to sign his name to the note. Tr. 138, 140-43. However, MC did sign a blank sheet of paper that was presented to him in his office by Sahai who said, “What I’m going to write on it was for your permission to transfer the stock document into American Skandia.”⁵ Tr. 139; CX 20, at 6. By signing the blank sheet, MC understood that he was authorizing Sahai to invest the proceeds of the stock certificate in American Skandia. Tr. 140.

In response to his request for documents, MC also received from Sahai’s office an American Skandia mutual fund application that did not contain his handwriting, but purported to contain his signature. CX 22. MC did not sign the application, nor did he authorize anyone to sign it on his behalf. The application contains an extra middle initial in his name, an incorrect mailing address, and an incorrect telephone number. Tr. 142-44, 186-88.

⁵ At the hearing, Sahai testified that he was not sure that his handwriting appears on the note (CX 20, at 8), and that the handwriting does not appear to be his. Tr. 407-08. However, in his investigative testimony, he admitted that he wrote the words “Please invest the entire proceeds of my account in American Skandia.” Tr. 408. The Hearing Panel finds that the handwriting is Sahai’s, and that the wording is consistent with MC’s testimony that Sahai intended to write something in the blank space above MC’s signature.

Unauthorized Transaction and Forgery of Customer SI's Signature

In late 1999, while SI was working for MC, SI was notified that her former employer retired and wanted to close an IRA account that he had established for SI and other employees. MC recommended that SI speak to Sahai about rolling over her IRA account. In December 1999, SI called Sahai and told him that she wanted "a traditional IRA." He then faxed to her an American Skandia IRA application which she partially filled out and faxed back to him. Tr. 69-70; CX 16. All of the handwriting on the application is hers, including the signature. She did not fill out the section on fund selection because she never discussed fund selections with Sahai. Tr. 74.

In January 2000, SI received a copy of a letter from American Skandia, addressed to the attention of Sahai at Key Group. The letter noted that there was no signature on SI's application for an IRA rollover account. A copy of the application was enclosed with the letter, and Sahai was requested to obtain SI's signature on it. CX 37. After receiving a copy of the letter, SI called American Skandia to inquire about her IRA application. She was informed that, instead of opening an IRA account, she had actually purchased a variable annuity.⁶ Tr. 75-76. American Skandia then faxed to her copies of two applications that were completed in her name: one was an application for a variable annuity (CX 18), and one was an application for an IRA mutual fund (CX 17). SI had never before seen the application for a variable annuity. None of the handwriting on the application was hers, and her signature had been forged. Moreover, both her son's first and last names were spelled incorrectly. Tr. 78-79. None of the handwriting on the mutual fund application was hers, and her signature was forged. Tr. 77-78. She never

⁶ Following its review of the matter, American Skandia offered, and SI accepted, rescission of the purchase with no loss of principal. Tr. 94-95; RX 3.

discussed with Sahai the information contained in the Fund Selection section of the application. However, the application shows that four funds were selected. In that section, the percentage aggregate for those four funds was in error because the individual totals did not add up to one hundred percent of the amount to be invested. CX 17, at 2.

In his Answer to the Complaint, Sahai admitted that he purchased a variable annuity on behalf of SI, but claimed that he did so with her prior knowledge, authorization, or consent.⁷ In his testimony at the hearing, however, he corroborated SI's testimony that she never authorized him to purchase a variable annuity.⁸ Sahai also confirmed, in his hearing testimony, that he recommended that SI purchase a mutual fund, not a variable annuity. Tr. 317-18.

Sahai acknowledged that his handwriting appears on the first page of the mutual fund application that contains SI's forged signature. Tr. 315. However, in his investigative testimony, Sahai presumed that, if any documents were forged, they would have been "forged by one of his administrative personnel." Tr. 206-07.⁹

The Hearing Panel credits SI's testimony that her signature was forged on the two applications. At the time of her testimony, which was voluntary, she no longer worked for MC, she had rescinded the purchase of the variable annuity without any loss of money, and had no motive to claim falsely that her signatures were forged. Because American Skandia first raised the issue of a missing signature, the forgery could not have occurred there. There is no reliable evidence that Sahai, himself, forged her signatures.

⁷ The Answer was filed by the newly retained third attorney to represent Sahai in this matter.

⁸ SI did not know what a variable annuity is. Tr. 76.

⁹ Counsel who represented Sahai at his investigative testimony stated, ". . . in regard to what happened with [SI], . . . there were some clerical mistakes going on, on behalf of Mr. Sahai's office personnel. Apparently those personnel aren't with him because they didn't perform their jobs appropriately and they're gone." Tr. 325.

However, it is clear, from the totality of the evidence, that the forgeries were committed in his office.

Failure to Respond to Requests for Information

In its investigation of the forged documents, NASD staff sought to question former members of Sahai's administrative staff to determine if they had forged the documents or knew who may have forged them. Tr. 212. To that end, during his on-the-record interview that occurred in February 2001, Sahai was asked to identify the one full-time employee and the two part-time employees who, he claimed, were working for him while he was registered through Key Group. He replied that he could not recall their names, but would check with his accountant and check his payroll records. Tr. 207. As a result of that testimony, on February 15, 2001, NASD staff sent Sahai a written request, pursuant to Procedural Rule 8210, seeking, among other things, the names and addresses of those employees.¹⁰ CX 23. At the request of Sahai's then counsel, the staff extended the response date from March 1 to March 16, 2001. CX 24. Sahai failed to respond by March 16 to the request for information.

On March 19, 2001, the staff sent Sahai a written request, pursuant to Procedural Rule 8210, again seeking, among other things, the names and addresses of the employees who worked for him while he was registered with Key Group. CX 25. On March 28, 2001, through counsel, Sahai responded to the request by providing the names of his employees, but not their addresses. In the response, counsel stated that those addresses "have not yet been located," and the employees had been terminated because Sahai "was generally not satisfied" with their performance. CX 26.

¹⁰ The parties have stipulated that this Rule 8210 request, as well as the others at issue in this matter, were sent to Sahai at his Central Registration Depository address, as well as to his then counsel. Tr. 211.

On March 29, 2001, the day following Sahai's last response, the staff sent another request to Sahai, pursuant to Procedural Rule 8210, again seeking the addresses of the employees. CX 27. The response date for the request was April 9, 2001. On April 3, 2001, Sahai's counsel responded that Sahai would continue to search for additional records, and that if any were found, he would produce them. The response also stated that "[u]ntil that time the response tendered is complete." CX 28. On April 18, 2001, counsel sent an additional response, stating that Sahai "is seeking that his former accountant voluntarily produce that information [the addresses and possibly phone numbers of the employees] from the payroll records." CX 30.

On April 23, 2001, the staff sent Sahai a fourth request, pursuant to Procedural Rule 8210, again seeking, among other things, the addresses of his former employees. CX 31. On April 25, 2001, Sahai's counsel provided the last known address for former employee Patrick Haas, but asserted that Sahai was not able to locate addresses for Chris Marra and Deepa Patel.¹¹ As to Marra and Patel, counsel stated: "These were temporary employees for whom records were not kept other than in a computer address book program which crashed sometime in 2000." CX 32.

In an effort to gather enough information to do an independent investigation to determine the employees' addresses, on April 27, 2001, the staff sent Sahai a fifth request, pursuant to Procedural Rule 8210, seeking (1) the source from which Sahai obtained Patrick Haas' address; (2) the social security numbers for each employee; (3) payroll records for the employees or an explanation of how they were paid; and (4) employment applications for the employees. Tr. 223-24; CX 33. The response date for

¹¹ The staff was never able to verify the existence of, or locate, Patrick Haas. The family name at the address supplied by counsel was not Haas, and the staff could find no phone number in the vicinity for a Patrick Haas. Tr. 230-31.

this request was May 11, 2001. Sahai failed to provide the requested information or an explanation of why he could not provide it. Tr. 225.

On May 14, 2001, the staff sent Sahai a “final” request to produce, by May 24, the documents and information it had requested originally in the April 27 request. CX 36. Sahai failed to provide the requested information or an explanation of why he could not provide the information. Tr. 229-30.

Discussion and Conclusions

Forgery of Customer Signatures

NASD Conduct Rule 2110 states that members “shall observe high standards of commercial honor and just and equitable principles of trade.” Rule 0115 extends this requirement to persons associated with members. The ethical and legal obligations set forth in Conduct Rule 2110 are not limited to the sale of securities. Instead, the Rule encompasses a wide variety of unethical business-related conduct. *See Daniel J. Alderman*, Exchange Act Rel. No. 35997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff’d* 104 F.3d 285, 289 (9th Cir. 1997). Affixing a customer’s signature on a document, including an application, without the customer’s knowledge and consent is a type of unethical conduct that falls under the purview of Conduct Rule 2110. *See Donald M. Bickerstaff*, Exchange Act Rel. No. 35607, 1995 SEC LEXIS 982 (Apr. 17, 1995); *see also Dist. Bus. Conduct Comm. v. Peters*, No. C02960024, 1998 NASD Discip. LEXIS 42, at *4-5 (NAC Nov. 13, 1998); *Dep’t of Enforcement v. Brinton*, No. 04990005, 1999 NASD Discip. LEXIS 36, at *1, *8 (NAC Dec. 14, 1999)

Customer MC testified that his signature was forged on three documents: a W-9 tax form, a handwritten note to invest the proceeds of a stock certificate, and an

application for a mutual fund. Sahai did not dispute MC's testimony that liquidation of the stock certificate was held up pending receipt of a signed W-9. Moreover, other than his general testimony that he did not get involved with paperwork, he offered no explanation of why a W-9 did not accompany the stock certificate when the certificate was sent to Bear Stearns, or how a signed W-9 eventually got to Bear Stearns. Had MC, himself, signed the W-9, he would have had no reason to request that Bear Stearns send him a copy of it. The Hearing Panel concludes that the signature on the W-9 had to have been forged by someone in Sahai's office. Sahai testified that he hired and supervised the employees in that small office. Clerical employees in his office would have had nothing to gain from forging a customer's signature, and there is no evidence that any employee forged a signature on his or her own volition. As discussed below, in failing to respond to NASD staff requests for information, Sahai blocked evidence from any employees who might have worked for him at the time. A preponderance of the evidence demonstrates that either Sahai forged the signature or that he directed someone in his office to do so. Whether he forged MC's signature himself or directed an employee to forge MC's signature, he bears responsibility for it. Accordingly, by so doing, Sahai violated Conduct Rule 2110.

Similarly, Sahai bears responsibility for the forged signature on the note instructing that the proceeds of the stock certificate were to be invested at American Skandia. Sahai alleges that MC's testimony is not credible and is motivated by Sahai's refusal to invest in MC's IRA account more money than MC lawfully could put into it. On the other hand, MC alleges that Sahai threatened to retaliate against him if MC made

a formal complaint against Sahai.¹² Tr. 150-61; CX 38. Regardless of any animosity that may exist between MC and Sahai, the Hearing Panel concludes that the consistent evidence relating to the note and the other forgeries in this matter proves, by a preponderance of the evidence, that the forged signature on the note was affixed by Sahai or at his direction. Accordingly, Sahai must accept responsibility for it. For the same reasons, the Hearing Panel concludes that Sahai was responsible for the forged signature on the mutual fund application submitted to American Skandia on MC's behalf. Each forgery is a violation of Conduct Rule 2110.

The Hearing Panel finds the testimony of SI to be credible and consistent with the evidence of other forgeries that are alleged in this matter. Accordingly, the Hearing Panel concludes that Sahai was responsible for the forgeries on SI's applications for a variable annuity and a mutual fund, in violation of Conduct Rule 2110.¹³

Unauthorized Transaction

The SEC and NASD have consistently held that "unauthorized trading in a customer's account violates Conduct Rule 2110." *Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13-14 (NAC Mar. 27, 2002) (citations omitted); *see also Robert Lester Gardner*, Exchange Act Rel. No. 35899, 1995 SEC LEXIS 1532, at *1 n.1 (1995). Sahai argues that the allegation of an unauthorized trade should be dismissed because (1) he had no motivation to effect an unauthorized purchase of a variable annuity for SI because the commissions on sales of the mutual fund and the annuity were the same; (2) the transaction was merely an error; (3) SI discovered the error after only a

¹² MC testified that Attorney Seewald threatened to sue him for defamation of character, and called third parties in an effort to obtain information on MC and his wife.

¹³ SI also testified that she was threatened with suit by Attorney Seewald if she were to testify against Sahai in this proceeding. Tr. 88-90.

month, when she received her first statement of account; and (4) SI did not lose any money as a result of the erroneous purchase of the annuity because she was offered, and accepted rescission by American Skandia.

Sahai's arguments are not a defense to the allegation of an unauthorized transaction. Put simply, SI did not wish to purchase the annuity, did not authorize Sahai to purchase it for her, and did not acquiesce in, or ratify, the purchase of an annuity. Moreover, in his Answer to the Complaint, Sahai claimed he purchased the annuity with SI's prior knowledge, authorization, or consent. At the hearing, he admitted that SI never authorized the purchase.

This is not a case where a mere error in a transaction has occurred. For example, there was no mistake in transposing the letters of a stock symbol or in listing the number of shares to be purchased. The annuity application contained SI's forged signature; it misspelled both the first and last names of her son who was her primary beneficiary; and it listed four funds for investment allocations that she had never discussed with Sahai. CX 18. The investment allocations on the annuity application do not match the funds or percentages that appear on the forged mutual fund application. CX 17. Consequently, the Hearing Panel concludes that the completion of the annuity application was an intentional act. That act occurred in Sahai's office and at his direction. Accordingly, its execution was unauthorized and violated Conduct Rule 2110.

Failure to Respond to Requests for Information

For the purpose of an investigation, complaint, examination, or proceeding, Procedural Rule 8210 authorizes NASD staff to require any person subject to its jurisdiction to provide information orally, in writing, or electronically. The Rule serves

as a “key element” in NASD’s oversight function and allows NASD to carry out its regulatory functions without subpoena power. *See Richard J. Rouse*, Exchange Act Rel. No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993); *John A. Malach*, Exchange Act Rel. No. 32743, 1993 SEC LEXIS 2026, at *7 (Aug. 12, 1993). When an individual fails to respond to information requests, NASD’s ability to perform its regulatory responsibilities is subverted. *See Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998). A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110. *See Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 13956, at *22 (July 20, 1999); *see also Dept’ of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

The inquiry into the names, addresses, and whereabouts of Sahai’s employees was a pivotal part of the investigation to determine who committed the forgeries at issue in this case. In February 2001 at his on-the-record interview, Sahai committed to searching for that information. At that time he made no mention of a computerized address book or a computer crash. Instead, he volunteered to check with his accountant and his payroll records. Two months and four written requests later, Sahai, for the first time, stated that no records for the employees were kept, other than in the “computer address book program which crashed” sometime during the previous year. He failed completely to respond to the fifth and sixth requests for information concerning the source for the one address provided, social security numbers for the employees, payroll records, sources of payment, and employment applications. In defense, Sahai argues that he testified at length at his on-the-record interview; that he delegated responsibility for responding to the requests to his former attorney; that Enforcement failed to ask for, and analyze, the

computer hard drive that crashed; and that Enforcement failed to question Sahai's current employee to verify the cause for the unavailability of certain information.

Sahai's defenses are not availing. First, his appearance at an on-the-record interview does not relieve him of responsibility for providing information that is determined by the staff to be necessary to its investigation and which was not provided before or during that interview. Second, he cannot delegate responsibility for responding to requests for information, made pursuant to Procedural Rule 8210, to his attorney or to anyone else. As a registered person, the responsibility is his. Third, he cannot shift to the Department of Enforcement responsibility for discovering information that is particularly within his own dominion and control. If the information could have been recovered from a hard drive that crashed, the responsibility for accessing that information remained with Sahai. Finally, an interview with a current employee would have been a useless act if its purpose was to discover information on former employees that the current employee did not and could not have.

During his hearing testimony, Sahai could not recall the source from which he obtained the address of one employee; he could not recall if he ever provided the social security numbers for his employees; he could not recall, but believed he did not provide payroll records to the staff; he could not recall whether he told the staff that he could not find employment applications; and he did not know or could not recall whether he made hard copies of payroll records or employment applications. He did recall and testify that, at the end of 1999, "there were no 1099s or W-2s generated to any" of the employees. Tr. 330. It strains credulity for the Hearing Panel to find that employees who were charged with the responsibility for all administrative tasks and paperwork in Sahai's

office, albeit part-time employees, worked so few hours that W-2s, indicating the extent of their taxable earnings, were not required to be generated. Although Sahai testified that he paid his employees by check, he produced no cancelled checks or check registers that would show the amounts each employee earned to corroborate his assertion that W-2s were not required to be generated.¹⁴

Sahai had the responsibility promptly to provide the requested information or to explain why he could not provide it. He had to have known, at the time of his on-the-record interview that his computer hard drive had crashed, yet he delayed mentioning that fact until months after the interview. The delay in providing that explanation, and his refusal to respond to the staff's fifth and sixth written requests for information, pursuant to Procedural Rule 8210, obstructed the staff's investigation and violated Conduct Rule 2110.

Outside Business Activities

Conduct Rule 3030 provides that no person registered with a member "shall be employed by, or accept compensation from, any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member . . . in the form required by the member." The purpose of Conduct Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate

¹⁴ In the absence of such corroborating evidence, the Hearing Panel does not credit Sahai's testimony that W-2s were not required to be generated. Sahai placed his credibility in issue over the question whether postponement of the original hearing was necessary in light of his medical condition. On November 18, 2002, Sahai submitted (1) a physician's statement, dated November 13, 2002, recommending that Sahai refrain from any public appearances, and suggesting that Sahai could resume normal business activities in "perhaps" 30 days; and (2) his own declaration stating that he was operating on a reduced business schedule, and would be able to participate in a hearing "in the near future." On November 18, 2002, the day Sahai signed his declaration and submitted the physician's statement recommending that he refrain from any public appearance, he testified before the New Jersey State Senate. Tr. 301-02.

supervision as necessary under applicable law. *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exch. Act Rel. No 34-26063, 1988 SEC LEXIS 1841 (Sept. 6, 1988).

Conduct Rule 3030 applies to activity “outside the scope” of the registered person’s “relationship with his employer firm,” and exempts activities subject to the requirements of Conduct Rule 3040. Conduct Rule 3040 specifically prohibits *securities* transactions outside the scope of a registered person’s relationship with his firm.

Accordingly, Rule 3030 has been generally applied to activities that are unrelated to securities transactions. *DBCC v. Micah C. Douglass*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at *18 (NAC Sept. 19, 1995); *DBCC v. Michael Anthony Doherty*, No. CO6940014, 1995 NASD Discip. LEXIS 46, at *13 (NAC Dec. 7, 1995). Here, Sahai gave written notice to Key Group that he engaged in insurance business outside the scope of his relationship with Key Group. He gave that notice to Key Group on the form that Key Group provided, and the responsible officials at Key Group were satisfied with that notice. They did not ask him for any further information or documentation regarding the nature, scope, or description of his insurance business. His written notice to Key Group on its own form satisfied the minimum requirements of Conduct Rule 3030 that he disclose his outside insurance activity to Key Group. To the extent that Sahai engaged in securities transactions, Key Group was named as the firm through which those transactions were executed. There is no evidence that those transactions occurred outside the scope of Sahai’s relationship with Key Group. Sahai may have utilized a letterhead, fax form, and business card that were not approved by Key Group. However, that evidence does not constitute a violation of Conduct Rule

3030, as charged in the Complaint. Accordingly, the Hearing Panel will dismiss the Fourth Cause of the Complaint that alleges a violation of Conduct Rule 3030.

Sanctions

For forgery violations, NASD Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and, in cases where mitigating factors exist, a suspension for up to two years. In egregious cases, the Guidelines recommend consideration of a bar. NASD SANCTION GUIDELINES, at 43. The principal considerations in determining sanctions are (1) the nature of the documents forged, and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority. *Id.*

For unauthorized trading violations, the Guidelines recommend a fine of \$5,000 to \$75,000, and a suspension of 10 business days to one year. In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar. NASD SANCTION GUIDELINES, at 102. The principal considerations in determining sanctions are (1) whether the respondent misunderstood his authority or the terms of the customer's order; and (2) whether the unauthorized trading was egregious. *Id.*

For failure to respond, or respond timely to requests for information, made pursuant to Procedural Rule 8210, the Guidelines recommend a fine of \$25,000 to \$50,000 for failure to respond, and a fine of \$2,500 to \$25,000 for failure to respond in a timely manner. For failure to respond in any manner, the Guidelines recommend a bar as the standard sanction. Where mitigation exists, or the person did not respond in a timely manner, the Guidelines recommend consideration of a suspension for up to two years. NASD SANCTION GUIDELINES, at 39. The principal considerations in determining the sanction are (1) the nature of the information requested; and (2) whether the information

has been provided, the number of requests made, the time the respondent took to respond to the requests, and the degree of regulatory pressure required to obtain the response.

The forgeries, unauthorized transaction, and failures to respond, or to respond timely, to requests for information all arose from a single course of conduct, acting on behalf of customers without their knowledge or consent, and then frustrating an investigation into those actions. Under such circumstances, a single set of sanctions may be appropriate and effective to achieve NASD's remedial goals. *See, e.g., Department of Enforcement v. Respondent Firm 1*, No. C8A990071 (NAC Apr. 19, 2001). Accordingly, the Hearing Panel has considered the totality of Sahai's actions in assessing sanctions for his conduct.

The signatures that were forged were necessary to effect each of the transactions at issue. However, there is no question that the customers did not authorize Sahai, or anyone in his office, to affix their purported signatures to any documents. There is no evidence that Sahai had a good-faith, but mistaken belief that they had conferred express or implied authority on anyone to affix those signatures. Nor did Sahai misunderstand his customer's order for a mutual fund IRA, rather than an order for a variable annuity. For his part, Sahai has failed to accept responsibility for the forgeries and unauthorized transaction. Instead, he seeks to place blame on members of an administrative staff he found so deficient that he fired them. The identity and location of those staff members were of material significance to the staff of NASD who were investigating the forgeries. That information was essential to their determining how many, if any, employees were working in the office at the time of the forgeries and who was responsible for those forgeries. Sahai knew, at the time of his on-the-record interview, that his office computer

had crashed. However, rather than disclose that information promptly, he attempted to lull the staff into inactivity while he offered to search for information he knew he was not willing or able to supply. What information he ultimately produced came only after numerous requests from the staff. Given the totality of his actions, the Hearing Panel finds that Sahai should be barred for the multiple violations of Conduct Rule 2110.¹⁵ Sahai is also assessed costs of \$3590.75, consisting of a \$750 administrative fee and a \$2,840.75 transcript fee.

Conclusion

Rooney A. Sahai is barred from association with any NASD member firm in any capacity for causing the signatures of two customers to be forged on documents pertaining to investments, engaging in an unauthorized transaction on behalf of a customer, and failing to respond, and to respond timely, to information requests issued pursuant to Procedural Rule 8210, all in violation of NASD Conduct Rule 2110. Sahai is also assessed costs of \$3,590.75. Cause Four of the Complaint, alleging outside business activities, is dismissed. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

Alan W. Heifetz
Hearing Officer
For the Hearing Panel

¹⁵ In the absence of the forgeries and unauthorized transaction, the Hearing Panel would have barred Sahai for failures to respond and to respond timely to requests for information, issued pursuant to Procedural Rule 8210. See *Dep't of Enforcement v. Manuel M. Bello*, No. CAF000030, 2002 NASD Discip. LEXIS 10 (June 3, 2002).

Copies to:

Via First Class Mail & Overnight Courier

Rooney A. Sahai

Via First Class Mail & Facsimile

Eric S. Hutner, Esq.

Andrew Seewald, Esq.

Via First Class & Electronic Mail

David B. Klafter, Esq.

Michael J. Newman, Esq.

Rory C. Flynn, Esq.