BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Peter Orlando Taunton, MA, Respondent.	DECISION Complaint No. 2014043863001 Dated: March 16, 2020

Registered representative unethically exploited a senior customer for financial reasons, made an unsuitable recommendation to the customer, and inappropriately maintained in his files two forms that the customer signed in blank. Held, findings affirmed and sanctions modified but affirmed in their effect.

Appearances

For the Complainant: John R. Baraniak, Esq., Leo F. Orenstein, Esq., Jessica Zetwick-Skryzhynskyy, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Peter Orlando ("Orlando") appeals a January 29, 2019 Hearing Panel decision. The Hearing Panel found that Orlando violated FINRA rules as the Department of Enforcement ("Enforcement") alleged in a three-cause complaint. First, the Hearing Panel found that Orlando violated FINRA Rule 2010 by using his position as a registered representative to exploit unethically a senior customer to become her attorney-in-fact, executor, and beneficiary of her bank account and primary beneficiary of her will. Second, the Hearing Panel found that Orlando violated FINRA Rules 2111 and 2010 by recommending that the customer surrender a variable annuity, a recommendation that was unsuitable for the customer given her financial profile. Finally, the Hearing Panel found that Orlando violated FINRA Rule 2010 by unethically maintaining in his files two forms that the customer signed in blank. The Hearing Panel barred Orlando from associating with any FINRA member in any capacity for using his position to obtain control of his customer's assets, money, and property unethically. The Hearing Panel also ordered that he pay his customer $4,000 in restitution, plus prejudgment interest. In light of the

bar, however, the Hearing Panel did not impose the sanctions it assessed for Orlando's remaining FINRA rule violations.

After reviewing the entire record, we affirm the Hearing Panel's findings. Although, as we explain below, we modify the sanctions the Hearing Panel imposed, by assessing a unitary sanction for Orlando's unethical exploitation of his customer and unsuitable recommendation, we nevertheless affirm them in their effect. We thus, like the Hearing Panel, bar Orlando from the securities industry and order that he pay his customer restitution in the sum of $4,000, plus prejudgment interest.

I. Background

A. Orlando's Securities Industry Experience

Orlando entered the securities industry in 1973, and he first associated with a FINRA member ten years later. From March 1988 to June 2010, he registered with a succession of six FINRA members.

Orlando was registered with MetLife Securities, Inc. ("MetLife") from July 2010 to December 2014.[1] He resigned while the subject of a MetLife internal investigation of the events at issue in this case. Although Orlando registered with another FINRA member after leaving MetLife, he left that firm in February 2018, shortly after Enforcement filed the complaint in this matter. Orlando is not currently associated with any FINRA member.

B. Procedural Background

1. Enforcement Files a Complaint

Enforcement filed the complaint commencing a disciplinary action against Orlando on February 7, 2018.

The complaint's first cause of action alleged that Orlando, during the period of August through September 2014, unethically obtained control of the financial affairs of DW, his 81-year-old customer. Specifically, Enforcement claimed, Orlando used his position and influence as DW's registered representative to have DW make him the beneficiary of her bank account, grant him powers of attorney, and appoint him as executor and primary beneficiary of her estate. In doing so, Orlando also allegedly circumvented the policies of his firm, MetLife, which prohibited its registered representatives from being named as a beneficiary of a financial account or acting in a position of trust for anyone who was not a family member. Consequently, Enforcement alleged, Orlando failed to observe high standards of commercial honor and just and equitable principles of trade and violated FINRA Rule 2010.

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[1] During this period, Orlando registered with MetLife as a general securities representative, a direct participation program limited representative, and an investment company and variable contracts limited representative.

The complaint's second cause of action alleged that Orlando recommended DW surrender a variable annuity that included a guaranteed minimum income benefit. Enforcement claimed that Orlando's recommendation, which Orlando made in an effort to sever DW's ties to MetLife, and which DW effected at Orlando's direction, caused DW to incur unnecessary sales and withdrawal charges and ignored DW's need for income. Orlando's recommendation, Enforcement alleged, was unsuitable for DW in light of her financial profile and violated FINRA Rules 2111 and 2010.

Finally, the complaint's third cause of action alleged that MetLife discovered, during an internal investigation of Orlando's relationship with DW, two forms that Orlando maintained in his files that DW signed in blank. Enforcement averred that, by obtaining and keeping these forms, Orlando again acted unethically and violated FINRA Rule 2010.

2. Orlando Answers by Denying He Violated FINRA Rules

Orlando filed an answer on March 17, 2018, in which he admitted that he held the authority to act as DW's attorney-in-fact pursuant to powers of attorney that DW granted him. Orlando also admitted that he recommended that DW surrender her variable annuity. Orlando, however, denied that this or any other conduct in which Enforcement alleged he engaged violated any FINRA rules.

3. The Hearing Panel Holds a Hearing

The Hearing Panel held a three-day hearing in October 2018 during which eight witnesses testified. Orlando, who appeared pro se, testified both during Enforcement's case and in his own defense. In his testimony, consistent with his answer, Orlando denied all allegations that his conduct violated FINRA rules.

DW, however, was not able to testify. At the time of the hearing, she was aged 86, physically and emotionally frail, possessed a diminished memory of the events at issue in this case, and suffered from confusion and anxiety when under stress. Two witnesses who DW knew well—her son, WW, and her son's former wife, PW—nevertheless testified concerning DW's finances, her financial acumen, her care and living arrangements, and her physical, emotional, and cognitive health when the events at issue in this case occurred. The Hearing Panel found WW and PW both were credible witnesses.[2]

The Hearing Panel also heard from four witnesses associated with MetLife. Notable among these witnesses were Joseph Kotula ("Kotula"), Orlando's manager, Richard Spicuzza ("Spicuzza"), a MetLife registered representative, and Timothy Thomas ("Thomas"), an

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[2] Absent substantial contrary evidence, we defer to the Hearing Panel's credibility findings. *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve 'special weight.' These determinations can be overcome only when there is 'substantial evidence' for doing so." (citations omitted)).

investigative consultant who conducted MetLife's internal investigation of Orlando's relationship with DW.

Finally, a FINRA senior attorney testified about the investigation that led to the filing of Enforcement's complaint, provided the Hearing Panel a time-line of the events relevant to the allegations of wrongdoing, and recounted two interviews—one phone interview and one in-person interview—that FINRA staff conducted of DW.

4. The Hearing Panel Issues a Decision and Orlando Appeals

The Hearing Panel issued its decision on January 29, 2019. The Hearing Panel found that Orlando violated FINRA rules as Enforcement alleged in each of the complaint's three causes of action. The Hearing Panel also assessed sanctions for Orlando's wrongdoing under each of these causes. For Orlando's misconduct under cause one of the complaint, the Hearing Panel barred Orlando from associating with any FINRA member in any capacity. It also ordered that he pay DW restitution in the amount of $4,000, plus pre-judgment interest, for legal fees that DW incurred unnecessarily at Orlando's direction. The Hearing Panel further assessed a $10,000 fine and a 30-business-day suspension in all capacities for Orlando's misconduct under cause two, and it assessed a $5,000 fine and a 30-business-day suspension in all capacities for his wrongdoing under cause three. In light of the bar imposed for cause one, however, the Hearing Panel declined to impose the sanctions for Orlando's additional wrongdoing.

On February 22, 2019, Orlando filed a timely notice of appeal requesting that we review the Hearing Panel's findings and the sanctions it imposed.[3]

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[3] During this appeal, Orlando twice moved to adduce additional evidence. On March 27, 2019, Orlando moved to adduce three pieces of evidence that he admittedly possessed at the time of his disciplinary hearing. His proposed new evidence included some largely illegible, hand-written notes from 2011 through 2013 and a letter, apparently in Orlando's handwriting but purportedly bearing DW's signature, which ostensibly disclaimed the fact that Orlando accepted roles as the beneficiary of DW's bank account and executor and a beneficiary of her will. On September 30, 2019, after an appeal hearing and oral arguments, Orlando also moved to put new evidence before the NAC in the form of an unsworn, narrative statement. The NAC subcommittee appointed to consider Orlando's appeal denied both motions under the terms of FINRA Rule 9346 because Orlando had not established extraordinary circumstances to adduce such evidence late, including by showing that there was good cause for his having failed to present the evidence to the Hearing Panel below. We find no error in the subcommittee's rulings, and we adopt them as our own. *See Brian Prendergast*, 55 S.E.C. 289, 311 (2001) ("Prendergast did not offer the two items in evidence at the hearing, even though he had them in his possession.").

II. Facts

A. Relevant MetLife Policies

1. Policies About Beneficiaries and Fiduciaries

MetLife's policies on prohibited and restricted business practices and outside business activities addressed the naming of registered representatives as beneficiaries and fiduciaries. At all relevant times, these policies prohibited a registered representative from being the beneficiary of any contract, policy, or account, including a bank account, belonging to an individual who was not a member of the registered representative's family.[4] These policies further prohibited a registered representative from serving in any fiduciary capacity for an individual who was not a family member, including as an executor, conservator, or attorney-in-fact under a power of attorney.

Both proscriptions applied without regard to whether the individual was a customer of the registered representative or the location of the account. MetLife's policies required a registered representative, when he became aware that a non-family member named him as a beneficiary or fiduciary, to inform his manager and MetLife's compliance department and advise the individual and all other appropriate parties to remove the representative from any documents that listed him in one of these positions.

2. Policies for the Protection of Seniors

MetLife's policies also addressed the potential for the diminished capacity and suspected abuse of seniors. Protection of these customers, the firm's policies stated, was a matter of ethical and regulatory concern. Accordingly, when a registered representative possessed concerns that a customer suffered from a mental or physical impairment creating an inability to weigh financial decisions properly, or the registered representative saw signs that a family member or caregiver was exploiting or abusing a senior customer, MetLife's policies required the representative to discuss these issues with their manager and MetLife's compliance department.

3. Policies Prohibiting Fraudulent Activity

MetLife's policies required registered representatives to treat their customers fairly and proscribed fraudulent activities. Included among the deceptive practices covered by the firm's policies was the example of "[o]btaining and keeping on file blank forms that have been signed by the client." MetLife's policies explicitly provided that a customer "must never sign a blank application or other blank forms to be completed later by the representative." This conduct, MetLife's policies stated, was one example among many other examples of prohibited, untrustworthy conduct, such as forgery, whether with or without the customer's permission,

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[4] MetLife's policies did not prohibit a registered representative from being named as a beneficiary in a will.

signing as a witness to a signature that a registered representative did not witness, executing a transaction without a customer's consent, or falsifying records.

4. Orlando's Acknowledgment and Understanding of MetLife's Policies

MetLife maintained its policies and procedures in an online portal, where they were available to all of the firm's registered representatives, who were required to know how to access the policies or procedures and read them. On August 19, 2014, during an annual compliance review, Orlando attested to a member of MetLife's compliance department that he was familiar with MetLife's policies and knew how to access them. In his hearing testimony, Orlando admitted that he understood, at the time of the annual compliance review, that MetLife's policies prohibited a registered representative of the firm from acting as a fiduciary for a non-family member, including as an executor, conservator, or attorney-in-fact under a power of attorney. He admitted also that he knew at the time MetLife prohibited a registered representative from being the beneficiary of a bank account belonging to an individual who was not a member of the registered representative's family.

B. DW Becomes Orlando's Customer

DW, who was born in 1932, was a member of a prominent Providence, Rhode Island family. She and her husband had five children and six grandchildren and lived in a house across the street from their son, WW, and his then-wife, PW.[5]

DW became Orlando's customer in December 2008. Orlando considered himself DW's registered representative solely. As he plainly admitted in his testimony, Orlando and DW were neither friends nor family, and they did not have a bond akin to a familial relationship.

Orlando visited DW and her husband at their home several times a year to discuss DW's finances. In October 2011, Orlando recommended and sold to DW a MetLife variable annuity. The variable annuity, for which DW paid approximately $150,000, included a guaranteed minimum income benefit rider meant to help DW meet her income needs as she aged.

C. DW's Health and Financial Condition

DW's husband died in March 2014, when DW was aged 81. At the time, DW did not suffer from any severe cognitive disorders, like dementia or Alzheimer's, but she did have memory problems for which she took medicine. She had a heart arrhythmia and was physically frail. PW testified that, after her husband's death, DW was in emotional turmoil and prone to anxiety and confusion.

WW testified that his mother had little understanding of financial matters, trusted others inherently, and was vulnerable to being misled. Both WW and PW testified that DW was predisposed to accepting what someone told her and signing documents without questions.

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[5] Of DW's five children, four were living at the time of the hearing in this matter.

Indeed, at the time of her husband's death, DW had recently been the victim of financial exploitation. In 2013, her family discovered, after Orlando alerted them, that DW's daughter had withdrawn about $100,000 from DW's MetLife variable annuity account without DW's knowledge or permission.[6]

After this episode, WW became DW's attorney-in-fact pursuant to a durable power of attorney and a power of attorney for health care that he shared with his brother, KW. WW cared for DW's finances and paid her bills and, with KW and PW, took DW to her doctor appointments, maintained her home, and prepared her meals.[7]

WW testified that his sister's theft diminished DW's finances.[8] When her husband died, DW's assets consisted of her 6,000-square-foot house; two parcels of land, worth about $50,000; her MetLife accounts, including the variable annuity account, which had a value of approximately $63,000; about $62,000 in cash held at Citizen's Bank; two small investments, which WW estimated were worth about $30,000; and personal property, including jewelry.[9] In addition to systematic monthly withdrawals of about $626 from her MetLife variable annuity account, DW also received income from two family trusts, one of which she shared as beneficiary with her children and grandchildren.

To put DW on a better financial footing, DW's family decided to sell her house, her largest financial asset, but the one that also created a significant strain on her finances. They intended originally to use the proceeds from the sale of DW's house to purchase her a smaller, less expensive house next to KW that WW and KW would renovate for her to live in.

In late July 2014, DW moved to an apartment in an assisted living facility close to WW's and PW's house. Although her move to this facility was at first meant to be temporary, DW continued living there long term after the plans to purchase her a new house fell through. WW and PW both testified that, following a period of adjustment, DW became accustomed to living at the assisted living facility, where she was well cared for and enjoyed frequent visits from

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[6] Orlando testified that, in his effort to understand these withdrawals from DW's MetLife variable annuity account, DW granted him permission to look at the entirety of her finances, including her bank account.

[7] DW did not drive.

[8] DW's daughter faced prosecution for theft, but DW recovered few of the funds her daughter stole.

[9] WW testified that his sister's theft of DW's assets necessitated taking a reverse mortgage against DW's house to help her cover her expenses. One of the two parcels of land had a pool that DW's family used. Estimates of the value of DW's jewelry were uncertain, but testimony indicated it could be worth more than a few hundred thousand dollars.

family members. Despite her physical and cognitive weakening, DW remained capable of performing the necessary activities of daily life and did so.

WW sold DW's house on August 1, 2014, and he deposited the net proceeds from the sale, approximately $350,000, in DW's bank account at Citizens Bank. WW testified, and Orlando's written statements attest, WW kept Orlando apprised of the events leading to the sale of DW's house because WW intended for Orlando to invest the sale proceeds for his mother's benefit. Orlando also testified he both knew of the sale of DW's house and that WW deposited the sale proceeds in his mother's bank account.

D. Orlando's Financial Condition

Orlando's own finances were uncertain. During the investigation of this matter, Orlando provided FINRA staff with net-worth statements for calendar years 2013 and 2014. In each of these statements, Orlando, who at the time was in his late sixties, reported having cash and cash equivalents less than $8,000, home equity less than $100,000, no investments in stocks, bonds, or mutual funds, and about $30,000 in retirement savings.[10] In addition to a mortgage and home equity credit, Orlando had auto loans, credit card balances, and student loans totaling more than $75,000.

E. Through a Series of Events, Orlando Becomes DW's Beneficiary, Attorney-in-Fact, and Executor

According to Orlando, DW became upset with and estranged from WW and KW in the summer of 2014 because of financial and other decisions they had made on her behalf. DW, Orlando claimed, felt victimized and abused by her sons and repeatedly asked him to "help" her because she felt Orlando was "like a good son, a wonderful friend, and like a family member." Orlando maintains that he therefore reluctantly agreed to help DW, but he admits that he did not speak with either WW or KW, who he knew held powers of attorney for DW. Instead, as the following events establish, Orlando advised DW to take steps to prevent WW and KW from having further access to her money. These steps included closing her MetLife accounts and surrendering her variable annuity, opening a new bank account at Citizens Bank, and revoking the powers she had granted WW and KW to act as her attorneys-in-fact. Although Orlando claimed that he intended these moves to ensure that DW controlled her own finances, he in fact acquired considerable powers to make financial and life decisions for DW and stood to benefit considerably if she died. In doing so, Orlando concealed his activities from MetLife.

1. Orlando Tells DW She Must Close Her MetLife Accounts

Orlando told DW that he could not help her if she continued to be his MetLife customer. Therefore, in early August 2014, Orlando hand wrote two letters for DW to sign. The first letter, dated August 7, 2014, instructed MetLife to close one of DW's two MetLife accounts, a small

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[10] Orlando reported his net worth on December 31, 2013, and December 31, 2014, as $184,776 and $197,654, respectively.

trust account with less than $150 in funds, and send the proceeds to her at the assisted living facility. The second letter, dated August 8, 2014, instructed MetLife to close "all" of DW's MetLife accounts, including her MetLife variable annuity account. The letter stated, "It has been a pleasure to work with Peter Orlando . . . . However my circumstances have changed and I must close my MetLife contract." Orlando testified that DW read both letters and signed them, and he faxed them to MetLife.

2. Orlando Advises DW to Close One Bank Account, and She Opens Another That Benefits Him

Orlando advised DW that, to deny WW and KW access to her funds, she could close her existing bank account at Citizens Bank and transfer the account's money to a new bank account. Consequently, on August 11, 2014, Orlando drove DW to Citizens Bank, where in Orlando's presence, DW closed her existing bank account and transferred the account's funds to a new account titled, "[DW] TTEE for Peter Orlando."[11] Titling the new bank account this way meant that Orlando became the beneficiary of DW's bank account and, upon DW's death, was entitled to receive the account's funds, which at the time were approximately $362,000, including the proceeds from the sale of DW's house.

Orlando testified that he did not understand the significance of the language, "TTEE for Peter Orlando," when DW opened the new bank account. The Hearing Panel, however, did not find this claim credible. Indeed, Orlando titled his own bank account "Peter Orlando TTEE for [Orlando's wife]" to ensure that his wife received his funds should he die. Although MetLife's policies required Orlando to inform his manager, Kotula, and MetLife when DW named him the beneficiary of her new bank account, it is uncontroverted that Orlando never did so.

3. Orlando Counsels DW to Revoke Her Sons' Powers of Attorney

To restrict further WW's and KW's ability to control DW and her finances, Orlando also steered DW to revoke their powers of attorney. Orlando printed a revocation of power of attorney form that he found online, and he hand wrote on the form the information necessary for DW to revoke all powers of attorney running to WW and KW. While at Citizens Bank on August 11, 2014, DW executed the form, and Orlando signed it as a witness.

4. Orlando Recommends That DW Surrender Her Variable Annuity

Orlando also recommended that DW surrender her MetLife variable annuity as a condition for his continued help. Therefore, again on August 11, 2014, Orlando called MetLife, with DW in his presence and on speakerphone, to arrange the surrender of the variable annuity. During the call, Orlando did most of the talking for DW. Orlando told the MetLife call representative that DW wanted to surrender her variable annuity because DW's "circumstances had changed," and he instructed the representative to remit the proceeds from the sale to DW's

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[11] Orlando also received online access to the new account and authorization to receive statements for the account.

"new" address, presumably at the assisted living facility.[12] When the MetLife call representative informed Orlando that he could not send the proceeds to the "new" address without effecting a separate request to change DW's address, the representative informed Orlando that he could instead have the funds sent to the Citizens Bank account to which MetLife deposited DW's systematic withdrawals under the annuity. Orlando asked the call representative to confirm the account number of that bank account, before asking, "[T]here's no one else listed on that account?"[13] When the call representative informed Orlando that he saw only DW's name on the account, Orlando told the representative to send a check to DW's "regular" address because the check would be forwarded to DW's "new" address.[14]

The MetLife call representative then inquired whether DW understood that surrendering the variable annuity would result in a "penalty" of about $3,464. Orlando responded, "[W]e understand that okay." Nevertheless, DW responded, "Oh, I didn't know." Orlando asked DW, "Is that okay?" DW responded, "Uh-huh, yeah. . . . That will be fine. . . . Whatever you say."

The surrender of DW's MetLife variable annuity yielded a net payment to her of $57,806, after a sales charge of $30, a $479 charge related to the guaranteed minimum income benefit, and a surrender fee of $3,440. The proceeds from the variable annuity were deposited in DW's new bank account at Citizens Bank on August 22, 2014, where it earned nominal interest of .01 percent.

5. Orlando Pursues a Conservatorship and Becomes DW's Attorney-in-Fact for Health-Care Decisions

DL served as DW's attorney for more than 20 years. DL drafted the powers of attorney making WW and KW attorneys-in-fact for their mother after her daughter's theft in 2013. DW considered DL a good attorney, and she made no mention to members of her family that she was displeased with DL's counsel.

Nevertheless, Orlando claimed that DW asked him to serve as her conservator, but she did not want to use DL, with whom Orlando alleged DW had concerns, to effect a conservatorship. Orlando therefore recommended that DW retain RH, an attorney who Orlando chose, but DW did not know, to appoint Orlando as her conservator. On August 13, 2014, Orlando paid RH $2,000 using a check drawn from DW's new bank account that Orlando

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12 Orlando testified that he wanted to ensure that WW did not "intercept" the check.

13 During the call, Orlando asked DW, "[W]hat are your thoughts on that [DW]?" DW replied, "I don't know." Orlando then mused, directing his question to DW, "If it gets sent [to Citizens Bank] that's a curious thing because that other thing that we did, you know?" Orlando then asked the call representative, "So what it—what's the Citizen's Bank look like? . . . Uh, is it just in her name?"

14 Although DW moved into the assisted living facility in late July 2014, MetLife continued to send the account statements for DW's MetLife accounts to her former residential address.

completed in his handwriting, but DW signed. Orlando spoke with RH by telephone, without DW present, to discuss a conservatorship for DW. Ultimately, Orlando decided against becoming DW's conservator because, among other reasons, he called MetLife's compliance hotline and learned that the firm's policies prohibited him from serving as DW's conservator.[15]

After abandoning plans for a conservatorship, Orlando sought instead a role as DW's attorney-in-fact. On August 14, 2014, Orlando contacted the law firm of S&H about drafting new powers of attorney for DW. As was the case with RH, Orlando selected these attorneys, who DW had never met. A week later, on August 21, 2014, Orlando drove DW to the S&H offices, when during a meeting with LH, an S&H attorney, Orlando did most of the talking and DW largely went along with what he said. During this visit, DW executed a new durable power of attorney for health care that named Orlando as her attorney-in-fact for health-care decisions, including decisions concerning life-prolonging care and treatment. Before leaving, Orlando paid the S&H firm $2,000 with a check drawn on DW's new bank account that he completed and DW signed.

6. DW Names Orlando Her Executor and Primary Beneficiary of Her Will

When DW and Orlando met with LH on August 21, 2014, Orlando also discussed with LH the possibility of her drafting a revised will for DW. One day later, on August 22, 2014, Orlando left a message for LH that instructed her that the revised will should name him as the primary beneficiary and Orlando's wife, who DW had never met, as the contingent primary beneficiary.[16]

LH emailed Orlando a draft of the revised will on August 24, 2015. The draft that LH sent Orlando nominated him as the revised will's executor. Consistent with Orlando's prior instructions, the draft revised will also named him primary beneficiary of DW's estate and Orlando's wife the contingent primary beneficiary.

On August 25, 2014, Orlando emailed LH and informed her that the draft revised will she sent him a day earlier accurately reflected DW's wishes, and he offered LH a couple of small edits. Orlando told LH that DW was free to sign the revised will in her apartment at the assisted living facility, and he requested that LH provide a convenient time for her to do so.

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[15] Orlando testified that he did not understand fully the role of a conservator, but he admitted that he knew a conservatorship would require a probate court's supervision and would be a matter of public record.

[16] Orlando claimed that, even though DW did not know his wife, DW spoke highly of her. He also suggested that DW named his wife contingent primary beneficiary to thank her for all the time that Orlando spent with DW. In his hearing testimony, however, Orlando stated that he asked that his wife be named as contingent beneficiary of DW's will because he was afraid WW and KW would harm him, and "my wife would have received the proceeds if anything happened to [DW] and me."

DW executed the revised will on August 28, 2014. The revised will, as it did in the draft, appointed Orlando executor of DW's estate, a fact that he, in violation of MetLife's policies, did not disclose to Kotula or MetLife. The revised will also named Orlando the primary beneficiary of DW's residual estate, including DW's real and personal property, and his wife contingent primary beneficiary. By signing the revised will, DW effectively disinherited WW and KW.[17]

7. DW Grants Orlando Durable Powers of Attorney

On September 10, 2014, DW executed a power of attorney wherein she appointed "my friend, Peter Orlando," her attorney-in-fact. Orlando claimed that this power of attorney was only an "emergency, temporary measure," which he intended to use solely in a moment of crises. It, however, was durable in nature, with no termination date, and granted Orlando general powers as DW's attorney-in-fact, including the authority to, among other things, acquire and sell her real and personal property, sign checks and withdraw funds from her bank account, make investment decisions for her, exercise any rights that DW had under any insurance policies, and make gifts.

Orlando testified that he knew MetLife's policies prohibited him from acting as DW's attorney-in-fact, and he admitted that he failed, in violation of MetLife's policies, to advise Kotula and MetLife that DW had named him her attorney-in-fact in both the August 21, 2014 power of attorney for health care and the September 10, 2014 durable power of attorney. Orlando claimed that DW wanted to keep the existence of these powers of attorney a secret from WW and KW, and he felt that he could "skate away" from the fact that he violated MetLife's policies if he never employed or profited from using the powers that DW had granted him.[18]

F. DW's Family Learns of Orlando's Intrusions

In a handwritten letter dated August 11, 2014, DW informed WW that he should not write any more checks from her bank account at Citizens Bank because she planned to close the account and transfer the monies to another account. After he received the letter, WW went online and discovered that the funds in the Citizens Bank account to which he had access previously were gone. When WW asked his mother why she closed the account, she was confused and did not understand about what he was talking.[19]

Later, in September 2014, WW went to Citizens Bank to conduct some personal banking. While there, the bank manager asked WW to step into his office and inquired how well WW knew DW's "financial advisor." The bank manager told WW that DW had made Orlando the

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[17] The revised will provided for nominal sums, of less than $3,000 each, for two priests, one of DW's daughters, and her surviving grandchildren upon DW's death.

[18] Orlando testified that he knew he could not be DW's attorney-in-fact under any circumstances, but he viewed his violation of MetLife's policies as "not a grievous thing" because he felt he was acting in "the spirit" of the policies by not exercising his powers of attorney.

[19] WW testified DW did not realize she had closed the account or had forgotten about it.

beneficiary of her bank account at Citizens Bank, and if DW died, Orlando stood to acquire all of the money in the account. Around this time, WW also received a copy of the revocation of power of attorney form that DW executed on August 11, 2014, revoking WW's and KW's powers as her attorneys-in-fact.

After learning of these facts, WW contacted his brother KW, who was also Orlando's MetLife customer, and they decided to speak with Orlando. WW and KW met Orlando at KW's house on September 22, 2014. During their meeting, WW and KW informed Orlando that they had learned that he had become the beneficiary of DW's bank account and that they did not believe this "look[ed] right." WW and KW encouraged Orlando to "step away" or "walk away" because they believed his involvement with their mother was "terribly unethical." WW testified that Orlando became agitated upon hearing the concerns that WW and KW shared with him.

The next day, September 23, 2014, Orlando called WW and asked him to turn over receipts and other documents relating to WW's handling of DW's finances while WW held DW's power of attorney. WW testified that he became agitated and upset with Orlando, who challenged him to come to DW's assisted living facility for a meeting.

WW agreed to meet with Orlando and called KW. When WW and KW arrived at the assisted living facility, WW called Spicuzza. Spicuzza worked with Orlando at MetLife, and WW knew him through a mutual friend. WW asked Spicuzza to intervene and "talk some sense" into Orlando. Spicuzza testified that WW told him that Orlando was in DW's apartment and would not let WW and KW in to see her. Spicuzza therefore agreed to meet WW at the assisted living facility to help diffuse the situation.

WW testified that, shortly after he called Spicuzza, the police arrived. They asked WW and KW, who had remained in the parking lot, to explain what happened. WW told the police that Orlando, who later testified that he was the one who called the police, was DW's "financial advisor" and was with her inside the assisted living facility.

After Spicuzza arrived, the police asked Spicuzza to call Orlando to tell him that the police were coming in to see DW. The police went to DW's apartment, and they asked Orlando to leave the apartment because he had shown himself reluctant to let the police talk to DW alone. The police spoke with DW, and she told the police that she was not afraid of WW and KW, as Orlando apparently reported. Satisfied that DW was not at risk, the police left. Spicuzza convinced Orlando to leave as well. After a brief, heated discussion with Orlando in the parking lot, WW and KW left the assisted living facility without seeing their mother.

One day after this exchange, on September 24, 2014, Orlando returned to DW's apartment with a highly self-serving letter that he had typed and prepared for DW's signature.[20] The letter, addressed, "To whom it may concern," stated, "Mr. Peter Orlando, my friend of Barrington, does not have any beneficial interest to any of my property including bank accounts at Citizens Bank. He has declined any beneficial interest." The letter further indicated, "I am

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[20] DW did not own a typewriter or a computer, and she did not know how to type.

competent and able to handle my own affairs. . . ." WW and KW, the letter also claimed, had "acted in a hostile and bullying manner," "putting me in such fear that I had to call the police when they came to my apartment complex last night." It concluded: "I am not a client of Mr[.] Orlando nor METLIFE. Mr[.] Orlando is a friend of mine and I thank God every day for his kindness, courage, intelligence and honesty." After DW signed the letter, Orlando drove her to Citizens Bank, where she removed his name as the beneficiary of her bank account.

Also on September 24, 2014, with the assistance of PW and DL, her long-time attorney, DW revoked all powers of attorney running to Orlando. DW executed a new durable power of attorney that appointed PW as her attorney-in-fact and a separate power of attorney for health care that made WW responsible for any health-care decisions.[21] After DW appointed PW her attorney-in-fact, Orlando returned to PW DW's checkbook, check ledger, and other financial documents, DW's wedding ring, the key to DW's pool, and vanity license plates that had belonged to DW's husband and were in his family for many years.[22]

Upon reviewing the check ledger that Orlando returned, PW discovered two checks drawn on DW's checking account for attorneys—one to RH and one to the S&H law firm.[23] Concerned, PW called DL. After further inquiry, DL learned that DW had executed a revised will in which DW named Orlando as executor and primary beneficiary of her estate. Consequently, with DL's assistance, DW revoked the revised will and executed a third will that named WW and KW beneficiaries. When PW asked DW why she had named Orlando primary beneficiary and his wife contingent primary beneficiary in the revised will, DW responded, "I wouldn't leave everything to Peter Orlando," and "I never met his wife."

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[21] After DW named PW her attorney-in-fact, Orlando wrote DW a letter, dated September 27, 2014, in which he recalled: "You had to exert your will to get to this happy result and you told me in early August I was the only who could help you. There was no on else." The letter further stated, "I can take a modest pride in being the midwife to this satisfactory ending." He concluded the letter, "Our close relation has ended but our friendship I am certain will endure."

[22] Orlando testified that DW wanted him to safeguard the license plates on a temporary basis. On August 14, 2014, however, DW signed a typewritten letter claiming that the license plates were a "gift to my friend Peter Orlando." Orlando thereafter used one of the license plates on his car.

[23] After reviewing the check ledger, PW also learned that Orlando had written checks totaling $1,300 to two members of his extended family. Orlando testified he wrote these checks, which he had DW sign, to reimburse the individuals for services that they provided to DW, including dog walking and driving DW to the doctor and hairdresser.

G. MetLife Investigates Orlando and Reinstates DW's Variable Annuity

KW called Kotula, Orlando's manager, on September 24, 2014, and explained that Orlando had "barricaded" himself in DW's assisted living facility apartment the prior evening.[24] KW also advised Kotula that he had concerns that Orlando had overstepped the boundaries of his relationship with DW. KW explained to Kotula that, among other things, Orlando had become the beneficiary of DW's bank account, her attorney-in-fact, and "conservator" of DW's estate, and he possessed numerous articles of DW's personal property.

Also on September 24, 2014, Kotula met with Orlando to discuss his relationship with DW. Orlando told Kotula that WW and KW were "out to steal [DW's] money and get her estate" and that he did not believe that WW and KW "were going to do anything appropriately for [DW] and her future." Kotula explained to Orlando that MetLife had protocols for him to report to the firm instances of suspected elder abuse or the financial exploitation of a senior. Orlando never reported to Kotula or MetLife that he suspected that WW and KW were exploiting or abusing DW.[25]

MetLife thereafter commenced an investigation of Orlando and his relationship with DW. MetLife's investigator, Thomas, attempted to reach Orlando by telephone, but he was unable to do so. He therefore arranged through an intermediary to meet with Orlando at MetLife's offices. Orlando did not attend this meeting, and he instead resigned from MetLife rather than cooperate with its investigation.

Although MetLife did not find evidence that Orlando misappropriated any of DW's funds, the firm confirmed that DW named Orlando her attorney-in-fact and executor of her estate, facts that Orlando had not disclosed to MetLife. The firm also reviewed Orlando's customer files and found in them two forms that DW had signed in blank—a variable annuity withdrawal form and a form to request an electronic transfer of funds.[26]

Finally, at PW's request, MetLife also reviewed the circumstances surrounding DW's surrender of her MetLife variable annuity. After completing its review, MetLife waived the surrender charges that DW paid and reinstated the variable annuity as of the date of its surrender, paying to DW the monthly systematic withdrawal payments that she should have received in the interim.

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[24] Kotula already knew this fact because Spicuzza had contacted him to make him aware of what had happened the day before.

[25] Orlando also never reported any concerns of suspected abuse or exploitation to the police or a government agency for protective or social services.

[26] MetLife determined that a copy of the blank, signed electronic transfer of funds form was later completed and used to transfer funds from DW's MetLife variable annuity account to her bank account at Citizens Bank. Enforcement did not allege that the circumstances surrounding the completion and use of this form involved a violation of FINRA rules.

H. FINRA Interviews DW

FINRA staff interviewed DW—once by telephone in July 2016 and once in person in April 2018. During the July 2016 interview, DW did not recall purchasing a variable annuity, revoking her sons' powers of attorney, granting Orlando any powers of attorney, executing a will naming Orlando as executor and primary beneficiary, opening a bank account that benefited Orlando, or meeting with any attorneys other than DL. She said she was "shocked" these things happened, and she did not believe she would have ever authorized them because she never intended to give Orlando access to her money. She trusted him and signed any documents that he asked her to sign. She explained that she had not been upset with either WW or KW or concerned with them having access to her finances, and she never wanted to disinherit them.

During the second interview in April 2018, FINRA staff noted that DW's memory had faded even further, and although she appeared physically well, DW was frail and her energy faded easily. DW could not recall any specifics of her relationship with Orlando or the events at issue in this case. She also denied being friends with Orlando, and she emphasized that she never considered him to be like a son. She reiterated that she simply followed Orlando's instructions.

III. Discussion

A. Orlando Unethically Exploited a Senior Customer for Financial Purposes

The complaint's first cause of action alleged that Orlando failed to observe high standards of commercial conduct and just and equitable principles of trade when he used his position as DW's registered representative to exploit her for financial purposes. The Hearing Panel found, as Enforcement alleged, that Orlando acted unethically and violated FINRA Rule 2010. We affirm the Hearing Panel's findings.

FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[27] The rule permits FINRA to regulate the ethical standards of its members and their associated persons, and it covers any business-related activity that is inconsistent with just and equitable principles of trade, even if that conduct does not involve a security. *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016). It thus covers myriad forms of misconduct that operate as an injustice to investors and other participants in the securities markets and proscribes dishonest practices without regard to whether they are illegal or violate a specific rule. *Id.* at *10, 21. In this respect, FINRA Rule 2010 operates "'as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the

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[27] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides, "Persons associated with a member shall have the same duties and obligations as a member under the Rules."

profession.'" *See Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54, at *17 (Jan. 6, 2012) (quoting *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *13 (Jan. 9, 2009), *aff'd*, 586 F.3d 122 (2d. Cir. 2009)).

Unethical behavior, even if not undertaken in bad faith, is sufficient to establish liability under FINRA Rule 2010. *See DiFrancesco*, 2012 SEC LEXIS 54, at *18. Application of the rule for that reason focuses on a person's conduct, and the ethical implications of that conduct, rather than on the person's subjective intent or state of mind. *Id.* at *17-18. It does not require proof of motive or scienter. *Id.* at *18. Whether misconduct violates FINRA Rule 2010 is "ultimately a question of whether the conduct raises concerns that the associated person will not 'comply with the regulatory requirements of the securities business' and will not 'fulfill [his or her] fiduciary duties in handling other people's money.'" *Grivas*, 2016 SEC LEXIS 1173, at *17 (quoting *Daniel D. Manoff*, 55 S.E.C. at 1162).

We conclude that Orlando used his position as DW's registered representative to exploit her unethically for financial reasons. In reaching this conclusion, we have considered Orlando's relationship with DW and the entire course of his actions during August and September 2014. Although no one factor is dispositive, we find that there exists in this case multiple reasons to find that Orlando failed to observe high standards of commercial honor and just and equitable principles of trade.

First, we conclude that DW's age and age-related, cognitive decline made her unable to protect her own interests. At the relevant time, she was 81-years-old, suffered from memory issues, and was prone to anxiety and confusion. *See* U.S. SEC. AND EXCH. COMM'N, OFFICE OF THE INVESTOR ADVOCATE, ELDER FINANCIAL EXPLOITATION: WHY IT IS A CONCERN, WHAT REGULATORS ARE DOING ABOUT IT, AND LOOKING AHEAD 2 (June 2018) ("Cognitive decline is a key factor that makes the elderly more susceptible to financial exploitation."). She had difficulty assessing the trustworthiness of others, making her vulnerable to becoming an unwitting victim to her desire simply to go along with what she was told or asked, without asking questions. *See id.* ("[O]lder persons can fall prey to deception and scams if they experience a decline in their ability to judge trustworthiness and riskiness."). In many respects, DW was a logical mark for Orlando. He knew well, and had observed, the full scope of DW's finances, her previous financial exploitation and her recent widowhood, that she did not handle her finances or make her own financial decisions, that she maintained a tenuous level of independence after moving to an assisted living facility, and that she was open to his instructions. All of these facts optimized the occasion for Orlando's abuse and lead us to infer that Orlando knew or must have known of DW's diminished capacity to protect herself.[28]

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[28] During the hearing, Orlando offered what he claimed was evidence of DW's ability to make her own financial decisions. This evidence consisted of a risk assessment ostensibly performed by a nurse at DW's assisted living facility shortly after DW began living there. The assessment apparently examined DW's ability to perform certain activities for daily living and included a "mini-mental assessment" that apparently sought to identify DW's ability to remember such things as the time of year, where she resided, and words and numbers. The assessment concluded that DW was an appropriate candidate for assisted living but suffering

[Footnote continued on next page]

Second, the facts establish that Orlando used his position as DW's registered representative to influence her unduly and engage in a campaign of predation. While Orlando was not DW's financial or investment advisor, she placed in him a level of trust as her registered representative of several years, and she proved pliable to his suggestions. Orlando's advice was the catalyst that would lead DW to become isolated financially from her family and place Orlando seemingly in complete control of her property and assets. In this respect, Orlando told DW that he could not help her unless she closed her MetLife accounts and surrendered her variable annuity, and he provided her letters to sign that he had hand written to affect her separation as a MetLife customer. He also advised DW to close her existing bank account at Citizens Bank and was there when DW opened a new account at the same bank that, more than fortuitously, made Orlando the beneficiary of her money should she die. Orlando further told DW how to revoke WW's and KW's powers of attorney, providing her the completed revocation form for her to sign. In addition, he suggested the attorneys to use so that he could pursue a conservatorship, and later, become her attorney-in-fact, executor, and the primary beneficiary of her estate. Orlando also wrote the checks, and had DW sign them, to pay these attorneys with DW's money. As the transcript of the call that Orlando made to MetLife to surrender DW's variable annuity illustrates, DW simply went along with whatever Orlando proposed.

Third, we find that Orlando's actions in this case evidence his pursuit of considerable self-interests. *See DiFrancesco*, 2012 SEC LEXIS 54, at *23 ("We also find that DiFrancesco's conduct was 'self-interested' and for his own purposes."). Although Orlando claimed that he intended to become the caretaker of DW's finances solely on a short-term basis until a better candidate could be found and planned to use the powers she granted him as her attorney-in-fact only in the event of an emergency, these assertions ring hollow. Among other things, DW granted Orlando a durable power of attorney that, by definition, would continue to be in effect indefinitely, even in the event of DW's mental incompetency. In addition, the powers DW granted Orlando were not limited for emergencies only, but were instead general and broad. Orlando could, among other things, at any time dispose of DW's real or personal property, sign checks, and withdraw money from her bank account without DW's approval. Moreover, in short time, DW made Orlando her attorney-in-fact for health care decisions, beneficiary of her bank account, and executor and primary beneficiary of her will. When you consider that Orlando had DW name his wife the contingent primary beneficiary of DW's will, and he came to possess articles of DW's personal property, including her wedding ring and the keys to her pool, the breadth of Orlando's long-playing machinations show that he was decidedly self-centered.

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from memory loss. Although the Hearing Panel admitted the assessment into evidence, Orlando offered no foundation to authenticate the document or testimony from an individual competent to testify about the assessment's conclusions or import. We discern from the assessment no evidence that DW possessed the cognitive ability to protect herself as Orlando claims. As the Hearing Panel found, correctly, Orlando offered no credible evidence to rebut the testimony of WW and PW concerning DW's physical, cognitive, and emotional state at the time of the events at issue in this case.

Indeed, throughout these proceedings, Orlando asserted that he was merely fulfilling DW's calls for "help" and wanted to protect her from the mistreatment and abuse of her sons. The only evidence that support these claims, however, are self-serving letters that he drafted, one for DW's signature, after his deep intrusion into DW's finances was complete and detected. He bluntly admitted that he possessed no contemporaneous proof that either WW or KW were exploiting their mother, and he testified that various pejorative statements he made about them rested on nothing more than naked prejudices and stereotypes. Orlando also never reported to MetLife, as the firm's policies directed, or law enforcement or a government agency, that he held concerns WW and KW were exploiting or abusing DW. Although we need not find a motive for Orlando's conduct, the fact that he had limited financial resources of his own, but ended up as the individual who stood to gain the most, whether DW lived or died, from the powers and titles that she granted him, leads us to dismiss his allusions that he acted in good faith.[29]

Finally, we have considered that Orlando knowingly violated MetLife's policies, which prohibited him from becoming the beneficiary of an account, attorney-in-fact, or executor for any individual who was not a member of his family. *See Heath*, 2009 SEC LEXIS 14, at *18 ("[W]e have looked to internal firm compliance policies to inform our determination of whether applicants' conduct . . . violated the professional standards of ethics covered by the J&E Rule."). He also secreted his conduct from MetLife by failing to disclose to his manager and the firm's compliance department, as MetLife's policies required, his designations as beneficiary of DW's bank account, her attorney-in-fact, and executor of her estate. *See Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *10 (NASD NAC May 7, 2003) ("We also find that Davenport's dishonesty to his firm reflects directly on his ability to abide by his firm's policies, many of which are designed to protect the public and the firm, and to deal responsibly with the public."). Orlando instead convinced DW to close her accounts at MetLife, seemingly to insulate further his conduct from the firm.

In sum, we have no doubt, under the facts presented in this case, that Orlando's conduct was unethical. Accordingly, we affirm the Hearing Panel's findings that Orlando violated FINRA Rule 2010, as alleged in the first cause of the complaint.

B. Orlando Made an Unsuitable Recommendation

The second cause of the complaint alleged that Orlando recommended a security transaction to DW, the surrender of her MetLife variable annuity, which was unsuitable for her in light of her specific financial needs. Consistent with Enforcement's allegations, the Hearing Panel found that Orlando violated FINRA Rules 2111 and 2010. We affirm the Hearing Panel's findings.

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[29] Enforcement did not allege, and there is no evidence that establishes, Orlando profited from his misconduct. This fact is nevertheless irrelevant to our finding that Orlando's conduct was unethical. *See DiFrancesco*, 2012 SEC LEXIS 54, at *23 ("Nor do we find that the absence of demonstrable customer harm excuses or mitigates his actions . . . .").

FINRA Rule 2111 requires that an associated person who recommends to a customer a transaction involving a security have a reasonable basis to believe that the recommendation is suitable for the customer based on information obtained through reasonable diligence about the customer's investment profile.[30] *See* FINRA Rule 2111(a). The duties imposed under FINRA Rule 2111 include a customer-specific obligation that requires a recommendation be consistent with the customer's best interests and financial situation. *See Bernard G. McGee*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987, at *32 (Mar. 27, 2017), *aff'd*, 733 F. App'x 571 (2d Cir. 2018); *see also* FINRA Rule 2111, Supplementary Material .01 (discussing the three main components of suitability under FINRA Rule 2111).

We find that Orlando did not have a reasonable basis for recommending that DW surrender her MetLife variable annuity. As the evidence established, and Orlando admitted, his recommendation was neither consistent with DW's best interests nor based on her financial needs. It instead originated from Orlando's self-serving desire that DW close her MetLife accounts so that he could "help" her by becoming, among other things, her attorney-in-fact, and to hide his activities from his firm.

Orlando's recommendation that DW surrender the variable annuity also was not reasonable in light of the financial repercussions of his recommendation for DW. Orlando recommended that DW purchase the variable annuity just three years earlier, and she paid a premium for a guaranteed minimum income rider intended to help her meet her need for income. Despite the withdrawal of a large sum of money from DW's MetLife variable annuity account by her daughter, WW testified that DW's investment objectives had not changed and, as other evidence and testimony established, the variable annuity continued to perform well and provide DW a steady source of income of approximately $2,500 a calendar quarter. Orlando's recommendation that DW surrender the variable annuity nevertheless resulted in her paying unnecessarily several thousands of dollars in fees and charges, money that DW would not recoup when she deposited the proceeds from the annuity's surrender in her bank account, where they earned nominal interest. These facts are inconsistent with Orlando's post-hoc claims that his recommendation was specifically suitable based on DW's needs and financial condition. *See McGee*, 2017 SEC LEXIS 987, at *32 ("CF incurred expenses . . . in surrendering [her variable annuities] to generate money to invest in 54Freedom. This meant that the new investment, whose prospects were unknown to McGee, needed to recoup [these expenses] simply to put CF in the position she was in before she started.").

Accordingly, we conclude that Orlando did not fulfill his obligations under FINRA's suitability rule when he recommended that DW surrender her variable annuity. We thus affirm

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[30] A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives and time horizon, liquidity needs, and risk tolerance. *See* FINRA Rule 2111(a). These factors are generally relevant when determining whether a recommendation for a particular customer is suitable, although the weight given to any one of these factors varies based on the facts and circumstances of each case. *See* FINRA Rule 2111, Supplementary Material .04.

the Hearing Panel's findings that Orlando violated FINRA Rules 2111 and 2010, as alleged in the complaint's second cause of action.[31]

C. Orlando Acted Unethically by Keeping Forms His Customer Signed in Blank

The third, and final, cause of the complaint alleged that Orlando unethically kept in his files for DW two blank forms that DW nevertheless signed. The Hearing Panel found that this conduct, which Enforcement proved, violated FINRA Rule 2010. We affirm the Hearing Panel's findings.

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Though Orlando put forward various, unfounded suppositions about the blank forms, including that someone else may have planted them in his files, MetLife's investigative consultant, Thomas, testified unequivocally about MetLife's discovery in Orlando's customer files for DW two forms—a variable annuity withdrawal form and a form to request an electronic transfer of funds—that DW had signed in blank. We agree with the Hearing Panel that Orlando's conduct was inherently antithetical to a registered representative's duty to uphold high standards of commercial honor and just and equitable principles of trade. Obtaining a document that a customer signed in blank, and keeping that form for the ostensible purpose of completing it at another time, is conduct that runs counter to a registered representative's ethical obligations. *Cf. Dist. Bus. Conduct Comm. v. Delorraine*, Complaint No. C3A910110, 1992 NASD Discip. LEXIS 58, at *11 (NASD NBCC Nov. 27, 1992) (affirming findings that a registered representative violated just and equitable principles of trade when, to avoid Exchange Act Rule 15c2-6, he completed an unsolicited trade confirmation letter the customer previously signed in blank).

Unquestionably, this practice is on a plane with other dishonest devices, exemplified in MetLife's policies, that we have regularly found are self-evidently wrong, such as signing a document for a customer as an accommodation, falsely dating a document, and forgery. *See, e.g.*, *Dep't of Enforcement v. Bukovcik*, Complaint No. C8A050055, 2007 NASD Discip. LEXIS 21, at *11 (NASD NAC July 25, 2007) ("Bukovcik's signing of Firm account documents on behalf of customers therefore violated the 'broad ethical principle' embodied in [NASD] Conduct Rule 2110."); *Dep't of Enforcement v. Cuozzo*, Complaint No. C9B050011, 2007 NASD Discip. LEXIS 12, at *23 (NASD NAC Feb. 27, 2007) ("Cuozzo knowingly entered false dates on at least 50 . . . documents. [His] conduct is inconsistent with the high ethical requirements of [NASD] Conduct Rule 2110."); *Dep't of Enforcement v. Masceri*, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29, at *34 (NASD NAC Dec. 18, 2006) ("[W]e affirm the Hearing Panel's finding that Masceri committed forgery in violation of [NASD] Rule

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[31] FINRA Rule 2111 "is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct." FINRA Rule 2111, Supplementary Material .01. A violation of FINRA's suitability rule is thus also a violation of FINRA Rule 2010. *See Dep't of Enforcement v. Taddonio*, Complaint Nos. 2015044823501, 2015044823502, 2019 FINRA Discip. LEXIS 3, at *40 n.24 (FINRA NAC Jan. 29, 2019) ("A violation of NASD Rule 2310 or FINRA Rule 2111 is also a violation of FINRA Rule 2010. . . ."), *appeal docketed*, SEC Admin. Proceeding No. 3-19012 (Feb. 28, 2019).

2110."). Accordingly, we affirm that Hearing Panel's findings that Orlando violated FINRA Rule 2010, as alleged in the complaint's third cause of action.

IV. Sanctions

The Hearing Panel barred Orlando from associating with any FINRA member in any capacity and ordered that he pay DW restitution in the sum of $4,000, plus pre-judgment interest, for unethically exploiting DW for financial purposes. In light of the bar, the Hearing Panel declined to impose the sanctions it assessed for Orlando's additional wrongdoing—a $10,000 fine and a 30-business-day suspension in all capacities for his violation of FINRA's suitability rule and a $5,000 fine and a 30-business-day suspension in all capacities for his unethical conduct concerning two forms he kept in his files that DW had signed in blank.

After carefully considering the FINRA Sanction Guidelines ("Guidelines"), we modify the sanctions the Hearing Panel imposed.[32] Although we assess sanctions differently than the Hearing Panel, imposing a unitary sanction for Orlando's proven wrongdoing under the complaint's first two causes of action, we nevertheless agree with the result of the Hearing Panel's decision on sanctions. Consequently, we bar Orlando from the securities industry. We also order that he pay DW the sum of restitution determined by the Hearing Panel. While we agree with the Hearing Panel's assessment of sanctions for Orlando unethically keeping in his files two forms that DW previously signed in blank, we decline to impose these additional sanctions in light of the bar and restitution we impose for his other misconduct.

A. Orlando Is Barred for Unethically Exploiting DW and Recommending an Unsuitable Transaction

As an initial matter, we have determined to impose a unitary sanction for Orlando's demonstrated wrongdoing under the first and second causes of the complaint. Orlando admittedly recommended that DW surrender her MetLife variable annuity as a condition for his agreeing to "help" her, which resulted in his exploiting DW for financial reasons. Accordingly, we find it is appropriate to aggregate sanctions for Orlando's unethical exploitation of DW and his unsuitable recommendation that she sell her variable annuity.[33] *See, e.g.*, *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *59 (Sept. 24, 2015) (sustaining FINRA's decision to impose a unitary sanction for violations that "result[ed] from a single systemic problem or cause").

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[32] *FINRA Sanction Guidelines* (2019), https://www.finra.org/rules-guidance/rulebooks/archive/sanction-guidelines-version-february-28-2019 [hereinafter *Guidelines*].

[33] *See id.* at 4 (General Principles Applicable to All Sanction Determinations, No. 4) ("Aggregation or 'batching' of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.").

As for the specific sanctions to impose for Orlando's misconduct, the Hearing Panel noted, correctly, the Guidelines do not address precisely Orlando's unethical exploitation of DW. The Hearing Panel therefore looked, as the Guidelines instruct FINRA adjudicators, to the sanctions recommended for analogous misconduct.[34] In view of that instruction, the Hearing Panel found Orlando's misconduct most similar to a failure to comply with the notice requirements for outside business activities and considered the Guidelines for this specific misconduct. We find no fault in this reasoning, and we too have considered the Guidelines for a failure to comply with the rule requirements for outside business activities. These Guidelines recommend that we suspend an individual for 10 business days to three months, except when aggravating factors are present, in which case the Guidelines recommend a suspension of up to one year.[35] When aggravating factors predominate, however, the Guidelines for this misconduct recommend a suspension of up to two years or a bar.[36]

Because we have determined to apply a unitary sanction for Orlando's FINRA rule violations under causes one and two of the complaint, we have considered also the Guidelines for unsuitable recommendations in our assessment of sanctions. These Guidelines recommend that we suspend an individual in any or all capacities for a period of up to two years, but when aggravating factors predominate, they urge us to consider strongly a bar.[37]

We nevertheless recognize that the foregoing Guidelines do not capture fully the dark character and gravity of Orlando's entire course of unethically exploitive misconduct. We find that Orlando's wrongdoing, which DW's family discovered before it became irreversible, was the exercise by Orlando of undue influence for his own benefit. In this respect, Orlando's conduct is not unlike that at issue in other cases we have decided involving registered representatives who used their positions to influence unethically senior or other vulnerable customers for their personal advantage. For example, in *Department of Enforcement v. Butler*, we found that the respondent befriended a senior, widowed customer who, because of her declining mental health, was unable to manage her own finances. Complaint No. 2012032950101, 2015 FINRA Discip. LEXIS 35, at *5-11 (FINRA NAC Sept. 25, 2015), *aff'd*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989 (June 2, 2016). Over time, the respondent used the trust his customer placed in him to, among other things, cause her to make

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[34] *See Guidelines*, at 1 (Overview) ("For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.").

[35] *Id.* at 13 (Outside Business Activities-Failure to Comply with Rule Requirements). The Guidelines for outside business activities recommend monetary sanctions in the form of a fine ranging from $2,500 to $77,000. *Id.*

[36] *Id.*

[37] *Id.* at 95 (Suitability-Unsuitable Recommendations). The Guidelines for unsuitable recommendations recommend monetary sanctions consisting of a fine ranging from $2,500 to $116,000. *Id.*

him her attorney-in-fact, the primary beneficiary of her estate, and the joint account holder of her bank accounts, from which he later converted funds for his personal use. *Id.* Similarly, in *Department of Enforcement v. Evans*, the respondent exerted undue influence over a teenage girl who had no experience with financial matters. Complaint No. 2006005977901, 2011 FINRA Discip. LEXIS 36, at *5-18 (FINRA NAC Oct. 3, 2011). After the girl's father died, she moved into the home of the respondent, her father's long-time friend. *Id.* at *5. Using his position as the girl's close advisor, the respondent persuaded her to make him the joint owner of her bank and brokerage accounts, accounts funded with the proceeds from her father's life insurance policies that the respondent used improperly for his personal gain. *Id.* at *6-18.

In each of the foregoing cases, we barred the respondents for their egregious, unethical conduct. *See Butler*, 2015 FINRA Discip. LEXIS 35, at *29-30; *Evans*, 2011 FINRA Discip. LEXIS 36, at *39. In doing so, we concluded that the course of conduct in which each engaged, which at its core involved taking advantage of a customer's vulnerability and trust for personal gain, was so adverse to the ethical principles that underpin the self-regulation of the securities industry as to render them unfit for continued employment with any FINRA member.[38] *See Butler*, 2015 FINRA Discip. LEXIS 35, at *29 ("Butler's violations are so antithetical to the conduct required of securities professionals that we find him unfit for continued employment in the securities industry."); *Evans*, 2011 FINRA Discip. LEXIS 36, at *39 ("We conclude that Evans has evinced a complete lack of understanding of his duties as a registered person . . . . [W]e find that Evans's misconduct warrants that he be barred from associating with any [FINRA] member in any capacity.").

It is against this backdrop that we conclude Orlando's exclusion from the securities industry is surely necessary to protect the investing public. His conduct was egregious and characterized by numerous aggravating factors that predominate.[39] Foremost among these factors is the circumstance that Orlando used his position as DW's MetLife registered representative, and the trust that DW placed in him, to unduly influence her and engage in a deliberate, methodical campaign and pattern of predation.[40] This case is a classic example, and a

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[38] Because *Butler* and *Evans* included elements of conversion, we considered, among other aspects of the Guidelines, the Guidelines for the conversion or improper use of funds. *See Butler*, 2015 FINRA Discip. LEXIS 35, at *27; *Evans*, 2011 FINRA Discip. LEXIS 36, at *36. These Guidelines recommend a bar as the standard sanction in most cases. *See Guidelines*, at 36 (Conversion or Improper Use of Funds or Securities).

[39] To identify the factors that we find aggravating, we consulted the principal considerations for determining sanctions enumerated in the Guidelines for application in every disciplinary case. *See Guidelines,* at 7-8. We also considered the specific principal considerations listed for applying the outside business activities Guidelines. *See id.* at 13. The Guidelines for unsuitable recommendations and the conversion or improper use of funds do not provide any specific principal considerations for adjudicators to consider. *Id.* at 36, 95.

[40] *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 19); *see id. also* at 13 (Principal Considerations in Determining Sanctions, No. 6).

regrettable one, of the kind of misconduct for which a strong sanction is necessary. *See FINRA Regulatory Notice 17-13*, 2017 FINRA LEXIS 39, at *3 (Apr. 2017) ("This new consideration reaffirms that financial exploitation of senior or other vulnerable customers should result in strong sanctions."). We will not hesitate to impose the sanction of a bar in future cases in which a respondent exploits a senior investor.

Moreover, Orlando intentionally exploited a senior customer who lacked financial sophistication and, because of her declining cognitive abilities and memory, was unable to manage her own financial affairs.[41] By causing DW to name him beneficiary of her bank account, attorney-in-fact with general powers to dispose of her assets, and executor and primary beneficiary of her will, Orlando obtained control of the entirety of DW's finances and placed himself in a commanding position to obtain DW's money, and her real and personal property, whether DW lived or died.[42] At the same time, Orlando affected DW financial harm by causing her to surrender her MetLife variable annuity and engaging attorneys to conduct legal work that served Orlando's interests only.[43]

There are no facts that warrant a sanction of less than the bar we impose for Orlando's conduct. Orlando concealed his conduct from MetLife, knowingly violating his firm's policies concerning registered representatives who assume roles as beneficiaries or fiduciaries and deliberately failing to disclose, as MetLife's policies directed, his appointments as beneficiary of DW's bank account, her attorney-in-fact, and executor of her estate.[44] He has not taken responsibility for his actions and instead has consistently attempted to assign blame to others in a self-serving attempt to paint himself as DW's white knight.[45] Although he claims that he rejected any beneficial interest or role that DW granted him, he did so only after detection and intervention by DW's family, who promptly reported his actions to MetLife.[46] Indeed, rather than acknowledge his misconduct, Orlando declined to cooperate with MetLife's investigation

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41 *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 13, 19); *see id. also* at 13 (Principal Considerations in Determining Sanctions, Nos. 1, 3).

42 *See id.* at 8 (Principal Considerations in Determining Sanctions, Nos. 16-17). Although there is no evidence that Orlando converted or misappropriated DH's funds, he potentially could have. His lack of pecuniary gain is thus not mitigating. *See Paz Sec., Inc. v. SEC*, 566 F.3d 1172, 1175 (D.C. Cir. 2009) (holding that lack of direct benefit to a violator or harm to a customer is not mitigating).

43 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 11); *see id. also* at 13 (Principal Considerations in Determining Sanctions, No. 2).

44 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 10); *see id. also* at 13 (Principal Considerations in Determining Sanctions, No. 5).

45 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 2).

46 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 4).

and instead resigned from the firm.[47] The fact that Orlando returned to DW various pieces of her personal property, including her wedding ring, does not serve to mitigate the sanction we impose.

We agree with the Hearing Panel that Orlando's failure to grasp the grievous nature of his misconduct warrants a substantial sanction. *See Dep't of Enforcement v. Akindemowo*, Complaint No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *48 (FINRA NAC Dec. 29, 2015) ("His failure to appreciate the requirements of the securities business and the gravity of his misconduct and the harm it caused warrants significant sanctions."), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016). Like other respondents who have embarked on similarly unethical paths, he has evinced a complete lack of understanding of his role and duties as a registered representative and engaged in conduct that is antithetical to the high standards of commercial conduct and just and equitable principles of trade that are required of all FINRA members and their associated persons. *See Butler*, 2015 FINRA Discip. LEXIS 35, at *29; *Evans*, 2011 FINRA Discip. LEXIS 36, at *39.

Orlando's continued presence in the securities industry thus poses a substantial risk to the investing public that we conclude is best remediated by his exclusion from the securities industry. *See Paz Sec.,* 566 F.3d at 1176 (affirming a FINRA imposed bar where the respondent posed a "'clear risk of future misconduct'" and the bar was "necessary to protect investors"); *see also McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) ("It is familiar law that the purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers."). Imposing a bar in this case will serve as an effective deterrent to Orlando repeating his misconduct and discourage future misconduct by likeminded individuals who would use their position as a registered representative to exploit for financial gain the trust placed in them by vulnerable customers. *Cf. McCarthy*, 406 F.3d at 189 (stating that general deterrence is considered part of the overall inquiry into remedial sanctions).

In summary, we bar Orlando from associating with any FINRA member in any capacity for unethically exploiting DW for financial reasons and recommending to her an unsuitable transaction.[48]

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[47] *See id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 2-3).

[48] Because we bar Orlando and order restitution, we follow the recommendation in the *Guidelines* and do not fine him. *See Guidelines*, at 10 ("Adjudicators generally should not impose a fine if an individual is barred and the Adjudicator has ordered restitution or disgorgement of ill-gotten gains as appropriate to remediate misconduct."); *see also NASD Notice to Members 99-86*, 1999 NASD LEXIS 63 (Oct. 1999) (discussing policies regarding the imposition and collection of monetary sanctions). If we were to impose a fine for Orlando's financial exploitation of a senior customer, we would impose a fine that exceeds the high-end recommendations in the Guidelines considered.

B. Orlando Is Ordered to Pay DW Restitution

The Hearing Panel ordered that Orlando pay DW restitution in the amount of $4,000, plus prejudgment interest. We affirm the Hearing Panel's order.

Restitution is a remedy intended to restore the status quo ante where a victim would otherwise suffer a loss unjustly.[49] The Guidelines thus permit us to order restitution as an appropriate sanction to remedy misconduct when an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct.[50] We calculate orders of restitution based on the actual amount of a person's loss, which may exceed the amount of the respondent's ill-gotten gains.[51]

We find, as did the Hearing Panel, that Orlando's misconduct was the proximate cause of DW paying fees—$2,000 to RH and $2,000 to the S&H law firm—for legal work that was unnecessary and benefitted Orlando. Orlando selected these attorneys, who DW did not know, after he recommended that DW revoke all powers of attorney running to WW and KW. He then paid these attorneys, with funds from DW's bank account, to assist him with becoming DW's conservator and, when Orlando abandoned that plan, her attorney-in-fact.

We therefore order that Orlando pay DW restitution in the sum of $4,000. We also order that Orlando pay prejudgment interest on this amount.[52]

C. We Affirm the Sanctions Analysis for Orlando Keeping Pre-Signed Forms

The Hearing Panel assessed a $5,000 fine and 30-business-day suspension in all capacities for Orlando's unethical conduct keeping two forms in DW's file that she signed previously in blank. In light of the bar imposed on Orlando for his exploiting DW unethically for financial reasons, the Hearing Panel declined to impose the fine and suspension it assessed for this remaining act of misconduct. We affirm the Hearing Panel's assessment of sanctions for Orlando's wrongdoing under the complaint's third cause of action, and we agree with its decision not to impose these additional sanctions in light of the bar we too have imposed.

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49 *Guidelines*, at 4 (General Principles Applicable to All Sanctions Determinations, No. 5).

50 *Id.*

51 *Id.*

52 *See id.* at 11 (Technical Matters) ("When ordering restitution, Adjudicators may consider requiring the payment of interest on the base amount."). Prejudgment interest shall be paid at the rate established in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), and accrue from August 21, 2014, the date of the second check Orlando wrote to pay for legal fees unnecessarily. *See id.* ("Generally, interest runs from the date(s) of the violative conduct and should be calculated at the rate established for the underpayment of federal income tax . . . .").

There are no Guidelines addressing the exact nature of Orlando's unethical acts of maintaining in his customer files two forms DW signed in blank. We have nevertheless considered the Guidelines for forgery, the unauthorized use of signatures, and the falsification of records. *See, e.g.*, *Bukovcik*, 2007 NASD Discip. LEXIS 21, *11-12 (considering the Guidelines for forgery or falsification of records when the respondent signed account documents on behalf of customers); *Cuozzo*, 2007 NASD Discip. LEXIS 12, at *29 (assessing sanctions for respondent's false dating of documents under the Guidelines for forgery or falsification of records); *Masceri*, 2006 NASD Discip. LEXIS 29, at *39 (assessing sanctions under the Guidelines for forgery). These Guidelines instruct adjudicators to consider imposing, for signatures or falsifications involving an authorized transaction, when there is no other misconduct or customer harm, a fine of $5,000 to $11,000 and a suspension of 10 business days to six months.[53] When a respondent affixes a signature or falsifies a document without authorization, the Guidelines recommend a fine of $5,000 to $155,000 and a suspension of two months to two years, unless the misconduct furthered another violation, resulted in customer harm, or stemmed from significant aggravating factors, in which case a bar is standard.[54]

We find aggravating that Orlando kept in his files two forms—a variable annuity withdrawal form and a form to request the electronic transfer of funds—that were significant and created the opportunity for Orlando to engage in unauthorized transactions to DW's financial detriment.[55] The record, however, is otherwise devoid of evidence concerning the circumstances leading to DW affixing her signature to two blank documents or showing whether she intended Orlando to use the documents for authorized purposes.[56] The facts also do not support, and Enforcement did not allege, that Orlando used the forms DW signed in blank to engage in other violations of FINRA's rules or to harm DW.

In light of the foregoing, we also assess Orlando's misconduct as worthy of a $5,000 fine and a 30-business-day suspension in all capacities, sanctions which are within the range of sanctions provided under the Guidelines for forgery, the unauthorized use of signatures, and the falsification of records when there are no other violations or customer harm. Because of the bar and restitution imposed above for Orlando's misconduct under causes one and two of the complaint, however, we do not impose these additional sanctions for Orlando's unethical conduct under cause three.[57]

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53 *Guidelines*, at 37 (Forgery, Unauthorized Use of Signatures or Falsification of Records).

54 *Id.*

55 *See id.* (Principal Considerations in Determining Sanctions, No. 1).

56 *See id.* (Principal Considerations in Determining Sanctions, Nos. 2-4).

57 *See id.* at 10; *see also Dep't of Enforcement v. Mielke*, Complaint No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *85-86 (FINRA NAC July 18, 2014) ("We decline to impose these fines and suspensions in light of the three bars that we have already imposed on him.").

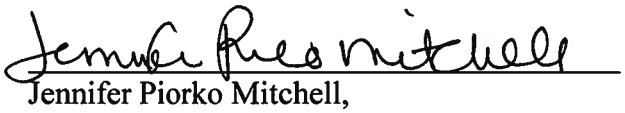
V. Conclusion

The integrity of the securities industry is undermined substantially by registered representatives who, like Orlando, exercise undue influence to exploit financially seniors and persons who are not able to protect their own interests due to a mental or physical impairment. We condemn Orlando's actions and seek to protect the investing public by barring him from FINRA membership.

We affirm the Hearing Panel's findings that Orlando violated FINRA Rule 2010 by exploiting DW, his senior customer, for financial reasons. We also affirm the Hearing Panel's findings that Orlando violated FINRA Rules 2111 and 2010 when he recommended that DW engage in an unsuitable transaction by surrendering her MetLife variable annuity. Finally, we affirm the Hearing Panel's findings that Orlando violated FINRA Rule 2010 by unethically keeping in his files two forms that DW previously signed in blank.

In light of our findings, we impose a unitary sanction for Orlando's unethical exploitation of DW and his unsuitable recommendation. Accordingly, we bar Orlando from associating with any FINRA member in any capacity for this misconduct. We also order that he pay DW $4,000 in restitution, plus prejudgment interest.[58] We affirm the Hearing Panel's order that Orlando pay hearing costs of $7,693.86, and we impose appeal costs of $1,630.20. The bar imposed herein is effective upon service of this decision.

On behalf of the National Adjudicatory Council,



Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

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[58] Given the bar and order of restitution, and consistent with the policies set forth in the Guidelines, we do not impose the fine and suspension that we have assessed for Orlando unethically keeping blank pre-signed forms in his files.