FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. AMY SIESENNOP (CRD No. 2735819), Respondent.	Disciplinary Proceeding No. 2010025132201 Hearing Officer – MC **HEARING PANEL DECISION** October 22, 2012

Respondent Amy Siesennop guaranteed a customer against loss, in violation of FINRA Rules 2150 and 2010; settled with a customer in exchange for an agreement not to complain to FINRA, in violation of FINRA Rule 2010; failed to properly report receipt of a complaint and settlement, in violation of FINRA Rules 3070 and 2010; provided a false and misleading document to FINRA during an examination of her firm, in violation of NASD Rule 2110; caused her firm's books and records to be inaccurate, in violation of NASD Rules 3110 and 2110, and FINRA Rule 2010; and produced misleading and inaccurate documents to FINRA in response to a request for information and documents, in violation of FINRA Rules 8210 and 2010.

For these violations, the Hearing Panel suspends Respondent for 16 months in all principal capacities, fines her $11,000, and requires her to requalify as principal before acting again in that capacity.

Appearances

David R. Sonnenberg, Head of Litigation, Washington, DC; Kevin G. Kulling, Senior Regional Counsel, and Mark A. Koerner, Regional Chief Counsel, Chicago, Illinois; and Mark P. Dauer, Deputy Chief Litigation Counsel, New Orleans, Louisiana, for the Department of Enforcement.

Alan M. Wolper and Nathan W. Lamb, Ulmer & Berne LLP, Chicago, Illinois, for Respondent.

I. Introduction

Respondent Amy Siesennop is an owner, vice president, and principal of FINRA member firm Freedom Investors Corp. ("Freedom"). The Department of Enforcement's Amended Complaint alleges that she engaged in two distinct courses of misconduct.

The first concerns Siesennop's settlement of a complaint a customer made against a Freedom representative in February 2010. The Department of Enforcement alleges that Siesennop guaranteed the customer against loss, settled the complaint conditioned on an agreement that the customer not complain to FINRA, and failed to report the complaint and settlement properly to FINRA. Siesennop admits these charges.

The second relates to a compliance review form that documented a meeting Freedom's president held with a Freedom representative in February 2008. Siesennop did not participate in the meeting. However, Siesennop entered information onto the form afterwards. Enforcement alleges that Siesennop's entries altered the form, making it misleading, and that filing the form caused Freedom's books and records to be inaccurate. Enforcement alleges further that Siesennop provided the misleading form to FINRA auditors in September 2008. In December 2011, Siesennop produced the form to Enforcement in response to a post-complaint Rule 8210 request. On neither occasion did she disclose that she had altered the form. Siesennop denies these charges.

II. Procedural Background

Enforcement filed the original Complaint in this disciplinary proceeding on September 22, 2011, against Siesennop and three other respondents. On March 19, 2012, Enforcement filed a Motion for Leave to File Amended Complaint and Request for Shortened Response Time and Expedited Consideration ("Motion for Leave to Amend").

On April 2, 2012, Respondents filed their Opposition to Enforcement's Motion for Leave to Amend. On April 3, 2012, for good cause shown, the Hearing Officer granted Enforcement's Motion for Leave to Amend.

As the original Complaint did, the Amended Complaint named four respondents: Freedom; Gary Gossett, a Freedom registered representative; Joel Blumenschein, an owner and president of Freedom; and Siesennop. Blumenschein and Siesennop each own 47.5% of Freedom Securities, which in turn owns Freedom,[1] a firm with two offices of supervisory jurisdiction and headquarters located in Brookfield, Wisconsin.[2] Freedom has 24 registered representatives. A few of the representatives are located in the states of Washington and California, one in Florida, one in New York, one in Georgia, and the rest in Wisconsin.[3]

On April 23, 2012, Enforcement submitted an Order Accepting an Offer of Settlement as to Respondents Freedom, Gossett, and Blumenschein. On the same day, the parties submitted Respondent Siesennop's Consent to Liability on Certain Counts and Joint Stipulation Regarding Limitation of the Scope of the Hearing on Those Counts ("Consent and Stipulation").

III. The Hearing

A Hearing Panel convened the one-day hearing in this matter in Chicago, Illinois, on May 1, 2012. At the outset, Enforcement withdrew one of the remaining causes of

[1] Hearing transcript ("Tr.") 38, 117. References to exhibits the parties jointly offered are designated "JX-__." References to exhibits offered by Enforcement are "CX-__."

[2] Tr. 117, 210.

[3] Tr. 211.

action against Siesennop.[4] This left the Panel with the task of determining what sanctions, if any, to impose upon Siesennop for the three violations for which she concedes liability, and whether Siesennop is liable, and should be sanctioned, for the three causes of action she contests.

The three causes of action for which Siesennop concedes liability charge that she:

- guaranteed a customer against loss, in violation of FINRA Rules 2150 and 2010;[5]
- settled a customer complaint conditioned on an agreement by the customer not to complain to FINRA about the matter, in violation of FINRA Rule 2010; and
- failed to properly report the receipt of the customer complaint and settlement, in violation of NASD Rule 3070 and FINRA Rule 2010.

The three charges Siesennop contests allege that she:

- provided a false and misleading document to FINRA during an examination of Freedom, in violation of NASD Rule 2110;
- caused Freedom's books and records to be inaccurate, in violation of NASD Rules 3110, 2110, and FINRA Rule 2010; and

[4] Enforcement withdrew the ninth cause of action, which alleged that Siesennop had violated NASD Rule 3010 and FINRA Rule 2010. Tr. 7.

[5] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). Following consolidation, FINRA began developing a new Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Regulatory Notice 08-57 (Oct. 2008). This Decision relies on the NASD and FINRA Rules in effect at the time of the alleged misconduct. The applicable rules are available at www.finra.org/rules.

- produced an altered and inaccurate document to FINRA in response to a post-Complaint request for documents and information, in violation of FINRA Rules 8210 and 2010.

IV. Jurisdiction

Siesennop entered the securities industry in 1996 when she joined Freedom.[6] During the period relevant to this disciplinary proceeding, from the beginning of 2008 to the present, Siesennop has been an owner of Freedom Securities, which wholly owns Freedom,[7] and has been the firm's chief compliance officer, FINOP, and office manager.[8] The Central Records Depository ("CRD") describes her as Freedom's vice president and secretary. She currently holds Series 6, 7, 24, 27, and 63 licenses.[9] Therefore, FINRA has jurisdiction over Siesennop for the purposes of this disciplinary proceeding.

V. Facts

A. Background

As noted above, the first course of alleged misconduct concerns Siesennop's settlement of a customer complaint. The customer made the complaint against Freedom representative Gary Gossett in 2010. The second relates to a Freedom compliance review form. Freedom's president Blumenschein partially filled out the form to document a meeting he had with Gossett in February 2008. Because the relevant acts relating to the compliance review form occurred first, and provide a backdrop for the later customer

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[6] Tr. 208.

[7] Tr. 37-38, 116, CX-2.

[8] Tr. 212-14.

[9] Tr. 214.

complaint, the discussion below begins with a description of the circumstances surrounding creation of the form.

1. The Gossett Form

In October 2007, Blumenschein traveled to Spokane, Washington, on firm business. He had several reasons for making the trip: to conduct off-site compliance reviews of several Freedom representatives working in the Spokane area; to look for potential office space for Freedom; and to interview Gossett, who was not yet associated with Freedom.[10]

When Blumenschein conducted the compliance reviews of the Spokane area Freedom representatives, he documented each review on the firm's off-site compliance review form.[11] He initialed and recorded the date of the reviews, all of which occurred on October 29, 2007.[12] When Blumenschein returned to Wisconsin, he left the forms on Siesennop's desk to be filed.[13]

In February 2008, Blumenschein returned to Spokane. By this time, Freedom had hired Gossett. Blumenschein met with Gossett to conduct an "orientation review." He wanted to inform Gossett, among other things, of Freedom's expectations regarding records Gossett should maintain as a Freedom representative. According to Blumenschein, it was not a "formal" meeting. It lasted no more than an hour.[14] Prior to meeting, Blumenschein asked Gossett to bring with him all the paperwork he had already

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[10] Tr. 76-78, 86.

[11] Tr. 80-81.

[12] Tr. 80-82.

[13] Tr. 83.

[14] Tr. 85-87.

generated working as a Freedom representative. Gossett, however, had generated none in the brief time he had been with Freedom.[15]

At the time, Freedom did not have a form specifically designed to document an orientation meeting such as this.[16] Consequently, Blumenschein used the Freedom off-site compliance review form as a checklist for his discussion with Gossett, and placed check marks in some of the boxes as he went over various topics listed on the form with Gossett.[17] At the meeting's conclusion, Blumenschein directed Gossett to sign the partially completed form to acknowledge that they had reviewed the topics checked off on the form. This was the genesis of what the parties referred to at the hearing as the "Gossett form".[18]

Blumenschein left the Gossett form incomplete. He did not identify the date, location of the review, or identity of the reviewer on the lines calling for this information, and he did not sign it. Blumenschein testified that he did not deem it important to include such information or his signature because he considered the meeting to be merely an informal "introduction to the firm," not an "office review."[19]

Upon returning to Wisconsin, Blumenschein turned the Gossett form over to Siesennop, as he had done previously with the off-site compliance review forms in

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[15] Tr. 87.

[16] Freedom no longer uses the off-site compliance review form for orientation meetings. Since then, the firm has created a binder specifically for that purpose. Tr. 261- 62.

[17] Tr. 89-90.

[18] Tr. 92-93.

[19] Tr. 91-94; JX-31, at 24-25.

October 2007.[20] Subsequently, either Siesennop or a Freedom receptionist or sales assistant filed the Gossett form in a file containing Freedom's 2007 office reviews.[21]

Approximately seven months later, on September 2, 2008, FINRA informed Siesennop that it was going to conduct a routine audit of Freedom. FINRA staff asked her to gather a number of records for the review, including "Branch Office Inspection Records."[22] In doing so, Siesennop retrieved the firm's October 29, 2007 off-site compliance review file, which contained the Gossett form.

When Siesennop noticed that the Gossett form was incomplete, she filled in the blanks. She wrote October 29, 2007, as the date of the review, because that was the date written on the other off-site compliance review forms. She wrote "WA" and "Gary Gossett" in the line for "Location of Office," and inserted her name as the person who conducted the review, even though she had not done so.[23] Siesennop included the Gossett form with the other records FINRA had requested for the audit. She did not inform FINRA staff that she had added information to the Gossett form.[24]

When Enforcement filed its Complaint against the original four respondents, it alleged, among other charges, that Blumenschein and Freedom had failed to supervise Gossett properly, and that they had failed to establish and maintain an adequate supervisory system. In their Answer, Respondents denied these allegations and asserted,

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[20] Tr. 165.

[21] Siesennop acknowledged that she was the office manager and responsible for maintaining Freedom's books and records. Tr. 166-68.

[22] CX-30, at 1, 4; Tr. 170-71; 262-63.

[23] Tr. 262-68.

[24] Tr. 175-76.

in defense of the supervision charge, that Freedom and Blumenschein had subjected Gossett to two supervisory reviews over the previous three years.[25]

To investigate this defense, Enforcement issued a post-complaint Rule 8210 request for "documents and information ... related to the two separate office reviews."[26] In response to the request, Siesennop provided the Gossett form without revealing that she had changed it in September 2008.[27]

On its face, the Gossett form appears to document an off-site compliance review of Gossett conducted by Siesennop on October 29, 2007. Gossett's CRD records, however, indicate that he was not hired by Freedom until January 2008.[28] Noticing the apparent discrepancy – that Freedom's records indicated Siesennop conducted an off-site compliance review of Gossett more than two months before he began working for the firm – Enforcement followed up with another post-complaint Rule 8210 request. In it, Enforcement asked for an explanation.[29] Siesennop's counsel responded by describing Blumenschein's creation of the Gossett form, and stated that Freedom "mistakenly filed" it with the October 29, 2007 off-site compliance review files. Siesennop's counsel stated further that in preparation for the September 2008 FINRA audit, "it was discovered" that the Gossett form "was not properly completed" because "the top of page one ... was not completed and it was not signed and dated by a principal. Because the other forms in the file were dated October 29, 2007, that date was improperly affixed to this form."[30]

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[25] Tr. 179-180; Answer, at 21.

[26] JX-31, at 2.

[27] Tr. 180-81; 271.

[28] CX-3, at 1, 7.

[29] CX-29, at 1.

[30] JX-33, at 2-3.

2. The Customer Complaint

In February 2010, Gossett's customer JT called Siesennop to complain about the management of his account, which had sustained significant losses.[31] JT expressed concern about the number of trades and the amount of commissions charged. He wanted his account made whole.[32] JT followed up his call with a letter to Siesennop dated February 18, 2010, detailing his grievances.[33]

Siesennop informed Blumenschein of the complaint.[34] Blumenschein directed her to resolve it, and, in his words, "make sure [JT] is happy."[35]

Siesennop reviewed JT's account and decided that "a lot of [JT's] concerns were unfounded." Siesennop determined that the commissions Gossett charged JT were not excessive, and she concluded Gossett had executed less than half the number of trades JT had complained were excessive.[36] Nonetheless, Siesennop sought to negotiate a settlement, believing that would be preferable to litigating an arbitration claim.[37]

Siesennop wrote JT a letter dated March 4, 2010, explaining her analysis of the account. Siesennop closed the letter by writing that to retain JT "as a valued client," Freedom was "open to any solution that would appease" JT.[38]

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[31] Tr. 127. Siesennop's contemporary notes reflect that JT called her to complain about Gossett on February 12, 2010. Tr. 225-26; JX-20, at 233.

[32] Tr. 224-225, 230.

[33] JX-12.

[34] Tr. 229.

[35] Tr. 55.

[36] Tr. 232.

[37] Tr. 236.

[38] Tr. 129; JX-13.

On March 15, 2010, Siesennop reported Freedom's receipt of the complaint to FINRA on a "Disclosure Events and Complaints" form. However, in doing so, she incorrectly checked the box indicating that the customer lodged the complaint against the *firm*. She should have checked the box to reflect, correctly, that the customer brought the complaint against a registered representative.[39]

On April 12, 2010, Siesennop sent JT a formal settlement offer (the "settlement letter"). It contains two provisions that run afoul of FINRA rules. The first is a guarantee against loss. Siesennop proposed "to make [JT's] account whole, within ... eighteen (18) months. If after 18 months you have not made back the original investment of $75,323.40 ... your account will be made whole.... If after eighteen months, if the difference has not been made up, the difference would be paid to you plus 5% interest." The second is a requirement that JT not take his complaint to FINRA. Siesennop wrote: "In return you agree not to file a complaint with FINRA, unless we do not make your account whole by October 31, 2011." JT, Gossett, and Siesennop signed the settlement letter.[40] She did not report the settlement to FINRA for over six months, in October 2010.[41]

In September 2010, Siesennop learned from discussions with FINRA staff conducting an examination of Freedom that the settlement she had crafted for JT violated FINRA rules. As soon as she could, Siesennop flew to Spokane to renegotiate the agreement with JT. She advised him that the settlement letter "as written ... was not

[39] Tr. 155; JX-26.

[40] JX-16.

[41] JX-27.

worded correctly" and that she "needed to correct that."[42] She prepared a new agreement, dated October 6, 2010, settling JT's complaint for $9,500.[43]

In the new settlement document, Siesennop expressly provided that the previous settlement was "null and void," "was not viewed as a guarantee," and that JT "understood that [he] could have filed a complaint with FINRA at any time." Both she and JT signed the agreement, and Siesennop gave JT a check for $9,500.[44]

VI. Analysis

A. The Uncontested Customer Complaint Charges

As noted above, Siesennop concedes liability for the violations charged in the Fourth, Fifth, and Tenth causes of action in the Amended Complaint relating to the settlement letter. The facts and applicable law support her concessions.

1. Siesennop Guaranteed a Customer Against Loss

FINRA Rule 2150(b) states clearly: "No member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction *or in any securities account of such customer*" (emphasis added). The Securities and Exchange Commission has held that the rule applies "broadly to any guarantee ... in connection with a customer's account."[45]

By promising that if JT's account did not recover its original value in 18 months Freedom would make the account "whole" by paying the difference between the account

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[42] Tr. 249-250.

[43] At the time, it would have required only $4,000 to $5,000 to make his account "whole." She agreed to a larger payment, however, to resolve the matter and "to get this off the books." Tr. 252-53.

[44] Tr. 254; JX-21.

[45] *Curtis I. Wilson*, 49 S.E.C. 1020, 1024 (1989).

value and its original value, plus five percent interest, Siesennop improperly guaranteed JT's account against loss. By doing so, she violated FINRA Rules 2150(b) and 2010.

2. Siesennop Settled a Customer Complaint Conditioned on the Customer Agreeing Not to Complain to FINRA

It is impermissible for a FINRA member firm or associated person to condition a settlement with a customer upon a requirement that the customer agree not to complain to FINRA. Notice to Members ("NTM") 04-44, issued in June 2004, reiterates previously issued prohibitions against including provisions in customer settlement agreements that "impede, or have the potential to impede, NASD investigations and the prosecution of NASD enforcement actions violates NASD Rule 2110."[46] NTM 04-44 explains that it is impermissible "to prohibit, limit, or discourage customers or other persons from disclosing the settlement terms or the underlying facts of the dispute in question" to FINRA or other securities regulators.[47] As precedent makes clear, requiring a customer to promise not to divulge the terms of an agreement to "any third party" violates this proscription.[48]

Here, as Siesennop concedes, the settlement agreement she crafted to resolve JT's complaint contained an impermissible condition that JT agree not to complain to FINRA if Freedom made his account whole. Siesennop therefore violated FINRA Rule 2010.

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[46] 2004 NASD LEXIS 49 (June 2004). Earlier proscriptions against including impermissible non-disclosure or confidentiality provisions in customer settlements are found in *Notice to Members 95-87* (October 1995); *Notice to Members 86-36* (May 1986); and NASD Regulatory and Compliance Alerts (June 1994 and July 1995). *See also Dep't of Enforcement v. Murphy*, No. 2005003610701, 2011 FINRA Discip. LEXIS 42 (N.A.C. Oct. 20, 2011), *appeal docketed*, No. 3-14609 (S.E.C.) (finding impermissible a settlement provision that customer would not provide testimony or documents to NASD unless compelled by subpoena "or other legal process").

[47] *Notice to Members 04-44*, 2004 NASD LEXIS 49 (June 2004).

[48] *Dep't of Enforcement v. Am. First Assocs. Corp.*, No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at *26 (N.A.C. Aug. 15, 2008).

3. Siesennop Failed to Properly Report a Customer Complaint and Settlement

A customer complaint triggers reporting obligations on the part of a member firm. NASD Rule 3070(a)(8) required a firm to make a prompt report to FINRA if an associated person was "the subject of any claim for damages by a customer ... settled for an amount exceeding $15,000." Rule 3070(b) required a firm to notify FINRA within 10 days of the settlement. Rule 3070(c) required a firm to file certain detailed information about the complaint by the 15th of the month following the quarter when the customer made the complaint.

At the end of March 2010, when Siesennop negotiated the settlement with JT, his account had a value of $46,491.67. By the terms of the settlement, Siesennop agreed to make JT's account "whole" at $75,000. If the account value remained unchanged at the end of 18 months, this meant that Siesennop had obligated Freedom to pay JT almost $29,000, the difference between JT's original investment and the $46,491.67 value of the account.[49] By not reporting the agreement to pay a potential claim of more than $15,000 promptly to FINRA, Siesennop violated Rule 3070(a)(8). By failing to notify FINRA within 10 days of the signing of the settlement agreement on April 12, 2010, Siesennop also violated Rule 3070(b).

On March 15, 2010, Siesennop filed a timely Disclosure Events and Complaints form to report JT's complaint. On the form, FINRA requires a firm to disclose whether the customer directed the complaint against the *firm* or against a *representative*. However, Siesennop incorrectly checked the box indicating that the complaint related to

[49] Tr. 153.

the firm, not an individual representative.[50] This, as she concedes, violated FINRA Rules 3070(c) and 2010.

B. The Contested Gossett Form Charges

Siesennop contests the allegations relating to the Gossett form contained in the Twelfth, Thirteenth, and Fourteenth causes of action.

FINRA Rule 2010, and its identical predecessor, NASD Rule 2110, require members and associated persons to adhere to a high standard of business conduct. Both read:

> A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Sometimes referred to as the "just and equitable" conduct rule, it articulates a "broad ethical principle" that prohibits "all unethical business-related conduct."[51] It encompasses a wide spectrum of conduct.[52] It applies to the obligation of members and associated persons to provide accurate information to FINRA.[53] Providing falsified or misleading documents to FINRA violates the rule.[54]

As the Amended Complaint's twelfth cause of action alleges, in September 2008 Siesennop collected the Gossett form along with other documents in response to a FINRA staff request to prepare for an examination of Freedom. When she did so,

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[50] JX-26; Tr. 155.

[51] *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *13, *16 (N.A.C. June 2, 2000).

[52] *Id.*, at *16-18.

[53] *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996), *aff'd*, 1997 U.S. App. LEXIS 8875 (9th Cir. Apr. 1997).

[54] "Falsifying documents is a practice that is inconsistent with just and equitable principles of trade." *Dep't of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *17(N.A.C. May 25, 2005); "[P]roviding false and misleading information subverts NASD's ability to carry out its regulatory functions." *Dep't of Enforcement v. Rogala*, No. C8A030089, 2005 NASD Discip. LEXIS 44, at *22 (N.A.C. Oct. 11, 2005).

Siesennop added the review date, the location of Gossett's office, and her name as the person who conducted the review. By post-dating her signature, Siesennop made it appear that she signed the form on October 29, 2007, almost a year before she actually signed it. Siesennop knew that she had not conducted the review, the review did not occur on October 29, 2007, and she actually signed the form in September 2008.

Siesennop testified that she first noticed that the Gossett form was not properly completed when she prepared for the FINRA audit. Seeing it was incomplete, she "just filled it in." Siesennop stated it did not occur to her that in October 2007 Freedom had not yet hired Gossett.[55] At the hearing, Siesennop acknowledged that, "in hindsight," she "probably" should not have added the information.[56] Siesennop admitted that she did not disclose to the FINRA auditors that she had made additions to the form when she readied it for their review.[57] When pressed as to whether she should have disclosed the changes, Siesennop testified "I don't know" and stated she had not thought about it "one way or another."[58]

Siesennop insisted that when she dated and signed the Gossett form, she actually believed that October 29, 2007, was the date Blumenschein saw Gossett. Thinking it was correct, she wrote that date on the face of the form to make it consistent with the date on the other off site review forms in the file. She dated her signature October 29, 2007, because that was the date she had written on the first page of the form.[59]

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[55] Tr. 168-170.

[56] Tr. 183.

[57] Tr. 175.

[58] Tr. 184-85.

[59] Tr. 268-73.

When asked why she did not simply turn the Gossett form over to FINRA in the incomplete condition she found it, Siesennop made an admission the Panel finds significant and revealing. She said that giving FINRA examiners a document with "blank lines just brings up more questions."[60]

Siesennop strenuously denies she "falsified" the form, but simply intended to "correct" the Gossett form by making it more accurate.[61] Siesennop claims that, at worst, by inadvertently inserting incorrect information, she made an inconsequential mistake that did not change the substance of the form. Siesennop protests what she refers to as "Enforcement's erroneous presumption that the addition of information ... somehow makes the entire [Gossett form] false."[62]

Finally, Siesennop stresses that for the audit, FINRA staff requested "branch office inspection records." Siesennop points out that the Gossett form is not a branch office inspection record and is not a record Freedom was required to maintain. Therefore, Siesennop argues, she "gratuitously" provided FINRA with a document the auditors did not ask for, with information she added without realizing it was erroneous. Siesennop argues that under these facts, she did not violate NASD or FINRA Rules.[63]

1. Siesennop Provided a False and Misleading Document to FINRA Auditors

After careful consideration of the evidence and arguments of the parties, the Panel finds that Siesennop knew, or should have known, that when she filled in the blanks on the Gossett form, she added inaccurate information. The Panel does not accept

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[60] Tr. 281-82.

[61] Tr. 351-52; 358-59; 362.

[62] Pre-Hearing Br. of Respondent Amy Siesennop 5.

[63] Tr. 358-59; 362.

Siesennop's assertion that she did not consider, and therefore was unaware, that by making it appear that she had conducted an off-site review of Gossett on October 29, 2007, she provided false and misleading information to FINRA. Siesennop concedes that her motive was to avoid rousing auditors' queries about a facially incomplete form. This amounts to a deceptive intent.

The Panel finds it is of no moment that originally the Gossett form was not a branch office inspection record, and technically not required to be maintained and produced for the FINRA audit. What is relevant is that Siesennop presented it to FINRA auditors as if it were one of the off-site compliance reviews completed in 2007 that Freedom was required to produce for the FINRA audit.

Based upon the considerations set forth above, the Panel finds that Siesennop's additions to the Gossett form, and producing it to FINRA auditors, violated NASD Rule 2110, as alleged in the Complaint's Twelfth cause of action.

2. Siesennop Maintained the Gossett Form in Freedom's Records, Causing the Firm's Books and Records to be Inaccurate

NASD Rule 3110 imposes upon members the obligation to maintain certain books and records. It states:

> Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3.

It is implicit that the records a firm maintains should be "true and correct."[64] There is no requirement of proof of scienter to establish a violation of Rule 3110, nor is it

[64] *Voss & Co., Inc.*, 47 S.E.C. 626, 632 n.16 (1981).

necessary to prove that inaccuracies in a member's records are material.[65]

The Complaint's Thirteenth cause of action alleges that by maintaining the Gossett form among Freedom's records from September 2008 until December 2011, after adding inaccurate and misleading information, Siesennop violated NASD Rules 3110 and 2110, and FINRA Rule 2010. In her defense, Siesennop reiterates the arguments, set forth above, that since the Gossett form is not a document that Freedom or Siesennop had to create or maintain, she did not violate the rules.[66]

Siesennop admits that as Freedom's office manager, she was responsible for the firm's books and records, and for filing the Gossett form with the year 2007 off-site branch office reviews.[67] On its face, primarily because of Siesennop's actions, the Gossett form purports to be a record of an off-site branch office review. Because Siesennop maintained the misleading and inaccurate Gossett form in the file containing Freedom branch office reviews for 2007, the Panel finds that she violated NASD Rules 3110 and 2110, and FINRA Rule 2010.

3. In Response to a Rule 8210 Request, Siesennop Produced an Altered Document to FINRA

Fundamental to FINRA's regulatory mandate, FINRA Rule 8210 empowers FINRA, in pursuing a complaint, to require a member or an associated person to provide information, in writing or orally. Because FINRA lacks the power to issue subpoenas, it relies upon Rule 8210 to obtain information from members. "The rule is at the heart of

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[65] *Palm State Equities, Inc.*, 52 S.E.C. 333, 336 (1995) ("Exchange Act Rule 17a-3 requires that a broker-dealer keep and maintain current books and records. It does not permit a broker-dealer to avoid this requirement merely because, in retrospect, the resulting adjustments prove to be immaterial."); *Joseph G. Chiulli*, 54 S.E.C. 515, 522 (2000) ("Rule 3110 has no scienter requirement.").

[66] Tr. 356-358.

[67] Tr. 167-168.

the self-regulatory system for the securities industry."[68] An associated person's obligation to comply with Rule 8210 information requests is unequivocal.[69] As noted by Enforcement, Rule 8210 proscribes providing false or misleading information in response to requests issued under the Rule, and false or misleading responses to such requests violate Rule 8210 and NASD Rule 2110, and FINRA Rule 2010.[70]

The Amended Complaint's Fourteenth cause of action concerns a post-complaint Rule 8210 request Enforcement issued on November 18, 2011, for documents and information related to the "two separate [Gossett] office reviews in the last three years" referenced in Respondents' Answer. In response, Siesennop produced the Gossett form in December 2011.

Siesennop admits that, to comply with the request, she turned the Gossett form over to her counsel to forward to Enforcement without informing anyone of what she had written on it in preparation for the 2008 FINRA audit.[71] She maintains, however, that the Rule 8210 request left her with no alternative other than to produce the Gossett form. In Siesennop's view, it is "nonsensical" to charge her with a Rule 8210 violation for complying with her obligation to produce the document.[72]

Based upon the facts set forth above, the Panel concludes that Siesennop knew or should have known that she rendered the Gossett form inaccurate and misleading in September 2008. By producing it in response to the post-Complaint Rule 8210 request,

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[68] *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

[69] *Id.*

[70] Dep't of Enforcement's Pre-Hearing Br. 18; *Dep't of Enforcement v. Maceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36, *39 (N.A.C. Dec. 18, 2006).

[71] Tr. 158-161.

[72] *Id.*, at 5; Pre-Hearing Br. of Respondent Amy Siesennop 5.

without any explanation of how and why she had previously altered the form, Siesennop violated FINRA Rules 8210 and 2010, as alleged in the Amended Complaint's Fourteenth cause of action.

VII. Sanctions

Enforcement argues that Siesennop's misconduct, particularly the Gossett form violations, reflect a "pattern of bad choices, [and] bad ethical decisions." To deter her and others, Enforcement asserts, requires the imposition of severe sanctions. At the hearing, Enforcement argued that Siesennop's misconduct "could well justify a permanent bar."[73] Nevertheless, noting that the Gossett form was not a complete fabrication, because it documents, albeit inaccurately, a meeting that actually took place,[74] Enforcement recommends a less severe outcome: a suspension in all capacities for a total of two years, a $30,000 fine, and a requirement that Siesennop requalify as a principal before being permitted to act again in any principal capacity.[75]

Not surprisingly, Siesennop argues that the case calls for far less stringent sanctions. For the uncontested charges, Siesennop urges the Panel to issue a Letter of Caution or, at most, a minor fine not exceeding $2,500. For the contested charges, if found liable, Siesennop urges the Panel to impose at most "only a modest sanction."[76]

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[73] Tr. 330-331.

[74] Tr. 333; Dep't of Enforcement's Pre-Hearing Br. 24.

[75] Tr. 331. In its Pre-Hearing Brief, Enforcement recommends a suspension in principal capacities for four months and a $20,000 fine for the settlement agreement violations alleged in the fourth and fifth causes of action; a $5,000 fine for the Rule 3070 reporting violation alleged in the tenth cause of action; and a suspension in all capacities for two years, a fine of $30,000, and requalification as a principal for the Gossett form violations alleged in the twelfth, thirteenth and fourteenth causes of action. This would make the fines total $55,000. Enforcement's Pre-Hearing Brief 19, 21. In both its brief and arguments at the hearing, Enforcement makes clear that it is recommending a total period of two years of suspension. Enforcement's Pre-Hearing Brief, 25-26; Tr. 331.

[76] Pre-Hearing Br. of Respondent Amy Siesennop 9.

Taking the entire record into consideration, the Panel concludes that Siesennop's misconduct requires neither the severity of the sanctions Enforcement proposes, nor the leniency of the sanctions Siesennop suggests.

A. The Uncontested Customer Complaint Violations

For violating FINRA Rules 2010 and 2150 by guaranteeing a customer against loss, FINRA's Sanction Guidelines recommend that adjudicators consider a fine of $2,500 to $25,000 and suspension in any or all capacities for up to 30 business days. Among the relevant Principal Considerations enumerated in the Guidelines are the purpose and timing of the guarantee and whether a respondent received any financial gain from the guarantee.[77] For violating FINRA Rule 2010 by settling a customer complaint in exchange for an agreement that the customer not cooperate with regulatory authorities, the Sanction Guidelines recommend a fine of $2,500 to $50,000, consideration of suspension in any or all capacities from one month to two years, and a bar in egregious cases.[78] The Principal Considerations include the nature of the confidentiality agreement, whether the respondent released the customer from the restriction against cooperating before regulatory authorities became involved, or after a regulatory authority advised the respondent to do so.

Applying the Principal Considerations, the Panel does not find aggravation present in the timing of the settlement. Siesennop acted reasonably promptly after receiving JT's complaint to resolve it in a manner satisfactory to JT, as Blumenschein directed her to do. She received JT's initial phone call on February 12, 2010, engaged in

[77] *FINRA Sanction Guidelines* 86 (2011) (available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

[78] Sanction Guidelines 32.

a series of negotiations with JT, communicated with Gossett and Blumenschein, and authored the settlement on April 12, 2012. The Panel finds credible Siesennop's testimony that her motive was primarily "to do what [was] best for the firm, for the reps, for [Blumenschein] and myself as owners."[79] Unfortunately, in the Panel's view, Siesennop ignored fundamental FINRA rules to accomplish her objectives.

For these two uncontested violations, Enforcement recommends suspending Siesennop for four months in all principal capacities and imposing a fine of $20,000.[80] Enforcement propounds four arguments to justify these sanctions. First, Enforcement contends that JT's complaint was significant in drawing FINRA's attention to other issues of concern at Freedom, thereby implying that Siesennop negotiated the settlement intending to avoid drawing FINRA's attention to other issues. Second, Enforcement argues that Siesennop's leadership role at Freedom as principal, chief compliance officer, and co-owner require serious sanctions. Third, Enforcement contends that Siesennop attempted to secure a financial benefit, as owner of a 47% interest in the firm, by delaying the payment required to make JT's account whole, with the hope that JT's account value would improve in the meantime.[81] Finally, Enforcement argues that Siesennop failed to release JT from the requirement not to disclose the matter to FINRA until after FINRA informed her that the agreement was impermissible.[82]

To support her argument for far less serious sanctions, Siesennop argues that she was a novice in handling customer complaints. JT's complaint was only the third

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[79] Tr. 275-76.

[80] Dep't of Enforcement's Pre-Hearing Br. 19.

[81] *Id.*

[82] *Id.*

customer complaint she had received during her tenure as chief compliance officer at Freedom,[83] and was the only customer complaint she received and settled in 2010.[84] She testified that she did not use the word "guarantee" in the settlement letter, did not intend to give JT a guarantee against loss, and knew it was against FINRA rules to provide such a guarantee.[85] She maintains she made a mistake and "inartfully drafted" the settlement letter.[86] Siesennop counters Enforcement's suggestion that she had a financial motive by arguing that in settling with JT, she sought no financial gain to her or to Freedom, as evidenced by the fact that she required Gossett to bear the cost of making JT whole.[87]

As for the condition that JT would not complain to FINRA, Siesennop acknowledges that she violated FINRA rules, but did so unintentionally: her purpose, she claims, was simply to express that the settlement was "full and final."[88]

Turning first to Enforcement's recommendations, the Panel finds some, but not all, of Enforcement's list of aggravating factors relevant and applicable.

First, the Panel finds no evidence that shielding other problems at Freedom from FINRA's view motivated Siesennop to engineer the flawed settlement of JT's complaint.

Second, the Panel agrees that Siesennop's leadership roles as vice president, chief compliance officer, FINOP, and office manager at Freedom add a significant, troubling dimension to her misconduct. Because Siesennop was "actively engaged in the management" of the firm's securities business and thus played "an essential role in

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[83] Tr. 222.

[84] Tr. 190-191.

[85] Tr. 242.

[86] Tr. 338, 342.

[87] Tr. 343.

[88] Tr. 244-245.

compliance by ensuring that [FINRA] rules and the federal securities laws are followed," her status renders her misconduct "particularly worrisome."[89] This is especially so because of the unambiguously violative terms of the settlement letter. As Blumenschein bluntly testified in an on-the-record interview: "There are two things in this world that you can't do as a broker and as a rep and as a firm. (A), guarantee against loss. (B), tell somebody they can't go to FINRA. Cardinal rules 1 and 2."[90]

Third, the evidence does not support Enforcement's contention that Siesennop's own financial interests significantly influenced her efforts to reach the settlement with JT, even though her overarching motive to serve the firm's best interests obviously included the firm's, and therefore her, financial welfare. The Panel therefore does not consider the prospect of financial gain to be an aggravating factor in this case.

Fourth, although Siesennop acted with dispatch to revoke the original settlement after FINRA informed her of its infirmities, her failure to recognize that its terms were improper before FINRA intervened supports Enforcement's argument that her "ethical compass is ... misaligned"[91] and needs correction.

Turning to Siesennop's arguments, the Panel does not agree that the objectionable provisions in the settlement agreement reflect merely inartful drafting. The language is unambiguous. The words she chose are inconsistent with Siesennop's claim that she did not intend to guarantee JT against loss and obtain a commitment from him not to complain to FINRA. The Panel observed Siesennop testify at length at the hearing.

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[89] *Dep't of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *16 (N.A.C. May 7, 2007) *citing Dep't of Enforcement v. Duma*, No. C8A030099, 2005 NASD Discip. LEXIS 46, at *25 (N.A.C. Oct. 27, 2005) (Respondent's "disregard for regulatory requirements is particularly disturbing given that he is registered as a principal.").

[90] Tr. 69-70.

[91] Tr. 326.

Based upon the substance of her testimony, as well as her demeanor, the Panel concludes that the settlement agreement she drafted reflects precisely what she intended it to say. That this was the first customer complaint she settled does not provide mitigation. She had years of experience and is a senior principal at Freedom. Siesennop testified that the customer complaint against Gossett was a "big deal."[92] It merited, and received, her full attention. At the very least, she had the option of seeking assistance from Blumenschein if she felt insufficiently experienced to settle JT's complaint.

In sum, for all of the reasons set forth above, and to achieve the deterrent purposes of the Sanction Guidelines, the Panel concludes that for guaranteeing a customer against loss, in violation of FINRA Rules 2150 and 2010 as alleged in the Complaint's Fourth cause of action, Siesennop should be suspended for one month in all principal capacities and fined $2,500. For settling with a customer in exchange for the customer's agreement not to complaint to FINRA, contrary to FINRA Rule 2010, the Panel imposes a consecutive three-month suspension in all principal capacities, and an additional fine of $2,500.

B. The Uncontested Reporting Violation

The Sanction Guidelines for filing an inaccurate Rule 3070 report call for a fine of $5,000 to $100,000, suspension in all supervisory capacities for 10 to 30 business days, and in egregious cases, suspension in any or all capacities for up to two years or barring the responsible principal in all supervisory capacities.[93] The Principal Considerations include whether the inaccurately reported event would have established a pattern of misconduct, and the number and type of incidents inaccurately reported.

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[92] Tr. 191.

[93] Sanction Guidelines 74.

Enforcement notes that Siesennop failed to disclose the settlement with JT until after FINRA brought to her attention that she needed to do so, and that her failure to disclose that the complaint was directed against a representative instead of the firm delayed FINRA's examination into the matter. In recommending a fine of $5,000, Enforcement concedes that Siesennop's Rule 3070 violations appear to be isolated.[94]

The Panel finds that the Rule 3070 violations here do not constitute a pattern of misconduct. The Panel accepts as credible Siesennop's testimony that her failure to accurately report that the complaint was directed against a representative was inadvertent. As for the failure to report the settlement timely as required for settlements for amounts in excess of $25,000, the Panel notes that Siesennop calculated JT's realized loss initially at $10,031, offered to settle for that amount, and later consummated a settlement for under $10,000.[95] The Panel concludes that Siesennop did not intend to violate the reporting requirements of NASD Rule 3070(a)(8) and (b), and did so inadvertently. For these reasons, the Panel concludes that a fine of $1,000 will achieve the deterrent purposes appropriate for Siesennop's Rule 3070 violations alleged in the Complaint's tenth cause of action.

C. The Contested Gossett Form Violations

For falsification of records, in violation of FINRA Rule 2010, the Sanction Guidelines recommend a fine of $5,000 to $100,000. If there are mitigating factors, the Guidelines recommend suspension in any or all capacities for up to two years. The

[94] Dep't of Enforcement's Pre-Hearing Br. 21.

[95] JX-15.

relevant Principal Consideration is the nature of the document. The Guidelines call for a bar in egregious cases.[96]

For causing a firm's books and records to be inaccurate, the Sanction Guidelines recommend a fine of $1,000 to $10,000 and suspension in any or all capacities for up to 30 business days. In egregious cases, the Guidelines call for a fine of $10,000 to $100,000 and suspension in any or all capacities for up to two years, or a bar. The Principal Consideration is the nature and materiality of the inaccuracies.[97]

For responding untruthfully to a Rule 8210 request, the Sanction Guidelines recommend a fine of $25,000 to $50,000. When there is mitigation, the Guidelines recommend suspension for up to two years. The relevant Principal Consideration is the importance of the information, viewed from FINRA's perspective.[98]

As noted above, Enforcement considers Siesennop's misconduct related to the Gossett form to be egregious and therefore deserving of sanctions at the upper end of the Guideline range: a two-year suspension in all capacities; a fine of $30,000; and requalification as a principal.[99] Enforcement argues that three aggravating factors support its recommendation: (i) Siesennop did not accept responsibility for her misconduct before FINRA intervened; (ii) her misconduct extended over a lengthy period; and (iii) she attempted to conceal her misconduct.[100] Enforcement explains it is

[96] Sanction Guidelines 37.

[97] Sanction Guidelines 29.

[98] Sanction Guidelines 33.

[99] Dep't of Enforcement's Pre-Hearing Br. 25.

[100] *Id.*, at 24-25.

not recommending a bar because the Gossett form documented a "review of some sort" that had occurred, and was therefore not "created out of whole cloth."[101]

Siesennop contends Enforcement "has overreached" and asserts that she "merely completed" the portions of the Gossett form Blumenschein had left blank. Trying to make the form more accurate, "in an effort to help the FINRA examiners," Siesennop argues that she merely made a mistake by writing the wrong date and name on a form FINRA rules did not require the firm to maintain, and that FINRA examiners did not ask her to produce.[102] Siesennop denies that she tried to mislead FINRA. She argues that if she had intended to conceal or mislead, she would never have produced the Gossett form.[103] She claims, further, that the length of time the Gossett form remained in Freedom's 2007 off-site review file is not an aggravating factor. Siesennop argues that when she produced it to FINRA, she did not realize that it contained erroneous information: she entered the information in September 2008, and the form sat in the file "out of sight, out of mind," until the Rule 8210 request came more than three years later.[104] She testified that when she provided it to counsel in response to a Rule 8210 request, she did not read it, but simply retrieved it because she could see it appeared to relate to supervision of Gossett and was therefore responsive to the request.[105]

Siesennop makes no specific sanction recommendation for the Gossett violations, insisting simply that they should be dismissed. However, Siesennop argues that the Panel should consider favorably the sanctions imposed by a hearing panel in another case,

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[101] Dept. of Enforcement's Pre-Hearing Br. 24.

[102] Tr. 362, 364.

[103] Tr. 365.

[104] Tr. 366.

[105] Tr. 272.

Dep't of Enforcement v. Gilmore.[106] In her view, the backdating of firm records in *Gilmore* was more egregious than Siesennop's, but the sanctions were modest. The Panel declines to rely on *Gilmore*.[107]

The Panel begins its sanction analysis with the observation that the Gossett form is misleading on its face. Even before Siesennop's additions to it, it was misleading because it appeared to reflect an off-site office review. This may explain why Siesennop or somebody else on Freedom's staff filed it with the 2007 off-site reviews. However, Siesennop made it more misleading when she altered the form.

Siesennop's claim that she intended merely to make the Gossett form more accurate does not excuse her conduct, particularly in light of the admission that her underlying motive was to avoid having FINRA personnel conducting the September 2008 audit ask questions about the incomplete form. As she had hoped, the auditors completed their review without noticing anything amiss, and Siesennop returned the Gossett form to Freedom's files.

The Panel does not find credible Siesennop's explanation that when she later retrieved the Gossett form in response to Enforcement's post-complaint Rule 8210 request, she did not look at it, and therefore did not realize that she was providing FINRA with a document onto which she had made inaccurate entries. But by that time,

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[106] No. C9B0200372003, 2003 NASD Discip. LEXIS 5 (O.H.O. Jan. 8, 2003).

[107] Siesennop's counsel argues that if the Panel imposes any sanctions for the Gossett violations, the *Gilmore* sanctions of a suspension for ten business days and a fine of $7,500 would be more appropriate than Enforcement's recommendations. Tr. 368-370, 373. (In *Gilmore*, FINRA examiners informed the respondent that his firm had failed to make a required designation of an officer as a Senior Registered Options Principal. Subsequently, the respondent "inexplicably" created a memo falsely making it appear that the firm had done so years before. Two years later, the respondent produced the memo to satisfy a Rule 8210 request.) The Panel notes that the SEC has repeatedly rejected attempts by respondents to compare the sanctions imposed against them to the sanctions imposed against other individuals. *Raghavan Sathianathan*, Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572, at *44 (Nov. 8, 2006), *aff'd*, 304 F. App'x 883 (D.C. Cir. 2008). Therefore the Panel imposes the sanctions here relying solely on the facts and circumstances of this case, and guidance gleaned from the Sanction Guidelines.

Siesennop was aware that Freedom's supervision of Gossett was an issue in this disciplinary proceeding. Siesennop admitted that she believed the form evidenced Freedom's supervision of Gossett, and she thought it would be helpful to the original respondents' defense. Thus, insofar as the Principal Consideration focuses on the materiality of the inaccuracy of the firm's record, the Panel finds the Gossett form was material to the original Complaint. It was therefore a document of consequence to Siesennop.

In sum, the Panel finds neither aggravation nor mitigation sufficient to adopt the sanctions recommended by either party. Siesennop intentionally inserted inaccurate information onto the Gossett form for an unacceptable reason. She is responsible for knowingly causing Freedom to maintain the inaccurate form in its books and records. Ultimately, Siesennop produced it in response to Enforcement's post-complaint Rule 8210 request, expecting that it would bolster a defense to an allegation of inadequate supervision. And, as noted above, Siesennop is the principal at Freedom responsible for ensuring compliance with FINRA rules and securities laws.

For these reasons, the Panel concludes that it is necessary to impose sanctions significantly greater than Siesennop urges. To deter Siesennop, who acted in her role as a principal in the course of her misconduct, and others who may be similarly situated, the Panel imposes a suspension in all principal capacities for one year, a fine of $5,000, and a requirement that Siesennop requalify as a principal before acting again in that capacity.

VIII. Conclusion

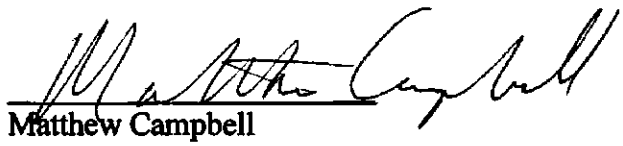
The Panel imposes the following sanctions upon Respondent Amy Siesennop:

- a suspension in all principal capacities for one month, and a fine of $2,500 for violating FINRA Rules 2150 and 2010 by guaranteeing a customer against loss.
- a suspension for a consecutive three months in all principal capacities and an additional fine of $2,500 for violating FINRA Rule 2010 by settling with a customer in exchange for the customer's agreement not to complain to FINRA.
- an additional fine of $1,000 for violating NASD Rule 3070 and FINRA Rule 2010 by failing to file a customer complaint accurately.
- a suspension for one year in all principal capacities, consecutive to the above suspensions, and an additional fine of $5,000 for violating: (i) NASD Rule 2110 by providing a false and misleading document to FINRA during an examination of her firm; (ii) NASD Rules 3110 and 2110, and FINRA Rule 2010, by causing her firm's books and records to be inaccurate; and (iii) FINRA Rules 8210 and 2010 by producing inaccurate and misleading documents to FINRA in response to a post-complaint request.

In sum, the Panel suspends Respondent for 16 months in all principal capacities and fines her $11,000. In addition, Respondent shall requalify as a principal before acting again in that capacity.

If this decision becomes FINRA's final disciplinary action, Respondent's suspensions shall become effective with the start of business on December 17, 2012, and shall end at the close of business on April 16, 2014. The fines shall be due and payable upon Respondent's return to the securities industry.[108]

HEARING PANEL.



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[108] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.