

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C07010091
v.	:	
	:	HEARING PANEL DECISION
LUIS G. SARMIENTO	:	
(CRD #828824)	:	Hearing Officer - SW
Miami, FL	:	
	:	July 8, 2002
	:	
Respondent.	:	

The Hearing Panel barred Respondent for violating NASD Rule 2110 by acting as an impostor to take the Series 7 and Series 24 Qualification Examinations for his employer. The Hearing Panel also ordered Respondent to pay costs in the amount of \$1,276.40.

Appearances

Gene E. Carasick, Esq., Regional Counsel, Atlanta, GA (Rory C. Flynn, Chief
Litigation Counsel, Washington, DC, of counsel), for the Department of Enforcement.

Luis G. Sarmiento, pro se.

DECISION

I. Introduction

NASD Department of Enforcement filed its Complaint against Respondent Sarmiento on December 4, 2001. The Complaint alleges that Respondent violated NASD Rule 2110 by impersonating Bayard Spector for the purposes of taking Spector's Series 7 and Series 24 qualification examinations. Respondent admitted that, under financial and psychological duress, on two separate occasions, November 29, 1999 and January 19, 2000, he impersonated Spector and took Spector's NASD qualification exams.

On May 17, 2002, a Hearing Panel, composed of an NASD Hearing Officer and two current members of the District 7 Committee, held a Hearing in this matter to determine appropriate sanctions. During the Hearing, the Parties presented the testimony of Respondent and offered one joint exhibit, including a stipulation.¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent became initially registered with NASD as a general securities representative in November 1999. (Stip. ¶1). From September 14, 1999 until September 7, 2000, Respondent was associated American First Capital Corporation (“American First Capital”), a broker-dealer owned by Spector. (Stip. at ¶1; JX-1, p. 8).

Since June 2000, Respondent has been associated with the electronic day trading firm, Investors Street.² (Stip. at ¶1; JX-1, p. 4). Accordingly, the Hearing Panel determined that NASD has jurisdiction over Respondent.

B. Respondent Violated Rule 2110

1. Background

Respondent, a native of Columbia, South America, successfully lived in Columbia for eight years as a financial advisor and professor of international finance. (JX-1, p. 8). After being abducted by terrorists, who looted all of his assets and caused him to borrow in excess of \$200,000, Respondent was forced to relocate to Miami, Florida with his wife, his mother-in-law, and his three children, in May 1999.

¹ “Tr.” refers to the transcript of the Hearing held on May 17, 2002, “JX” refers to the Parties joint exhibit admitted at the Hearing, and “Stip.” refers to the stipulations filed by the Parties.

² Respondent is the president and the CEO of Investors Street. (Tr. p. 13).

Upon his arrival in Miami, Respondent was introduced to Spector, who agreed to employ Respondent as a financial advisor at American First Capital. (JX-1, p. 8). Spector indicated that American First Capital could not afford to pay Respondent a fixed salary, but it would sponsor Respondent to obtain his NASD “licenses” and would provide Respondent with advances against anticipated commissions as needed to support Respondent’s family. (JX-1, p. 8; Tr. p 14). Respondent’s main job was to advise Spector how to invest the company's monies. (Tr. p. 12). American First Capital had a trading account, and Respondent researched particular stocks and markets for the account. (Id.).

During the period from May 1999 to December 1999, Spector advanced Respondent approximately \$14,000. (Tr. p. 15). On occasion, Spector also bought groceries for Respondent’s family, paid telephone bills and electric bills, paid the costs of emergency medical services for Respondent’s epileptic child, and paid back rent to prevent Respondent and his family from being evicted. (JX-1, p. 9).

During this period, Respondent was working for Spector “practically for free.” (Id.). Respondent described Spector as able to control people with a combination of “fear and charm.” (Id.).

In November 1999, when the CEO of American First Capital resigned, Spector directed Respondent to become a registered representative in order that he might replace the CEO. (Tr. pp.10-11; JX-1, p. 10). During the same period, NASD staff advised Spector that he would have to become registered in order to continue to hold an ownership interest in American First Capital. (Tr. p. 13).

Approximately five days before the scheduled exam, Spector approached Respondent about taking the Series 7 exam for him, stating that he did not think he could

pass the Series 7 exam and American First Capital would be closed down if he did not pass the exam. (JX-1, p. 10; Tr. p. 13). Initially, Respondent “thought it was a joke and laughed,” then he refused. (JX-1, p. 9). Spector, however, convinced Respondent that he owed it to him to take the exam because Spector had been like a brother to Respondent and helped support his family. (Id.).

2. Respondent Was Persuaded to Impersonate Spector on Two Separate Occasions.

Respondent testified that, on November 29, 1999, using his employer’s driver’s license, he impersonated Spector and took the NASD Series 7 qualification examination.³ (Tr. p. 24). When it was time for Spector to take the NASD Series 24 qualification examination on January 19, 2000, Spector told Respondent to take the exam or he would report Respondent for having taken the Series 7 exam in November 1999. (Tr. p. 16).

Respondent stipulated that he took the Series 7 and 24 examinations in Spector’s place. (Stip. at ¶2). Respondent passed both examinations, thereby permitting Spector to retain control of American First Capital.

NASD Conduct Rule 2110 provides that in the conduct of business, members “shall observe high standards of commercial honor and just and equitable principles of trade.”⁴ Respondent has admitted and the Hearing Panel finds that Respondent violated Rule 2110 by impersonating Spector.

³ Respondent testified that he physically resembled Spector. (Tr. p. 24).

⁴ Although Rule 2110 applies to NASD members, Rule 0115 states that NASD rules shall apply to all members, as well as to “persons associated with a member.”

IV. Sanction

Where an individual cheats on a qualification examination, or is in possession of unauthorized materials during a qualification examination, the NASD Sanction Guidelines provide that a bar should be standard.⁵ The Hearing Panel finds that a bar should also be the standard sanction for a registered individual who assists another to cheat on a qualification exam.

Enforcement argued that Respondent should be barred. Respondent argued that the duress to which he was subjected and his subsequent actions provided sufficient mitigating factors to warrant a sanction of less than a bar.⁶

The Hearing Panel does not find the duress that Respondent suffered or his subsequent actions sufficiently mitigating to justify any sanction less than a bar for this very serious violation. The Hearing Panel agrees with Enforcement that this violation goes right to the heart of the qualification process.

On not one, but two separate occasions, Respondent's actions circumvented the integrity of the registration process, which is designed to insure that registered people in the securities business have a certain minimum level of competence and knowledge. Respondent admitted that he knew that NASD staff had advised Spector that if Spector did not take and pass the examinations he would not be permitted to continue to be an owner of the NASD member firm.

The Hearing Panel is sympathetic to the pressures to which Respondent was subjected and appreciates that Respondent's subsequent actions were helpful to NASD.

⁵NASD Sanction Guidelines, p. 47 (2001).

Nevertheless, the Hearing Panel believes that, when presented with the option of violating Rule 2110, Respondent, a Brown University graduate with a master's degree, failed to explore fully other alternatives. The Hearing Panel is very concerned that Respondent would succumb to similar pressures in the future and violate other NASD rules, possibly to the detriment of the public. Accordingly, Respondent is barred.

V. Order

The Hearing Panel bars Respondent for violating Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of the NASD. In addition, Respondent is ordered to pay costs of \$1,276.40, which include an administrative fee of \$750 and the hearing transcript cost of \$526.40.⁷

HEARING PANEL

By: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
July 8, 2002

Copies to:

Luis G. Sarmiento (via Airborne Express and first class mail)
Gene E. Carasick, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

⁶ Respondent's subsequent actions help lead to NASD staff's discovery of the impersonation. (Tr. p. 16-17).

⁷ The Hearing Panel 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.