

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TODD GRAFENAUER  
(CRD No. 4408817),  
S101 W323 98 Hwy. LO  
Mukwonago, WI 53149

Respondent.

Disciplinary Proceeding  
No. C8A030068

Hearing Officer – DMF

**HEARING PANEL DECISION**

May 27, 2004

**Respondent is barred from associating with any NASD member in any capacity for forging documents, in violation of Rule 2110.**

Appearances

Pamela Shu, Esq., and Richard Schultz, Esq., Chicago, Illinois, (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant.

James Blask, Esq., Milwaukee, Wisconsin, for Respondent.

**DECISION**

**1. Procedural History**

The Department of Enforcement filed a Complaint on September 2, 2003, charging that Respondent Todd Grafenauer forged certain documents, in violation of Rule 2110. Grafenauer filed an Answer and requested a hearing, which was held in Milwaukee, Wisconsin on April 28-29, 2004, before a Hearing Panel that included an NASD Hearing Officer and two members of the District 8 Committee.<sup>1</sup>

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<sup>1</sup> In this decision, the hearing transcript is cited “Tr.” and Complainant’s Exhibits are cited “CX.” Respondent did not offer any additional Exhibits.

## 2. Facts

Grafenauer graduated from college in 2001 and became associated with UBS PaineWebber, Inc. (now UBS Financial Services, Inc.) in its Milwaukee, Wisconsin branch office in June 2001. After completing UBS training and passing the qualifying examination, he became registered with NASD through UBS as a General Securities Representative (Series 7) on August 3, 2001. After he became registered, Grafenauer agreed to “partner” with James Miller, who had joined UBS in approximately November 2000.<sup>2</sup> (Tr. 160, 301-02, 374; CX 1, 17 at 3-4, 20-21.)

UBS allowed registered representatives to recruit and utilize college student interns if the interns either were paid for their work by the representatives or received academic credit. UBS required the representatives who recruited for-credit interns to obtain written verification from the interns’ colleges that the interns would receive credit for their work, as well as the colleges’ agreement, on a form created by UBS, to indemnify and hold harmless UBS from any claims or liabilities that UBS might incur as a result of the student internship program. (Tr. 41-44, 76-78, 80-81, 114-16; CX 2, 17 at 3-5.)

UBS representatives in the Milwaukee branch found it difficult to obtain interns for credit because colleges were reluctant to sign UBS’s hold harmless agreement form. At the same time, representatives preferred for-credit interns to paid interns, because otherwise they had to pay their interns themselves. (Tr. 38, 78, 81, 102, 115-16, 142-43, 162, 212, 217-18.)

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<sup>2</sup> Miller was originally named as a respondent in this proceeding, but subsequently entered into a settlement, pursuant to which he was barred from associating with any NASD member in any capacity.

Unlike other representatives in the Milwaukee branch, Miller and Grafenauer had success in recruiting for-credit student interns. Between Fall 2001 and Fall 2002, the number of for-credit interns working for them increased steadily, reaching as many as 50 by Fall 2002. For each intern, Miller and Grafenauer provided the required documentation to the branch's operations manager, including a hold harmless agreement purportedly signed by a college official and a letter on the college's letterhead, also purportedly signed by a college official, confirming that the intern would receive college credit for working at UBS. (Tr. 41-42, 118, 164-68, 224, 237, 307; CX 2, 16.)

Miller and Grafenauer apparently used the interns primarily to contact potential clients in order to invite them to investment seminars. Thus, the interns were performing a valuable service, and other representatives in the Milwaukee branch who had not been able to recruit interns took notice. One of them, Michael Ebeling, approached the branch manager, explaining that his team would like to utilize interns but had been unsuccessful in recruiting them because the colleges would not sign the hold harmless agreement. The branch manager suggested that Ebeling and his partners have lunch with Miller and Grafenauer to learn how they were overcoming the problem. As a result of the lunch and subsequent discussions with Miller and Grafenauer, Ebeling became suspicious that Miller and Grafenauer were falsifying the hold harmless agreements and reported that to the branch manager. The branch manager then spoke to the operations manager, who told him that she, too, had recently become suspicious about the documentation that Miller and Grafenauer were submitting. The branch manager then contacted UBS human resources officials, which led to an investigation by UBS. (Tr. 41, 44-53, 81-86, 105-06, 120-23, 220-21; CX 14, 17 at 5-7.)

The investigation disclosed that the documentation for many, if not all, of the Miller and Grafenauer for-credit interns had been falsified. The signatures on the hold harmless agreement forms were forgeries, as were the letters purportedly from the interns' colleges verifying that they would receive credit. Initially, Miller and Grafenauer denied having any knowledge of the forgeries, but they subsequently admitted that they had forged the documents. (Tr. 177, 179-81; CX 2, 6-7, 14-15.)

During the investigation, UBS contacted the colleges, which advised UBS that they would not have signed the hold harmless agreements and that some of the interns were not eligible for credit.<sup>3</sup> Based upon the results of its investigation, UBS terminated Miller and Grafenauer. In addition, UBS demoted the branch manager and disciplined the operations manager. (Tr. 126, 128, 135-36, 138-40, 230-31, 274-75; CX 15-16, 17 at 10-11.)

After being terminated by UBS, Miller and Grafenauer attempted to establish a business together without success. Grafenauer also filed for unemployment benefits with the state of Wisconsin, claiming that he "was not told I was actually discharged" by UBS and that he "assume[d] they [were] just cutting back on costs and [it was] nothing that I did wrong because I had received no prior [notice that my] job was in jeopardy and I did the job to the best of my ability. I really was not given a reason as to why I was terminated." UBS contested Grafenauer's unemployment claim and a hearing was held before a Wisconsin administrative law judge. During the course of the hearing, Grafenauer admitted forging a substantial number of hold harmless agreements and letters. The administrative law judge subsequently issued a decision holding that Grafenauer was ineligible for benefits because he had been discharged for misconduct,

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<sup>3</sup> If it was able to contact those interns, UBS paid them for the time they had worked.

and that he had been wrongfully collecting benefits, which he was ordered to repay. As of the date of the hearing, however, Grafenauer had repaid only a portion of the benefits he wrongfully collected. (Tr. 355-56, 363-64; CX 10-13.)

After UBS filed a Form U-5 concerning the terminations of Miller and Grafenauer, NASD staff began an investigation. In the course of the investigation, Grafenauer admitted that he had forged documents. At the hearing in this matter, Grafenauer identified at least 30 hold harmless agreements and letters purportedly signed by college officials that he had forged. (Tr. 206-08, 216, 315-22; CX 2, 6.)

### **3. Discussion**

Rule 2110 requires NASD members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” In Department of Enforcement v. Shvarts, the National Adjudicatory Council (NAC) explained the reach of Rule 2110:

Conduct Rule 2110 “is not limited to rules of legal conduct but rather . . . it states a broad ethical principle.” . . . Disciplinary hearings under Conduct Rule 2110 are ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred. . . . The NASD has authority to impose sanctions for violations of “moral standards” even if there was no “unlawful” conduct.

No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*11 (NAC June 2, 2000) (citations and footnote omitted). The NAC recently explained:

The SEC has construed Conduct Rule 2110 broadly to apply to all business-related misconduct, regardless of whether the misconduct involved securities. . . . The principal consideration is whether the misconduct reflects on an associated person’s ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public. . . .

Department of Enforcement v. Davenport, No. C05010017, 2003 NASD Discip. LEXIS 4, at \*8-9 (May 7, 2003) (citations omitted).

Not surprisingly, it is well established that “[f]orgery is conduct that is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor to which the NASD holds registered individuals. . . . The violation is equally problematic whether the forgery is submitted to the NASD or to a member firm.”

DBCC No. 2 v. Peters, No. C02960024, 1998 NASD Discip. LEXIS 42, at \*4-5 (NAC Nov. 13, 1998) (citation omitted).

Grafenauer admits that he forged the purported signatures of college officials on numerous hold harmless agreements and letters and submitted them to UBS. Such conduct is unquestionably unethical, and suggests that Grafenauer was unwilling or unable to comply with basic regulatory requirements. At the hearing, however, he attempted to portray himself as a victim of Miller, who was older and somewhat more experienced. According to Grafenauer, Miller told him that the for-credit intern documents were “meaningless,” and that Ebeling had taught him (Miller) how to falsify them.<sup>4</sup> Grafenauer testified that he did not realize that forging and submitting the documents was wrong until he received an e-mail from the operations manager on September 5, 2002, after she became suspicious of the documents he had been providing:

Todd: Pls make sure that all the interns you are considering are eligible to receive college credit. Also the Professor who signs the school letter, which must [b]e on **original school letterhead**, should be the person to sign the “Hold Harmless Agreement” as well. Chad [another branch employee] will be collecting the

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<sup>4</sup> Apart from Grafenauer’s testimony, there is no evidence that Ebeling had any role whatsoever in the scheme perpetrated by Miller and Grafenauer. Indeed, as explained above, Ebeling was unsuccessful in recruiting interns and when he suspected that Miller and Grafenauer were falsifying documents, he advised the branch manager, all of which is inconsistent with the claim that he taught Miller how to forge the documents.

documents when he returns from vacation, and I will be confirming with the College or University that they have record of the student receiving college credit. Pls confirm receipt of these requirements.

(CX 15 at 3.)

According to Grafenauer, after he received the e-mail, he “initially went to [Miller] and said it seems as if this paperwork isn’t just meaningless, that it is important and that I am no longer going to participate in forging those documents.” He testified that “it really wasn’t until September of ’02 when [the operations manager] sent me those e-mails that in my mind I felt that [the forgery scheme] was wrong.” (Tr. 311, 363.)

Grafenauer was not a credible witness. By his own admission, he forged many documents. He initially lied to UBS investigators, denying responsibility for the forgeries. He submitted a false claim to obtain unemployment benefits. And, as explained below, at the hearing in this matter he testified that he had lied under oath during his unemployment hearing.

There is no independent evidence to support Grafenauer’s testimony that Miller induced him to falsify the documents, or that after he received the e-mail from the operations manager, he advised Miller that he would no longer participate in the scheme. He admitted that, prior to the hearing, he had never told anyone that Miller told him to falsify the documents. He did not tell the UBS investigators or NASD staff that he was following Miller’s instructions when he forged the documents. Furthermore, during his unemployment compensation hearing, he expressly denied twice, under oath, that anyone had instructed him to falsify the intern documentation. (Tr. 184, 208-09; CX 12 at 40, 48.)

Grafenauer testified that, prior to the hearing in this matter, he had been afraid to blame Miller because Miller had verbally and physically abused him, and because Miller owed him a substantial amount of money. Once again, however, he conceded that, prior to the hearing, he had never told anyone that Miller was abusing him. He did not tell the UBS investigators or NASD staff that he had been acting under any sort of duress. Furthermore, his testimony in that regard was inconsistent with his decision to go into business with Miller after they were terminated by UBS.

In any event, even assuming that all of Grafenauer's testimony was true, it would not establish a defense to the charge. A registered representative is expected to know that forgery is unethical and that it violates the representative's obligation to observe high standards of commercial honor. Although Grafenauer says that he believed the documents were meaningless, on their face they represented significant commitments by the colleges to hold UBS harmless and to provide credit to the interns for the work they performed for UBS. Indeed, Grafenauer knew that the hold harmless agreements, in particular, were so significant to the colleges that they would not sign them, which is why it was necessary to forge the documents.

A registered representative is also expected to resist the urgings of co-workers to engage in unethical activities, and to report to the firm or NASD any efforts by co-workers to coerce him or her to engage in such activities. A representative who cannot recognize that forgery is improper and who cannot resist pressure to engage in it lacks the ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public.

Therefore, the Hearing Panel finds that by forging for-credit intern documentation, Grafenauer violated Rule 2110, as charged.

#### **4. Sanctions**

For forgery or falsification of records, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000. In addition, in cases where mitigating factors exist, the Guidelines recommend a suspension of up to two years, and in egregious cases a bar. NASD Sanction Guidelines at 43 (2001 ed.). Enforcement requested a bar.

In setting specific sanctions in cases involving fraud or falsification of documents, the Guidelines indicate that the Hearing Panel should, in particular, consider the nature of the documents forged or falsified, and whether the respondent had a good-faith, but mistaken, belief of express or implied authority. Id. In this case, Grafenauer admits that he did not believe that he had authority to sign the hold harmless agreements or letters on behalf of the colleges. Although he says he thought those documents were meaningless, in fact they were quite significant. They purported to commit the colleges to indemnify UBS from potential claims and liabilities arising from the intern program, and to assure UBS that the interns would receive credit if they completed the program. In fact, UBS had no protections and at least some of the interns did not receive credit because they were not eligible to earn credits for intern work.

The Guidelines also include a number of general considerations in setting sanctions for any type of violation, several of which are applicable here. Sanction Guidelines at 9-10. Grafenauer forged numerous documents, in accordance with an established pattern, over a period of many months. His misconduct could have, and to some extent did, cause injury to UBS; his fellow UBS employees, including the branch manager and the office manager; the interns; and the colleges. His misconduct was

intentional, not innocent or even negligent. And his misconduct resulted in the potential for monetary gain to Grafenauer, because it allowed him to obtain interns who worked on his behalf at UBS. All of these circumstances are aggravating.

Grafenauer argued in mitigation that, as a young man fresh out of college and in his first professional employment, he came under the psychological and physical domination of Miller, who was older and more experienced. He pointed out that other witnesses who had worked in the Milwaukee branch testified that Miller was the dominant partner. As explained above, however, a registered representative is expected to recognize that forgery – even forgery of “meaningless” documents – is unethical, and to resist urgings to engage in that sort of misconduct.

The circumstances, taken as a whole, establish a highly egregious violation and suggest that Grafenauer would pose a serious risk to member firms and the investing public if he were allowed to continue in the securities industry. Therefore, the Hearing Panel concludes that a bar is the appropriate sanction. In light of the bar, the Panel will not impose a fine.

## **5. Conclusion**

Respondent Todd Grafenauer is barred from associating with any NASD member in any capacity for forgery, in violation of Rule 2110. The bar will become effective immediately if this decision becomes NASD’s final action in this proceeding.<sup>5</sup>

### **HEARING PANEL**

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By: David M. FitzGerald  
Hearing Officer

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<sup>5</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

Copies to: Todd Grafenauer (*via overnight and first class mail*)  
James Blask (*via overnight and first class mail*)  
Pamela Shu, Esq. (*electronically and via first class mail*)  
Richard Schultz, Esq. (*electronically and via first class mail*)  
Rory C. Flynn, Esq. (*electronically and via first class mail*)