

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DALE EDWARD PARA
(CRD No. 1028917),

Respondent.

Disciplinary Proceeding
No. 2013037332701

Hearing Officer—CC

HEARING PANEL DECISION

September 29, 2014

The Hearing Panel bars Respondent from associating with any FINRA member firm in any capacity for misrepresenting the status of a customer's account and for misrepresenting that he had executed hundreds of requested trades in the customer's account when he had not, in violation of FINRA Rule 2010.

Appearances

For the Department of Enforcement, Complainant, Samuel L. Barkin, Esq., Paul D. Taberner, Esq., and Gina Petrocelli, Esq.

For Dale Edward Para, Respondent, Todd A. Zuckerbrod, Esq.

DECISION

I. Introduction

Respondent Dale Edward Para ("Para") misrepresented to a customer that he executed hundreds of requested trades in the customer's account when he had not and misled the customer into believing that his account transferred with Para from one firm to another when it had not. Based on this conduct, the Department of Enforcement filed a complaint alleging that, between

September 2009 and May 2013, Para intentionally misrepresented facts to a customer and violated FINRA Rule 2010.¹

Para filed an answer, denying the allegations and stating that his conduct was justified because he feared for his safety due to the customer's threatening and intimidating conduct.

The parties participated in a hearing before a FINRA Hearing Panel on June 17, 2014, in Boston, Massachusetts.² Enforcement argued that Para's misconduct was egregious and sought a bar in all capacities. Para denied that his actions violated FINRA rules and argued that he was under extreme duress and the threat of harm and that these factors should be considered mitigating.

The Hearing Panel concludes that, between September 2009 and May 2013, Para intentionally misled a customer regarding the status of his account and whether Para had executed trades that the customer ordered, in violation of FINRA Rule 2010. The Hearing Panel finds that Para's response to what he perceived as threats and intimidation was unreasonable and that his conduct was unethical. For this misconduct, the Hearing Panel bars Para from associating in any capacity with any member firm.

II. Findings of Fact

A. Dale Edward Para

Para entered the securities industry in 1982.³ Para was associated from March 1981 through December 2003 with FINRA member firm Antaeus Capital, Inc., which operated as Oftring & Company, Inc. ("Oftring"). Para was registered with FINRA at various times during

¹ FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business. FINRA Rule 0140 applies this requirement to associated persons.

² The Hearing Panel consisted of a Hearing Officer and two current members of FINRA's District 11 Committee.

³ Complaint ("Compl.") ¶ 5; Answer ("Ans.") ¶ 5; Stipulations ("Stip.") ¶ 1.

that association as a general securities representative and principal, registered options principal, and equity trader.⁴ From January 2004 through June 2010, Para was associated with former member firm Jesup & Lamont (“Jesup”).⁵ In July 2010, he joined Anderson & Strudwick (“Anderson”), and in August 2011, he moved to Meyers Associates, LP (“Meyers”).⁶ On June 25, 2013, Meyers filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) to terminate Para’s association with the firm as of June 19, 2013.⁷ Para has not been registered with FINRA since leaving Meyers.⁸

B. Customer CG

In 2001, CG opened an account with Para at Offring.⁹ At the time, CG was a 20-year-old high school graduate who worked as a painter for his father’s construction company.¹⁰ Although CG was an adult, his father, WG, had a written power of attorney and conducted nearly all of the

⁴ *Id.*

⁵ Compl. ¶ 5; Ans. ¶ 5; Stip. ¶ 2.

⁶ *Id.*

⁷ Compl. ¶ 6; Ans. ¶ 6; Stip. ¶ 3. At the same time, Meyers filed a FINRA Rule 4530 disclosure concerning Para’s conduct, and FINRA commenced a cause examination that resulted in the filing of the Complaint in this matter. Stip. ¶ 4.

⁸ Compl. ¶ 6; Ans. ¶ 6. Para remains subject to FINRA’s jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) FINRA filed the Complaint on December 13, 2013, which is within two years after the effective date of FINRA’s termination of his registration; and (2) the Complaint alleges that Para engaged in misconduct while he was registered with FINRA. Compl. ¶ 6; Ans. ¶ 6.

⁹ CX-1; Hearing Transcript (“Tr.”) (Para) at 30, (CG) at 96.

¹⁰ Tr. (CG) at 95-96.

trading in CG's account.¹¹ In 2004, when Para joined Jesup, CG's account was transferred from Oftring to Jesup.¹² At Jesup, WG again held a written power of attorney over CG's account.¹³

C. CG's Trading Activity at Oftring and Jesup

Between 2001, when CG opened his account, and September 2009, the CG account engaged predominantly in short-term trading and often day trading.¹⁴ WG initiated the vast majority of trading in the account on an unsolicited basis and often purchased stocks with which Para was not familiar.¹⁵ WG and CG testified that CG researched stocks to determine what to buy and sell and that WG was the main point of contact with Para.¹⁶ Generally, WG spoke with Para every day and often multiple times per day.¹⁷ CG's account traded on margin.¹⁸

In addition to trade confirmations and monthly account statements that Jesup sent to CG to document transactions in the CG account, Para prepared hand-written account summaries that he provided to CG and WG.¹⁹ Para prepared the hand-written summaries because WG requested them.²⁰ WG requested the summaries because they were easier than the formal account

¹¹ Ans. p. 2; Tr. (Para) at 30, (CG) at 96-97, (WG) at 152. WG operates his own construction business and employs CG. Tr. (WG) at 151. WG holds a high school diploma, and he testified that he knew little about investing in the stock market when CG initially opened his account in 2001. Tr. (WG) at 151, 153. WG testified that, over time, he taught himself about investing. Tr. (WG) at 151, 153. Para believes that some of the funds used to open the account, which he approximated to be between \$10,000 and \$30,000, belonged to WG. Ans. p. 2. WG and CG deny this and state that CG fully funded the account with the proceeds of an insurance settlement related to a car accident, savings from his work as a painter, and money that his father owed him. Tr. (CG) at 96, 111-114, (WG) at 152-153.

¹² CX-7; CX-20; Tr. (Para) at 30-31, 53.

¹³ Tr. (Para) at 31.

¹⁴ Tr. (Para) at 31.

¹⁵ Tr. (Para) at 31, 34, 36.

¹⁶ Tr. (CG) at 104, 115-118, (WG) at 174.

¹⁷ Tr. (Para) at 32, (CG) at 129, (WG) at 170.

¹⁸ Ans. pp. 2-3; Tr. (CG) 108-109.

¹⁹ CX-8, at 1-23; Tr. (Para) at 38-39.

²⁰ Tr. (Para) at 38-39.

statements for him to understand.²¹ Para matched buys and sells on the hand-written summaries, thereby enabling WG to better monitor CG's profits and losses.²²

Throughout September 2009, WG purchased multiple shares of Delta Petroleum ("Delta") in CG's account.²³ Soon thereafter, the price of Delta stock fell because of negative news about Delta's gas pipelines.²⁴ Para's version of events relating to CG's subsequent sales of Delta stock differs from CG's and WG's recollections.

Para testified that the CG account's initial purchases of Delta in September 2009 resulted in small profits, but that CG's Delta stock purchases on Friday, September 18, 2009, were less profitable because the price of the stock started to drop.²⁵ WG contacted Para for guidance as to whether he should sell or hold the stock over the weekend.²⁶ Para suggested that WG and CG wait before selling to see if the price of the stock rebounded.²⁷ Para indicated that WG chose to hold the Delta stock in CG's account over the weekend.²⁸ The following Monday, negative press reports regarding Delta stock surfaced, and the price of the stock plummeted.²⁹ The CG account sold its Delta stock on September 21, 2009, and suffered losses of approximately \$28,000.³⁰

²¹ Tr. (WG) at 174-176. WG testified that he shared the hand-written summaries with CG. Tr. (WG) at 176.

²² CX-8, at 1-23; Tr. (WG) at 174-176.

²³ CX-6, at 19-20; CX-7, at 8. CG suggested the purchase of Delta to his father because he had heard that it was a "hot stock" on a television program about stock investing. Tr. (CG) at 120.

²⁴ Ans. p. 3; Tr. (WG) at 156.

²⁵ Tr. (Para) at 40-42.

²⁶ Tr. (Para) at 40-42.

²⁷ Tr. (Para) at 40-42. Para advised WG that he was not familiar with Delta, but made the general observation that news affecting the price of individual securities generally is not reported on weekends. Ans. at 3; Tr. (Para) at 41-42.

²⁸ Tr. (Para) at 41-42.

²⁹ CX-6, at 20; Tr. (Para) at 42.

³⁰ CX-6, at 20; Tr. (Para) at 42. The remaining equity in CG's account was approximately \$2,745. CX-7, at 23.

CG and WG recalled a different scenario. They testified that WG contacted Para's office multiple times on September 18, 2009, because WG was anxious to sell CG's Delta stock before the weekend.³¹ WG denied that he ever told Para that he was willing to hold the stock over the weekend.³² Rather, WG and CG stated that WG left numerous messages for Para communicating their desire to sell CG's Delta holdings on Friday, and Para never returned the calls.³³ WG blamed Para's unavailability for the losses that CG sustained in the sales of Delta stock.³⁴

Regardless of which version of events is true, the CG account sustained significant losses on its sales of Delta stock, a fact that neither party disputes. The closing value of CG's account as of December 31, 2009, was \$2,745.20.³⁵

Between September 2009 and July 2010, when Jesup went out of business, CG engaged in sporadic activity in his account at Jesup. CG bought and sold Axcelis Technologies ("Axcelis") stock and three other securities.³⁶ These transactions used most of the remaining funds in CG's account.³⁷ As discussed in more detail below, between September 2009 and the close of CG's Jesup account in July 2010, CG and WG believed that, through Para, they also made many other trades in CG's account at Jesup.

³¹ Tr. (CG) at 98-100, 133-134, (WG) at 155-156.

³² Tr. (WG) at 155.

³³ Tr. (CG) at 98-100, 133-134, (WG) at 155-156. CG and WG both recall that the one person they were able to reach on September 18 was Para's sister. Tr. (CG) at 100, (WG) at 156. Para testified that his sister sometimes worked for him as an assistant. Tr. (Para) at 29, 79.

³⁴ Tr. (Para) at 42, (CG) at 136, (WG) at 157. WG testified that, although he held Para responsible for the losses, he did not complain to Jesup because he believed that they would "work [their] way out of the hole" with more trading and the use of margin. Tr. (WG) at 157-158.

³⁵ CX-7, at 23. Jesup went out of business in or around July 2010, but WG was unaware that the firm had closed. Tr. (WG) at 216, 223-225. He knew, however, that Para moved from Jesup to Anderson around that time. Tr. (WG) at 216, 223-225.

³⁶ CX-7, at 23-62.

³⁷ CX-6, at 19; Tr. (Para) at 44.

In July 2010, Para joined Anderson and, in August 2011, moved to Meyers.³⁸ Para did not transfer CG's account to Anderson or Meyers.³⁹

D. Para's Misrepresentations to CG and WG

Soon after the CG account suffered losses in sales of Delta stock, WG ordered stock purchases that never appeared on CG's Jesup account statements. During the months following CG's Delta stock losses, Para pretended to execute trades for the CG account that he led both CG and WG to believe were real trades.⁴⁰ Para testified that, after the CG account suffered losses on its sales of Delta stock, the \$2,745 left in CG's account was not sufficient to cover the next order that WG placed, which was for a purchase of Axcelis stock.⁴¹ Para testified that he was afraid to tell WG, so instead he lied to WG and told him that he had executed the purchase and later sale of Axcelis stock, even though he had not.⁴² To document these fictitious trades, Para prepared hand-written summaries of the non-existent trades identical to the hand-written summaries that he previously prepared for WG regarding CG's actual trading.⁴³ Para repeated this pattern of misleading CG and WG by falsely representing that he executed purchases and sales directed by WG approximately 60 times between October 2009 and July 2010.⁴⁴ Para created hand-written summaries to complete the deception.⁴⁵

³⁸ Stip. ¶ 2.

³⁹ Ans. p. 3.

⁴⁰ CX-1; Tr. (Para) 89-90. In May 2013, Para wrote in response to an inquiry from Meyers that, after the CG account lost money on sales of Delta, Para "was afraid of what [WG] might do so [he] embarked on a scheme where [he] only executed future trades on 'paper,' not for real." CX-1.

⁴¹ Tr. (Para) at 43, 45-46; CX-8, at 25.

⁴² Tr. (Para) at 43, 45-46.

⁴³ CX-8, at 24-60; Tr. (Para) at 48-49.

⁴⁴ Tr. (Para) at 43-54; CX-8, at 24-60.

⁴⁵ Tr. (Para) at 43-54; CX-8, at 24-60. Para could not recall if he misrepresented to CG and WG that he executed additional fictitious trades during the period of October 2009 through August 2010 other than those documented on the hand-written summaries entered into evidence. Tr. (Para) at 53-54.

WG and CG understood from Para that the CG account transferred with Para from Jesup to Anderson in July 2010. WG and CG continued to place trades through Para while he was associated with Anderson, and Para continued to accept those trades.⁴⁶ Para told WG that CG had to complete an "ACAT" or customer account transfer form to transfer CG's account from Jesup to Anderson.⁴⁷ CG completed the form and provided it to Para.⁴⁸ Para testified that he submitted the form to Anderson, but the firm rejected it because, unbeknownst to CG, his account had a negative balance.⁴⁹ Para never told WG and CG that the CG account had not been transferred or that he never executed the trades that they thereafter requested he execute.⁵⁰

Para misled CG and WG further by providing them with summaries of the fictitious trades that he supposedly executed while associated with Anderson between July 2010 and August 2011.⁵¹ During that time, Para misrepresented to CG and WG that he executed at least ten transactions that were in fact fictitious trades.⁵²

Para also misled CG and WG into believing that the CG account transferred to Meyers when he moved to Meyers.⁵³ CG or WG spoke with Para almost every day while he was with Meyers, communicated buy and sell orders to him, and received summaries from him to

⁴⁶ Tr. (CG) at 101-102, (WG) at 168-170. CG and WG also believed that WG held a power of attorney for the CG account at Anderson. Tr. (CG) at 103, (WG) at 173-174.

⁴⁷ Tr. (Para) at 55.

⁴⁸ Tr. (Para) at 55.

⁴⁹ Tr. (Para) at 55-56.

⁵⁰ Tr. (Para) at 55-56, (CG) at 102, (WG) 169.

⁵¹ CX-8, at 57-60; Tr. (Para) at 56-59.

⁵² CX-8, at 57-60; Tr. (Para) at 56-59. Para testified that he may have led CG and WG to believe that he executed more than ten fictitious trades while he was associated with Anderson, but he could not recall with certainty. Tr. (Para) at 60-61.

⁵³ Tr. (Para) at 64-66. CG and WG also believed that WG held a power of attorney for the CG account at Meyers. Tr. (CG) at 103, (WG) at 173.

document the supposed trading in the CG account.⁵⁴ Para provided WG with type-written summaries of the CG account's purchases and sales between December 2011 and February 2012.⁵⁵ The hearing record includes 91 type-written pages of fictitious purchases and sales that Para purportedly executed in the CG account and an indication of the short-term gain or loss that resulted from each trade.⁵⁶ The summaries stated "Meyers Associates, LP" at the top and included a telephone number for Meyers.⁵⁷ Para also prepared and provided to WG a hand-written summary of approximately 290 fabricated purchases and sales and resulting short-term gains and losses in CG's fictitious account at Meyers during the month of February 2012.⁵⁸

Para's charade ended in May 2013 when CG sought to withdraw funds from his Meyers account. In May 2013, WG ordered a purchase of Boyd Gaming Corporation ("Boyd") stock, and CG ordered its subsequent sale at a profit of \$327,071.⁵⁹ CG had become distrustful of Para, and he told WG that he wanted to withdraw all of the money in his account.⁶⁰ CG also told Para that he wanted to close his account.⁶¹ WG asked Para how long the sale would take to clear, and Para responded that CG would be able to withdraw the proceeds of the sale after three days.⁶² When Para still had not issued funds to CG after one month, WG contacted Meyers and learned

⁵⁴ Tr. (CG) at 102-103, (WG) 170-171.

⁵⁵ CX-10; Tr. (Para) at 63-66, (WG) at 177-178.

⁵⁶ CX-10.

⁵⁷ CX-10; Tr. (Para) 63-66.

⁵⁸ CX-9; Tr. (Para) at 67-68. WG testified that he did not believe the trades to have been fictitious. Tr. (WG) at 179.

⁵⁹ CX-4; Tr. (Para) at 83-85, (WG) at 185.

⁶⁰ Tr. (CG) at 110, (WG) at 186-187.

⁶¹ Tr. (CG) at 110, (WG) at 186-187. Before CG decided to withdraw his money, WG complained to Para that Para's \$8,000 commission on the Boyd trade was excessive. Tr. (WG) at 186-187. Para agreed to adjust the commission. Tr. (WG) at 186-187.

⁶² Tr. (WG) at 187.

that CG never had an account at Meyers.⁶³ When CG learned from WG that Para had misled him and his father for years, he contacted Para.⁶⁴ Para apologized to CG and indicated that he would “work something out” to cover CG’s losses, but Para never did.⁶⁵

III. Conclusions of Law

Para violated FINRA Rule 2010 by intentionally misrepresenting facts to CG and WG. FINRA Rule 2010 is not limited to rules of legal conduct; rather “it states a broad ethical principle” and implements the requirements of the Securities Exchange Act of 1934.⁶⁶ Rule 2010 is violated when a respondent engages in unethical conduct.⁶⁷ “The principal consideration is whether the misconduct reflects on an associated person’s ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public.”⁶⁸

Para intentionally misrepresented to CG, his customer, and WG, an individual with a power of attorney in CG’s account, that he executed numerous trades in CG’s Jesup account when, in fact, he had not. He concealed his misconduct by providing hand-written trade summaries to WG and CG. Para continued the charade when he moved first to Anderson and then to Meyers. He continued to misrepresent to WG and CG that he had executed trades for CG when he had not, and he falsely led them to believe that he transferred the CG account to Anderson and Meyers. While associated with Anderson and Meyers, Para produced not only

⁶³ Tr. (WG) at 187-188. WG also sent Meyers the hand-written summary of the Boyd purchase and sale that Para had provided to him. CX-4; Tr. (WG) at 188-189.

⁶⁴ Tr. (CG) at 110.

⁶⁵ Tr. (CG) at 110.

⁶⁶ *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) (citing *Benjamin Werner*, 44 S.E.C. 622 (1971)).

⁶⁷ *Dep’t of Enforcement v. Taylor*, Complaint No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 (NASD NAC Feb. 27, 2007); *Dep’t of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NASD NAC May 7, 2003).

⁶⁸ *Taylor*, 2007 NASD Discip. LEXIS 11, at *22.

hand-written trade summaries to deceive WG and CG, he went so far as to create type-written trade summaries that included the name “Meyers Associates, LP” and the firm’s telephone number. “It is axiomatic that a broker who makes material misrepresentations and omissions to customers is engaging in unethical conduct.”⁶⁹

As a defense, Para argues that he did not act in bad faith. Rather, he contends that he misrepresented facts to CG and WG because he feared that WG would harm him or his family. Para avers that, during the weeks following CG’s losses in Delta stock, WG became increasingly belligerent and threatening and insisted that Para cover CG’s losses.⁷⁰ Although Para admits that WG never directly threatened him or his family, he states that his overall perception, given his many interactions with WG, was that WG posed a threat.⁷¹ Para states that WG was a former Marine and that he mentioned to Para his prior experience with hand-to-hand combat in Viet Nam in an effort to intimidate Para.⁷² Para states that WG also told him that he had a gun, suggested that Para buy a gun, asked for Para’s parents’ address, delivered a long wooden dowel to Para’s office, and visited Para’s personal residence, all in an effort to threaten and intimidate Para.⁷³ Para testified that he feared for his life, but did not report WG’s behavior to the police or to his firm because he believed from watching television shows that going to the police would do no good.⁷⁴

⁶⁹ *Dep’t of Enforcement v. Timberlake*, Complaint No. C07010099, 2004 NASD Discip. LEXIS 11, at *16 (NASD NAC Aug. 6, 2004); see also *Dep’t of Enforcement v. Kapara*, Complaint No. C10030110, 2005 NASD Discip. LEXIS 41, at *20-21 (NASD NAC May 25, 2005) (finding that material misrepresentations to customers violated NASD Rule 2110, precursor to FINRA Rule 2010).

⁷⁰ Tr. (Para) at 232-233.

⁷¹ Tr. (Para) at 81, 236.

⁷² Tr. (Para) at 234-235.

⁷³ Tr. (Para) at 237-241, 244-246.

⁷⁴ Tr. (Para) at 238.

The Hearing Panel rejects Para's defense. In order to find a violation of Rule 2010, the Hearing Panel need not find that Para acted with bad faith, malicious intent, or deceitfulness.⁷⁵ Unethical conduct, regardless of intent, is sufficient to prove a violation.⁷⁶ "It is clear . . . that the [just and equitable principles rule] is concerned with enforcing ethical standards of practice in the securities industry and is violated by a breach of confidence if such breach amounts to unethical conduct."⁷⁷ Para demonstrated a troubling lack of judgment and perspective in this case. While he may have felt threatened or intimidated, the appropriate response would have been to seek the assistance and protection of legal authorities and his firm, to discuss the matter with CG and WG, and to end his business relationship with them. Instead, he chose to act unethically, mislead a customer, and expose his employer firms to the risk of loss and potential liability.⁷⁸ We do not accept Para's argument as a defense to his actions.

Additionally, substantial evidence contradicts Para's claim that WG behaved in a threatening manner. Para misled CG and WG as to the state of the CG account for three and one-half years, from September 2009 through May 2013. The occurrences that Para contends caused him to fear WG and undertake this course of action, however, occurred sporadically throughout or years after Para first embarked on his scheme, not at or around September 2009 when Para began the deception. For instance, Para claims that he was intimidated by WG's

⁷⁵ *Dep't of Enforcement v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *16, 21 (NASD NAC June 2, 2000).

⁷⁶ See *Heath*, 586 F.3d at 131-141 (concluding that bad faith is not required to establish a violation of the just and equitable principles rule); *Shvarts*, 2000 NASD Discip. LEXIS 6, at *16, 21 (finding that a demonstration of unethical conduct is sufficient to support finding a violation of NASD Rule 2110).

⁷⁷ *Heath*, 586 F.3d at 131.

⁷⁸ Cf. *Dist. Bus. Conduct Comm. v. Barnes*, Complaint No. C01950015, 1996 NASD Discip. LEXIS 40, at *14 (NASD NBCC Aug. 1, 1996) (rejecting as a defense to respondent's violation of just and equitable principles rule that respondent feared for the lives of himself and his children because of threats from a gang member who loaned him money); *Dist. Bus. Conduct Comm. v. Gibbons*, Complaint No. C3A940038, 1995 NASD Discip. LEXIS 234, at *15 (NASD NBCC Oct. 24, 1995) ("[I]f respondent believed himself to have been under threat or duress . . . his remedy lay in obtaining assistance of the NASD or other regulatory authorities to help him . . . rather than in [violating NASD rules]."), *aff'd*, *Brian L. Gibbons*, 52 S.E.C. 791 (1996).

delivery to his office of a large wooden dowel that Para described as “a club.” Para admits, however, that WG delivered the dowel to his office at the end of 2012, which is three years after Para began misleading CG and WG.⁷⁹ Para also argues that WG’s visit to his home intimidated him. But WG’s visit to Para’s home occurred in May 2013, which is more than three years after Para began misrepresenting account activity to CG and WG.⁸⁰

Para similarly stated that he felt intimidated by WG’s inquiry as to where Para’s parents resided. WG testified that he and Para were engaging in a friendly discussion when WG asked where Para’s parents lived.⁸¹ Although Para testified at the hearing that WG’s inquiry occurred immediately after CG’s losses in Delta stock, during prior sworn testimony, Para stated that WG asked about his parents’ “in the past,” before the Delta trades, not immediately after.⁸² Para further testified later in the hearing that WG may have asked about his parents’ residence right after the Delta losses or possibly “a couple years later.”⁸³ Para’s varied answers demonstrate that he does not recall when WG asked about his parents’ residence and that it could have been well before or years after he began misleading CG and WG. Furthermore, Para did not tell WG

⁷⁹ Tr. (Para) at 249, 254. WG admitted that he brought the object into Para’s office. Tr. (WG) at 163. WG stated that he had several in his car from a job for his construction company, and he brought one into Para’s office. Tr. (WG) at 163-164. WG testified that his daughter accompanied him on the visit, but Para disputed that point. Tr. (Para) at 243-244, (WG) 162-163. Para testified that, when WG entered his office with the wooden dowel, he entered from the back door, not through the front door, which Para understood to be threatening. Tr. (Para) at 245-246. Para acknowledged, however, that even if WG had entered through the front door, there was no receptionist to question or stop him, and when WG delivered the wooden dowel to Para’s office, he did not swing it at Para or make a threatening motion with it. Tr. (Para) at 247. Although there are differences in Para’s and WG’s recollections of the event, the Hearing Panel need not reconcile the differences because neither version offers Para a defense to his misconduct, which began more than three years prior.

⁸⁰ Tr. (Para) at 78, 248, 254. Para’s account of WG’s visit to his home casts doubt on Para’s overall veracity. Para claims that he never told his wife about the intimidation that he felt from WG. Tr. (Para) at 79. Yet, he also states that he was in fact home when WG appeared at his house and that his wife lied to WG about his being home, even though she purportedly knew nothing about WG’s threatening behavior. Tr. (Para) at 79, 241. Para offers no explanation for why his wife lied if she was unaware of WG’s purported threats. Para testified that he told his wife after WG’s visit that WG had threatened him, but he also told her that WG probably visited their house to pick up papers (trade summaries) that Para had agreed to give WG. Tr. (Para) at 242.

⁸¹ Tr. (WG) at 162.

⁸² Tr. (Para) at 76-77.

⁸³ Tr. (Para) at 254.

where his parents lived, and although Para may have been associated with Jesup at the time, he did not tell the firm that he felt threatened by a customer.⁸⁴ Nor did Para drop CG as a client. The evidence does not support Para's claim that WG's inquiry was intended to be intimidating.

Para testified that after CG's losses in Delta stock, he was frightened by WG's verbally abusive conduct, use of foul language, talk of his service in Viet Nam, and experience with hand-to-hand combat.⁸⁵ But Para stated that WG exhibited similar behavior before the Delta stock losses as well. Para testified that since 2001, when CG first opened his account, WG used foul language and was verbally abusive, yet Para believed WG to be essentially a good person.⁸⁶ Para also testified that WG talked about his experiences with hand-to-hand combat in Viet Nam before the Delta trades ever occurred.⁸⁷ The many inconsistencies in Para's account of the events at issue weaken his claim of intimidation.

Para's other reports of threatening behavior by WG are equally unavailing. Para contends that he felt threatened by WG's statement that he owned a gun and his suggestion that Para should get one as well.⁸⁸ Para also testified that WG referred Para to a friend who WG claimed could provide the training that Para would need to secure a gun permit.⁸⁹ The person to whom WG referred Para was a police officer in the state in which they both resided.⁹⁰ WG testified that Para told him that he wanted to purchase a gun, and WG referred him to his police

⁸⁴ Tr. (Para) at 76-77, 250.

⁸⁵ Tr. (Para) at 255. Para testified that WG said that "he would do whatever it takes to survive, and he survived [Viet Nam] and he can survive anything." Tr. (Para) at 255. Para considered WG's words intimidating in the context of WG's demands that Para cover CG's losses in Delta stock. Tr. (Para) at 235-236.

⁸⁶ Tr. (Para) at 32-33.

⁸⁷ Tr. (Para) at 74. WG denied that he ever served in Viet Nam while in the military or that he told Para that he had. Tr. (WG) at 159. We find WG credible on this point. Regardless, however, of whether WG told Para that he had served in Viet Nam or not, as discussed above, Para's purported fear does not excuse his misconduct.

⁸⁸ Tr. (Para) at 74, 237.

⁸⁹ Tr. (Para) at 74-75.

⁹⁰ Tr. (Para) at 74-75, (WG) 159-161.

officer friend who trained individuals seeking to obtain a gun permit.⁹¹ It strains credulity for WG to threaten Para by stating that he owns a gun, while at the same time referring Para to a police officer that WG identified by name so that Para could purchase his own gun.

Furthermore, Para admits that he subsequently met with WG alone at a mall parking lot and at a restaurant after WG and CG learned that Para had been lying to them about executing trades (after the fictitious Boyd trades).⁹² If indeed Para felt so threatened and frightened by WG, and feared that WG wanted to harm him with a gun, Para's voluntary decision to meet with WG alone twice after Para admitted his deceit is illogical.

Para's second defense is that his misrepresentations should be excused because CG and WG should have noticed that they did not receive formal confirmations and account statements for the fictitious trades and that they had no legitimate reason to believe that CG's account had been transferred to Anderson or Meyers. Para's assertions offer no defense to Para's unethical conduct. "Registered persons are expected to adhere to a standard higher than 'what they can get away with.'"⁹³ Additionally, WG and CG reasonably believed that CG's account was transferred to Anderson and Meyers and that Para executed the trades that they ordered because Para purposely misled them.

WG testified that he paid little attention to confirmations and account statements and found Para's hand-written summaries easier to read because Para matched up purchases and sales for him.⁹⁴ Notwithstanding WG's reliance on Para's hand-written account summaries, WG questioned Para about CG's failure to receive account statements and trade confirmations from

⁹¹ Tr. (WG) at 159-161. Para denies that he ever purchased a gun or obtained a gun permit, although he admits that he falsely claimed to WG that he in fact owned a gun. Tr. (Para) at 75.

⁹² Tr. (Para) at 92-93.

⁹³ See *Leonard John Ialeggio*, 52 S.E.C. 1085, 1088 (1996), *aff'd*, 1999 U.S. App. LEXIS 10362 (9th Cir. 1999).

⁹⁴ Tr. (WG) at 174-176.

Meyers and Anderson.⁹⁵ Para fabricated stories to explain why CG did not receive account statements and trade confirmations. Para first advised WG that Meyers had an incorrect address for CG's account.⁹⁶ When CG still did not receive account statements, WG asked again and Para said that the home office must be holding them and agreed again to try to resolve the problem.⁹⁷ Eventually, Para told WG that he needed to provide Meyers with a copy of CG's driver's license.⁹⁸ WG provided the copy, and Para told him that it had expired and that is why CG did not receive account paperwork.⁹⁹

CG also asked Para many times why he did not receive confirmations and account statements, and Para always answered evasively.¹⁰⁰ Para told CG that he would check into it and that he was "going to send them."¹⁰¹ Para repeated to CG the fabricated story that Anderson needed to see CG's updated driver's license, so CG provided Para with a photocopy of his driver's license.¹⁰² Para admits that CG and WG asked why they did not receive account statements and trade confirmations during the time that Para was associated with Anderson and Meyers and that he deceived them.¹⁰³

⁹⁵ Tr. (WG) at 181-183. WG testified that a friend told him that CG should have a "PIN" number to access his account. Tr. (WG) at 182. WG asked Para why CG could not access his account with a PIN number, and Para's response was "We don't do that kind of stuff here." Tr. (WG) at 182.

⁹⁶ Tr. (WG) at 171.

⁹⁷ Tr. (WG) at 171. When WG told Para that he (WG) intended to call Meyers to ask about account statements, Para discouraged him and stated that he (Para) would take care of it. Tr. (WG) at 171.

⁹⁸ Tr. (WG) at 171-172.

⁹⁹ Tr. (WG) at 172.

¹⁰⁰ Tr. (CG) at 107-108.

¹⁰¹ Tr. (CG) at 107-108.

¹⁰² Tr. (CG) at 107.

¹⁰³ Tr. (Para) 69-72.

Para also misled WG and CG to believe that the CG account transferred first to Anderson and then to Meyers.¹⁰⁴ Para told WG that CG had to complete an "ACAT" (customer account transfer form) to transfer CG's account from Jesup to Anderson, and CG completed the form and gave it to Para.¹⁰⁵ Para never told them that the account did not transfer.¹⁰⁶ In response to the question of why CG believed that he had an account at Anderson, CG stated "Because nothing changed. We were still trading, everything was still the same, so I figured it was all set."¹⁰⁷

Para led CG and WG to believe that the CG account transferred to Meyers when he moved to Meyers.¹⁰⁸ In response to the question of why CG believed that he had an account at Meyers, CG testified "Because I trusted [Para]. Like I said, everything was going the same and we were still trading and everything so I figured it was all set."¹⁰⁹ Para also provided WG with type-written account summaries that included Meyers' name and telephone number at the top of each page.¹¹⁰ Para did everything he could to deceive CG and WG into believing that the CG account transferred when Para changed firm affiliations.

As a third defense, Para contends that, because CG never deposited funds into his account after the Delta losses, he and WG should have known that there were insufficient funds in the account to execute the large trades that they ordered. The Hearing Panel rejects this defense. CG and WG understood that CG's account balance dropped after the Delta stock sales, but both

¹⁰⁴ Tr. (CG) at 101-102, (WG) at 168-170.

¹⁰⁵ Tr. (Para) at 55.

¹⁰⁶ Tr. (Para) at 55-56.

¹⁰⁷ Tr. (CG) at 102. CG and WG believed that WG held a power of attorney for the CG account at Anderson. Tr. (CG) at 103, (WG) at 173.

¹⁰⁸ Tr. (Para) at 64-66. CG and WG believed that WG held a power of attorney for the CG account at Meyers. Tr. (CG) at 103, (WG) at 173.

¹⁰⁹ Tr. (CG) at 103. CG testified that he always trusted Para because Para "never gave [him] a reason not to." Tr. (CG) 104.

¹¹⁰ CX-10.

relied on Para to advise them as to how much stock the CG account could afford to buy and sell using the CG account's assets and margin.¹¹¹ The February 2012 account summary that Para provided to WG identified many large trades, including many purchases that exceeded \$300,000 and some that exceeded \$500,000.¹¹² WG believed that he could execute trades of that size in CG's account because, after WG identified a stock, Para would tell him how much the account could "afford" to buy.¹¹³ Para never told WG or CG that the CG account did not have sufficient funds to make the purchases that they requested.¹¹⁴ Additionally, CG testified that Para led him to believe that, to compensate him for the Delta stock losses, Para enabled the CG account more leeway to trade on margin.¹¹⁵ CG testified that Para "margin'd stocks out for us to trade – so we could make our money back" and that Para did this by "[asking] what do you want to trade? And I said trade this or that, and he said it was all set. Told me how many shares I had and what I bought it at."¹¹⁶ CG's and WG's expectations about the buying power in CG's account were formed by Para's misrepresentations to them. Their reliance on Para does not provide Para with a defense.

The Hearing Panel finds that Para violated FINRA Rule 2010 during the period from September 2009 through May 2013 by intentionally misrepresenting to CG and WG that he

¹¹¹ Tr. (CG) at 138, (WG) 169-170.

¹¹² CX-9, at 1-3, 8, 13-15.

¹¹³ Tr. (WG) at 180-181, 214. WG testified:

I would call [Para] and say, Dale, I want to buy this. And I'd say to him, how many shares can we get? He goes, call me back. Call me back in a couple of minutes. Then he would tell me 15,000, 12,000, 30,000, whatever. And so, okay, let's get 30 of that. And then we'd make some money on that and then we'd go to the next stage. I asked him once, I said, how come we can't get more? He says, we don't want to do too much margin or whatever. So I just kept trading. I mean, I didn't make those up. Tr. (WG) at 169.

¹¹⁴ Tr. (WG) at 184.

¹¹⁵ Tr. (CG) at 138-139.

¹¹⁶ Tr. (CG) at 138.

executed hundreds of trades in CG's account and that he had transferred CG's account from Jesup to Anderson and subsequently to Meyers.

IV. Sanctions

FINRA's Sanction Guidelines ("Guidelines") advise that, for intentional or reckless material misrepresentations or omissions of fact, the adjudicator should impose a \$10,000 to \$100,000 fine and suspend the respondent in any or all capacities for 10 business days to two years.¹¹⁷ In egregious cases, the Guidelines advise that the adjudicator consider barring the respondent in all capacities.¹¹⁸ As discussed in more detail below, the Hearing Panel finds that Para's misconduct was egregious and accompanied by numerous aggravating and no mitigating factors.

The Hearing Panel finds it aggravating that Para acted intentionally and concealed his misconduct to avoid detection.¹¹⁹ Para intentionally misled CG and WG so that he did not have to address their displeasure with CG's account losses. CG was a young investor with a high school education. He and his father trusted Para, and they believed what he told them. As a result, when they questioned Para as to why CG stopped receiving confirmations and account statements, they believed Para's lies. Para intentionally misled CG and WG and purposefully concealed his misconduct by fabricating account summaries that he provided to CG and WG and telling them an array of falsehoods, such as, the firm must be holding confirmations and account statements in the office, CG did not have a copy of his driver's license "on file," and CG's license had expired. None of it was true. Para even discouraged WG from contacting Meyers when WG threatened to do so. These factors aggravate Para's misconduct.

¹¹⁷ FINRA Sanction Guidelines at 88 (2013), *available at* www.finra.org/Industry/Enforcement/SanctionGuidelines.

¹¹⁸ *Id.*

¹¹⁹ Guidelines at 6-7 (Principal Consideration nos. 10, 13).

Also aggravating is the fact that Para engaged in misconduct over the course of three and one-half years, lied about hundreds of trades, and fabricated multiple documents to conceal his actions.¹²⁰ Para did not engage in merely a single isolated incident that was an aberration in an otherwise commendable career. Rather than provide CG with honest information about losses in his account, he strung CG along for years with a web of lies and deceit. Had CG known the truth earlier, he may have opened an account at another firm or attempted in some other way to mitigate his losses. In this regard, Para's misconduct resulted in harm to CG.¹²¹ The fact that Para's misconduct harmed CG is aggravating.

In contrast, while harming CG, Para's lies benefitted Para by enabling him to avoid detection and stay employed in the securities industry. Had CG or WG complained earlier to any one of the firms with which Para was associated, Para faced the risk of reprimand, termination, and investigation by a regulatory authority such as FINRA. Para benefitted from his misconduct, which is another aggravating factor.¹²²

The degree of Para's abuse of customer trust is also aggravating. CG and WG were not sophisticated investors. Although they testified that they eventually engaged in their own research and that most of their purchases were unsolicited, both also testified that they had no education beyond high school, and they were self-taught investors. They trusted Para and relied heavily on him to treat CG fairly. Para took advantage of their relative lack of sophistication and their high level of trust in him. Para's conduct in this regard is aggravating.¹²³

¹²⁰ Guidelines at 6-7 (Principal Consideration nos. 8, 9, 18).

¹²¹ Guidelines at 6-7 (Principal Consideration no. 11).

¹²² Guidelines at 6-7 (Principal Consideration no. 17).

¹²³ Guidelines at 6-7 (Principal Consideration no. 19).

The Hearing Panel finds no mitigating factors. Para's claim that he deceived his customer because he was concerned about his and his family's safety does not justify his unethical conduct.

Based on the foregoing application of the Guidelines, and taking into account the aggravating evidence and the lack of mitigation, the Hearing Panel bars Para for intentionally misrepresenting account and trading information to CG and WG. A representative who cannot recognize that intentionally misrepresenting pertinent facts about a customer's trading is improper and who, rather than seek assistance with what he perceives to be a dangerous situation, instead engages in unethical action for more than three years lacks the ability to comply with the regulatory requirements necessary for the proper functioning of the securities industry and investor protection.¹²⁴ Para's determination to mislead a customer for more than three years and lie about hundreds of trades is a startling deviation from the standards imposed on members of the securities industry, and we find that he poses a significant risk to the investing public.¹²⁵ The Hearing Panel therefore bars Para from associating with any member firm in any capacity.

¹²⁴ See *Dep't of Enforcement v. Grafenauer*, Complaint No. C8A030068, 2004 NASD Discip. LEXIS 26, at *12 (NASD OHO May 27, 2004) (barring respondent who claimed as a defense that he acted under duress and was forced by an abusive mentor to forge paperwork); *Dep't of Enforcement v. Sarmiento*, Complaint No. C07010091, 2002 NASD Discip. LEXIS 42, at *8 (NASD OHO July 8, 2002) (barring respondent who, under duress, acted as an imposter to take a qualifications examination for another person).

¹²⁵ Cf. *Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217 at *75 (Jan. 30, 2009) (barring respondent who demonstrated an indifference to his responsibilities under FINRA's rules and posed a risk to the investing public); *Guang Lu*, 58 S.E.C. 43, 61 (2005) (barring respondent who, even if motivated by honorable intentions to assist a fellow immigrant, exhibited a failure to appreciate the gravity of his misconduct and an indifference to NASD rules).

V. Order

Respondent Dale Edward Para is barred from associating with any member firm in any capacity for violating FINRA Rule 2010 by intentionally providing false trading and account information to a customer and an individual with a power of attorney over the customer's account. Para is ordered to pay the costs of the hearing in the amount of \$3,027.05, which includes a \$750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.¹²⁶


Carla Carloni
Hearing Officer
For the Hearing Panel

Copies to: Dale E. Para (by overnight courier and first-class mail)
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¹²⁶ The Hearing Panel considered and rejected without discussion all other arguments by the parties.