BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John M.E. Saad Atlanta, GA, Respondent.	DECISION Complaint No. 2006006705601R Dated: March 16, 2015

On remand from the SEC for reconsideration of sanctions. Held, respondent barred for violations of NASD Rule 2110.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Steven N. Berk, Esq., Matthew Bonness, Esq.

Decision

I. Background

This matter is before us on remand from the SEC to reconsider the appropriate sanctions to be imposed on John M.E. Saad ("Saad"), formerly a general securities representative, general securities principal, and investment company products and variable contracts limited representative with Hornor, Townsend & Kent ("HTK"), a FINRA member firm. In a National Adjudicatory Council ("NAC") decision dated October 6, 2009, we found that Saad misappropriated funds of HTK's parent company, Penn Mutual Life Insurance Company ("Penn Mutual"), by submitting false receipts and expense reimbursement reports and accepting reimbursement to which he was not entitled. We held that this conduct violated NASD Rule 2110.[1] We barred Saad in all capacities, affirmed the Hearing Panel's imposition of costs, and

[1] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

assessed appeal costs. *Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29 (FINRA NAC Oct. 6, 2009). Saad appealed the NAC's decision to the SEC, which sustained the NAC's findings of violations and the bar imposed. *John M.E. Saad*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

Thereafter, Saad appealed the SEC's decision to the United States Court of Appeals for the District of Columbia Circuit. Saad did not contest his culpability, but he argued that the SEC abused its discretion in upholding the bar. The court agreed. It explained that the SEC (and FINRA) ignored "several potentially mitigating factors asserted by Saad and supported by evidence in the record." In this regard, the SEC and FINRA failed to address Saad's arguments that his firm "disciplined him by terminating his employment in September of 2006, prior to regulatory detection" and that "he was under severe stress with a hospitalized infant and a stressful job environment." For these reasons, the court found that the SEC "abused its discretion" by "fail[ing] to address potentially mitigating factors with support in the record" and remanded "on that basis" and "for further consideration of the sanction." The court concluded, "[w]e take no position on the proper outcome of this case" and "[w]e leave it to the Commission in the first instance to fully address *all* potentially mitigating factors that might militate against a lifetime bar." *Saad v. SEC*, 718 F.3d 904, 913-14 (D.C. Cir. 2013).

The SEC, in turn, remanded to FINRA "the portion of the proceeding concerning the imposition of a bar to give FINRA an opportunity to explain its views on its Sanction Guidelines and Saad's claims of mitigation." It also directed FINRA's attention to five specific questions, as set forth below. The SEC concluded, "[w]e do not intend to suggest any view as to the appropriate outcome of these proceedings." *John M.E. Saad*, Exchange Act Release No. 70632, 2013 SEC LEXIS 3133, at *4-6 & n.7 (Oct. 8, 2013).

During this remand proceeding, we considered the matter on the basis of the record, including the briefs that the parties filed. We have considered the sanctions, in light of the D.C Circuit's opinion and the SEC's remand order. As explained below, we have considered all of Saad's claims of mitigation, including his claims that his termination and the stress he was under were mitigating factors. Having considered these additional claims carefully, we find that the arguments presented by Saad to support these claims do not rise to the level of mitigation that would be sufficient to reduce the sanctions we originally imposed. In light of the absence of qualifying mitigating factors, the presence of aggravating factors, the troubling nature of Saad's misconduct, and his concealment of that misconduct from regulators, it remains appropriate to bar Saad for misappropriation of his firm's funds.

II. Facts

The underlying facts, which the parties do not dispute, have been addressed extensively before. Because there is no need to restate the factual background, we reproduce below relevant excerpts from the SEC's opinion, and we present in footnotes some additional relevant material:

> In the summer of 2006, Saad served as Penn Mutual's regional director in Atlanta, Georgia, and was registered with Penn Mutual's broker-dealer affiliate, HTK, as an investment company products and variable contracts limited representative, general securities representative, and general securities principal. Saad['s] . . . chief

duties were recruiting insurance agents to sell Penn Mutual's insurance products as independent contractors and helping existing Penn Mutual independent contractors build their business.

Saad's career at Penn Mutual started promisingly. . . . By the end of 2005, however, his production declined . . . . By June 2006, Saad received a production warning from Penn Mutual. . . . [S]aad blamed his drop in productivity on an illness of one of his year-old twin sons . . . .

A. Saad's Fabricated Receipts and False Expense Report

Saad testified that, the month after receiving the production warning, he had "a really good recruiting opportunity" in Memphis, Tennessee, scheduled for Monday, July 10, 2006. Saad testified that he intended to travel to Memphis the day before the meeting. On the way to the airport, however, he learned the meeting had been canceled . . . . [S]aad "panicked because my travel was down dramatically." Saad testified that he checked into an Atlanta-area hotel for two nights: Sunday, July 9, and Monday, July 10. Saad explained that he did not go into the office during that time "[b]ecause I had told me [sic] staff that I was going to be in Memphis. I was concerned with the fact that when that appointment [in Memphis] cancelled, that if I had gone to the office, that it would have been evident that I hadn't done any travel."[2]

Two weeks later, Saad flew to Penn Mutual's home office, where, Saad testified, "they formally told me, essentially, that it was a 60-day production warning." He explained, "I was told that production had fallen, and they needed to see results."

A week after this production warning, Saad submitted his July expense report for processing. Typically, Saad paid office expenses and overhead directly out of an office account into which Penn Mutual wired $6,300 at the beginning of each month. However, for expenses Saad incurred personally, including travel, Saad would submit a month-end expense report, along with receipts, to the office administrator, who would then submit the materials to Penn Mutual. Once approved, Saad would transfer the approved amount out of the

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[2] Saad testified at an on-the-record interview that he checked into a hotel to "try to get back on track with my job" and because of "distractions at home," elaborating that he had "young twins at home" who were "one year old" which created "a lot of stress."

office account into his personal account or use that money to pay his credit card bill directly.

By the time Saad submitted his July expense report, he "felt total pressure . . . to show that this recruiting trip [to Memphis] had occurred." He added, "I had to show that I was somewhere because the only way that the home office could verify my travel or work ethic or whatever was being questioned was on my expense reports." Saad submitted an expense report that included a receipt of $478 for a round-trip airline itinerary, showing travel from Atlanta to Memphis on July 9, 2006, and returning on July 11, 2006. Saad also included a hotel receipt of $274.44 that showed a two-night stay in a Memphis-area hotel [Marriott] for July 9 through July 11, 2006. These receipts, of course, were fakes. Saad admitted that he fabricated them by copying information and company logos from the Internet.[3]

Unrelated to the claimed Memphis trip, Saad also submitted a $392.19 receipt for the purchase of a cell phone, dated July 14, 2006. The section on the receipt indicating the name of the cell phone recipient was blacked out, and a handwritten note on the receipt stated: "new cell phone, old Treo broke." Saad acknowledged writing the note on the receipt, but could not recall whether he had blacked out the recipient's name (although, he acknowledged during his investigative "on-the-record" testimony, "I'm assuming I probably did").

Regardless . . ., Saad admitted he had not purchased the cell phone to replace his phone. He instead purchased the phone for Magdaline Moser, an insurance agent affiliated with Aflac, Inc.'s Atlanta office. Saad testified that he hoped to recruit Moser to sell Penn Mutual products and that, in exchange for the cell phone, Moser would introduce him to other prospects in Aflac's Atlanta office.

Saad . . . claimed [at the hearing,] "I had the right to expense items that I felt necessary to help [someone he was recruiting] with their production." He also claimed that he had purchased other equipment, such as laptops, for people he was recruiting . . . . When asked why . . . he altered the receipt instead of just submitting it at face value, Saad responded, "if I put down that I spent a cell phone [sic] for a new rep, then, you know, I just wanted—you know, I was under the pressure of the situation that I just said, you know, I'm just

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[3] Saad also provided his administrator with a list of calendar appointments to "back up" his Memphis travel plans.

going to put it down as my own, but I should have put it down as exactly the way it should have been put down and expenses it that way." The Hearing Panel . . . did not find credible Saad's claim that his purchase of a cell phone for Moser "was consistent with previously approved business equipment." Moreover, Saad stated during his on-the-record testimony that his purchase of a cell phone for Moser "probably wouldn't have been" an approved expense.

B. Discovery of Saad's Falsified Expense Report

. . . Saad also submitted an authentic, unaltered receipt for four drinks purchased on Sunday evening, July 9, at an Atlanta hotel lounge. The office administrator questioned Saad about the drink receipt, noting it showed Saad was in Atlanta—not Memphis—on the evening of July 9. Saad withdrew the receipt and threw it away, because, he explained, "if she [the office administrator] knew that I was in Atlanta, then it wouldn't help my production."

The office administrator retrieved the receipt from the trash. She submitted it, along with her concerns, to Penn Mutual's home office . . . . When Penn Mutual approached Saad about his claimed expenses, Saad admitted he had not gone to Memphis. He offered to reimburse Penn Mutual, but Penn Mutual declined reimbursement and terminated him [and HTK also terminated him effective September 16, 2006] . . . .

C. FINRA Investigation

Approximately two months after Saad was terminated, FINRA asked Saad to provide information about his discharge by HTK and whether he improperly submitted expense reports for expenses not actually incurred, and, if so, why.[N4] Saad responded that, "[a]fter an extensive audit, it was determined that on my July 2006 expense report a charge of under $750 for a business trip that had yet to occur was posted." . . .

[N4] The Office of Insurance for the Commonwealth of Kentucky . . . also asked Saad to provide a detailed response to "a complaint involving your actions as an agent." Saad answered that, "[a]fter an extensive audit, [Penn Mutual] determined that on my July 2006 expense report a charge of under $750 for a business trip that had yet to occur was posted." Saad added, "I asked [Penn Mutual] if I could repay the isolated expense deemed 'improperly submitted' but

> they declined to accept my offer. They in turn decided to terminate my employment." . . . [End of Footnote]
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> Approximately six months later, in April 2007, a FINRA examiner telephoned Saad to ask again about his termination. According to a FINRA file memorandum about that conversation, Saad acknowledged "HTK's issue with the airfare and hotel expense is valid," but claimed that he did not know Moser and that he did not know why HTK was questioning his cell phone expense. Saad, however, later admitted buying the cell phone for Moser during his on-the-record testimony.

Saad, 2010 SEC LEXIS 1761, at *3-11.

III. Discussion

Before the court of appeals, Saad did "not contest his culpability." *Saad*, 718 F.3d at 906. Thus, it is already established that Saad intentionally falsified receipts, submitted a fraudulent expense report, and accepted $1,144.63 in reimbursement to which he was not entitled. It is also already established that this conduct was inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110. Thus, our only task on remand is to consider further the sanction to be imposed for Saad's violation. In remanding the case for this purpose, the SEC directed our attention to five questions, which we address in sequence below. As explained below, we find that Saad has raised no additional mitigating factors and that Saad should be barred for his egregious misconduct.[4]

A. SEC's Question Number 1

The first question posed by the SEC in its remand order, which relates to Saad's claim that his termination by HTK was a mitigating factor, is a purely legal one:

> When considering Principal Consideration Number 14 of FINRA's Sanction Guidelines (which concerns the consideration of whether a member firm disciplined an associated respondent prior to regulatory detection), does that guideline apply as to the member firm, the

[4] As an initial matter, Saad argues that the SEC's remand order "cabined FINRA's analysis to 5 focused questions" and failed to abide by the court of appeals' directive to "address all potentially mitigating factors that might militate against a lifetime ban." Similarly, Saad contends that "[n]one of [the five] questions . . . require, as the Court ruled, a substantive analysis of mitigating factors." Far from restricting our analysis of mitigating factors, however, the SEC's remand order specifically directed that we address essentially any claim of mitigation that Saad has raised. Accordingly, we have done so.

> associated person, or both (e.g., does the guideline apply when determining whether (a) the *member firm's* misconduct was mitigated because the firm disciplined an associated person before regulators detected the misconduct, (b) the *associated person's* misconduct was mitigated because the firm had already disciplined the associated person, or (c) *either* the member firm's *or* the associated person's misconduct was mitigated by such disciplinary action)?

Saad, 2013 SEC LEXIS 3133, at *4-5.

The first sentence of Principal Consideration Number 14 of the FINRA Sanction Guidelines ("Guidelines") directs adjudicators to consider "[w]hether the member firm with which an individual respondent is/was associated disciplined respondent for the same misconduct at issue prior to regulatory detection."[5] As explained below, this part of Principal Consideration Number 14 is relevant only to the sanctions imposed on an individual respondent, and not a member firm.

Nearly every Principal Consideration includes a reference to a "respondent," an "individual respondent," or a "member firm respondent." *See, e.g.*, *Guidelines*, at 6-7, Principal Considerations No. 1 (referring to a "respondent's relevant disciplinary history"), No. 2 (referring to an "individual or member firm respondent"), No. 5 (referring to a "respondent member firm"), No. 11 (referring to "an individual respondent" and a "respondent's misconduct"). However, some Principal Considerations, like Number 14, also refer to a "member firm" or other persons without the "respondent" qualifier. *See, e.g.*, *Guidelines*, at 6-7, Principal Considerations No. 10 (directing adjudicators to consider "in the case of an individual respondent" whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate his or her "member firm"), No. 15 (directing adjudicators to consider whether, in the case of an individual respondent, the respondent engaged in the misconduct at issue notwithstanding prior warning from "a supervisor").

This overall structure makes clear that a Principal Consideration applies to a member firm or an individual only when it specifies that such member firm or individual is a "respondent" or when it applies generally to a "respondent" without further definition. Thus,

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[5] *FINRA Sanction Guidelines* 7 (2011) [hereinafter *Guidelines*]. In our October 2009 decision, we considered and applied the 2007 version of the Guidelines, as did the SEC in its May 2010 opinion. The court of appeals, however, cited and quoted from the 2011 version of the Guidelines. *Saad*, 718 F.3d at 907, 913. The only pertinent difference between the 2007 and the 2011 versions of Guidelines is that they contain different versions of Principal Consideration Number 14. Those differences, however, are not material to the outcome of this case. *Compare Guidelines*, at 7 (2007) (concerning a member firm's discipline for "the misconduct at issue") *with Guidelines*, at 7 (2011) (concerning a member firm's discipline for "the same misconduct at issue" and adding a consideration for sanctions imposed by another regulator). To maintain consistency with the court of appeals' opinion, all citations to the Guidelines are to the 2011 version unless otherwise noted.

because Principal Consideration Number 14 refers to a "member firm"—without the "respondent" qualifier—and an "individual respondent," it can be applied to mitigate only an individual respondent's misconduct. Indeed, we are not aware of any instances in which the NAC has applied this aspect of Principal Consideration Number 14 to the sanctions imposed against a member firm.[6]

B. SEC's Question Number 2

The second question posed by the SEC asks, "[i]n light of FINRA's finding as to question (1) above, is Saad's claim that HTK had terminated his employment before FINRA detected his misconduct mitigating?" *Saad*, 2013 SEC LEXIS 3133, at *5. Saad argues that whether termination should be considered mitigating should be "thoughtfully considered in the context of the wrong committed," and he implies that termination should not be mitigating only in situations that are more serious than his, such as when an employee has "skimmed hundreds of thousands of dollars from [a] company." As explained below, however, the fact that Saad's firm terminated him prior to regulatory detection is not mitigating.

The NAC has consistently rejected arguments that being terminated is a mitigating factor for purposes of sanctions. For example, in *Department of Enforcement v. Prout*, we rejected a respondent's argument that his termination should be given credit when imposing sanctions. We stated:

> As a general matter, we give no weight to the fact that a respondent was terminated by a firm when determining the appropriate sanction in a disciplinary case. We consider the disciplinary sanctions we impose to be independent of a firm's decisions to terminate or retain an employee. We neither credit a respondent who was terminated by a firm, nor seek additional remedies against a respondent who was retained by a firm.

Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *11 (NASD NAC Dec. 18, 2000).

We have reaffirmed this principle on several occasions.[7] Likewise, the SEC has indicated that a firm's termination of a respondent is not relevant for purposes of sanctions. *See*

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[6] Despite that the first portion of Principal Consideration Number 14 has no applicability to a member firm respondent, Principal Consideration Number 4 directs adjudicators to consider "[w]hether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution *or otherwise remedy the misconduct*." (Emphasis added.) In appropriate circumstances, a respondent member firm's act to discipline an individual may "remedy . . . misconduct." Moreover, the list of Principal Considerations in Determining Sanctions is "illustrative, not exhaustive," and "Adjudicators should consider case-specific factors in addition to those listed here." *Guidelines*, at 6.

[7] *See, e.g.*, *Dep't of Enforcement v. Nouchi*, Complaint No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *13 n.18 (FINRA NAC Aug. 7, 2009); *Dep't of Enforcement v. Winters*,

[Footnote continued on next page]

Edward S. Brokaw, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *71 (Nov. 15, 2013) (rejecting arguments that loss of employment, among other "hardships" that applicant endured, were mitigating); *Robert L. Wallace*, 53 S.E.C. 989, 996 (1998) (rejecting respondent's argument that firm's termination of him and his resulting inability to find satisfactory employment should be mitigating and stating, "[t]hat Wallace's employer responded to his misconduct, independent of this NASD proceeding, is not relevant to our review of the NASD's sanctions here"); *see also Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *35-36 (Feb. 20, 2014) (holding that "any collateral consequence that [applicant] may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor").

Indeed, there are good reasons for not crediting a firm's decision to terminate a respondent with mitigation. First, being fired for engaging in misconduct is usually an inherent result of the misconduct itself. *See Brokaw*, 2013 SEC LEXIS 3583, at *71 (stating that loss of employment and other "hardships" were not mitigating because "they are all a direct result of his deliberate misconduct"); *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) (rejecting argument that "loss of work" was mitigating because any "economic disadvantages" suffered were "a result of his misconduct"). Moreover, a firm's termination of an individual does not disqualify an individual from working elsewhere, as demonstrated by Saad's ability to quickly join another company that did not require him to have a securities registration. Therefore, the fact that HTK terminated Saad before FINRA detected the misconduct is not mitigating.

C. SEC's Question Number 3

In Question Number 3, the SEC asked, "[i]s Saad's claim that he was under personal and professional stress at the time of his misconduct mitigating?" *Saad*, 2013 SEC LEXIS 3133, at *5. To address this question, we begin with a brief overview of relevant jurisprudence, which informs our assessment of Saad's stress-related arguments. As explained below, Saad's claim of stress is ultimately not mitigating.

1. Overview of Relevant Jurisprudence

In general, personal problems such as stress and health issues do not mitigate violations of FINRA rules. *See, e.g., Joel Eugene Shaw*, 51 S.E.C. 1224, 1226-27 (1994) (holding that an applicant's deliberate conversion of his customer's money was not mitigated by applicant's

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Complaint No. E102004083704, 2009 FINRA Discip. LEXIS 5, at *21 (FINRA NAC July 30, 2009); *Dep't of Enforcement v. Correro*, Complaint No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *21 (FINRA NAC Aug. 12, 2008); *Dep't of Enforcement v. Trevisan*, Complaint No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *35 n.20 (FINRA NAC Apr. 30, 2008); *Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *13-14 (NASD NAC May 7, 2003).

"extreme emotional stress" that he suffered "as a result of severe financial problems and his parents' and children's ill health"); *Variable Investment Corp.*, 46 S.E.C. 1352, 1353-54 (1978) (holding that "[n]either the pressure of litigation nor [applicant's] physical problems could relieve [him] of [the] obligation" to comply with FINRA's requests for information and records); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, Complaint No. C04960004, 1998 NASD Discip. LEXIS 4, at *13, 20 (NASD NBCC Jan. 16, 1998) (finding that a respondent's obtaining of funds from her employer under false pretenses was not mitigated by her "great deal of personal and work-related stress" and noting FINRA's need to "act[ ] decisively . . . where the evidence calls into question the honesty and the veracity of a person associated with a member firm").[8]

Personal problems might give rise to some mitigation *if* there is evidence that such problems interfered with an ability to comply with FINRA rules or that violations resulted from, or were exacerbated by, such problems. For example, in *Paul David Pack*, the SEC found that "uncontroverted expert medical evidence that [the applicant's] misconduct was the product of stress compounded by clinical depression and a chronic sleep disorder" mitigated the applicant's submission to a prospective employer of an altered production statement and his false representation that the statement reflected his own sales. 51 S.E.C. 1279, 1283 (1994). Likewise, in *District Business Conduct Committee v. Nelson*, the NBCC found that respondent's chronic fatigue syndrome, which caused him to remain bedridden at home or in the hospital for long periods of time, mitigated his failures to respond to FINRA requests for information. In doing so, the NBCC stated that respondent's illness "played a role in causing his apparent confusion over his receipt of [FINRA's] letters and his failure to respond." Complaint No. C9A920030, 1996 NASD Discip. LEXIS 17, at *9, 15 (NASD NBCC Mar. 8, 1996).

But as numerous cases demonstrate, showing that stress or personal circumstances interfered with an ability to comply with FINRA rules, or that violations resulted from such

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[8] *See also Dist. Bus. Conduct Comm. v. Bozzi*, Complaint No. C10970003, 1999 NASD Discip. LEXIS 5, at *16 (NASD NAC Jan. 13, 1999) (finding that a respondent's submission of fictitious life insurance applications was not mitigated by the pressure he was under to meet production requirements and noting that respondent "had not reacted to the pressure in a manner appropriate for a person registered with [NASD]"); *Dist. Bus. Conduct Comm. v. Gorniak*, Complaint No. C07940019, 1994 NASD Discip. LEXIS 197, at *5 (NASD NBCC Dec. 8, 1994) (giving no mitigation credit to respondent's arguments that, when he failed to apply funds as directed by the customer, he was under pressure from his employer and job stress resulting from forced reductions in his client base), *aff'd*, 52 S.E.C. 371 (1995); *Dist. Bus. Conduct Comm. v. Seckman*, Complaint No. C3A940002, 1994 NASD Discip. LEXIS 206, at *4-8 (NASD NBCC Oct. 6, 1994) (barring a respondent for obtaining and misusing $132,966 in customer funds, despite respondent's "health and state of mind at the time of the violations"); *Dist. Bus. Conduct Comm. v. Lentz*, Complaint No. C9A910003, 1991 NASD Discip. LEXIS 77, at *7-8 (NASD NBCC Oct. 18, 1991) (affirming a censure, a bar, and a $25,000 fine on a respondent who forged signatures on applications for life insurance, despite respondent's argument that he "had suffered from a series of personal problems involving his wife's pregnancy and . . . had been pressured by his . . . managers to produce").

circumstances, is a difficult burden to meet and, in fact, one that has rarely been met. For example, the Commission has rejected a claim of mitigation based on stress where an applicant took no action to remedy his misconduct until after it was discovered.[9] The SEC also has found that misconduct was not mitigated by stress where the misconduct occurred over an extended period of time.[10] There are many other examples where similar claims of mitigation have failed due to insufficient evidence that personal circumstances interfered with an ability to comply with, or caused a violation of, FINRA rules.[11]

Even where personal circumstances such as stress are mitigating, they are weighed together with all other relevant considerations, including any other aggravating or mitigating factors. Indeed, there are several examples where although personal circumstances were found to be mitigating, they were not given much weight in the sanctions analysis. For example, in *District Business Conduct Committee v. Klein*, the NBCC found that a respondent's misuse of customer funds and forgeries of customer signatures were mitigated by respondent's substance abuse and psychological problems. Nevertheless, the NBCC barred respondent with a right to

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[9] *Shaw*, 51 S.E.C. at 1226 (noting that the applicant "retained the money for almost two years and did not return it until the conversion was discovered").

[10] *See, e.g.*, *John A. Malach*, 51 S.E.C. 618, 620 (1993) (holding that an applicant's alleged personal problems "could not excuse his extended failure, over the course of a two-year period, to furnish the information requested" by FINRA).

[11] *See, e.g.*, *Dep't of Enforcement v. Mielke*, Complaint No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *80-82 (FINRA NAC July 18, 2014) (finding that respondents failed to establish that personal health issues and concerns about family's health issues "interfered with [their] ability" to respond to FINRA's requests for information and testimony), *appeal docketed*, SEC Admin. Proceeding No. 3-16022 (Aug. 19, 2014); *Dep't of Enforcement v. Masceri*, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29, at *43-44 (NASD NAC Dec. 18, 2006) (disagreeing that a respondent was unlikely to engage in future misconduct where, although the panic attacks from which he was suffering when committing forgeries were now "under control through medication," he subsequently made untruthful statements to FINRA); *Jeffrey A. King*, 58 S.E.C. 839, 844 (2005) (finding that applicant had "not provided any evidence substantiating his claims that his divorce [or the stress it caused] prevented him from responding to NASD's request for information, or from requesting a hearing as authorized under NASD's rules"); *Lee Gura*, 57 S.E.C. 972, 976-77 (2004) (finding that applicant "has not provided any evidence substantiating his claims of depression so severe that he could not respond in any manner to NASD's multiple requests for information"); *Kwikkel-Elliott*, 1998 NASD Discip. LEXIS 4, at *13-14 (finding that "[n]othing in the record convinces us that the conduct in question resulted from or was exacerbated by [respondent's] personal or work-related circumstances"); *Dist. Bus. Conduct Comm. v. Goetz*, Complaint No. C04950009, 1996 NASD Discip. LEXIS 43, at *11 (NASD NBCC Nov. 12, 1996) (finding that respondent's "emotional problems . . . did not prevent him from telling the truth at the outset of the investigation"), *aff'd in relevant part*, 53 S.E.C. 472 (1998).

reapply in five years, noting that "it is critical to ensure that the investing public is protected from any possible recurrence of misconduct," "the violation was serious," the conduct "was essentially 'stealing,' rather than the result of a mistaken belief of authority," "the value of the funds was significant," and the respondent "did not make restitution." Complaint No. C02940041, 1995 NASD Discip. LEXIS 229, at *13-14 (NASD NBCC June 20, 1995). Likewise, in *District Business Conduct Committee v. Parks*, the NBCC found that a respondent who failed to use customer funds as directed did not intend to misappropriate those funds, noting that, among other things, she "was in considerable pain and under stress, and . . . unable to keep her accounts straight." Nevertheless, the NBCC imposed a bar, stating that "[it] cannot condone any misuse of customer funds," that "[p]articipants in the securities industry must be trusted to . . . handle [customer] funds as instructed," and that, given respondent's "demonstrated lack of understanding of her responsibilities as a participant in the securities industry," there was "a danger . . . she might repeat her misconduct, notwithstanding that she may not have intended to convert any customer funds."[12] Complaint No. C8A930055, 1995 NASD Discip. LEXIS 206, at *19-20 (NASD NBCC Apr. 6, 1995).

With this overview of the relevant jurisprudence in mind, we turn to Saad's contention that his personal stress mitigated his misconduct.

2. Saad Was Under Significant Professional and Personal Stress

First, we find that Saad was, in fact, under professional and personal stress around the relevant period, and that such stress was significant. In its initial decision, the Hearing Panel "recognized that [Saad] was under a great deal of pressure to produce and was under additional pressure due to the illness of his one-year old son." While neither we nor the SEC previously made any findings that Saad was under stress, the court of appeals suggested that Saad's assertion of being under stress is "supported by evidence in the record." The court of appeals wrote:

> At his disciplinary hearing, Saad . . . explained that this conduct occurred during a period when he was under a great deal of professional and personal stress. Toward the end of 2005, Saad's sales declined and he virtually halted business travel, which was considered a significant aspect of his professional responsibilities. In June 2006, Saad's superiors at Penn Mutual issued a production warning to him and admonished him to increase his sales of Penn Mutual products. During this same time period, Saad and his wife

[12] *See also Dist. Bus. Conduct Comm. v. Schlueter*, Complaint No. C04930031, 1994 NASD Discip. LEXIS 58, at *16 (NASD NBCC May 18, 1994) (finding that respondent, "during a period of personal and professional stress [caused by the takeover of his member firm and a serious accident], [and] in a moment of weakness, misrepresented an account balance to a customer, and thereafter felt compelled to disguise his untruthfulness by means of a false confirmation statement," but nevertheless increasing the sanctions imposed to a censure, a $5,000 fine, and a 90-day suspension).

> were caring for one-year old twins, one of whom had undergone surgery and was frequently hospitalized for a significant stomach disorder.[13]

Saad, 718 F.3d at 908.

3. Saad's Professional and Personal Stress Is Not a Mitigating Factor

The fact that Saad was experiencing stress is separate from whether such stress rises to the level of qualifying mitigation under the Guidelines. As explained below, Saad's stress is ultimately not mitigating.

At the hearing, Saad offered his view on how his stress was linked to his misconduct. Saad testified that, towards the end of 2005 and continuing into 2006, "[I] basically stopped working at the pace that I was working previously" because "I had to be there a lot more for hospital visits and to help support my wife in a family role." As a result, "over about a six-month period of time . . . my production took a pretty good spiral downwards because I essentially wasn't working quite as hard as I probably should have been, but for good reason." When Saad's appointment in Memphis cancelled, he became "concerned . . . that if [he] didn't show that [he] traveled that month after being warned [by Penn Mutual] for [his] production," that his job was at risk. Therefore, "out of embarrassment and then protection of my job," Saad decided, "I've got to show that I was [in Memphis], even though I worked [in Atlanta]."[14] Saad also testified, "I wasn't very overt about the severity of the family issues to Penn Mutual," that

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[13] During this remand proceeding, Saad requested leave to file additional evidence concerning his son's medical condition, which he contended would serve as a "factual predicate to Mr. Saad's claims of severe stress." The Subcommittee granted that motion, and Saad submitted additional medical records into evidence. We adopt the Subcommittee's ruling. While Saad made no attempt, as required by FINRA Rule 9346(b), to show why he had good cause for not introducing the medical records below, it was appropriate for the Subcommittee to be lenient, considering that the evidence concerned one of the two issues that the court of appeals singled out as a specific reason for the remand. That said—and notwithstanding Enforcement's objection that Saad did not properly authenticate the medical records—such records only provide additional support for findings that have already been made that Saad's conduct occurred during a period when he was under stress caring for his sick son.

[14] Saad advanced similar arguments in his various briefs about his motives for requesting reimbursement of the Memphis expenses. When this case was first before us, Saad argued that his "motive . . . was that of misleading his employer as to his whereabouts, or in other words, his failure with the loss of an additional client," and that he "erred in judgment by believing that it was better to convince Penn Mutual that he has not lost another business opportunity." Before the court of appeals, Saad explained that he "feared imminent termination as it became apparent that he might not be able to meet [production] demands." And on remand before us, Saad contends that he submitted false expense reports to his employer "to cover up for the fact that he was unable to pursue client leads and travel to Memphis."

"[i]f I had been, maybe they would have recommended that I took some time off," and that he "should have looked into" family leave. Likewise, Saad testified that he fabricated the reason for his cell phone purchase due to "[t]he pressure of where the budget was in terms of sales," explaining further that "if numbers were up, I could have bought [Moser] . . . a laptop, and they wouldn't have said a word."

We are sympathetic to the personal and job-related stress that Saad faced in 2006, and understand how his concerns over losing his job may have motivated him to hide his lack of business-related travel through the submission of a falsified expense report. Nevertheless, there is no evidence that his stress interfered with his *ability* to comply with FINRA rules or his understanding of what those rules required in terms of ethical conduct. Saad's conduct did not involve a momentary, stress-caused lapse in, or interference with, his judgment. Instead, it involved several separate decisions that were, as we said in our first decision, "premeditated, intentional and ongoing."

When Saad's trip to Memphis was cancelled after receiving his first production warning, he chose to hide that fact from his colleagues by checking into an Atlanta hotel and not reporting to his office. After Saad received a second production warning from his firm, Saad chose to submit falsified receipts to his employer for reimbursement. In doing so, Saad acted in a manner that was calculated to deceive. To make the falsified receipts more believable, he researched how much a last-minute flight from Atlanta to Memphis and hotel rate would have cost, cut-and-pasted flight rate information from the Delta Airlines website, searched the Internet for Marriott's corporate logo, and assembled all of this into false receipts.[15] Separate from any effort to conceal his lack of work-related travel, Saad also chose to claim reimbursement for a cell phone that he purchased for another person, decided to falsely indicate on the receipt that the phone was to replace a broken phone of his, and chose to blacken out the name of the person for whom he actually bought the phone. Saad then intentionally submitted all of the false receipts to his employer. In an attempt to add credibility to his ruse, Saad submitted a calendar purporting to show his Memphis appointments, and he requested reimbursement of food and tips expenses that he incurred in Atlanta but claimed to have incurred in Memphis.[16]

Saad had several chances to cease his dishonest conduct but maintained his deception at nearly each juncture. When Saad's office administrator noted to him that his receipts were not "normally" what he submitted, Saad chose to proceed with his attempted deception. When Saad's office administrator then pointed out that a hotel lounge receipt that he also submitted showed that he was not in Memphis, Saad chose not to abandon his plan, but to throw away the lounge receipt and continue his cover-up. When Saad was reimbursed for his fake expenses, Saad accepted the money to which he was not entitled without protest. Saad then opted, over the next two months, to make no attempt to remedy his misconduct. When Saad's firm informed

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[15] Saad searched for the price of a last-minute flight because, in his words, "I had to be consistent with the fact that, you know, it was a last minute purchase-type of ticket, so --."

[16] Explaining why he submitted Memphis-related food expenses, Saad testified, "I had to show I was in Memphis in some form. I had to eat."

him on September 15, 2006, that it was auditing his expenses, there is no evidence that Saad chose to immediately confess. Instead, Saad opted for a wait-and-see approach, and only offered to pay back the expenses "after [Penn Mutual] came back to me" and "asked me about the expenses."[17]

Even after Saad was caught by his firm, he decided to compound his deception to his employer with misrepresentations and lies to regulators. In November 2006, Saad suggested to a FINRA examiner and a state regulator that his falsified travel reimbursement request related to a trip that had not "yet" occurred, rather than a trip that was fabricated and would never occur. In April 2007, Saad misrepresented to a FINRA examiner that the cell phone he purchased was a legitimate expense to replace his own broken phone and that he did not know Moser, the person for whom he actually bought the phone. Finally, during a May 2007 on-the-record interview, Saad initially contended that he could not recall if he actually purchased a plane ticket for his July 9 trip to Memphis, and he did not admit that he never made such a purchase until after Enforcement required Saad to produce a relevant credit card receipt.

In short, this was not a situation where a stressful situation or period caused a person to be momentarily distracted from his compliance obligations or unable to fulfill or understand the substance of those obligations. Rather, Saad, in response to a stressful personal situation, voluntarily chose and then methodically continued an unethical course of conduct and, thus, did not react to his stress in a manner appropriate for a person registered with FINRA. Saad's willingness to provide false documents to, and misappropriate funds from, his employer gives no assurance that Saad would choose to act in an ethical manner were he to again face a stressful situation related to his job or family, which could recur at any time. Saad's personal stress thus warrants no mitigation under the Guidelines.

D. SEC's Question Number 4

In Question Number 4, the SEC asked, "[a]re there any other considerations that Saad has raised (whether or not discussed in the D.C. Circuit's decision) that are mitigating?" *Saad*, 2013 SEC LEXIS 3133, at *5. As explained below, there are not.[18]

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[17] Indeed, Saad claimed that when he was terminated, he purportedly "had no idea what it was that they were questioning" and was told by his firm that "they're going to do an investigation or audit of my expenses, and that they would get back in touch with me." Saad's testimony suggests that the firm, on the day it fired Saad, did not immediately confront him about his Memphis and cell phone expenses and, likewise, that Saad did not immediately admit his misconduct.

[18] On remand, Saad focuses on his arguments that his termination and his stress are mitigating, the two issues we addressed in Parts III.B and III.C. The SEC's remand order, however, was not so limited in focus. Thus, in Part III.D we address any claims of mitigation that Saad has raised before us, the SEC, or the D.C. Circuit, and in Part III.E we review the seriousness of the misconduct and any aggravating factors. Although we and the SEC have covered the large majority of this ground before, we do so again to reaffirm our views and to

[Footnote continued on next page]

Saad has argued that he has a clean disciplinary history.[19] While the existence of a disciplinary history is an aggravating factor when determining appropriate sanctions, its absence is not mitigating. *See, e.g.*, *Daniel D. Manoff*, 55 S.E.C. 1155, 1165-66 & n.15 (2002); *Dep't of Enforcement v. Balbirer*, Complaint No. C07980011, 1999 NASD Discip. LEXIS 29, at *10-11 (NASD NAC Oct. 18, 1999) ("We are not compelled to reward a respondent because he has acted in the manner in which he agreed (and was required) to act when entering this industry as a registered person.").

Similarly, Saad has argued that there have been no additional complaints filed against him and, likewise, that "[t]ime and actual reality have shown that there is no serious risk of recidivism." The absence of customer complaints, however, is not mitigating. *Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *41 (FINRA NAC May 14, 2014) ("As we have emphasized many times, the absence of disciplinary history and customer complaints is not mitigating."). Moreover, the lack of complaints since the events at issue is immaterial considering that Saad has not been employed in a position where he has been required to comply with FINRA rules.

Saad has suggested that his false reimbursement requests constituted a wash as compared to legitimate business expenses that he incurred and for which he did not seek reimbursement. For example, he claimed that he could have sought reimbursement for the expenses he incurred to stay in the Atlanta hotel and for the cell phone purchase for Moser. However, Saad offered no evidence to support his contentions that he could have obtained reimbursement for either of these expenses. Moreover, even if Saad could have properly obtained reimbursement, Saad's decision to misrepresent his expenses and submit falsified receipts and expense reports was unethical, and the suggestion that he may have been able to obtain reimbursement for his expenses if properly submitted does not exonerate or lessen the significance of his unethical conduct. *Dep't of Enforcement v. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *12 n.13 (FINRA Board of Governors May 9, 2014), *appeal docketed*, SEC Administrative Proceeding No. 3-15916 (June 9, 2014).

Saad has stressed that his conduct involved a "single expense report" and a "one-time" and "aberrant" lapse in judgment that took place over an "extremely short period" and not over an extended period.[20] However, as we stated in our initial decision and explained in detail above, we do not agree that Saad's conduct was essentially a one-time lapse in judgment.

[cont'd]

provide a single decision that contains our full rationale for the sanctions being imposed. Thus, many of the statements in the remainder of the decision are derived from statements in our initial decision or the SEC's opinion.

[19] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 1).

[20] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

Rather, Saad's misconduct was intentional and ongoing. *Saad*, 2009 FINRA Discip. LEXIS 29, at *22.

Saad has suggested that the nature of the documents that he falsified and the character of the transactions at issue are mitigating. In this regard, Saad has stressed that the documents "implicated only [him]," that he "did not forge a client's signature, a regulatory filing, a co-worker's paperwork, or a superior's approval," and that the "size of the transactions" is "modest" and did not involve "large amounts of money." The fact that the falsified documents "implicated only Saad," however, does not lessen the significance of his misconduct. The documents he falsified were intended to be relied on by Saad's employer in assessing the validity of his claimed expenses and in paying Saad reimbursement. As Enforcement also correctly explains, the documents also would constitute his employer's documentation of expenses for corporate tax purposes. Thus, the nature of the documents at issue is not a mitigating factor. And regardless of whether $1,144 is a "large" sum or not, the amount involved is less important to our sanctions analysis than Saad's willingness to engage in a series of deceptive actions that he knew would result in financial losses to his firm and benefit to him.[21]

Saad has claimed that he accepted responsibility, acknowledges fault, does not attempt to blame others, and has expressed remorse.[22] We do not agree, however, that Saad readily accepted responsibility for his own actions. When confronted by the office administrator about inconsistencies in his expense forms, Saad withdrew a real receipt (for drinks in the Atlanta hotel lounge) in favor of submitting fabricated receipts to Penn Mutual. When his firm initially informed him that it was conducting an audit of his expenses, there is no evidence that Saad was immediately forthcoming. Although Saad eventually chose to admit to his firm that he engaged in misconduct, he did so only after he was caught by his firm, and there is no evidence that he otherwise would have acknowledged his misconduct.[23] Saad also was less than fully truthful during the initial phases of FINRA's and another regulator's investigations of this matter.

As for his claims of remorse, Saad points to no place in the record where he expressed remorse. Moreover, his claims of remorse and of having accepted responsibility are at odds with his numerous efforts to minimize his transgressions and—despite his claims otherwise—blame others. For example, Saad wrote off his conduct as an "accounting misnomer," discounted it as an "isolated event," and claimed that the amount he misappropriated "all evens out" with

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[21] Indeed, the FINRA Board of Governors recently barred an individual who, through the use of false expense reports, misappropriated less funds from her employer than Saad did. *See Olson*, 2014 FINRA Discip. LEXIS 7, at *10-26 (barring person who falsified an expense report and converted $740.10 of firm funds).

[22] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2).

[23] *See id.* at 6 (directing adjudicators to consider whether an individual respondent accepted responsibility and acknowledged misconduct "prior to detection and intervention by the firm").

expenses for which he could have sought reimbursement but did not.[24] Blaming others for his regulatory troubles, Saad protested that his firm lacked "a formal process and procedure" for "what you can and can't expense," fired him not for his misconduct but for his lack of production, "maltreated [him] in the termination process," and did not try to "work with me . . . through these things." Saad also blamed FINRA staff for purportedly minimizing the seriousness of its investigation prior to his on-the-record interview.

In another attempt to show mitigation, Saad has noted that his conduct did not involve customers or harm to customers, and that he offered to pay his firm back. Saad has even gone so far as to proclaim that his misconduct was "victimless." Saad's misconduct is no less serious, however, because the firm and Penn Mutual were his victims, rather than a public customer. *Mayer A. Amsel*, 52 S.E.C. 761, 768 (1996); *Bernard D. Gorniak*, 52 S.E.C. 371, 373 (1995) (finding that "[t]his industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants"); *see Brokaw*, 2013 SEC LEXIS 3583, at *68 (holding that the absence of harm to the investing public is not mitigating). Moreover, Saad's offer to pay back the money he misappropriated is not mitigating because he made the offer only after his firm detected his misconduct.[25] *Shaw*, 51 S.E.C. at 1227 (rejecting argument that respondent's act to pay back injured customer was mitigating because "[i]t appears that [applicant] would have retained [the customer's] money if she had not discovered his conversion").[26]

Saad has argued that his motive was not to garner excessive profits for himself but to conceal his lagging performance. As we held in our initial decision, this is not mitigating. Regardless of Saad's reasons for creating false receipts, submitting fabricated expense reports, and seeking and receiving reimbursements to which he was not entitled, Saad's actions demonstrated a willingness to mislead, and his actions harmed his employer and Penn Mutual.

Finally, Saad's contention that he provided substantial assistance to FINRA in its examination of this matter is belied by the record.[27] Saad attempted to mislead FINRA and state

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[24] Saad elaborated, "I . . . spent more money out of my pocket than Penn Mutual ever would have netted out of this transaction."

[25] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 4) (directing adjudicators to consider "[w]hether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct").

[26] Saad has argued that "[t]he level of sophistication of the injured or affected customer" is potentially mitigating. This factor is not relevant, however, because, as Saad has noted elsewhere, no customers were involved. *See Guidelines*, at 6 ("The relevancy . . . of a factor depends on the facts and circumstances of a case . . . .").

[27] *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 12).

investigators and also conceal the extent of his misconduct from them. In sum, the record contains no mitigating factors.

E. SEC's Question Number 5

The fifth question posed by the SEC is, "[i]n light of FINRA's findings as to questions (1) through (4) above, what is an appropriate sanction in this case?" *Saad*, 2013 SEC LEXIS 3133, at *5. The appropriate sanction for Saad's misconduct remains a bar in all capacities.

In assessing sanctions, we consider the Guidelines, including the Principal Considerations in Determining Sanctions set forth therein and any other case-specific factors. The Guidelines for the improper use of funds recommend imposing a fine between $2,500 and $50,000 and to consider a bar. Where the improper use resulted from a misunderstanding, or other mitigation exists, the Guidelines recommend a suspension in any or all capacities for six months to two years and thereafter until respondent pays restitution.[28]

In determining the appropriate sanctions, we have considered the seriousness of Saad's offense and its potential for reoccurrence. *See McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005). Saad has demonstrated a willingness to lie to Penn Mutual and HTK, to construct false documents in furtherance of such lies, to obtain funds to which he was not entitled, and to later lie and tell half-truths about this conduct to regulators. Saad's dishonest behavior indicates a troubling disregard for fundamental ethical principles, reflects negatively on Saad's ability to comply with regulatory requirements and handle other people's money, and suggests his continued participation in the securities industry poses an unwarranted risk to the investing public. Moreover, the securities industry is rife with opportunities for abuse, and Saad's demonstrated inability to abide by his ethical obligations may manifest itself on other occasions in a customer-related or securities-related transaction. *Gorniak*, 52 S.E.C. at 372 (noting that this industry "presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants"). Indeed, as the SEC held, Saad's behavior provides no assurance that he will not repeat his violations. *Saad*, 2010 SEC LEXIS 1761, at *32.

Adding to the seriousness, Saad's breaches of his professional obligations involved providing inaccurate documentary information to his firm and false information to regulators.[29] As the SEC stated in its initial opinion, "[t]he entry of accurate information in firm records is a foundation for FINRA's regulatory oversight of its members, and '[i]t is critical that associated persons, as well as firms, comply with this basic requirement.'" *Saad*, 2010 SEC LEXIS 1761, at *14. Further, "[p]roviding false information in any form, be it data submitted to the clearing process, or forms or testimony to a self-regulatory organization, is an especially serious matter." *Id.* at *31 (internal quotation marks omitted).

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[28] *Guidelines*, at 36. Our application in this proceeding of the Guideline for the improper use of funds has already been affirmed by the SEC and the D.C. Circuit. *Saad*, 2010 SEC LEXIS 1761, at *23-26; *Saad*, 718 F.3d at 911.

[29] *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 12).

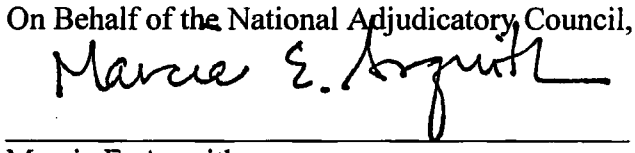
In addition, there are numerous aggravating factors. Saad's misconduct was intentional and ongoing, and it did not result from any misunderstanding.[30] Saad willfully engaged in efforts to deceive his firm about his expenses, did not come clean about his misconduct for months, and thereafter tried to conceal the extent of his actions from state and FINRA examiners.[31] Saad's conduct resulted in $1,144 in monetary gain and injured his employer to the same extent.[32]

In sum, we have looked at the record anew and considered all of the parties' sanctions-related arguments, including those concerning potential mitigating and aggravating factors. We find that Saad's conduct was egregious and find no acceptable mitigation. His choices reflect a troubling willingness to engage in unethical misconduct involving dishonesty and the misappropriation of firm assets through the use of false expense reports. Saad's remaining in the industry, which relies so heavily on personal integrity in matters both great and small, poses serious risks to the investing public. A bar is not only within the range of sanctions recommended in the Guidelines, it is an appropriate remedial sanction that will protect the public from future harm at his hands and deter others in the industry from engaging in similar misconduct. Therefore, after further consideration of the sanctions, we reaffirm our decision to bar Saad in all capacities for his misconduct.

IV. Conclusion

Accordingly, for misappropriating his employer's funds by intentionally falsifying receipts, submitting a fraudulent expense report, and accepting reimbursement to which he was not entitled, in violation of NASD Rule 2110, we bar Saad in all capacities. We affirm the Hearing Panel's imposition of $2,080 in costs, and we again impose appeal costs in connection with Saad's first appeal before the NAC in the amount of $1,385. We impose no additional costs related to this remand proceeding.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

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30 *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 8, 13).

31 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 10).

32 *Id.* at 6-7 (Principal Considerations in Determining Sanctions, Nos. 11, 17).