

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9A020052
v.	:	
	:	Hearing Officer – DMF
GUANG LU	:	
(CRD #2691821)	:	HEARING PANEL DECISION
Gaithersburg, MD	:	
	:	May 21, 2003
	:	
Respondent.	:	

Respondent (1) traded an account at an NASD member firm while registered with another firm, without providing written notice to both firms, in violation of Rules 3050(c) and 2110; (2) exercised discretion in a customer’s account without written authorization, in violation of Rules 2510(b) and 2110; and (3) failed to disclose required information on a Form U-4, in violation of Rule 2110. Respondent is barred from association with any NASD member firm in any capacity.

Appearances

David F. Newman, Esq., and Thomas M. Huber, Esq., Philadelphia, PA (Rory C. Flynn, Esq., Washington, DC, Of Counsel) for Complainant.

Respondent Guang Lu, pro se.

DECISION

1. Procedural History

The Department of Enforcement filed a Complaint on November 21, 2002, charging respondent Guang Lu with (1) trading a customer’s account at Charles Schwab & Co. while he was registered with NYLIFE Securities, Inc., without giving prior written notice to both Schwab and NYLIFE; (2) unauthorized trading in the customer’s account

at NYLIFE; (3) unsuitable and excessive trading of options in the customer's Schwab and NYLIFE accounts; (4) inducing the customer to provide false information on her NYLIFE account application forms; (5) exercising discretion in the customer's NYLIFE account without written authorization; and (6) failing to disclose on a Form U-4 that NYLIFE had discharged him after the customer complained about his actions. Lu filed an Answer denying the charges and requested a hearing.

The hearing was held in Washington, DC, on April 15, 2003, before a Hearing Panel that included an NASD Hearing Officer, a member of the District 11 Committee and a former member of the District 9 Committee.¹

2. Facts

Lu was employed by New York Life Insurance Company and its broker/dealer subsidiary, NYLIFE Securities, Inc. from 1998 until October 2000. He was primarily a successful life insurance salesman, but was registered with NYLIFE as an Investment Company and Variable Contracts Products Limited Representative (Series 6) in order to sell mutual funds and variable products to his clients. In 1999, he qualified and became registered as a General Securities Representative (Series 7) with NYLIFE. Lu testified that he had no interest in being a stockbroker, but qualified as a Series 7 in order to be eligible for possible promotion within New York Life Insurance. (Tr. 16, 154, 191-92, 210-11, 223; CX 1; RX 1.)

In February 2000, Dr. XH contacted Lu. Like Lu, XH was born in China. She was trained as medical doctor there and came to the United States in 1991. She continued her medical education here, but had difficulty obtaining a residency position.

¹ The Panel heard testimony from three witnesses, including Lu and the customer, and received 19 Complainant's Exhibits (CX) and 25 Respondent's Exhibits (RX).

She became licensed as an acupuncturist and practiced successfully for several years in Rochester, NY, earning about \$50,000 per year. In early 2000, hoping to further her medical career, she moved to the Washington, DC area and became an unpaid volunteer at the National Institutes of Health (NIH). (Tr. 21-22, 25, 33-35.)

Before she moved to the Washington area, XH opened a brokerage account, an IRA account and a SEP-IRA account at Schwab, where she invested primarily in various mutual funds. By the end of 1999, however, she had experienced some losses in her mutual funds, and in early 2000 she read a book by Wayne Cook entitled The Wall Street Money Machine, which led her to become interested in options trading. (Tr. 22-25, 29-30, 33; CX 2-5.)

There was a dispute about the impetus for XH contacting Lu. She said that she saw an advertisement that Lu had placed in a Chinese language newspaper; Lu said she simply called him out of the blue. Both agreed that he invited her to attend a meeting in February 2000 at New York Life Insurance's offices in Bethesda, Maryland. XH described the meeting as a "seminar" at which Lu discussed options trading; Lu described the meeting as a gathering of friends who were interested in investing at which he talked about his options trading experience. Lu testified that, like XH, he had read Cook's book, and had begun trading options successfully in his personal NYLIFE account, following the recommendations of a commercial website to which he subscribed. Both XH and Lu agreed that after everyone else left the meeting, XH stayed and discussed options trading with Lu. According to Lu, he advised her that she could trade options herself the same way he did, by following the recommendations on the website. XH had a somewhat different recollection, but both XH and Lu agreed that, ultimately, Lu agreed

to trade options for XH in her Schwab on-line brokerage account. (Tr. 36-39, 194-98, 210.)

XH gave Lu the password to her Schwab account, and during March 2000 Lu made approximately 27 option purchases in the account. Lu used his own discretion in making these purchases. He did not notify either Schwab or NYLIFE that he was trading XH's account. Lu did not charge XH anything for making these trades, but his trading was not successful and XH incurred substantial losses as a result. It does not appear that Lu made any purchases in XH's Schwab account after March, and sometime shortly thereafter XH changed the password on her account, effectively excluding Lu. (Tr. 39-43, 198-201, 210, 282; CX 3.)

In February 2000, XH also signed forms to open an account with NYLIFE. The forms indicated that XH's estimated annual gross income was \$50,000. Although that had been true when she worked as an acupuncturist, when she filled out the NYLIFE form she was an unpaid volunteer at NIH. The account forms also included a Securities Option Account Application on which XH indicated that she had eight years experience investing in stocks, averaging approximately 150 trades per year, and two years experience investing in options, averaging 100 trades per year. That information was false. XH testified that she wrote the false information on Lu's advice, because he told her that NYLIFE would require that level of income and experience to approve her Option Account Application. Lu, on the other hand, said he simply gave the forms to XH, who filled in all the information on her own and returned the forms directly to NYLIFE. He also pointed out that XH listed her income as \$50,000 per year on a form to authorize options trading in her Schwab account that she signed on February 25, 2000,

just a few days before she signed the NYLIFE account opening documents. (Tr. 44-51, 233-34, 280; CX 6; RX 7.)

In early April 2000, XH transferred a Vanguard mutual fund worth about \$14,000 to her NYLIFE account. She gave Lu her password to that account and discretion to trade options. Lu did not, however, have written authority to exercise discretion in the account and NYLIFE did not permit its representatives to exercise discretion in customer accounts. Nevertheless, in late May 2000, Lu liquidated the Vanguard fund and began trading options in XH's NYLIFE account, exercising his own discretion. The account incurred losses on those trades from June through August, 2000. (Tr. 53-58, 160, 184, 203, 211-12; CX 7.)

XH was concerned about the losses from Lu's trading in both her Schwab and NYLIFE accounts. She testified that she expressed these concerns to Lu frequently, often through e-mail, but that he consistently reassured her that the market was weak and that they needed to continue to trade, in the hope that the market would improve and they could recover the losses in her accounts. She said that initially she did not retain the e-mails, but began doing so around May 2000. (Tr. 42, 53, 56, 66.)

The e-mails she retained show that on June 12, she sent Lu an e-mail complaining about losses from his options trading in her NYLIFE account, and the continuing cost of the margin debt she had incurred in her Schwab account, which she attributed to the losses from his options trading in March. On June 13, Lu responded with an e-mail stating, "I will be very careful to trade your NYLIFE account. The mkt is very volatile and the big picture (up or down) is not clear. I was trying to catch the trend, but [it] was difficult." XH sent Lu another e-mail the next day, complaining that Lu's "email didn't

give me [a] detailed plan [about] how we can recover the money.” The following day, Lu responded with an e-mail in which, among other things, he said, “We have to be patient and work hard! ... Please don’t be [in] so much [of a] panic, things are not bad at all! The mkt is there, the strategy is there, and we will make millions. I am studying hard and working hard. I am very confident to make all your money back!” (Tr. 67-69; CX 9.)

On June 21, XH sent Lu another e-mail indicating that she felt Lu had “traded my account recklessly no matter which one. I totally trusted you but you have betrayed my trust.” Lu responded, “Don’t be so upset, please. It’s time to make things better! The mkt is going to turn and we will have a great chance to make all our money back. I am trying my best to dedicate to your account. Please be patient one more time!” On July 7, Lu sent XH an e-mail stating, “I am confident to make back all your margin debt SOON! In order to employ the new method, I decided to sell all your options. Also, I changed your password because I want to give you a surprise and I don’t want you to worry about it at all. Please trust my GOODWILL and my intelligence!” XH testified that after Lu changed the password, she no longer had on-line access to her NYLIFE account. (Tr. 58, 69; CX 9.)

XH continued to send Lu e-mails complaining about the losses in her accounts. On July 13, for example, she sent him an e-mail that concluded, “So please [deposit] whatever the money you lost[.] I need to close this account right away. I am waiting for your reply.” On July 15, apparently after speaking to Lu, she sent him an e-mail complaining about the losses and stating, “I don’t want you [to] play with my account any more.” On July 21, she sent him an e-mail stating, “I don’t want you to trade my NY life account.” (Tr. 74-75; CX 9.)

Lu never asked for or accepted any money from XH for trading her Schwab or NYLIFE accounts. In fact, he gave her money to repair her car, purchase a computer and pay for her Maryland acupuncturist license. At the end of July, as XH continued to complain about the losses in her NYLIFE account and her need for funds, Lu gave XH \$10,000 to “purchase” the account. Thereafter, he continued trading the account, as if it were his own. (Tr. 59-61, 87-89, 219-21; CX 9.)

In September 2000, XH sent a letter to the Maryland Attorney General’s Office in which she recounted her version of the relevant events. The Attorney General, in turn, sent a letter to NYLIFE that described the allegations in XH’s letter and attached some of the e-mails between XH and Lu, but did not include a copy of XH’s complaint letter. Upon receiving the Attorney General’s letter, Lu’s supervisor called him into his office, showed him the Attorney General’s letter, and asked him to prepare a written response. (Tr. 77-82, 161-63; CX 8, 18; RX 2.)

Lu provided a response on October 2 in which he admitted many of the facts set forth above. In particular, he acknowledged that he had traded XH’s Schwab account, explaining that when XH asked him to trade her account, he told her it “should be totally personal and extremely confidential, she was not my client at all and there is nothing to do with NYLIFE Securities. No third-party should ever be involved in this matter and I do not have any responsibilities for money loss.” He also said that after XH transferred funds to her NYLIFE account, she “insisted to give me her password and asked me to trade for her again. Frankly, I was scared. I really didn’t want to involve her money in any way and I told her I couldn’t trade her NYLIFE Securities account due to our company rules. However, because of my noble sympathy, I still felt that I should help

her out. Then I told her that I decided to give to her all her NYLIFE Securities money and bought her NYLIFE Securities account entirely by using my own personal money” (Tr. 165-67; CX 10; RX 2.)

After reviewing Lu’s October 2 letter, NYLIFE discharged Lu on October 9, 2000.² On October 30, NYLIFE filed a Form U-5 Uniform Termination Notice for Securities Industry Registration with NASD on October 30, 2000, indicating that “Mr. Lu was discharged after it was learned that he had violated NYLIFE Securities Inc.’s policy against discretionary trading of options in a customer’s account.”³ (Tr. 168-72; CX 12.)

After being discharged by NYLIFE, Lu sought employment with MetLife, but when he disclosed, “I left New York Life because of some complaint,” MetLife told him, “Well, we have to wait for the decision.” Lu then applied to NASD member Globalink Securities, Inc. On October 20, 2000, he completed and signed a Form U-4 Uniform Application for Securities Industry Registration or Transfer to become registered as a Series 6 and Series 7 representative with Globalink. In completing the Form U-4, among other things Lu was required to answer the following question: “Have you ever ... been discharged ... after allegations were made that accused you of ... violating investment-

² When his supervisor called Lu to his office on October 9 to advise him of his termination, Lu presented a letter in which he indicated that he had consulted two attorneys and that his “October 2, 2000 letter ... should be amended in order to make it more accurate, because the letter was written under time pressure Therefore, please allow me to withdraw that letter as a whole.” In the October 9 letter, Lu stated that XH’s “allegation against me is completely false, without any legal and factual basis and utterly lack of candor. I categorically deny all charges made by [XH] in relation to her accusation for my alleged ‘unsuitable transactions,’ ‘unauthorized transactions,’ and ‘failure to follow her directives.’” NYLIFE nevertheless decided to terminate Lu that day. (Tr. 168-70; CX 11.) The Hearing Panel did not rely on Lu’s admissions in his October 2 letter, finding sufficient independent evidence in the record to support all of the Panel’s determinations regarding Lu’s conduct.

³ XH made a claim against NYLIFE for the losses in her Schwab and NYLIFE accounts. Ultimately, NYLIFE paid her \$80,000 in settlement, the full amount of the losses she claimed. XH has never repaid any of the money that she received from Lu, including the \$10,000 he paid her for her NYLIFE account. (Tr. 83-85, 87-89, 144-45, 173; RX 6, 14-17.)

related statutes, regulations, rules, or industry standards of conduct?” Lu answered this question “No,” even though, based on the Maryland Attorney General’s letter, he was aware that XH had accused him of effecting unsuitable and unauthorized transactions in her account and failing to follow her directions, and he also knew that NYLIFE had discharged him after the Maryland Attorney General notified it of XH’s accusations. Lu testified that in making this response, he relied on the advice of Globalink’s president. (Tr. 263-68; CX 13.)

Globalink hired Lu effective October 25, 2000, and he became registered with the firm on that date as a Series 7. On December 11, 2000, Lu sent a letter to NASD’s Central Registration Depository/Public Disclosure department stating that, during a deposition on December 8, 2000, the Maryland Attorney General’s office had questioned whether his responses on the Globalink Form U-4 were correct. In the letter, Lu argued that his responses on the Form U-4 were correct because the Maryland Attorney General had never given him a copy of XH’s complaint letter, which Lu thought violated “basic fairness,” and because he had denied XH’s charges. Lu said he was sending the letter to NASD “[i]n the interests of full disclosure.” He also sent a copy of the letter to the president of Globalink. (Tr. 283; CX 1; RX 24-25.)

Lu remained registered with Globalink until January 2001, when he was terminated for “lack of current production.” He has not been employed in the securities industry since that date, and at the hearing he stated that he has no interest in returning to the securities industry.⁴ (Tr. 283; CX 1.)

⁴ Even though Lu is not currently registered, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD’s By-Laws.

3. Discussion

The first charge in the Complaint is that by exercising discretionary trading authority in XH's Schwab account without notifying Schwab and NYLIFE, Lu violated NASD Rules 3050(c) and 2110. To protect the investing public, member firms and registered representatives themselves, it is critically important that member firms be aware of all of their representatives' securities activities. To that end, Rule 3050(c) requires that a registered representative, such as Lu, must notify both his employer and the executing firm before placing orders in an account at another member firm. Lu admits he traded XH's Schwab account without providing any notice to NYLIFE or Schwab. Therefore, he violated Rule 3050(c), and, because a violation of any other rule is also a violation of Rule 2110, he violated that rule as well. See DBCC v. Prendergast, 1999 NASD Discip. LEXIS 19 (NAC July 8, 1999), aff'd, 2001 SEC LEXIS 1533 (Aug. 1, 2001).

The second charge in the Complaint is that Lu made unauthorized trades in XH's NYLIFE account, in violation of Rule 2110. It is well established that unauthorized trading in a customer's account violates Rule 2110. See DBCC v. Hellen, 1999 NASD Discip. LEXIS 22 (NAC June 15, 1999).

In this case, however, XH gave Lu discretionary authority to trade her NYLIFE account. Therefore, his trading was not unauthorized unless and until XH withdrew that authorization. The communications between XH and Lu were quite ambiguous in that regard. It is clear that XH was upset about the losses she had incurred, but for some period of time she appears to have accepted, at least implicitly, that Lu would continue to trade her account in an effort to recover her losses. Subsequently, in the e-mails she sent

him in July, she began to indicate she no longer wanted him to trade her account, culminating in her July 21 e-mail, in which, at last, she told Lu clearly: “I don’t want you trade my NY Life account.” Shortly thereafter, however, Lu offered her \$10,000 to “purchase” the account, and she accepted the money, clearly understanding that Lu would continue to trade the account, as he did. Therefore, the Panel found that Enforcement failed to prove by a preponderance of the credible evidence that Lu made unauthorized trades in XH’s NYLIFE account.

The third charge in the Complaint is that Lu, utilizing his discretionary authority, effected unsuitable and excessive options trades in XH’s Schwab and NYLIFE accounts, in violation of Rules 2310, 2510(a), 2860(b) and 2110. A representative must have reasonable grounds for believing that his trading is suitable for his customer based “upon the basis of the facts, if any, disclosed by such customer as to [her] other securities holdings and as to [her] financial situation and needs.” Trading may be unsuitable if it is excessive. There is no single test for determining whether a particular level of trading is excessive, but adjudicators look at such factors as the turnover ratio, the cost-equity ratio and the frequency of trades in an account as objective measures in assessing the trading in an account. See DBCC v. Pinchas, 1998 NASD Discip. LEXIS 59 (NAC June 12, 1998), aff’d, 1999 SEC LEXIS 1754 (Sept. 1, 1999).

In this case, it is unclear what information XH disclosed to Lu. For example, although Enforcement points out that at the time Lu traded her Schwab account in March 2000, she was an unpaid volunteer at NIH, in response to Lu’s questioning, XH admitted she may not have told Lu about her status as a volunteer until “much later, that could be.” (Tr. 96.) In addition, XH’s financial status during the relevant time is unclear from the

record; for example, she indicated that she owned some rental real estate, but there is no evidence regarding its value, and she testified that, after working at NIH as a volunteer, she became employed there in July 2000, but there is no evidence as to her salary. (Tr. 26, 64.) Moreover, XH testified that a substantial part of the funds she invested came from her brother (Tr. 31), but there is no evidence regarding his financial situation or needs. Finally, Enforcement did not present any analysis of the turnover ratio or cost-equity ratio in the account. Therefore, the Hearing Panel found that Enforcement failed to prove this charge by a preponderance of the credible evidence.

The fourth charge in the Complaint is that Lu induced XH to include false information about her income and investing experience on her NYLIFE account application, in violation of Rules 3110 and 2110. The only evidence supporting this charge was XH's testimony. She admitted that she filled out the forms, including the false information regarding her current earnings and investing experience, but she claimed she did so on Lu's advice; Lu denied that he told XH to provide false information on the forms, stating that he merely gave her the forms to fill out and that she completed them outside his presence. Lu pointed out that XH also falsely represented that she was earning \$50,000 per year on a Schwab options trading application that she completed just a few days before she completed the NYLIFE forms. Further, he noted that her testimony at the hearing, acknowledging that she filled out the NYLIFE forms, was inconsistent with a letter she sent to the Maryland Attorney General in January 2002 in which she stated that "Lu filled out all the forms and applications for me and I signed them." (RX 4.) Therefore, the Panel found that Enforcement failed to prove this charge by a preponderance of the credible evidence.

The fifth charge in the Complaint is that Lu exercised discretion in XH's NYLIFE account without written authorization, in violation of Rules 2510(b) and 2110. Rule 2510(b) provides, "No member or registered person shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member ... in writing" Lu admits he used his own discretion in trading XH's account, and that he had no written authorization. Further, Lu's supervisor testified that NYLIFE has a policy that prohibits discretionary trading, even with written authorization from the customer. The Panel therefore finds that Lu violated Rules 2510(b) and 2110 as charged.

The sixth charge is that Lu failed to disclose required information on the Form U-4 he completed for Globalink, in violation of Rule 2110. "The filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ... may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." IM-1000-1; see e.g., DBCC v. Prewitt, 1998 NASD Discip. LEXIS 37 (NAC Aug. 17, 1998).

The Form U-4 asked Lu whether he had ever been discharged after allegations had been made that he violated investment-related statutes, rules or industry standards. Lu answered "No" in spite of the fact that he knew that NYLIFE had discharged him after XH made such allegations against him. Although Lu testified that he followed the guidance of Globalink's president, "[i]t is axiomatic that the person who provides information for a regulatory filing and executes that filing is responsible for ensuring that the information contained therein is accurate." Department of Enforcement v. Howard,

2000 NASD Discip. LEXIS 16, at *31 (NAC Nov. 16, 2000), aff'd, 2002 SEC LEXIS 1909 (July 26, 2002), appeal pending, No. 02-1939 (1st Cir. Aug. 2, 2002) (citation omitted). The Panel, therefore, finds that Lu violated Rule 2110, as charged.

In summary, the Hearing Panel found that Lu (1) traded XH's Schwab account without giving notice to either Schwab or NYLIFE, in violation of Rules 3050(c) and 2110; (2) exercised discretion in trading XH's NYLIFE account without written authorization, in violation of Rules 2510(b) and 2110; and (3) failed to disclose required information on his Form U-4, in violation of Rule 2110. Enforcement did not prove the remaining charges by a preponderance of the credible evidence; therefore, they are dismissed.

4. Sanctions

For violations of Rule 3050, the Sanction Guidelines recommend that adjudicators impose a fine of \$1,000 to \$25,000 and “[i]n egregious cases, consider suspending [an] associated person in any or all capacities for up to two years or barring [the] associated person.” For violations of Rule 2510(b), the Guidelines recommend that adjudicators impose a fine of \$2,500 to \$10,000 and “[i]n egregious cases, consider suspending respondent in any or all capacities for 10 to 30 business days.” And for filing inaccurate U-4 Forms, the Guidelines recommend that adjudicators impose a fine of \$2,500 to \$50,000 and consider a suspension in any or all capacities for five to 30 business days or, in egregious cases, “a longer suspension in any or all capacities (of up to two years) or a bar.” NASD Sanction Guidelines at 21,77-78, 94 (2001 ed.).

His supervisor testified that, apart from the events giving rise to this proceeding, Lu's “record had been fine.” (Tr. 191.) Lu never took any money from XH, and XH

testified that she believed Lu had no bad intentions, but rather had been trying to help her. (Tr. 146.) Nevertheless, the Hearing Panel is convinced that if Lu were allowed to re-enter the securities industry, he would pose a serious risk to the investing public.⁵

The violations in this case are serious and represent extraordinary departures from the standards expected of registered representatives. Moreover, they flowed directly from Lu's acknowledged disinterest in understanding or fulfilling his obligations as a registered representative. He explained that he had "no interest to be a stockbroker" and "did not want to do stockbroker"; in fact, even though he had qualified and registered as a Series 7 General Securities Representative, he felt he "was not a stockbroker." (Tr. 16, 210, 214.) As a result, he was uninterested in the compliance questionnaires he completed for NYLIFE: "I think this kind of thing is like routine work [-] just check, check, check, yes, yes, yes, and no, no, no. I don't really specifically remember which rule is which, what is what. From my point of view, I just sell life insurance, life insurance [-] when you die our company pay money ... Series 7 I took it for maybe in the future I get promotion. That's a requirement to be promoted. You have to pass Series 7. That's my thinking." (Tr. 222-23.) He agreed that he "didn't really understand what the rules were" concerning discretionary accounts; he was "not very, very familiar with this terminology." (Tr. 213, 224.)

Overall, Lu was convinced that "this entire thing is [a] kind of scheme designed by somebody inside understanding the security rules. So, from my point of view, there is no point I try to break any rules or try to do anything bad." (Tr. 114-15.) He pointed out that he "never tried to cheat [XH], ... never tried to take a penny from her," and said he

⁵ "The overall purposes of NASD Regulation's disciplinary process and NASD Regulation's responsibility in imposing sanctions are to remediate misconduct and to protect the investing public." NASD Sanction Guidelines at 3.

“just had good intention[s] ...” (Tr. 206.) He did not recognize that if he had known and obeyed the applicable rules, none of his subsequent problems would have arisen, because he would not have been allowed to trade XH’s accounts.

In light of this evidence, the Hearing Panel concluded that Lu has learned nothing from the events that gave rise to this proceeding. He showed no remorse; on the contrary, at the close of the hearing he told the Panel, “In my viewpoint, I never do bad things.” (Tr. 280-81.) As a result, if he were allowed to return to the securities industry, Lu would likely continue to believe he is not subject to the rules applicable to registered representatives, and would continue to ignore and violate those rules, placing his customers at risk.

Returning to the specific violations found, the Hearing Panel finds that Lu’s violation of Rules 3050(c) and 2110 by trading XH’s Schwab account without notifying Schwab or NYLIFE was highly egregious. For the reasons set forth above, the Panel concludes that a bar is the appropriate sanction for that violation.

The Panel also finds that Lu’s violation of Rules 2510 and 2110 by exercising discretion in XH’s NYLIFE account without written authorization was highly egregious. Although the Sanction Guidelines do not recommend a bar for this type of violation, the Guidelines provide: “The recommended ranges in these guidelines are not absolute. ... For instance, in an egregious case, Adjudicators may consider barring an individual respondent ... regardless of whether the individual guidelines applicable to the case recommend a bar and/or expulsion or other less severe sanctions.” NASD Sanction Guidelines at 5. Once again, for the reasons set forth above, the Panel concludes that a bar is the appropriate sanction for this violation.

Lu's Form U-4 violation was also egregious. As explained above, even if he consulted with Globalink's president, Lu was personally responsible for completing the form accurately. The form clearly asked Lu whether he had been discharged after allegations had been made against him, and he knew that had occurred. In addition, he knew that, when he disclosed the facts to MetLife, they told him "we have to wait for the decision" before they would hire him. An accurate answer to each Form U-4 question is important, because the Form U-4 "serves as a vital screening device for hiring firms and the NASD against individuals with 'suspect history.'" DBCC v. Jones, 1998 NASD Discip. LEXIS 60, at *9 (NAC Aug. 7, 1998). The Hearing Panel notes that, because NYLIFE had not yet filed its Form U-5 regarding Lu's termination when Lu submitted his Globalink Form U-4, the information that Lu omitted was particularly critical to effective screening of his application for registration.

The Hearing Panel evaluated possible mitigating factors. First, Lu is not a native English-speaker, so the Hearing Panel considered whether he might have misunderstood the Form U-4 question. The question, however, was clearly stated; the written materials that Lu submitted in this proceeding were articulate, showing that he has a good grasp of written English; and in his testimony and prior written explanations, he did not claim he misunderstood the question, but rather indicated that he felt he did not have to provide a "Yes" answer because he disputed XH's allegations.

The Panel also considered whether his communications to NASD and Globalink in December 2000, after the Maryland Attorney General's office questioned the accuracy of his responses on the Form U-4, were mitigating. (RX 24-25.) It is well-established, however, that the registered representative is responsible for the accuracy of the Form U-

4, and cannot shift that responsibility to NASD staff or others. See Department of Enforcement v. Walker, 2000 NASD Discip. LEXIS 2, at *20-21 (Apr. 20, 2000). The Hearing Panel, therefore, finds that a bar is also the appropriate sanction for this violation.⁶

5. Conclusion

Respondent Guang Lu is barred from associating with any NASD member firm in any capacity for (1) effecting trades in an account at a member firm while registered with another firm, without providing written notice to both firms, in violation of Rules 3050(c) and 2110; (2) exercising discretion in a customer's account without written authorization, in violation of Rules 2510(b) and 2110; and (3) failing to disclose required information on a Form U-4, in violation of Rule 2110. He is also ordered to pay costs in the total amount of \$2,400.98, which includes a \$750 administrative fee and hearing transcript costs of \$1,650.98. The bars shall become effective immediately if this decision becomes the final disciplinary action of NASD.⁷

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to:

Guang Lu (via overnight and first class mail)
David F. Newman, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via first class mail)

⁶ In light of the bars, no fines are imposed for any of the violations.

⁷ The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.