

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of

Charles Scott Burford, Sr.

For Review of

FINRA Disciplinary Action

File No. 3-21915

**FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. FACTS .....	3
A. Background .....	3
B. Burford’s Relationship with His Customer, LR, and LR’s Death .....	3
C. Burford Failed to Timely Notify Hilltop of LR’s Death and To Follow Firm Procedures for Handling a Deceased Customer’s Account .....	4
D. Burford Effected 17 Unauthorized Transactions in LR’s Individual Account During a Period of More than Two Years .....	5
1. Burford’s Effected Eight Unauthorized Transactions from October 2016 through December 2017 .....	5
2. Burford Opened a Beneficiary IRA Account for PR in December 2017 But Did Not Freeze LR’s Individual Account .....	5
3. Burford’s Effected Nine Additional Unauthorized Transactions from January 2018 to November 2018 .....	6
E. Burford Froze LR’s Individual Account More Than Two Years after LR’s Death .....	6
F. Three Years After LR’s Death, Burford Finally Informed Hilltop About His Unauthorized Transactions in LR’s Account .....	7
G. LR’s Daughter Received the Remaining Balance in LR’s Individual Account After Contesting His Will .....	8
III. PROCEDURAL BACKGROUND .....	8
IV. ARGUMENT .....	10
A. Burford Executed Unauthorized Trades and Facilitated Unauthorized Withdrawals in Violation of FINRA Rule 2010 .....	10
B. The Sanctions that the NAC Imposed Are Remedial and Serve the Public Interest .....	14
V. CONCLUSION .....	25

**TABLE OF AUTHORITIES**

<b><u>FEDERAL DECISIONS</u></b>	<b><u>PAGE(S)</u></b>
<i>In re Est. of Silverman</i> , 579 S.W.3d 732 (Tex. App. 2019).....	11
<i>PAZ Sec., Inc. v. SEC</i> , 494 F.3d 1059 (D.C. Cir. 2007) .....	15
<i>Saad v. SEC</i> , 718 F.3d 904 (D.C. Cir. 2013) .....	15
 <b><u>SEC DECISIONS</u></b>	
<i>Howard Braff</i> , Exch. Act Release No. 66467, .....	15, 18
2012 SEC LEXIS 620 (Feb. 24, 2012)	
<i>John B. Busacca, III</i> , Exch. Act Release No. 63312, .....	20
2010 SEC LEXIS 3787 (Nov. 12, 2010)	
<i>Keith D. Geary</i> , Exch. Act Release No. 80322, .....	20
2017 SEC LEXIS 995 (Mar. 28, 2017)	
<i>Stephen Grivas</i> , Exch. Act Release No. 77470, .....	10
2016 SEC LEXIS 1173 (Mar. 29, 2016)	
<i>Thomas W. Heath, III</i> , Exch. Act Release No. 59223, .....	13
2009 SEC LEXIS 14 (Jan. 9, 2009)	
<i>Lek Sec. Corp.</i> , Exch. Act Release No. 82981, .....	17
2018 SEC LEXIS 830 (Apr. 2, 2018)	
<i>Wendy McNeeley, CPA</i> , Exch. Act Release No. 68431, .....	18
2012 SEC LEXIS 3880 (Dec. 13, 2012)	
<i>mPhase Tech., Inc.</i> , Exch. Act Release No. 74817, .....	10
2015 SEC LEXIS 398 (Feb. 2, 2015)	
<i>William J. Murphy</i> , Exch. Act Release No. 69923, .....	13, 19
2013 SEC LEXIS 1933 (July 2, 2013)	
<i>N. Woodward Fin. Corp.</i> , Exch. Act Release No. 74913, .....	18
2015 SEC LEXIS 1867 (May 8, 2015)	
<i>PAZ Sec., Inc.</i> , Exch. Act Release No. 57656, .....	18
2008 SEC LEXIS 820 (Apr. 11, 2008)	

<i>John Joseph Plunkett</i> , Exch. Act Release No. 69766, .....13 2013 SEC LEXIS 1699 (June 14, 2013)	
<i>Richard Allen Riemer</i> , Exch. Act Release No. 84513, .....10 2018 SEC LEXIS 3022 (Oct. 31, 2018)	
<i>Wanda P. Sears</i> , Exch. Act Release No. 58075,.....11, 13, 19 2008 SEC LEXIS 1521 (July 1, 2008)	
<i>Anthony Tricarico</i> , 51 S.E.C. 457 (1993) .....14, 19	
<i>Robert D. Tucker</i> , Exch. Act Release No. 68210, .....15 2012 SEC LEXIS 3496 (Nov. 9, 2012)	
<i>Blair Alexander West</i> , Exch. Act Release No. 74030,.....11 2015 SEC LEXIS 102 (Jan. 9, 2015)	

**FEDERAL STATUTES AND CODES**

15 U.S.C. § 78s(e)(1) .....10	
15 U.S.C. § 78s(e)(2) .....14	
17 C.F.R. § 201.450(b) .....10	
Tex. Est. Code § 256.001 .....11	

**FINRA RULES AND GUIDELINES**

<i>FINRA Sanction Guidelines</i> (2021 ed.) ..... passim	
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File No. 3-21915

**FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW**

**I. INTRODUCTION**

The applicant, Charles Scott Burford, Sr., executed unauthorized trades in, and facilitated unauthorized withdrawals from, his deceased customer's account at Hilltop Securities Independent Network, Inc. ("Hilltop"). Burford acted based on instructions from his deceased customer's wife, who Burford knew was neither authorized to effect transactions in the account nor a beneficiary of that account. Burford also knew that Hilltop's written supervisory procedures required him to immediately inform the firm about his customer's death and to consider the assets in the customer's account "frozen." Despite Burford's knowledge of his customer's death and Hilltop's explicit policies, Burford executed 17 unauthorized transactions in the customer's account during a period of more than two years after his death.

FINRA's National Adjudicatory Council ("NAC") correctly found that the 17 transactions that Burford effected in his deceased customer account based on the wife's instructions were unauthorized and thus violated FINRA Rule 2010. Unable to contest the

undisputed facts, and faced with Commission precedent that firmly establishes that unauthorized trading violates FINRA Rule 2010, Burford asserts that his misconduct should be excused because he was acting in “good conscience” and did not want to cause his customer’s widow financial hardship. Burford’s feelings and moral judgment do not negate the simple fact that the wife, who was not Burford’s customer, did not have authority to direct transactions in the deceased customer’s account at the time. That Burford believed he was acting in his deceased customer’s interest, and that Burford did not personally benefit from his misconduct, does not excuse his serious breach of the duty set forth in FINRA Rule 2010 to observe the high standards of commercial honor and just and equitable principles of trade.

For this misconduct, the NAC fined Burford \$10,000 and suspended him from associating with any FINRA member in any capacity for six months. In determining sanctions, the NAC found no mitigating factors but detailed several aggravating factors, including Burford’s three-year-long concealment of his actions from his firm and his failure to fully understand the seriousness of his misconduct. Contrary to Burford’s assertions, his actions are the antithesis of “consumer protection” and the high standards of commercial honor and just and equitable principles of trade required of securities industry professionals.

The record evidence and applicable law supports the NAC’s liability findings and the sanctions it imposed. Burford presents no legitimate reason to disturb the NAC’s liability findings or its sanctions. Burford’s misconduct reflects squarely on his ability to comply with the regulatory requirements that are necessary to the proper functioning of the securities industry and vital for the protection of the investing public. The NAC’s findings of liability are based in fact, and the NAC’s sanctions—a six-month suspension in all capacities and \$10,000 fine—are appropriately remedial, necessary for the protection of the investing public, and thus neither

excessive nor oppressive. The Commission should accordingly affirm the NAC’s decision in all respects and dismiss Burford’s application for review.

## **II. FACTS**

### **A. Background**

Burford is an experienced securities industry professional. Burford entered the securities industry in 1976 and first registered with FINRA in 1990. RP 25, 263 (Stip. ¶1), 559.<sup>1</sup> In 1995, Burford associated with Hilltop and registered as a general securities representative, general securities principal, municipal securities principal, registered options principal, financial and operations principal, and operations professional. RP 25, 263 (Stip. ¶2), 559. On November 19, 2019, Hilltop filed a Uniform Termination Notice of Securities Industry Registration (Form U5) disclosing that it had terminated Burford’s association due to his failure to follow firm policy regarding the death of a customer. RP 25, 559, 575-80. Burford has not since associated with a FINRA member. RP 263 (Stip. ¶2), 559.

### **B. Burford’s Relationship with His Customer, LR , and LR’s Death**

LR was Burford’s wife’s first cousin. RP 264 (Stip. ¶4). In 2013, Burford became the registered representative for LR. RP 264 (Stip. ¶8). LR opened a non-discretionary brokerage account (the “individual account”) that did not name a beneficiary. RP 264 (Stip. ¶¶ 9-10), 266 (Stip. ¶25). LR also opened a beneficiary IRA brokerage account (the “IRA account”) that named his wife, PR, as the beneficiary. RP 264 (Stip. ¶9). LR had married PR in 2012 and executed a will in November 2013 naming PR as executor and the primary beneficiary of his estate. RP 264 (Stip. ¶4).

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<sup>1</sup> “RP \_\_\_” refers to the page numbers in the certified record filed by FINRA on May 7, 2024.

On October 6, 2016, LR died. RP 264 (Stip. ¶11), 583. A week prior to his death, LR authorized PR to direct sales or trades in LR's individual account, under a Hilltop Trading Authorization Agreement executed by LR and PR. RP 267 (Stip. ¶26), 581. This authorization terminated upon LR's death. RP 267 (Stip. ¶26).

Burford learned about LR's death when it occurred. RP 264 (Stip. ¶11). At the time of his death, LR's individual account held approximately \$392,801.21, and his IRA account held \$38,671.23. RP 265 (Stip. ¶13).

**C. Burford Failed to Timely Notify Hilltop of LR's Death and To Follow Firm Procedures for Handling a Deceased Customer's Account**

Hilltop recognized the dangers of permitting transactions in a customer's account after his or her death. For that reason, the firm had detailed policies that described the specific steps that a registered representative must undertake when a customer dies. RP 631-32. The policies explained: "When a customer dies, the account assets owned by the deceased person may become subject to a will, estate laws, and other governing documents. The assets are, therefore, frozen in the account until necessary documents are received and legal distribution has been determined." RP 631. These policies further provided that, upon the death of a customer, a registered representative, like Burford, must: "(i) immediately notify [Hilltop's] New Accounts Department; (ii) cancel all open orders; and (iii) consider assets in the deceased person's account as 'frozen' until distribution of the assets has been determined, *i.e.*, accept no orders and do not authorize sending of securities or funds from the account." RP 631; *see also* RP 265 (Stip. ¶14); 395-96 (Tr. 67:19-24); 463 (Tr.134:23-135:6), 480 (Tr. 152:5-16).

Burford admits that, at the time of LR's death, he was aware that Hilltop's policies required him to inform his firm of LR's death, and that the firm would require a death certificate,



letters testamentary,<sup>2</sup> and an affidavit of domicile to process LR's death and distribute his assets. RP 122 (Tr. 111); 265 (Stip. ¶¶14-15, 17), 411-412 (Tr. 83:23-84:6). In fact, this was not Burford's first experience with a customer's death, and he previously had followed Hilltop's procedures when other customers had died. RP 265 (Stip. ¶16).

**D. Burford Effected 17 Unauthorized Transactions in LR's Individual Account During a Period of More than Two Years**

Notwithstanding Burford's knowledge of LR's death and Hilltop's policies for the handling of a deceased customer's account, Burford did not request that Hilltop freeze LR's individual account for more than two years after LR's death. During that period, from October 2016 to November 2018, Burford executed nine trades in, and facilitated eight withdrawals from, LR's individual account based on instructions from PR. RP 428 (Tr. 100:6-17), 555, 557.

**1. Burford's Effected Eight Unauthorized Transactions from October 2016 through December 2017**

From LR's death to December 2017, Burford executed five of the nine securities trades totaling \$70,176.12 in LR's individual account, and facilitated three of the eight unauthorized withdrawals totaling \$55,000 from LR's individual account, based on instructions from PR. RP 265 (Stip. ¶22), 428 (Tr. 100:6-17), 555, 557.

**2. Burford Opened a Beneficiary IRA Account for PR in December 2017 But Did Not Freeze LR's Individual Account**

By the end of 2017, Burford needed to open a beneficiary IRA account for PR to take a required minimum distribution from LR's IRA account by year's end. RP 429 (Tr. 101:9-

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<sup>2</sup> "Letters testamentary" is an "official exemplification of the appointment of an executor by the court. Letters issued by a court of probate to a person as evidence of his authority and office as the executor of a deceased person's estate." Ballentine's Law Dictionary (3rd ed. 2010).

102:10). Burford admitted it was “unusual” to wait 14 months to open a beneficiary IRA account and that he “likely” waited because he did not want anyone at Hilltop to identify his ongoing, impermissible activity in LR’s individual account. RP 432 (Tr. 104:10-24)). Based on Burford’s instructions, his assistant initiated a request to open the new account for PR, and his assistant provided LR’s death certificate to Hilltop’s new accounts department. RP 267 (Stip. ¶¶27), 585-89; 470 (142:20-143:22). Neither Burford nor his assistant informed Hilltop that LR’s individual account remained open and active, or that Burford had effected transactions in that account, based on PR’s instructions after LR’s death. RP 267 (Stip. ¶¶ 27-28); 433 (Tr. 105:3-106:3).

**3. Burford’s Effected Nine Additional Unauthorized Transactions from January 2018 to November 2018**

After his assistant submitted LR’s death certificate to Hilltop’s new accounts department, Burford continued to effect transactions in LR’s individual account based on PR’s instructions through November 2018. From January 2018 to November 2018, Burford executed the four remaining trades totaling \$59,795.91 in LR’s individual account, and facilitated five additional withdrawals totaling \$29,669.87 from LR’s individual account, based on instructions from PR. RP 267 (Stip. ¶¶29-30), 428 (Tr. 6-17), 555, 557.

**E. Burford Froze LR’s Individual Account More Than Two Years after LR’s Death**

Prior to January 2019, Burford knew that the probate process for LR’s will was not completed. RP 266 (Stip. ¶¶20), 267 (Stip. ¶¶31). Burford also knew that, if Hilltop found out that he had effected transactions in LR’s individual account at any time during that period, Hilltop would have stopped him and frozen LR’s individual account. RP 439-40 (Tr. 111:14-122:4); Burford Opp. Br. at 1. Yet Burford still did not stop effecting transactions.

In January 2019—more than two years after LR died—Burford learned that LR’s adult daughter from his first marriage, AD, planned to challenge the validity of LR’s will. RP 264 (Stip. ¶7), 268 (Stip. ¶32). Burford only then informed Hilltop in connection with the individual account that LR had died and requested that Hilltop freeze LR’s individual account. RP 268 (Stip. ¶33), 591-92. In connection with that request, Burford provided LR’s death certificate to Hilltop. RP 268 (Stip. ¶33). Burford nevertheless failed to inform Hilltop that he had improperly effected transactions in LR’s individual account.

**F. Three Years After LR’s Death, Burford Finally Informed Hilltop About His Unauthorized Transactions in LR’s Individual Account**

In May 2019, Burford received an email from AD’s attorney which asserted that LR’s individual account had effectively passed to PR without a beneficiary designation or letters testamentary. RP 268 (Stip. ¶34), 623. Following that email, in June 2019, AD petitioned the probate court for a temporary restraining order, requesting that the court enjoin PR from spending, transferring, or otherwise disposing of LR’s property. RP 268 (Stip. ¶35), 597-618.

Despite receiving this email, Burford did not notify Hilltop about his unauthorized activity in LR’s individual account until several months later. In October 2019, Burford received a letter from AD’s attorney detailing unauthorized distributions to PR from LR’s individual account. RP 268 (Stip. ¶36), 625. The letter informed Burford that AD had challenged LR’s will and warned Burford that Hilltop could be liable if the will was set aside. RP 625. As a result of this correspondence, on October 11, 2019, Burford finally notified his supervisor at Hilltop that he had effected transactions in LR’s individual account after LR’s death. RP 268 (Stip. ¶36), 629.

Hilltop subsequently investigated Burford’s conduct. During an interview with the firm, Burford explained that he did not freeze LR’s account after learning about LR’s death because it

was a “family situation.” He continued, “I allowed PR access to the account prior to probating with the understanding that she would get me the necessary documents in the near future. It just kept dragging on and on. [I] [d]id not intend for it to last several years . . . . [I] [a]llowed access to pay living expenses. Had a copy of the will naming PR executor and knew LR’s final wishes.” RP 627. Following its investigation, Hilltop terminated Burford’s association for failing to follow Hilltop’s policies regarding deceased customers’ accounts. RP 268 (Stip. ¶37).

**G. LR’s Daughter Received the Remaining Balance of LR’s Individual Account After Contesting His Will**

A few months later, PR and AD reached a settlement in LR’s will contest litigation in probate court. RP 268 (Stip. ¶38). LR’s will was admitted to probate, and the probate court issued letters testamentary to AD and appointed her as an independent executor of LR’s will on April 23, 2020. RP 268 (Stip. ¶¶38-39), 619-21. Pursuant to the settlement agreement and court’s order, AD, not PR, received the balance of the funds in LR’s individual account, *i.e.*, the amount in the account at the time of LR’s death minus the funds that Burford had distributed without authorization to PR over two years. RP 268 (Stip. ¶38), 619-21, 633-645.

**III. PROCEDURAL BACKGROUND**

On September 22, 2021, FINRA’s Department of Enforcement filed a one-cause complaint alleging that Burford executed unauthorized trades in, and facilitated unauthorized withdrawals from, his deceased customer’s account, in violation of FINRA Rule 2010. RP 1-13. After a one-day hearing, the Hearing Panel found Burford liable for the alleged misconduct. RP 647-60. The Hearing Panel fined Burford \$10,000 and suspended him from associating with any FINRA member in any capacity for six months. RP 659.

Following Burford’s appeal, the NAC affirmed the Hearing Panel’s liability findings and the sanctions it imposed. RP 661, 788-798. The NAC found that the record showed

unequivocally that Burford made unauthorized transactions in the conduct of his business at Hilltop. RP 793. The NAC noted that the parties stipulated to most of the facts underlying the allegations, and PR did not have any authority over LR's individual account. RP 793. The NAC therefore concluded that the 17 transactions that Burford executed in LR's individual account from October 2016 to November 2018 in accordance with PR's instructions were unauthorized and, based on established Commission precedent, violated FINRA Rule 2010. RP 794.

After detailing an array of aggravating factors, and finding no mitigation, the NAC agreed with the Hearing Panel that a \$10,000 fine and six-month suspension in all capacities were appropriately remedial sanctions for Burford's misconduct. RP 794-97. Notably, the NAC found that Burford's three-year concealment of his misconduct "appreciably" aggravated his misconduct. RP 795. The NAC also assessed additional aggravation because Burford failed to appreciate the seriousness of his misconduct and there was no assurance that Burford would not repeat his actions in the future under similar circumstances. RP 796-97.

On April 12, 2024, Burford filed this appeal with the Commission.

#### IV. ARGUMENT

##### A. Burford Executed Unauthorized Trades and Facilitated Unauthorized Withdrawals in Violation of FINRA Rule 2010

Burford does not contest FINRA's liability findings.<sup>3</sup> Nor can he. FINRA's findings that Burford violated FINRA Rule 2010 by executing unauthorized trades in, and facilitating unauthorized withdrawals from, his deceased customer's account are fully supported by the record and consistent with the Exchange Act.<sup>4</sup>

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." To determine whether conduct violates FINRA Rule 2010, the Commission examines whether the misconduct "reflects on the associated person's capacity 'to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money.'" *Stephen Grivas*, Exch. Act Release No. 77470, 2016 SEC LEXIS 1173, at \*10 (Mar. 29, 2016) (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1163 (2002)). To be liable under FINRA Rule 2010,

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<sup>3</sup> While Burford raised various liability finding in his application for review, Burford requests in his brief in support only that the Commission vacate the sanctions FINRA imposed on him (and without any citation to the record or authority). RP 799; Burford Opp. Br. at 1. Therefore, Burford abandoned his challenges to FINRA's liability findings by failing to address it in his brief. Burford Opp. Br. at 1; *see* Rule of Practice 450(b), 17 C.F.R. § 201.450(b) (stating that in the parties' briefs each "exception to the findings or conclusions being reviewed shall be stated succinctly" and "shall be supported by citation to the relevant portions of the record...and by concise argument"); *mPhase Tech., Inc.*, Exch. Act Release No. 74187, 2015 SEC LEXIS 398, at \*54 (Feb. 2, 2015) (finding that applicant abandoned argument that it made in its application for review but not in its subsequent briefs).

<sup>4</sup> The Commission reviews FINRA disciplinary decisions to determine (1) whether the applicant engaged in the misconduct FINRA found; (2) whether the misconduct violated the rules specified in FINRA's determination; and (3) whether the rules were applied in a manner consistent with the Exchange Act. *See* 15 U.S.C. § 78s(e)(1); *see also* *Richard Allen Riemer*, Exch. Act Release No. 84513, 2018 SEC LEXIS 3022, at \*8 (Oct. 31, 2018).

the conduct must be business related and in bad faith or unethical. *See Blair Alexander West*, Exch. Act Release No. 74030, 2015 SEC LEXIS 102, at \*20 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016). Executing or facilitating transactions for a customer's account without authorization constitutes "a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade" and goes to "the heart of the trustworthiness of a securities professional." *Wanda P. Sears*, Exch. Act Release No. 58075, 2008 SEC LEXIS 1521, at \*6 (July 1, 2008).

The record demonstrates that Burford engaged in unauthorized trading in the conduct of his business at Hilltop. Burford admits that he executed nine trades in, and facilitated eight withdrawals from, LR's individual account held at Hilltop in accordance with instructions from PR after LR died. RP 265 (Stip. ¶22), 267 (Stip. ¶¶29-30), 555, 557. PR did not have authority to authorize any transactions in LR's individual account after LR's death. RP 427-28 (Tr. 99:20-100:5). Burford admits that PR was never his customer for LR's individual account. RP 427 (Tr. 99:20-25). While LR's will named PR as the primary beneficiary, PR nonetheless lacked authority after LR's death to direct transactions in LR's account prior to the will being admitted to probate. Under Texas law, where LR's will was probated, the right to inherit is not effective until the will has been admitted to probate. *See Tex. Est. Code § 256.001* ("[A] will is not effective to prove title to, or the right to possession of, any property disposed of by the will until the will is admitted to probate."); *see also In re Est. of Silverman*, 579 S.W.3d 732, 737 (Tex. App. 2019) ("Construction of a purported will's property disposition typically occurs after the writing has been determined to be a will and has been admitted to probate."). Here, the probate court did not admit LR's will until April 2020. RP 268 (Stip. ¶39), 619-21. Thus, from October

2016 to November 2018, PR did not have authority to direct the transactions in LR's individual account that Burford effected.

Burford admits all the facts necessary to establish his liability under FINRA Rule 2010. Burford admits that he effected the 17 transactions in LR's account after LR died. RP 265 (Stip. ¶22), 267 (Stip. ¶¶29-30), 555, 557. He further admits that PR was never his customer for the individual account and that PR was not a beneficiary of the account. RP 427(Tr. 99:20-25), 264 (Stip. ¶9), 266 (Stip. ¶24). Burford also admits that PR's prior trade authorization in LR's individual account terminated upon LR's death by operation of law, a fact of which Burford was aware at the time. RP 267 (Stip. ¶26). Burford admits he knew at the time he was "facilitate[ing] the premature distribution of [his] deceased customer's assets" to PR. RP 799. He also admits he knew LR's will had not yet been probated when he effected the transactions at PR's direction in LR's individual account. RP 266 (Stip. ¶20), 267 (Stip. ¶31); 428 (Tr. 18-24), 799. Finally, Burford admits he knew he was violating Hilltop's policies when he failed to immediately notify the firm of LR's death and treat the assets in the individual account as frozen until legal distribution was determined by the probate court and the firm received the requisite documents. RP 265 (Stip. ¶¶14-17). 439-40 (Tr. 111:14-122:4), 799.

Faced with these damning admissions, Burford nonsensically asserts on appeal that his actions were somehow "legal," and that he adhered to the highest principles and core goals of FINRA Rule 2010. Burford Opp. Br. at 1; RP 799. The record and Commission precedent belie Burford's unsupported claims. First, Burford cannot disclaim liability under FINRA Rule 2010 because LR's will was ultimately probated and PR was permitted to keep the funds she obtained through Burford's unauthorized transactions. PR's ability to retain the proceeds was the result of a settlement between her and AD in probate court, not the result of a finding that PR was



authorized at the time to direct the transactions. Regardless, that Burford faced no legal liability for his unauthorized transactions does not preclude FINRA's authority to find him liable for his violation of FINRA Rule 2010 for the same conduct. *John Joseph Plunkett*, Exch. Act Release No. 69766, 2013 SEC LEXIS 1699, at \*22 (June 14, 2013) (“[FINRA Rule 2010] is not limited to rules of legal conduct but [instead] states a broad ethical principle, giving FINRA the authority to impose sanctions for violations of moral standards even if there is no unlawful conduct.”) (internal quotations omitted).

Second, there is no morality exception that permits a registered representative to escape liability for unauthorized trading. Burford contends that he could not in “good conscience” refuse to engage in unauthorized trading because PR otherwise would have suffered financial hardship. Burford Opp. Br. at 1. Burford misses the point. Unauthorized trading is “a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade.” *Sears*, 2008 SEC LEXIS 1521, at \*6. As explained by the Commission, the just and equitable principles of trade rule “focuses on the securities professional’s conduct rather than on a subjective inquiry into the professional’s intent for state of mind. Accordingly, a violation of the rule need not be premised on a motive or scienter finding.” *Thomas W. Heath, III*, Exch. Act Release No. 59223, 2009 SEC LEXIS 14, at \*15 (Jan. 9, 2009). Here, Burford’s liability under FINRA Rule 2010 is premised on his conduct of effecting unauthorized transactions in his deceased customer’s account. Burford knew PR had no authority to direct transactions in LR’s account, yet Burford still effected the transactions in LR’s account. Burford’s failure to obtain customer authorization violated one of the basic duties of a securities profession—the duty to obtain customer authorization. *See William J. Murphy*, Exch. Act Release No. 69923, 2013 SEC LEXIS 1933, at \*22 (July 2, 2013) (“An associated person is

responsible for obtaining his or her customer's consent prior to purchasing a security for the customer account.") (internal quotations omitted). Even if Burford believed he was acting in LR's best interests by effecting transactions in accordance with instructions from PR, that fact would not make the transactions authorized or not violative of FINRA Rule 2010. *Cf. Anthony Tricarico*, 51 S.E.C. 457, 460 n.5 (1993) (holding that unauthorized trading is conduct inconsistent with just and equitable principles of trade without evidence of scienter). Burford made similar arguments before the NAC, all of which the NAC rejected. The Commission should do the same here.

In summary, Burford admits he executed nine trades in, and facilitated eight withdrawals from, LR's individual account in accordance with instructions from PR after LR died. PR did not have authority over LR's individual account. The NAC therefore properly concluded that, by executing unauthorized transactions in and facilitating unauthorized withdrawals from LR's individual account, Burford violated FINRA Rule 2010. The Commission should affirm the NAC's findings of violation.

**B. The Sanctions that the NAC Imposed Are Remedial and Serve the Public Interest**

For executing unauthorized trades in, and facilitating unauthorized withdrawals from, his deceased customer's account, the NAC fined Burford \$10,000 and suspended him from associating with any FINRA member in any capacity for six months. The Commission should affirm these sanctions. Under Exchange Act Section 19(e)(2), the Commission will sustain the sanctions FINRA imposes unless they are "excessive or oppressive."<sup>5</sup> 15 U.S.C. § 78s(e)(2). In

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<sup>5</sup> Burford does not claim, and the record does not establish, that the sanctions FINRA imposed are an "unnecessary or inappropriate burden on competition." 15 U.S.C. § 78s(e)(2).

evaluating the sanctions imposed, the Commission will consider any aggravating or mitigating factors, and whether the sanctions are remedial and not punitive. *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007). The Commission considers FINRA’s Sanction Guidelines (the “Guidelines”) as a benchmark in conducting its review, *see Robert D. Tucker*, Exch. Act Release No. 68210, 2012 SEC LEXIS 3496, at \*33-34 n.85 (Nov. 9, 2012), and gives weight to whether the sanctions are within the allowable sanction range under the Guidelines. *See Howard Braff*, Exch. Act Release No. 66467, 2012 SEC LEXIS 620, at \*18-19 (Feb. 24, 2012).

Here, the NAC carefully considered the relevant violation-specific factors in the Guidelines for unauthorized transactions,<sup>6</sup> and the Principal Considerations in Determining Sanctions and General Principles Applicable to All Sanction Determinations. RP 794-97; *Guidelines* at 2-8, 100. Having found a myriad of aggravating factors, and no mitigating factors, the NAC imposed appropriate sanctions that are supported by the facts in this case, are consistent

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<sup>6</sup> For unauthorized transactions, the Guidelines recommend a fine of \$5,000 to \$116,000 and suspending individual respondents for a period of one month to two years. Where aggravating factors predominate, the Guidelines strongly recommend that consideration be given to a bar. The principal considerations in determining sanctions for unauthorized trading are: (i) whether the respondent reasonably misunderstood his or her authority or the terms of the customer’s orders; (ii) whether the respondent acted in bad faith, i.e., whether the respondent knew he or she was acting without authorization or was acting as a result of a reasonable misunderstanding; (iii) the number of customers affected and the magnitude of the customer’s losses, if any; (iv) the number and dollar value of unauthorized transactions or failures to execute buy or sell orders; (v) whether the respondent attempted to conceal the trading or to evade regulatory investigative efforts; and (vi) whether the unauthorized transactions were made in furtherance of or in connection with another violation (e.g., conversion, improper use of funds, churning). *FINRA Sanction Guidelines* (October 2021), at 2-8, 100, [https://www.finra.org/sites/default/files/2022-09/2021\\_Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf) [hereinafter “*Guidelines*”]. The NAC applied the 2021 version of the Guidelines, which version was in effect at the time of the Hearing Panel Decision. RP 794.

with the Sanction Guidelines for unauthorized transactions, serve the public interest, and thus are neither excessive nor oppressive.

In its decision, the NAC detailed several aggravating factors applicable to Burford's misconduct. RP 795-97. First, the NAC assessed aggravation for Burford's intentional conduct, the number and value of the transactions, and the extended period during which he effected the numerous unauthorized transactions. RP 795; *Guidelines* at 100; *Guidelines* at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9, 13, 17). The NAC noted that Burford intentionally effected 17 unauthorized transactions valued at more than \$200,000 over a period of 25 months despite knowing that PR was not authorized to direct transactions in LR's individual account after his death, PR was not named as the beneficiary of LR's individual account, and LR's will had not been probated. RP 795. The NAC found that, having previously followed Hilltop's procedures upon the death of a customer, Burford's refusal to follow Hilltop's written supervisory procedures demonstrated a conscious disregard of procedures designed to protect customers, which warranted additional aggravation. RP 795.

Next, the NAC appreciably aggravated Burford's sanctions because of Burford's "inherently deceitful" concealment of his misconduct over three years. RP 796; *Guidelines* at 100; *Guidelines* at 7 (Principal Considerations in Determining Sanctions, No. 10). As explained by the NAC, Burford knew that LR's accounts should have been immediately frozen at the time of LR's death. *Id.* Rather than tell Hilltop at the time, he waited for the firm to somehow find out about LR's death itself and, in the meantime, effected numerous unauthorized transactions in LR's individual account. *Id.* When PR needed to open a beneficiary IRA account to take the minimum required distribution from LR's IRA account, Burford purposely submitted LR's death certificate to Hilltop for that narrow purpose to avoid the cessation of his unauthorized activity in

LR's individual account. RP 267 (Stip. ¶¶27-28), 432-34 (Tr. 104:10-24-106:3), 470-71 (142:20-143:22), 585-89. .Despite knowing the entire time that his activities in LR's account were improper and contrary to his firm's written supervisory procedures, Burford only stopped executing transactions when he learned about AD's will challenge. RP 266 (¶19), 267 (¶27-28), 268 (Stip. ¶33), 439-40 (Tr. 111:14-122:4), 591-92. And then Burford waited an additional 11 months—i.e., a full three years after LR's death—to confess his misdeeds, and he only did so then because he learned that Hilltop could be liable for the unauthorized transactions.

Burford asserts he agreed to “help” PR while warning her that LR's assets could be frozen at any time should Hilltop discover his actions and he “could do nothing about it.” Burford Opp. Br. at 1. Burford overlooks his active role in preventing Hilltop from discovering his misconduct. RP 439-40 (Tr. 111:14-122:4). Burford's concealment mars his trustworthiness as a securities professional. The Commission should affirm the NAC's aggravation of sanctions in the face of such conduct.

The NAC assessed additional aggravation for Burford's refusal to accept responsibility. RP 797-98; *Guidelines* at 7 (Principal Considerations in Determining Sanctions, No. 2). Just as he argued before the NAC, Burford has continued to insist that his actions were legal and the distributions made to PR were legally hers. RP 799. Nothing could be further from the truth. Even on appeal, Burford has offered no assurance that he would not repeat the actions in the future under similar circumstances. Burford Opp. Br. at 1. The NAC's aggravation assessment for failure to accept responsibility is thus fully warranted because Burford does not comprehend his professional obligations or the seriousness of his misconduct. *See Lek Sec. Corp.*, Exch. Act Release No. 82981, 2018 SEC LEXIS 830, at \*40 (Apr. 2, 2018) (“FINRA likewise was entitled not to credit [applicant] in mitigation for acceptance of responsibility when [applicant] did not

acknowledge that its misconduct constituted a violation of the securities laws.”); *N. Woodward Fin. Corp.*, Exch. Act Release No. 74913, 2015 SEC LEXIS 1867, at \*44 (May 8, 2015) (“Applicants are entitled to present a vigorous defense. But Applicants’ continued refusal to acknowledge that they were required to respond fully to FINRA’s requests, even after their counsel explained the necessity of doing so, demonstrates a misunderstanding of, or lack of regard for, their professional obligations.”), *aff’d sub nom., Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. 2016); *Wendy McNeeley, CPA*, Exch. Act Release No. 68431, 2012 SEC LEXIS 3880, at \*59 (Dec. 13, 2012) (finding that, while the respondent had the right to present a vigorous defense, her testimony and arguments on appeal reflected a continuing failure to grasp her role as a professional).<sup>7</sup>

On appeal, Burford repeats that he realized no personal gain from his actions, that he caused no harm to others, and that his actions were not the product of self dealing. Opp. Br. at 1; RP 799. But as explained by the NAC, these factors are not mitigating. *See Braff*, 2012 SEC LEXIS 620, at \*26 & n.25 (“The absence of monetary gain or customer harm is not mitigating, ‘as our public interest analysis focus[es] . . . on the welfare of investors generally.’”); *PAZ Sec., Inc.*, Exch. Act Release No. 57656, 2008 SEC LEXIS 820, at \*17 (Apr. 11, 2008) (holding that applicants’ failures to comply with NASD rule “are not mitigated because those failures did not, in themselves, produce a monetary benefit to Applicants or result in injury to the investing public”), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

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<sup>7</sup> The NAC also correctly declined to award Burford any mitigation for reasonable reliance on advice of counsel because he did not consult an attorney until after his conduct in this case and he did not claim that he relied on this attorney’s alleged advice that Burford faced no liability for his actions. RP 797; *Guidelines* at 7 (Principal Considerations in Determining Sanctions, No. 7).

Burford continues to assert that he undertook his actions in “good conscience” to help PR, who he claims, without support, otherwise would have suffered financially and because he knew LR’s wishes. Burford Opp. Br. at 1. In Burford’s mind, he adhered to the principles of customer protection because he believed he was doing what LR would have wanted and because Burford was not enriching himself when executing the transactions. This premise is contrary to the very principles of investor protection and customer authorization. Here, Burford’s customer had died. Even though PR was not Burford’s customer and had no authority to direct transactions in LR’s account, Burford ignored the simple and central tenet of customer authorization when he acted based on instructions from PR to execute transactions in LR’s account posthumously. *See Murphy*, 2013 SEC LEXIS 1933, at \*22. Burford’s actions represent a fundamental betrayal of the duty he owed to LR, even after his death, and the willful disregard of probate law and the protections offered to deceased customers in Hilltop’s written supervisory procedures. *See id.*; *Sears*, 2008 SEC LEXIS 1521, at \*6; *Tricarico*, 51 S.E.C. at 460 n.5.

In fact, Hilltop’s written supervisory procedures recognized the dangers of permitting transactions in a customer’s account after a customer’s death. RP 631; *see also* RP 265 (Stip. ¶14); 395-96 (Tr. 67:19-24); 463 (Tr.134:23-135:6), 480 (Tr. 152:5-16). For that reason, the firm had explicit policies that detailed the necessary steps an associated person must take when a customer died, including immediately freezing the customer’s accounts. RP 631. Hilltop’s policies not only protected the customer by protecting the customer’s heirs, but it also protected the firm itself, should the validity of a customer’s will be challenged, as happened here. Such a sequence of events was entirely predictable and wholly preventable in this case had Burford merely followed the firm’s procedures as he done in prior instances when a customer died. By

executing the transactions as directed by PR, Burford both intentionally disregarded his firm's written supervisory procedures and supplanted the authority of a court when he attempted to fulfill the terms of a will before it had been probated. That AD and PR's probate court settlement allowed PR to keep the unauthorized distributions she had received as a result of Burford's misconduct does not make his actions any less serious with respect to his violation of FINRA Rule 2010. Associated persons cannot be permitted to substitute their judgement for customer authorization and the ethical obligations required of securities professionals.<sup>8</sup>

In sum, the NAC carefully balanced the applicable aggravating factors, lack of mitigating factors, and the nature of Burford's misconduct. RP 794-98. The NAC, in turn, imposed appropriately remedial sanctions that reflect the seriousness of Burford's violation, protect the investing public, and thus are neither excessive nor oppressive. RP 797. Burford engaged in high-risk misconduct by acting without customer authorization and concealing it from his firm for three years. He has offered no assurance that he would not engage in the same misconduct in the future under similar circumstances. The Commission should affirm the sanctions the NAC imposed.

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<sup>8</sup> Before the NAC, Burford made various other arguments in support of mitigation, all of which the NAC properly rejected and which Burford has since abandoned in his application for review. RP 699-700, 745, 796-97; see *John B. Busacca, III*, Exch. Act Release No. 63312, 2010 SEC LEXIS 3787, at \*41 n.77 (Nov. 12, 2010) (“[A] lack of a disciplinary history is not a mitigating factor.”), *aff'd*, 449 F. App'x. 886 (11th Cir. 2011); *Keith D. Geary*, Exch. Act Release No. 80322, 2017 SEC LEXIS 995, at \*35 (Mar. 28, 2017) (holding that cooperation in a FINRA investigation is not mitigating because associations person has “an ‘unequivocal’ responsibility to fully cooperate with FINRA”), *aff'd*, 727 F. App'x 504 (10th Cir. 2018); *Geary*, 2017 SEC LEXIS 995, at \*34-35 (finding that cooperation with FINRA must rise to level of “substantial assistance” to warrant mitigation).



**V. CONCLUSION**

The record amply supports that Burford directed unauthorized transactions in, and facilitated withdrawals from, his deceased customer's account. By doing so, Burford violated ethical conduct required of all FINRA members. The sanctions imposed—a \$10,000 fine and six-month suspension in all capacities—are appropriately remedial and necessary to protect the investing public. Accordingly, the Commission should affirm the NAC's decision in all respects.

Respectfully submitted,

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July 26, 2024


**CERTIFICATE OF SERVICE**

I, Megan Rauch, certify that on this 26th day of July 2024, caused a copy of the foregoing Brief in Opposition to Application for Review, In the Matter of the Application of Charles Scott Burford, Sr., Administrative Proceeding File No. 3-21915 to be served by eFAP on:

Vanessa Countryman, Secretary  
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and served by electronic mail on:

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**CERTIFICATE OF COMPLIANCE**

I, Megan Rauch, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

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**CERTIFICATE OF COMPLIANCE**

I, Megan Rauch, further certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 6,176 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

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