



In the Matter of)	Request for Review of
)	NYSE Hearing Board
)	Decision 08-3
Gregory W. Gray, Jr.)	

In accordance with NYSE Rule 476(f), after a consideration of the record in this matter, written submissions filed by the parties and oral argument, the Board affirms the decision of the Hearing Panel in all respects.

December 17, 2008

By the Board of Directors
NYSE Regulation, Inc.

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING BOARD DECISION 08-3

February 1, 2008

GREGORY W. GRAY, JR.
FORMER REGISTERED REPRESENTATIVE

* * *

Violated NYSE Rule 476(a)(6) by effecting unauthorized trades in two customer accounts; violated NYSE Rule 476(a)(7) by threatening and/or harassing three complaining customers and/or their family members – Censure and three-year bar.

Appearances:

For the Division of Enforcement
Penny Rosenberg, Esq.
Andrew Kampel, Esq.
Jennifer L. Mennella, Esq.

For Respondent
David K. Silverberg, Esq.

* * *

A Hearing Panel on behalf of the New York Stock Exchange LLC (“NYSE” or the “Exchange”) considered a Charge Memorandum issued by NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) charging Gregory W. Gray, Jr. (“Respondent”), a former registered representative with Quick & Reilly, Inc. (“Quick & Reilly”) and H&R Block Financial Advisors (“H&R Block”), both member organizations, with having:

- I. Violated NYSE Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade, in that he effected unauthorized trades in the accounts of one or more customers.
- II. Violated NYSE Rule 476(a)(7) by engaging in acts detrimental to the interest or welfare of the Exchange in that he threatened and/or harassed one or more complaining customers and/or their family members.

Respondent filed an Answer on April 27, 2007, in which he admitted certain of the allegations in the Charge Memorandum, denied others, and denied all but one of bases for one of the charges.

Based on the pleadings, evidence and argument presented at the hearing, the Hearing Panel made the following findings:

Background and Jurisdiction

1. Respondent was born in [REDACTED] His employment history in the securities industry has been as follows:

Non-Member Firm A	October 2006	-Present
Non-Member Firm B	April 2006	-September 2006
H&R Block	February 2004	-January 2006
Non-Member Firm C	December 2003	-February 2004
Quick & Reilly	March 2002	-December 2003
Member Firm A	June 2001	-March 2002
Member Firm B	June 1999	-June 2001
Member Firm C	October 1998	-June 1999

2. On or about December 22, 2003, Enforcement received a Uniform Termination Notice For Securities Industry Registration (“Form U-5”) from Quick & Reilly which stated, “through routine active account calls it was discovered that Respondent entered unauthorized trades in two customers’ accounts.”
3. By letter dated August 23, 2004, which he received, Enforcement informed Respondent that it was investigating this matter.
4. Respondent became employed by H&R Block in February 2004.
5. On or about December 20, 2005, H&R Block filed a “Submission of Required Information Pertaining to Members, Member Organizations, Allied Members, Registered and Non-Registered Employees and Approved Persons”(“Form RE-3”) reporting Respondent’s suspension pending a review of account activity on December 16, 2005.
6. On or about February 23, 2006 Enforcement received a Form U-5 from H & R Block stating that Respondent’s employment was terminated on January 26, 2006 because he did not submit accurate information regarding clients’ ages on insurance applications.
7. By letter dated February 28, 2006, which he received, Respondent was notified that Enforcement was also investigating those allegations.
8. By letter dated July 5, 2006, Enforcement notified Respondent that it was investigating additional customer complaints reported by H&R Block.

Unauthorized Transactions

Customer A

9. Customer A opened a Quick & Reilly custodian account for her son in October 1990.
10. On or about June 24, 2003, Respondent effected a purchase of 5,000 shares of ABC Fund (“ABC”) for \$100,000 in Customer A’s account.

11. Customer A did not authorize the ABC purchase described in ¶ 10 above.

Customer B

12. Customer B opened a Quick & Reilly account in July 1996. At the time, Customer B was an insurance claims administrator.
13. On or about September 25, 2003, Respondent effected a purchase of 7,500 shares of XYZ Fund (“XYZ”) for \$150,000 in Customer B’s account.
14. Customer B did not authorize the XYZ purchase described in ¶ 13 above.

Respondent Threatened or Harassed One or More Complaining Customers

Summary

15. On or about July 5, 2006, Enforcement sent Respondent a letter scheduling his on-the-record testimony (“OTR”) concerning allegations made by H&R Block customers whose names were contained in the letter.
16. Soon thereafter, Respondent contacted and sent letters to seven customers involved in Enforcement’s investigation and/or their family members. Respondent asked six of those customers and/or their family members to sign and attest either that he or she did not make a complaint against Respondent or otherwise explaining away the allegations.
17. In at least three instances, Respondent’s contact with the customers constituted threats or harassment as specified below.

Customer C

18. Customer C was born in 1938. He opened an account at OLDE Discount Stockbrokers Investors (“OLDE”) (a former NYSE member firm) in 1996¹. At the time Customer C opened his account, according to OLDE’s new account documents, Customer C’s annual income was approximately \$40,000 and net worth (exclusive of family residence) was approximately \$250,000.
19. On or about October 13, 2005, Customer C, a resident of Hickory Hills, Illinois made a complaint against Respondent alleging “poor service” in that he never received any responses to the telephone calls he placed to Respondent. {Enf. Ex. 39.}
20. On or about October 26, 2005, Respondent called Customer C and threatened him by stating that if Customer C made trouble for Respondent with “the board”, he would hear back from Respondent. {See Hearing Transcript (“Tr.”) at 458.}
21. On or about July 5, 2006, Enforcement sent Respondent a letter specifying that Customer C’s “poor service” complaint would be discussed during his upcoming OTR.

¹ H&R Block acquired OLDE in December 1999.

22. On or about July 7, 2006, Respondent called Customer C numerous times and threatened him in an effort to induce Customer C to withdraw his complaint.
23. On July 7, 2006, Customer C filed a "telephone harassment" police report with the Hickory Hills, Illinois Police Department, complaining about Respondent's behavior.
24. The police report states, *inter alia*, that on July 7, 2006 Customer C received 15-20 telephone calls from Respondent. Respondent told Customer C, "he was gonna f---ing kill you" and "I'm coming to Chicago next week." {Enf. Ex. 44.}
25. The police contacted Respondent regarding his conversations with Customer C and advised Respondent not to make any more telephone calls to Customer C.
26. During his OTR, Respondent admitted to Enforcement that he called Customer C in July 2006 and informed him that he could lose his license because of Customer C's complaint. Respondent also admitted that he spoke to Customer C in a "pissed off" tone. {Enf. Ex. 10.}

Customer D

27. Customer D was born in 1924. She opened an account at OLDE in 1992. At the time, according to OLDE's new account documents, her annual income was \$20,000 and net worth (exclusive of family residence) was \$100,000.
28. On or about January 31, 2005, Customer D verbally complained to H&R Block about allegedly unauthorized purchases and sales of securities on January 25, 2005 and January 28, 2005.
29. In February 2005, H&R Block cancelled the January 2005 trades that occurred in Customer D's account.
30. On at least two occasions in 2006, Respondent made calls to Customer D, urging her to withdraw her unauthorized trading complaint against him. Respondent also threatened to sue Customer D. Because Customer D is elderly, Customer D's son contacted Respondent and asked that he communicate solely with him regarding Customer D's unauthorized trading complaint. Following that request, Respondent spoke with Customer D's son, a school superintendent, on several occasions. On more than one occasion, Respondent threatened and harassed Customer D's son stating that he would sue Customer D.
31. Customer D became concerned about the level of stress his mother was experiencing due to Respondent's numerous telephone calls and threatening statements.
32. Respondent threatened Customer D's son by asking how Customer D's son would like it "if somebody called your school board and told a lie about something you did?" {Tr. at 70-72.}

33. On or about October 1, 2006, Customer D's son filed a police report with the Cook County Chicago Police Department concerning Respondent's harassment as described in ¶¶ 30 - 32 above.
34. On several occasions between October 2006 and February 2007, Respondent called Customer D's son and harassed him about the withdrawal of his mother's complaint.

Customer A

35. In November 2003, Customer A complained to Quick & Reilly about the \$100,000 unauthorized purchase of ABC effected by Respondent in her account during June 2003 as described in ¶¶ 9 to 11 above.
36. During December 2006, Enforcement advised Respondent that Customer A's complaint would constitute part of its proposed disciplinary action against him.
37. During January 2007 and February 2007, Respondent called Customer A many times a day (on one day, more than 40 times).
38. Respondent also called Customer A's mother.
39. In or about February 2007, Customer A warned Respondent to refrain from calling her and her mother. Shortly after receiving that warning, Respondent again called Customer A and left a threatening message on her answering machine.
40. In or about January 2007, Enforcement requested that Respondent cease harassing/threatening customers with his numerous telephone calls and requests that they withdraw their complaints. Despite this instruction, Respondent continued to contact Customer A and Customer D's son in an effort to have them withdraw their complaints.

DECISION

At the hearing, Enforcement presented documentary evidence and testimony from several witnesses including Customer A, the son of Customer D, Respondent's former supervisor at H&R Block and a former colleague of Respondent's at both Quick & Reilly and H&R Block. Respondent testified on his own behalf at the hearing. After hearing evidence and argument, the Hearing Panel, by unanimous vote, found Respondent guilty of both Charges I and II.

Charge I

Charge I alleged that Respondent engaged in "conduct inconsistent with just and equitable principles of trade" in violation of NYSE Rule 476(a)(6) in that he "effected unauthorized trades in the accounts of one or more customers." The Charge Memorandum specifically identified two instances in which Respondent was alleged to have executed trades in the accounts of Customers A and B without the prior authorization of those customers.

In his Answer, and at the hearing, Respondent admitted to having executed the unauthorized trade in Customer B's account. Respondent testified that he purchased \$150,000 in shares of XYZ for Customer B's account so that he could "park" the shares until they could be transferred into the account of the customer for whom they were originally intended. {Tr. at 341-46, 473-74.} Respondent stated that he was not able to purchase the shares for that customer directly because the customer's account was restricted and Respondent's supervisor had refused to authorize the trade. {Id.} Respondent was aware that parking shares was against Quick & Reilly's firm policy, but he nonetheless parked the shares in Customer B's account because he believed his supervisor would later change his mind and approve the trade. {Id. at 341-46, 466, 471.}

The Hearing Panel accepted Respondent's admission regarding the unauthorized trade in Customer B's account. Thus, the only remaining issue with respect to Charge I was the allegedly unauthorized trade in Customer A's account.

Customer A testified that she maintained a custodian account for each of her two sons, but that the accounts had been set up by her father, who was much more knowledgeable with respect to securities issues. {Tr. at 100-04, 109, 143-44.} She kept the accounts largely in cash and the only activity she conducted in the custodian accounts was to withdraw funds periodically from the accounts to cover her sons' tuition payments. {Id. at 103, 106, 144-45.}

Customer A testified that, when Respondent called her in 2003 and proposed that she purchase shares of ABC for her sons' custodian accounts, she had no interest in purchasing the shares but, in an effort to end the conversation, she suggested that Respondent send her information regarding the offering. {Tr. at 107-08, 166.} When Respondent later called to follow up regarding the offering, she informed him that she was not interested in purchasing any shares, and Respondent continued to be very "aggressive". {Id. at 108-10, 164.} Customer A subsequently received a voicemail message from Respondent informing her that a trade had been made in "error" in one of her son's accounts, and that she would receive a confirmation of the trade, followed by a cancellation. {Id. at 111.} When she received the confirmation, which reflected a purchase of ABC shares in the amount of \$100,000 in her younger son's custodian account, Customer A was "very upset" that "there could be an error with that kind of money". {Id. at 112-13.} She immediately called Quick & Reilly to find out "how an error like that could take place." {Id. at 113.} Respondent was not in the office at the time, but the person she spoke with assured her the trade would be cancelled. {Id.} Customer A subsequently received a confirmation that the trade had been cancelled. {See Enf. Ex. 13 at NYSER 00719.}

Respondent denied that the trade in Customer A's account was unauthorized. He testified that Customer A authorized the purchase of \$100,000 in shares of ABC for her son's custodian account, but later changed her mind when she learned that her father, on whom she relied for investment advice, disapproved of the purchase. {Tr. at 336-37.} When Customer A complained, he immediately sold the shares without charging Customer A a commission. {Id. at 337-38.} That sale was also subsequently cancelled by Quick & Reilly. {See Enf. Ex. 13 at NYSER 00720.}

The Panel found Customer A to be a credible witness. Given Customer A's history of trading inactivity, lack of sophistication regarding securities issues and conservative investment objectives, the Panel did not credit Respondent's testimony that Customer A had agreed to such a

large purchase of shares in a closed end fund that she did not understand. {Tr. at 103-04.} The Panel also found it highly unlikely that Customer A would have purchased shares for one son's account, but not the other's, given her stated commitment to treating both accounts alike. {Id. at 105, 110.} Finally, the Panel viewed Respondent's attempt to undo the trade by selling the shares, rather than canceling the transaction, as further proof that the transaction was not an error, and that his voicemail to Customer A was an attempt to divert her attention from the unauthorized trade.

The Hearing Panel thus found that Enforcement presented sufficient evidence to support a finding that Customer A had not authorized the trade in question. Based on this finding and Respondent's admissions regarding the unauthorized trade in Customer B's account, the Panel found Respondent guilty of Charge I.

Charge II

Charge II alleged that Respondent "engaged in acts detrimental to the interest or welfare of the Exchange, in that he threatened and/or harassed one or more complaining customers and/or their family members" in violation of NYSE Rule 476(a)(7). Specifically, the Charge Memorandum alleged that when Customers A, C and D made complaints about Respondent to Quick & Reilly and H&R Block, Respondent called those customers and their family members and made threatening and harassing remarks in an effort to cause them to withdraw their complaints. To support this Charge, Enforcement offered testimony from Customer A, Customer D's son and Respondent's former supervisor at H&R Block.

Customer D

Customer D's son testified that his mother, who was 81 years old at the time, complained to H&R Block regarding a trade Respondent had effected in her account that she claimed was unauthorized. Thereafter, Respondent called Customer D and threatened to sue her. {Tr. at 54, 91.} Customer D's son testified that his mother had received repeated calls from a "blocked" or "out of area" number that she believed to be from Respondent, and that she was so upset and frightened by these calls, she would no longer answer the phone. {Id. at 46-47, 51-52, 61-63, 69.} The latter testimony was corroborated by an October 1, 2006 police report presented by Enforcement, which showed that Customer D's son had filed a complaint on behalf of his mother charging Respondent with telephone harassment. {See Enf. Ex. 36.}

Customer D's son testified that, after asking Respondent to speak only with him regarding his mother's complaint, he had a number of "agitated" conversations with Respondent. {Tr. at 54-55, 59.} The most heated of these took place after Customer D's son informed Respondent that his mother would not sign a letter stating that she had never filed an unauthorized trading complaint against Respondent. Customer D's son testified that Respondent became very agitated upon hearing that Customer D would not sign the letter. {Id. at 59-61.} Respondent yelled at him and asked him if he realized that Respondent had all of his information, including his Social Security number. {Id. at 60.} Respondent then asked Customer D's son, a school superintendent, how he would like it "if somebody called your school board and told a lie about something you did?" {Id.} Customer D's son testified that he felt threatened by Respondent's remark. {Id. at 70-72.}

At the hearing, Respondent admitted calling Customer D but denied having threatened to sue her in “those exact words.” {Tr. at 418.} He testified that he was “frustrated” with Customer D “because of her age and her not recalling the events that took place.”² {Id. at 421.} Respondent admitted asking Customer D’s son to have Customer D sign a letter repudiating her complaint. {Id. at 422.} Respondent also testified that he called Customer D’s son on at least five additional occasions, and admitted yelling at him when Customer D’s son informed him that Customer D would not sign the letter. {Id. at 427, 452.} Respondent admitted asking Customer D’s son how he would feel if a false accusation were made against him, but claimed that the statement was intended to be an “analogy” to Respondent’s situation. {Id. at 363, 427-29} Respondent denied calling Customer D numerous times from a blocked number, although he admitted having a private number on his home office phone. Respondent testified that he did not call Customer D after Customer D’s son asked that he speak only with him. {Id. at 366.}

Customer A

Customer A testified that, in 2006 and 2007, Respondent left messages on her answering machine and also left messages with her mother. In addition, Respondent made numerous additional calls to both her and her parents without leaving a message. The caller ID on Customer A’s phone indicated that the calls she believed to be from Respondent originated from a private number. {Tr. at 127.} On one particular day, she received 47 calls from a private number. {Id. at 127-29.}

After receiving all these phone calls, Customer A was scared, so she tape-recorded her conversation with Respondent the next time she picked up the phone. In the recording, she told Respondent to stop calling her and her parents. {See Enf. Ex. 52.} Customer A testified that, shortly after that conversation took place, Respondent left a harassing message on her answering machine. No recording of that message was presented at the hearing, because Customer A testified that it had been accidentally erased. {Tr. at 131-32.}

Respondent did not deny calling Customer A, but claimed he had done so because an Enforcement attorney had authorized him to contact potential witnesses. {Tr. at 339-40.} Respondent admitted calling Customer A ten to fifteen times before finally speaking with her, but claimed that he was confused by the message on the answering machine indicating that Customer A’s phone number belonged to a business. {Id. at 141, 361-62, 452.} Respondent denied leaving a harassing message on Customer A’s answering machine after she told him to stop calling her.

Customer C

Customer C did not testify at the hearing, but MT, Respondent’s former supervisor at H&R Block, testified that Customer C called him on his cell phone in July 2006 and informed him that Respondent had been phoning him repeatedly at his home. {Tr. at 210-12.} Customer C told MT that Respondent told him he had been fired because Customer C had made a complaint to H&R Block in October 2005 in which he accused Respondent of poor service. {Id.} MT

² While the trade in Customer D’s account was subsequently cancelled by H&R Block, Respondent was never charged with unauthorized trading with respect to that transaction, because of ambiguity as to whether Customer D had, in fact, authorized the transaction.

testified that Customer C, who was 67 years old at the time, was “upset and shaken” by Respondent’s calls. {Id. at 211.} MT told Customer C that he could not help him because Respondent was no longer employed by H&R Block, but that if Customer C felt threatened, he should contact the police. {Id. at 213.} MT’s testimony was corroborated by a police report for telephone harassment filed by Customer C on July 7, 2006 {see Enf. Ex. 44}, in which Customer C told the police that Respondent stated that “he was gonna f---ng kill” him and that he was “coming to Chicago next week.” {Id.}

Respondent did not deny calling Customer C or speaking to him in a “pissed off” tone. {Tr. at 457, 461.} Respondent also admitted telling Customer C that he would “hear back” from him if Customer C’s complaint caused problems for Respondent with the NYSE. {Id. at 458.} Respondent testified that he called Customer C at least five times in July 2006 in order to ask that he sign a letter stating that he had never made a complaint against Respondent personally. {Id. at 451-52, 459.} Respondent admitted yelling and cursing at Customer C during one of these conversations, after Customer C informed him that the number Customer C had given him for purposes of forwarding the letter was, in fact, a fax number for H&R Block. {Id. at 460-61.}

Discussion

In considering Charge II, the Hearing Panel found the similarities among the experiences of the three unrelated complaining customers to be significant. In the case of each complaining customer, the evidence and testimony presented by Enforcement documented Respondent’s inability to handle customer complaints in an appropriate or professional manner. The Panel found Customer A’s testimony regarding the menacing message left on her answering machine to be credible, and also credited the testimony of Customer D’s son that he felt threatened by Respondent’s comments regarding the making of a false accusation against him. In addition to the credible testimony and the police reports filed by two of the customers, Respondent admitted yelling at both Customer C and Customer D’s son.

Respondent claimed that his actions were justified. The Panel finds no justification for Respondent’s actions. The frequency and tone of the telephone calls Respondent placed to these three customers and their family members were unreasonable and inconsistent with the behavior that is expected of a registered representative. While the Panel recognizes that there will inevitably be disagreements and even conflicts between registered representative and their customers, there are procedures within the firms and the self-regulatory organizations to resolve them. Yelling, cursing, harassing and threatening are inappropriate and unprofessional – especially, as here, when such behavior is repeated – and constitute acts detrimental to the interests of the NYSE, which requires that customers be treated with respect, even during difficult times.

In light of the foregoing, the Panel concluded that Enforcement had demonstrated by a preponderance of the evidence that Respondent had threatened and/or harassed one or more complaining customers and/or their family members in violation of NYSE Rule 476(a)(7). The Panel therefore found Respondent guilty of Charge II.

PENALTY

Enforcement urged the Hearing Panel to impose a penalty of a censure and a three-year bar. Respondent argued that such a penalty was excessive and unreasonable and proposed that the Panel, at most, censure Respondent and bar him for fewer than two months.

Enforcement argued that the penalty it proposed was both reasonable and appropriate in light of the factors articulated by the Second Circuit Court of Appeals in the McCarthy case:

The seriousness of the offense, the corresponding harm to the trading public, the potential gain to the [respondent] for disobeying the rules, the potential for repetition in light of the current regulatory and enforcement regime, and the deterrent value to the offending [respondent] and others are all relevant factors to be considered in deciding whether the sanction is appropriately remedial and not excessive and punitive.

McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2005).

Enforcement contended that the requested penalty was appropriate given Respondent's failure to accept responsibility for his actions and the potential harm to investor confidence in the integrity of the market that was caused by his misconduct. See Factors Considered by the New York Stock Exchange Division of Enforcement in Determining Sanctions, Info. Memo. 05-77 (Oct. 7, 2005) ("Info. Memo.") at 2-3.

The Hearing Panel finds that the offenses committed by Respondent were serious. In the case of Customer A, the unauthorized trade effected by Respondent put the tuition fund of Customer A's son at risk. In the case of Customer B, Respondent not only effected an unauthorized trade, but did so for the express purpose of circumventing a supervisor who had refused to approve the trade; in addition, he jeopardized one customer's account in order to benefit another. The Panel finds such conduct to be inconsistent with the values that registered representatives must possess. Respondent's pattern of disregarding customer instructions and effecting unauthorized trades in their accounts demonstrates a profound disrespect for the very investing public he purports to represent.

The Panel is even more troubled by the manner in which Respondent handled customer complaints. The record in this case established that, rather than allowing such complaints to run their course through appropriate channels inside and outside the firms, Respondent repeatedly called complaining customers and their family members, at times yelling at them and threatening them. The Panel found the fact that two of the complaining customers filed police reports for telephone harassment, and the third felt compelled to record her request to him to stop calling her, to be strong evidence of the distress such harassment caused the customers. {See Enf. Ex. 36, 44.} That two of those customers were elderly makes Respondent's actions even more egregious. Respondent's behavior demonstrates an inability to take responsibility for his actions, as well as a total disregard for the regulatory system and the NYSE Rules. While respondents are permitted to defend themselves against charges brought by Enforcement, Respondent crossed the line by not permitting potential witnesses to exercise their right to refuse to speak with him. Because the NYSE's ability to police its members necessarily relies on the willingness of

customers to file complaints, Respondent's interference with the NYSE's investigatory process threatened both the integrity of that process and the confidence of investors therein.

The Hearing Panel finds that Respondent's behavior warrants a serious penalty. In reaching this decision, we have considered other cases involving allegations of coercion or harassment in the securities industry, in which significant penalties were imposed, including those cited by Enforcement.³ Given the nature of Respondent's misconduct, the Panel finds those decisions to be more instructive on the matter of an appropriate penalty than the precedents cited by Respondent, some of which involved unauthorized trading, but none of which involved allegations of harassment or threats.⁴

³ See Brett Hirsch, Decision 97-103 (NYSE Hearing Board Aug. 5, 1997) (consent to censure and ten-year bar for, *inter alia*, threatening two persons while soliciting them to open an account); District Business Conduct Committee for District No. 6 v. Mark Andrew Stephens, Compl. No. TEX-722, 1991 NASD Discip. LEXIS 46 (N.A.S.D. Board of Governors Apr. 1, 1991) (censure, permanent bar and \$50,000 fine for unauthorized trading in four accounts where respondent attempted to dissuade customers from pursuing their complaints); Suresh Chandra, Decision 89-12 (NYSE Hearing Board Feb. 27, 1989) (consent to censure and five-year bar where respondent, *inter alia*, paid funds to customer in order to induce her to withdraw her complaint); Wallace E. Lin, Decision 87-49 (NYSE Hearing Board Sept. 8, 1987) (censure, four-year bar and \$10,000 fine where respondent effected unauthorized transactions in customer account, attempted to conceal transactions, improperly offered to reimburse customer for losses, and misrepresented to customer that respondent would be fired and would be unable to reimburse customer for losses if the customer complained), *aff'd*, (NYSE Dec. 3, 1987), *aff'd*, 50 S.E.C. 196 (1990); Dep't of Enforcement v. Eric H. Dieffenbach Littleton, Co., Compl. No. C06020003, 2004 WL 3141226 (N.A.S.D. N.A.C. July 30, 2004) (affirming penalty of fine but imposing greater sanction of permanent bar where respondents violated penny stock rules and also obstructed NASD's investigation by coercing customers to sign inaccurate and back-dated statements); District Business Conduct Committee for District No. 1 v. Marc A. Nichols, Compl. No. C01950004, 1996 WL 1114519 (N.A.S.D. N.A.C. Nov. 13, 1996) (affirming sanction of censure, \$10,000 fine and permanent bar where, in addition to forging signatures on three account transfer requests, respondent pressured customers to withdraw their complaints).

⁴ See Alfonso Roberto Asencio, Decision 07-152 (NYSE Hearing Board Oct. 4, 2007) (consent to censure and seven-month bar for recommending and effecting transactions that were excessive, recommending use of margin call that was unsuitable, loaning customer funds necessary to meet margin call, making material misstatement of fact to member firm employer regarding outside employment, engaging in outside business activity without receiving prior approval from member firm employer, and causing new account documentation to reflect inaccurate information); Adam Lazarus, Decision 07-147 (NYSE Hearing Board Sept. 11, 2007) (consent to censure and thirty-month bar for effecting unauthorized trades in five customers' accounts, utilizing unsuitable trading strategy and effecting unsuitable trades in four customers' accounts, failing to follow instructions from four customers and failing to inform member firm employer of complaints from four customers); Shuhnlung Shieh, Decision 07-153 (NYSE Hearing Board Oct. 8, 2007) (censure and two-year bar for exercising discretion without written authorization, failing to follow customer instructions, failing to inform firm of customer complaint, sending unapproved and unreviewed correspondence to customer, guaranteeing losses in customer accounts and agreeing to share in losses in customer accounts); Mark A. Otte, Decision 07-52 (NYSE Hearing Board Apr. 23, 2007) (consent to censure and one-year bar for effecting unauthorized transactions in customer accounts, effecting transactions in account of deceased customers without proper documentation or trustee authorization, failing to report customer complaints to member firm employer, omitting material fact to customer in connection with solicitation of mutual fund sale, making misrepresentations of material facts to member firm employer relating to customer accounts, reimbursing customer for loss attributed to

Nor is the Panel convinced that a lesser penalty would have the requisite deterrent effect. As Enforcement emphasized during the penalty portion of the hearing, Respondent's unwillingness to take responsibility for his actions was a factor that weighed heavily in favor of the imposition of a censure and three-year bar. Although Respondent argued that he had accepted responsibility, having admitted to the unauthorized trade in Customer B's account, the Panel finds that the evidence at the hearing, including Respondent's own testimony, painted a picture of Respondent as someone who only admitted to wrongdoing when left with no other choice. Respondent referred to the unauthorized trade in Customer B's account as an "error" rather than a deliberate act. {Tr. at 474.} Respondent also repeatedly characterized that incident as one in which he was being punished for his loyalty to the customer for whom the parked shares were intended. {Id. at 341-42, 484.} Indeed, when asked by the Panel what he had learned from his experience, Respondent spoke only of how he and his career had been harmed by the investigation. {Id. at 484-86.} Having observed Respondent's testimony and comportment at the hearing, and notwithstanding Respondent's contention that he has taken responsibility for his actions by voluntarily removing himself from the retail securities industry, the Panel does not believe that Respondent truly understands the gravity of his actions or has learned from his experience such that he will not engage in such conduct in the future.

In view of the above findings, the Hearing Panel has determined to impose the penalty of a censure and a three-year bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer
Panelists:
Eugene N. Halladay
James A. Talley

unauthorized trade effected in customer's account, and failing to keep current information reflected on customer's new account documents); Robert Marcellus Lawrence, Decision 06-65 (NYSE Hearing Board June 26, 2006) (censure and \$25,000 fine for using offensive language on NYSE floor); Glenn Steven Cohen, Decision 06-7 (NYSE Hearing Board Jan. 27, 2006) (consent to censure and six-month bar for effecting unsuitable transactions in one or more customer accounts); Michael Anthony Conti, Decision 05-168 (NYSE Hearing Board Feb. 8, 2006) (consent to censure and two-month bar for effecting unsuitable trades, effecting discretionary trades without written authorization, preparing and maintaining inaccurate new account documents and sharing in customer losses).