

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 58416 / August 22, 2008

Admin. Proc. File No. 3-12889

In the Matter of the Application of

GEOFFREY ORTIZ  
29500 Heathercliff Road No. 169  
Malibu, California 90265

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

Violations of Conduct Rules

Forgery of Customers' Initials on Revised Account Applications

Submission of False Information to Employing Member

Submission of False or Misleading Information to NASD

Conduct Inconsistent with Just and Equitable Principles of Trade

Former registered representative of association member forged or caused the forgery of customer initials on account applications to authorize increased fees and submitted forged documents to employer. Former registered representative also submitted false and misleading information to association in connection with its investigation of forgery allegations. Held, association's findings of violations and sanctions it imposed are sustained.

APPEARANCES:

Geoffrey Ortiz, pro se.

Marc Menchel, Alan B. Lawhead, and Jennifer C. Brooks, for FINRA.

Appeal filed: November 14, 2007  
Last brief received: March 6, 2008

## I.

Geoffrey Ortiz, a former registered representative of NASD member UBS Financial Services Inc. ("UBS"), appeals from NASD disciplinary action. <sup>1/</sup> NASD found that Ortiz forged or caused to be forged the initials of two customers on account applications and submitted the applications to UBS in violation of NASD Conduct Rule 2110 and provided false information to NASD in violation of NASD Conduct Rules 8210 and 2110. <sup>2/</sup> NASD barred Ortiz for the forgery and submission of forged documents to UBS and imposed a separate bar for his violation of NASD Rule 8210. <sup>3/</sup> We base our findings on an independent review of the record.

## II.

Ortiz entered the securities industry in 1988, and was employed by UBS in its Beverly Hills branch office at the time of the events at issue. Ortiz was in the lowest quintile of production at the Beverly Hills branch. Dennis Barron began buying municipal bonds through Ortiz in 1995 or 1996. Yuko Barron, Dennis Barron's wife, did not become a customer of Ortiz until 2001.

Between approximately 1996 and 2001, Ortiz repeatedly attempted to convince the Barrons to open a fee-based managed account at UBS. The Barrons declined because they did

---

<sup>1/</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member-regulation, enforcement, and arbitration functions of the New York Stock Exchange. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (Aug. 1, 2007). Because NASD instituted the disciplinary action before that date, we continue to use the designation NASD.

<sup>2/</sup> NASD Conduct Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." This standard governed Ortiz's conduct when he was an associated person of UBS. NASD General Rule 115 ("Persons associated with a member shall have the same duties and obligations as a member under [NASD] Rules."). NASD Rule 8210 requires persons associated with a member to provide information orally, in writing, or electronically in response to requests from NASD staff in connection with an investigation.

<sup>3/</sup> NASD also imposed hearing costs of \$4,778.52.

not want to pay a fee for the services of a professional money manager. By April 2001, however, a decline in the stock market induced Yuko Barron to invest \$250,000 in a managed account offered to her by another broker-dealer, which charged an annual management fee of 1.5%. Yuko Barron thought the 1.5% annual fee was too high, but she agreed to pay it.

In August 2001, the Barrons asked Ortiz for information about UBS's ACCESS managed-account program. The ACCESS program assigned individual accounts with at least \$100,000 in assets to outside money managers chosen by the investor for investment according to a published investment strategy. UBS charged ACCESS account holders a variable annual fee based on the value of the assets in the account. <sup>4/</sup> Ortiz persuaded Yuko Barron to open five accounts for herself and her husband. However, Yuko Barron was emphatic that she would not pay more than a 1.5% management fee. Ortiz explained to Yuko Barron that he could probably provide the Barrons the 1.5% fee that she demanded because UBS permitted its representatives to discount the ACCESS program's standard fees. <sup>5/</sup> On August 7, 2001, Ortiz gave the Barrons five partially completed ACCESS account application forms with the pre-printed standard fees crossed out and replaced with the hand-written notation "1.5[%]." Ortiz understood at that time that the Barrons were going to open their ACCESS accounts with a total of \$1 million. <sup>6/</sup> The Barrons signed and dated the ACCESS applications on August 8, 2001 and asked Ortiz to come to their house to pick them up.

When Ortiz picked up the signed applications on August 9, 2001, he learned that the Barrons were investing a total of \$500,000 through the family trust and planned to invest an additional \$300,000 in the near future, but he did not change the annual fee provision to reflect

---

<sup>4/</sup> UBS's variable fee schedule charged a 2.8% fee on accounts worth up to \$500,000. Accounts worth between \$500,000 and \$1 million were charged a blended rate of 2.8% on the first \$500,000 and 2.2% on the remainder between \$500,000 and \$1 million. For accounts worth between \$1 million and \$5 million, UBS charged 2.8% on the first \$500,000, 2.2% on the second \$500,000, and 1.6% on the amount between \$1 million and \$5 million. For accounts worth more than \$5 million, UBS charged an additional 1.4% on the amount over \$5 million.

<sup>5/</sup> Ortiz had discretion to discount UBS's standard fees down to a prescribed minimum. The minimum fee on amounts up to \$500,000 was 1.75%. Ortiz could reduce the fees at the breakpoints described in note 4, *supra*, to no less than 1.4%, 0.9%, and 0.75% respectively. Ortiz did not need management permission to give the prescribed discounts, but a manager had to approve the entire application.

<sup>6/</sup> If they had, the minimum fee Ortiz could have offered them would have been an effective rate of 1.575%, not the 1.5% Ortiz promised them.

the lower-than-expected opening investment. <sup>7/</sup> When Ortiz returned to his office, he signed each of the five applications as the Barrons' financial advisor and gave them to his assistant, Vivian Sanders, for handling. After internal processing by the Beverly Hills office, Sanders sent the Barrons' applications to UBS's New Jersey office on August 14, 2001 for final approval.

On August 16, 2001, an employee from UBS's New Jersey home office notified Ortiz that the Barrons' applications would not be approved because the 1.5% fee to which the Barrons agreed was below the minimum fee required for accounts worth \$500,000 or less. That same day, Ortiz received five UBS inter-office communications ("wires") notifying him that each of the Barrons' ACCESS account applications had been rejected because the applications were not accompanied by "managed account trustee cert forms" (which UBS required because the Barrons were opening accounts in the name of a trust); the fees were "below the maximum allowable discount rate"; and the accounts were not fully funded. The wires also informed Ortiz that he would need to open a "star case" (another UBS inter-office communication for resolution of customer service problems) if the accounts were to be "related for fee purposes." Shortly after receiving the wires, Sanders, acting at Ortiz's direction, opened a star case for each of the five account applications and sent the following message to the New Jersey office in connection with each account: "Please update the [b]reakpoint to 1.75 and 1.4. Thank you, Vivian." On the morning of August 17, 2001, Ortiz was told by the New Jersey office that the Barrons needed to initial the changed fees and the revised applications had to be sent back to New Jersey before the accounts would be approved for opening.

On the afternoon of August 17, 2001, Ortiz gave Sanders five ACCESS applications, each of which had the revised fees on it, as well as writing that purported to be the Barrons' initials approving the fee increase. Ortiz directed Sanders to transmit the revised applications to New Jersey. Sanders faxed the applications to Kevin Hong at the New Jersey office with a cover sheet indicating that the transmission contained a total of six pages and that "[the] [b]reakpoint [had been] changed and initialed." The fax time stamp along the top edge of the cover sheet indicates the date and time the revised applications were faxed from the fax machine in the operations department of the Beverly Hills office. The New Jersey office received the faxed applications with the Barrons' purported initials a short time after the Beverly Hills office sent them.

Although the record includes copies of the revised applications that were faxed to the New Jersey office, it does not contain the New Jersey office's copy of the fax cover sheet that accompanied the revisions. The fax cover sheet was the only document found in the Beverly Hills office that pertained to the August 17, 2001 fax to New Jersey. Sanders testified that, normally, she would file a fax cover sheet together with the material faxed under it. Jackie Kaden, the Administrative Branch Manager for the Beverly Hills office, testified that the originals of initialed revisions of applications faxed to New Jersey (such as the documents in

---

<sup>7/</sup> The Barrons' UBS account statements for April 2002 show that they deposited an additional \$92,530.43 divided equally between two of their five ACCESS accounts.

question here) would routinely be kept in the responsible sales representative's files at the originating branch office and not in the operations department's files "[u]nless a copy was given also to operations to stick in the file." Kaden testified that no copies of the revised applications were found in the operations department's files. Although it is UBS policy that the originals of the revised ACCESS account applications are to be kept in the sales representative's files, the originals of the Barrons' revised ACCESS applications were not found in the course of UBS's investigation or NASD's. 8/

On August 24, 2001, the Beverly Hills office received notice that three of the Barrons' five ACCESS account applications had been approved. Another of the Barrons' applications was approved on August 26, 2001, and the fifth was approved on August 28, 2001. 9/

In September 2002, the Barrons closed their ACCESS accounts because they had performed poorly. In January 2003, the Barrons noticed, in the course of preparing their income tax return, that the fees UBS had charged them for their ACCESS accounts exceeded 1.5%. On January 5, 2003, the Barrons sent a letter of complaint to Ortiz via fax demanding that UBS reimburse them for the overcharges and pay them interest and a penalty in compensation for the excessive fees.

Ortiz referred the Barrons' complaint letter to management, as required under UBS policy. In the course of the ensuing investigation, Ortiz told Kaden that Ortiz had gone to the Barrons' house after learning that the New Jersey office had rejected their applications and had obtained the Barrons' initials on the revised applications. Kaden reported this information to Dennis Barron, who immediately denied that either he or his wife knew that the fees had been increased, and further denied that they approved the increase. When Kaden provided the Barrons with

---

8/ John Cannistraci, UBS's regulatory attorney responsible for providing UBS documents in this matter, also testified that the original initialed revisions of ACCESS account applications would be kept in the sales representative's files. In his briefs, Ortiz quotes Sanders' testimony to the effect that the "back office" in Beverly Hills kept copies of the account applications. That testimony, however, referred explicitly to the applications for accounts handled by the Beverly Hills office. Sanders and Kaden both testified that the originals of ACCESS account applications were sent to New Jersey.

9/ The record contains copies of signed but undated trustee certification forms executed by the Barrons in connection with their ACCESS accounts without which the New Jersey office would not have approved the accounts. Although the Barrons have acknowledged their signatures on the forms, neither Dennis nor Yuko Barron can recall signing them. None of the witnesses at the hearing, including Ortiz (from whose files the copies were produced) could explain how, or when, the forms were signed.

copies of the initialed revised applications, 10/ the Barrons stated that their initials had been forged and filed a criminal complaint alleging forgery with the Beverly Hills Police Department. The Beverly Hills Police referred the matter to NASD, which undertook an investigation. 11/

In response to an NASD staff request for information, Ortiz claimed in a May 5, 2003 statement that, after receiving the phone call from the New Jersey office on the morning of August 16, 2001, he "immediately contacted the Barrons and informed them of [UBS's rejection of their applications], and that I would need to meet with them again to confirm these rates." In that statement, Ortiz also reported that he had met with the Barrons "on or about August 17, 2001" at their house during which

I explained the details of the rate structure to the Barrons over their dining room table . . . . The Barrons understood the structure that I explained, and although they were not happy about the changes, they agreed to the amended rate structure and signed the agreements consenting to such. This occurred at their home the week after they originally signed the agreements with the incorrect rates reflected on them. The alteration in question was done with the Barrons' authorization after we discussed the issue in detail. Moreover, the Barrons each initialed the change on the agreement in my presence.

In a supplemental written statement submitted to NASD on May 20, 2003, Ortiz said that he could not "say with certainty that the meeting took place on [August 17, 2001] or the early part of the following week since many meetings were re-scheduled by Mr. Barron." However Ortiz reiterated that both the Barrons "were present at the meeting at their home to discuss the details of the rate structure."

In a sworn on-the-record interview conducted by NASD staff on November 26, 2003, Ortiz testified as follows:

As I recall, on the 17th [of August 2001], I contacted the Barrons early that day. And Mr. Barron told me to come on out and see them. And I left the office mid morning and drove to their home and had a short meeting with them at their home at their dining room table. I do recall Mrs. Barron offering me something to drink. I asked for a glass of water. I recall Mr. Barron wasn't pleased about fees at all, discussing fees or the increased fees. Mrs. Barron was much more agreeable. And I recall them both signing in succession, passing the papers back and forth to each other and signing the documents.

---

10/ Ortiz was not able to provide Kaden with the originals of the revised applications when requested to do so. A short time later, however, Ortiz gave Kaden copies of the revised applications that he obtained from the New Jersey office.

11/ After filing for arbitration of their dispute with UBS, the Barrons settled their claims against UBS on or about January 13, 2004 for \$3,000.

On further questioning, Ortiz reiterated that both Barrons initialed the documents in his presence. Ortiz pinpointed the date by noting that he met with the Barrons on the same day he went to see Eric Clapton in concert, August 17, 2001.

Both Dennis and Yuko Barron denied that Ortiz informed them, by telephone or otherwise, on August 16, 2001, or on any other date, that the 1.5% fees were inadequate and denied further that Ortiz arranged a meeting at the Barrons' house to discuss increasing the account fees. The Barrons provided NASD with copies of airline boarding passes, a hotel bill, and Yuko Barron's invoice for her professional services as a Japanese language interpreter in North Carolina between August 13 and 18, 2001. These documents confirm that Yuko Barron was in North Carolina on a business trip from August 13, 2001 until August 18, 2001. When confronted by this evidence at the hearing, Ortiz stated that "[a]fter everything I have looked at, I am not certain how it [the appearance of the Barron's initials on the applications] happened." When asked if he could provide an alternative explanation for that event he answered only, "I wish I could."

UBS terminated the employment of Ortiz on December 9, 2003. Ortiz is no longer employed in the securities industry.

Both parties introduced expert handwriting testimony at NASD's hearing. The experts agreed that their analyses were hampered by the lack of "ink-on-paper" originals of the revised applications purportedly initialed by the Barrons. NASD's expert concluded that the initials purporting to be the Barrons' on the copies of the revised applications were not written by them, based on the design and construction of the initials, factors that are not affected by copying processes. He could neither identify nor exclude Ortiz as the forger. Ortiz's handwriting expert did not opine as to whether the initials had been signed by the Barrons, but he did conclude that the initials were "probably" not written by Ortiz and were "probably" written by more than one person.

The Hearing Panel found that both Barrons were direct and credible witnesses, but that Ortiz's testimony was "tentative and unconvincing." The Hearing Panel, on that basis, credited the Barrons' versions of events when there was a conflict with Ortiz's version. The Hearing Panel further found NASD's expert to be more persuasive because he based his analysis of the initials on samples of the Barrons' handwriting written before the allegations of forgery were made, while Ortiz's expert used samples of Ortiz's handwriting given for the purpose of the expert's analysis in this proceeding, which could reflect efforts by Ortiz to disguise his handwriting.

The Hearing Panel found that Ortiz had violated Rule 2110 by forging or causing to be forged the Barrons' initials on their revised ACCESS account applications, and by submitting the forged applications to UBS for processing and approval. The Hearing Panel also found that Ortiz had violated NASD Rule 8210 by providing false and misleading information to NASD in response to an information request during the investigation of the forgery allegations. On appeal, the National Adjudicatory Council sustained these findings.

## III.

A. We have repeatedly held that forgery is a violation of Rule 2110 when the misconduct defrauds a customer or otherwise benefits the forger. 12/ Ortiz was told on August 16, 2001 that the fees needed to be changed and, on the morning of August 17, 2001, that the Barrons had to initial any revisions to the fee provisions of the applications. On the afternoon of August 17, 2001, Ortiz gave revised and initialed applications to Sanders who faxed them to the New Jersey office, which received them a few minutes later. 13/ The documentary evidence establishes that Yuko Barron was not in Los Angeles on August 16 or 17, 2001, the only days on which the initials could have been obtained. This evidence compels the conclusions that Ortiz's testimony and statements were false, and that Yuko Barron could not have signed her initials on the revised application.

This documentary evidence also gives further weight to the Hearing Panel's finding that the Barrons' denials that they had ever initialed the applications were credible. We give great weight and deference to credibility determinations by a Hearing Panel, 14/ which can only be overcome by substantial record evidence. 15/

Ortiz notes that Dennis Barron testified, mistakenly, that he began doing business with Ortiz in or about 1977. Ortiz testified without contradiction that he was born in 1958 and was in high school in 1977. He argues that this error by Dennis Barron warrants a reversal of the Hearing Panel's credibility finding. Dennis Barron's confusion about this collateral event occurring years before the events at issue does not, however, undermine the testimony he gave with respect to the events of August 2001. Moreover, Dennis Barron's testimony with respect to the events relevant to this proceeding is corroborated by the testimony of Yuko Barron, or

---

12/ See, e.g., Eliezer Gurfel, 54 S.E.C. 56, 62 (1999) (finding that applicant agreed to split commissions with firm, but instead forged or caused forgery of commission check and deposited the entire check into his own account), petition denied, 205 F.3d 400 (D.C. Cir. 2000); Ramiro Jose Sugranes, 52 S.E.C. 156, 157 (1995) (finding that applicant falsified bank wires to customer to induce customer to open account with applicant); Brian G. Allen, 50 S.E.C. 509, 510 (1991) (finding that applicant forged president's signature on check and deposited it in his own account).

13/ The Hearing Panel questioned Sanders to ascertain whether she might have forged the initialed applications and credited her denial of involvement with the forgery. Ortiz has never suggested otherwise.

14/ Dane S. Faber, 57 S.E.C. 297, 307 (2004).

15/ See Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655 (Apr. 11, 2008), \_\_\_ SEC Docket \_\_\_, 2008 SEC LEXIS 819 at \*38.

documents, or both. 16/ The expert testimony further supports the Barrons' denials: NASD's expert concluded that the Barrons did not sign the initials, and Ortiz's expert did not offer contrary evidence.

Ortiz suggests, however, that the absence of the original revised ACCESS applications with the disputed initials undermines NASD's finding that he forged or caused the forgery of the Barrons' initials. He complains that UBS was unable to produce the originals of the revised applications and that only three of the copies of the Barrons' applications in the record have the red stamp that the New Jersey office would have given the documents received in the office. 17/ He argues from this absence that "[i]t is evident that UBS has supplied false documents."

Ortiz offers no reason why UBS would have supplied false documents to NASD, and apparently accepts that the three red-stamped documents are the documents UBS received and acted upon. We also note that both Kaden and John Cannistraci testified that originals of any revisions to ACCESS account applications would be kept in the sales representative's files in the branch office. 18/

More significantly, Ortiz does not dispute that, having learned on August 16th that the Barrons' applications required their consent to the amendments, he submitted revised applications with initials purporting to be those of the Barrons on the afternoon of August 17th. As discussed above, the evidence apart from the disputed copies of the revised applications establishes that the initials on the applications Ortiz gave to Sanders were not those of the Barrons. The record, including the expert testimony, does not establish that Ortiz himself signed the initials, but the evidence supports the conclusion that the Barrons did not.

Ortiz had a motive to forge or cause the forgery of the Barrons' initials: he would improve his production, earn a commission on the opening of the new accounts, and increase the assets under management, another element in his compensation. However, Yuko Barron's insistence on a fee of 1.5% or less made it likely that she would not initial the amended applications. The forgery also defrauded the Barrons by resulting in higher annual fees than Ortiz had represented.

---

16/ Cf. Kenneth R. Ward, 56 S.E.C. 236, 260-61 (2003) (disregarding credibility determination of hearing panel where testimony credited was self-serving, the only evidence supporting claim, and contradicted by "overwhelming testimonial and documentary evidence in the record").

17/ The copies of the documents in the record which we reviewed are not in color. The "red stamp" documents, however, were submitted as a numbered exhibit separate from other versions of the account applications.

18/ See supra note 8 and accompanying text.

Accordingly, we sustain NASD's findings that Ortiz forged or caused the forgery of the Barrons' initials on the five ACCESS applications in the record and that Ortiz's conduct violated NASD Rule 2110.

B. NASD also found that Ortiz violated Rule 2110 by submitting false information to UBS, his employing member. We have held generally that conduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade. 19/ We found above that Ortiz forged or caused the forgery of the revised applications, and Ortiz does not dispute that he directed Sanders to submit them to the New Jersey office for approval where they became part of the firm's records. Since the "entry of accurate information on firm records is a predicate to the NASD's regulatory oversight of its members" 20/ and a predicate for any firm's internal compliance program, we sustain NASD's finding that Ortiz's submission of false information to UBS is inconsistent with just and equitable principles of trade.

C. NASD found that Ortiz provided false information to NASD during its investigation of the charges against Ortiz in violation of NASD Rules 8210 and 2110. An associated person who provides false or misleading information to NASD in the course of an investigation violates NASD Rule 8210. 21/ An associated person violates Rule 2110 when he or she violates any other NASD rule. 22/ Moreover, providing false information to NASD is an independent violation of NASD Rule 2110. 23/

In written statements given to NASD in response to requests for information pursuant to Rule 8210 on May 5 and May 20, 2003, Ortiz stated that the Barrons had each initialed the revised applications in his presence. In sworn testimony given to NASD at an on-the-record

---

19/ See James A. Goetz, 53 S.E.C. 472, 477-78 (1998) (holding that associated person of member firms' conduct in disregarding employer's foundation's rules for securing payment of matching gifts and verifying falsely that he was not benefitting personally from matching gifts constituted conduct inconsistent with just and equitable principles of trade).

20/ Charles E. Kautz, 52 S.E.C. 730, 734 (1996).

21/ John Montelbano, 56 S.E.C. 76, 78 (2003).

22/ Robert E. Strong, Exchange Act Rel. No. 57426 (Mar. 4, 2008), \_\_ SEC Docket \_\_\_\_; Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999).

23/ Rooms v. SEC, 444 F.3d 1208, 1214 (10th Cir. 2006) (determining that respondent engaged in conduct contrary to just and equitable principles of trade by providing false information to NASD); Brian L. Gibbons, 52 S.E.C. 791, 795 (1996), aff'd, 112 F.3d 516 (9th Cir. 1997) (table) (construing predecessor to Rule 2110).

interview on November 26, 2003, Ortiz provided a highly detailed and specific narrative of what he claimed were the events of August 17, 2001, including a statement that both Barrons had signed the revised applications on that day in his presence. As we found above, these statements were false. When confronted at the hearing with the documentary evidence of Yuko Barron's absence, Ortiz stated "[a]fter everything I have looked at, I am not certain how [the appearance of the Barrons' initials on the applications] happened." Ortiz's dishonest conduct during NASD's investigation contradicts his claim on appeal that he cooperated with NASD and testified to the best of his recollection.

As a consequence of our finding that the information provided to NASD by Ortiz in his statements of May 5 and 20, 2003 and his testimony of November 26, 2003 were false, we find that Ortiz violated Rules 8210 and 2110 by providing false information to NASD.

#### IV.

Section 19(e)(2) of the Exchange Act governs our consideration of the sanctions imposed by NASD. 24/ Section 19(e)(2) directs us to sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 25/ Ortiz does not address the sanctions imposed on him by NASD in his briefs to the Commission.

A. NASD imposed a single bar for both the forgery and the submission of false documents to UBS. We begin our analysis with a consideration of NASD's Sanction Guidelines. Although the Commission is not bound by the Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). 26/ NASD's Sanction Guidelines with respect to forgery and falsification of documents suggest that in cases of forgery a fine between \$5,000 and \$100,000 is an appropriate monetary sanction. If there are mitigating factors present, a suspension for up to two years should be considered, but in egregious cases, the decision maker should consider a bar. 27/ The Guidelines also suggest that, in assessing the proper sanctions, decision makers should consider two specific factors: the "nature of

---

24/ 15 U.S.C. § 78s(e)(2).

25/ Ortiz does not claim, and the record does not show, that NASD's action imposed an unnecessary or inappropriate burden on competition.

26/ Perpetual Secs., Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2506 n.56. NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in sanctions. Id. (citing NASD Sanction Guidelines 1 (2006 ed.)).

27/ NASD Sanction Guidelines 39 (2006 ed.) (available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>).

document(s) forged or falsified" and "[w]hether respondent had a good faith, but mistaken, belief of express or implied authority" to act as he or she did. 28/

"There can hardly be more serious misconduct in the securities business than forgery . . . ." 29/ Ortiz forged or caused the forgery of the Barrons' initials on account applications that purported to authorize an increase in account fees over what they had originally agreed to pay. Ortiz knew that UBS would not open the accounts unless the Barrons approved the increased fees and also knew that the Barrons were very sensitive to the amount of fees charged and were unlikely to approve the increase if asked to do so. Ortiz does not contend that he believed he had authority to initial the applications on behalf of the Barrons. In submitting the falsified documents to UBS, Ortiz evidenced a disregard of his responsibilities to his customers and his employing member and of the basic requirement that associated persons ensure the accuracy of member firm records. 30/ Ortiz never accepted responsibility for his misconduct and continues to blame others for what occurred, even after documentary evidence proved that his version of the events of August 17, 2001 was impossible.

The public interest demands honesty from associated persons of NASD members; anything less is unacceptable. This is especially true with respect to forgery of documents on which NASD members depend to ensure that they act with their customers' consent when such consent is required. As NASD found, Ortiz's use of the forged applications was aggravated by the financial harm caused to his customers and to his firm in the action brought by the Barrons against the firm. Ortiz does not identify any factors that could mitigate his culpability or the seriousness of his misconduct. If customers of NASD members cannot expect to be protected from forgery of documents evidencing their consent, and NASD members cannot trust the documents submitted to them by their associated persons, the industry cannot operate. The industry must be protected from those who would undermine this trust; they cannot be, and have not been, allowed to continue to work in the industry. 31/ The bar also serves the goal of general deterrence by alerting others who may be in a position to forge or cause the forgery of account documents, or submit forged documents to their employers, that forgery is treated as serious misconduct and receives severe sanctions. We find that the bar imposed for the forgery and submission of falsified documents to UBS is not excessive or oppressive.

---

28/ NASD Sanction Guidelines at 39.

29/ Brian G. Allen, 50 S.E.C. 509, 510 (1991).

30/ Kautz, 52 S.E.C. at 734.

31/ See, e.g., Mark F. Mizenko, Exchange Act Rel. No. 52600 (Oct. 13, 2005), 86 SEC Docket 1515; Gurfel, 54 S.E.C. at 63-64; Donald M. Bickerstaff, 52 S.E.C. 232 (1995); Kautz, 52 S.E.C. at 730.

B. NASD imposed a separate bar for Ortiz's false statements to NASD's staff. NASD Guidelines address failures to respond truthfully, together with failures to respond completely or in part, as actions impeding regulatory investigations. We have observed that the ability to request and obtain information from its members and associated persons is crucial to NASD's performance of its regulatory mission, and that the complete failure to respond to such requests is "fundamentally incompatible" with that mission:

A complete failure to respond to a request for information . . . renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests. "Because of limited Commission resources, Congress has given NASD . . . significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." 32/

As such, we have stated that the Guidelines' proposal of a bar as the standard sanction for such misconduct reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry. 33/

Just as refusing to respond at all to requests for information undermines NASD's ability to conduct investigations, supplying false information to NASD during an investigation, as Ortiz did here, "mislead[s] NASD and can conceal wrongdoing" and thereby "subvert[s]" NASD's ability to perform its regulatory function and protect the public interest. 34/ Because of the risk of harm to investors and the markets posed by such misconduct, we conclude that the failure to provide truthful responses to requests for information renders the violator presumptively unfit for

---

32/ PAZ Secs., Inc., Exchange Act Rel. No. 57656 (Apr. 11, 2008), \_\_ SEC Docket \_\_, \_\_ (quoting Charles C. Fawcett, IV, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3157).

33/ PAZ Secs., \_\_ SEC Docket at \_ (quoting Fawcett, 91 SEC Docket at 3157).

34/ Michael A. Rooms, Exchange Act Rel. No. 51467 (Apr. 1, 2005), 85 SEC Docket 444, 450, aff'd, 444 F.3d 1208 (10th Cir. 2006).

employment in the securities industry. Where, as here, there are no factors mitigating the risk of future harm, a bar is an appropriate remedy. Accordingly, on the facts of this case, we find that the bar NASD imposed on Ortiz for providing false information in response to an information request pursuant to Rule 8210 is neither excessive or oppressive, and we sustain it.

An appropriate order will issue. 35/

By the Commission (Chairman COX and Commissioners CASEY, AGUILAR and PAREDES); Commissioner WALTER not participating.

Florence E. Harmon  
Acting Secretary

---

35/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 58416 / August 22, 2008

Admin. Proc. File No. 3-12889

In the Matter of the Application of

GEOFFREY ORTIZ  
29500 Heathercliff Road No. 169  
Malibu, California 90265

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Geoffrey Ortiz, and  
NASD's assessment of costs, be, and they hereby are, sustained.

By the Commission.

Florence E. Harmon  
Acting Secretary