UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68755 / January 29, 2013

Admin. Proc. File No. 3-15172

In the Matter of the Application of

HARRY W. HUNT
c/o Matthew T. Boos
Fredrikson & Byron, P.A.
200 South Sixth Street
Minneapolis, MN 55402-1425

For Review of Action Taken by

FINRA

ORDER DENYING STAY

Harry W. Hunt, a general securities representative formerly associated with Wachovia Securities, LLC,[1] a FINRA member firm, appeals from the self-regulatory organization's decision to bar him in all capacities for violating FINRA Rule 2010 by using a customer's confidential information to apply for a loan without the customer's knowledge or consent.[2]

[1] Wachovia Securities was renamed Wells Fargo Advisors, LLC after its parent, Wachovia Corporation, merged with Wells Fargo & Company on December 31, 2008.

[2] *Dep't of Enf. v. Harry W. Hunt*, Complaint No. 2009018068701, 2012 FINRA Discip. LEXIS 62 (Dec. 18, 2012). FINRA is a private, not-for-profit, self-regulatory organization registered with, and overseen by, the Securities and Exchange Commission. It was created in July 2007 following the consolidation of the National Association of Securities Dealers, Inc. and the member regulation, enforcement, and arbitration functions of the NYSE Regulation, Inc. *[No Name in Original]*, Exchange Act Release No. 56751, 2007 SEC LEXIS 2902, at *3-4 (Nov. 6, 2007); *Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes To Accomm. the Consol. of the Member Firm Regulatory Functions of NASD and NYSE Reg., Inc.*, Exchange Act Release No. 56145, 2007 SEC LEXIS 1640, at *133 (July 26, 2007). The consolidation of the two SROs eliminated their overlapping jurisdiction and set in motion the writing of a uniform set of rules to be administered by the surviving entity—a process that continues to this day.

FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. Rule 2010 applies to Hunt through FINRA Rule 140, which provides that persons associated with a member have the same duties and obligations as a member.

Pending appeal, Hunt moves to stay the imposition of the bar, which FINRA opposes. For the reasons stated below, Hunt's motion is denied.

I.

On August 3, 2010, FINRA's Department of Enforcement filed a three-cause complaint against Hunt, alleging that he (i) used a customer's confidential information in connection with a loan, without the customer's knowledge or authorization, in violation of FINRA Rule 2010; (ii) falsified a photocopy of his daughter's driver's license in connection with the loan application, in violation of FINRA Rule 2010;[3] and (iii) submitted false expense reports to his firm, in violation of FINRA Rule 2010 and NASD Rule 2110.[4]

A. FINRA hearing panel finds violations and bars Hunt in all capacities

In a decision dated October 17, 2011, a hearing panel found Hunt liable for two of the causes of action: (i) violating FINRA Rule 2010 by using a customer's confidential information to apply for a student loan without the customer's knowledge or consent and (ii) violating FINRA Rule 2010 and NASD Rule 2110 by falsifying expense reports.[5] The panel barred Hunt in all capacities for these violations. In doing so, the panel made the following factual findings, which Hunt did not challenge in any of his subsequent appeals.[6]

1. Hunt submitted a falsified student loan application to Sallie Mae

According to the panel, Hunt experienced significant financial difficulties in 2009, which was the same time his daughter was applying to college. As a result, Hunt applied for a $10,000 short-term student loan on his daughter's behalf through Sallie Mae.[7] In his initial loan application, Hunt offered himself as a guarantor of the loan, but Sallie Mae rejected the application because of Hunt's poor financial situation. Hunt applied two more times, first listing his wife and then listing his father as the guarantor of the loan, but Sallie Mae again rejected Hunt's applications.

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[3] As explained below, Hunt allegedly altered a photocopy of his daughter's license (falsely changing her residential address to a post office box address) in an attempt to ensure that any correspondence relating to the loan application would be available only to him.

[4] FINRA cited both the NASD and FINRA rules because part of Hunt's conduct related to the falsified expense reports occurred before the effort to consolidate and reorganize NASD's and NYSE's rules. NASD Rule 2110 (which was otherwise unchanged) was codified as FINRA Rule 2010, effective December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *32-33 (Oct. 2008); *see generally Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *3 n.4 (Dec. 10, 2009) (describing rules consolidation).

[5] The hearing panel dismissed the second cause of the complaint related to Hunt's alteration of the photocopy of his daughter's license, finding that such misconduct was not "business related." Because FINRA's Department of Enforcement did not appeal this finding, the NAC did not consider it on appeal.

[6] Hunt stipulated to many of these facts in a pre-hearing filing dated April 26, 2011.

[7] SLM Corporation (commonly known as Sallie Mae; originally the Student Loan Marketing Association) is a publicly traded corporation whose operations include originating, servicing, and collecting on student loans.

In a fourth application, Hunt listed one of his customers, who was also a close friend, as the guarantor of the loan. In doing so, Hunt gave Sallie Mae the customer's name, address, gross monthly income, monthly mortgage payment, and Social Security number. Hunt later testified that he knew most of this information, but admitted that he obtained the customer's Social Security number from Wachovia's customer files. Hunt further testified that he did not tell the customer about the use of his name or ask for the customer's consent because he was afraid the customer would not agree to be a guarantor for the loan. The customer was therefore unaware of the application and did not know that Hunt was attempting to use him as a guarantor.

During the loan application process, Hunt also identified a post office mailing box as the residential address for his daughter to ensure that any correspondence relating to the loan application would be available only to him. In one of the loan applications, Hunt altered a photocopy of his daughter's license (changing her residential address to the post office box address) to ensure that the requested documentation was consistent with the loan application.

Hunt's scheme was discovered in early April 2009, when Sallie Mae contacted the customer regarding his guarantee of the student loan. The customer told Sallie Mae that he was not a guarantor for the loan and then notified Wachovia of Hunt's actions. Sallie Mae denied Hunt's loan application, and Wachovia fired him.

2. Hunt submitted falsified expense reports to his employer, Wachovia

Between February 2008 and March 2009, Hunt submitted six false claims to Wachovia for reimbursement totaling $1,869.47. Wachovia typically reimbursed its registered representatives for certain business-related expenses, such as meals with customers, printing bills, and telephone expenses incurred in the course of the representative's employment. Wachovia's reimbursement policy required each employee to incur and pay the expense before submitting a claim for reimbursement. In six submissions, however, Hunt sought reimbursement before he actually paid for the expenses. Hunt did so by submitting checks that he photocopied and altered to give the false appearance of the checks having been paid to the vendor and cleared by the vendor's bank. In none of the instances, however, did Hunt fabricate the expenses. Instead, Hunt sought reimbursement for real costs that he had incurred, but had not yet paid.

B. On appeal, the NAC affirmed in part and modified in part the sanctions imposed

Hunt appealed the hearing panel's decision to FINRA's National Adjudicatory Council, but only as to sanctions. On December 18, 2012, the NAC barred Hunt for falsifying the student loan application, in violation of FINRA Rule 2010 and NASD Rule 2110. It reduced, however, the sanctions imposed by the panel for falsifying the expense reports. Instead of barring Hunt, the NAC opined that a six-month suspension and a $10,000 fine were appropriate. However, in light of the bar it imposed against Hunt for the falsified loan application, the NAC forwent imposing these additional sanctions.

In imposing the bar for the first cause of action, the NAC applied FINRA's *Sanction Guidelines* for forgery or falsification of documents.[8] The NAC found that Hunt's actions warranted a bar because they were egregious and that several aggravating factors existed. The NAC found, for example, that the loan application was a "critically important [document] because it contained highly confidential information, including [the customer's] social security number."[9] The NAC also found it aggravating that Hunt admitted that he lacked a good-faith belief that he had his customer's authorization to use his name on the loan; that Hunt's acts were premeditated; and that Hunt's misconduct provided him with the potential for monetary gain in the form of a $10,000 loan.

On January 10, 2013, Hunt filed an application for review with the Commission with respect to this first cause of action. That same day, it filed a motion to stay imposition of the bar pending the Commission's review.[10]

II.

The Commission considers the following factors in determining whether to grant a stay: (i) the likelihood that the moving party will eventually succeed on the merits of its appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest.[11] The moving party has the burden of establishing that a stay is warranted.[12]

A.

Hunt argues that he has a strong likelihood of succeeding on the merits of his appeal because FINRA failed to articulate compelling reasons for imposing a bar, citing *Steadman v. SEC* for the proposition that the NAC had an obligation to explain why a less drastic remedy was not sufficient.[13] Hunt also argues that FINRA ignored mitigating factors, such as his claim of remorse, when imposing the bar. Hunt additionally argues that FINRA failed to consider recent and relevant precedent, which he claims show that a less severe sanction than a bar was appropriate.

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8 *FINRA Sanction Guidelines* at 37, *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/ industry/p011038.pdf (last visited January 28, 2013).

9 *Hunt*, 2012 FINRA Discip. LEXIS 62, at *14.

10 "The filing of an application for review by the SEC shall not stay the effectiveness of final FINRA action, unless the SEC otherwise orders." FINRA Rule 9559(s).

11 *See, e.g.*, *Intelispan, Inc.*, Exchange Act Release No. 42738, 54 SEC 629, 2000 SEC LEXIS 855, at *5 (May 1, 2000).

12 *See, e.g.*, *Millenia Hope, Inc.*, Exchange Act Release No. 42739, 2000 SEC LEXIS 854, at *3 (May 1, 2000) ("The party requesting the stay has the burden of proof.").

13 603 F.2d 1126 (5th Cir. 1979).

Hunt further contends that, without a stay of the bar, he will lose his clients, resulting "in a complete loss of income from the only profession that he has ever had."[14] Such a loss, Hunt asserts, "would be catastrophic and irreparable; it would likely lead to personal bankruptcy and render him unable to support his family of four."[15] Hunt further claims that granting a stay will not cause any harm to others and, to the contrary, would serve the public interest by permitting "Hunt's long-standing clients to continue using the representative of their choice" and by "allowing individuals to work in their chosen profession."[16]

FINRA counters that Hunt has not shown a strong likelihood of success on the merits. FINRA argues that a bar is well supported by the record, noting, for example, that a bar was within the range recommended by the *Sanction Guidelines*. FINRA further asserts that the NAC considered Hunt's claims of mitigation, but determined that any such mitigation was outweighed by the egregiousness of Hunt's misconduct. FINRA also argues that Hunt applies the wrong legal standard by comparing his sanction to sanctions in other cases and that, regardless, "Hunt's case is easily distinguishable from all the cases he claims are comparable in that none of them involve the severe and egregious violation of trust caused by the improper use of a customer's confidential information."[17]

FINRA also argues that the possibility that Hunt may suffer some financial detriment does not rise to the level of irreparable injury. FINRA further explains that, even if Hunt prevails on appeal, he has still admitted to violations and, pursuant to the *Sanction Guidelines*, will "serve a significant suspension and lose his customers anyway."[18] FINRA adds that "[a]llowing Hunt to remain eligible to associate with a FINRA member firm during the pendency of his appeal would be perilous to maintaining the integrity of FINRA's membership and to the investing public even if doing so will harm Hunt financially."[19]

B.

Final resolution must await the Commission's determination of the merits of Hunt's appeal. Based on the briefs the parties have filed so far, however, there does not appear to be a strong likelihood that Hunt will succeed on appeal. Hunt claims, for example, that FINRA failed to articulate compelling reasons for imposing such a sanction, but FINRA's decision devoted approximately five pages to discussing how a bar was an appropriate sanction given the egregiousness of Hunt's conduct. In doing so, FINRA explained that a bar was an appropriate sanction under the *Sanction Guidelines* given Hunt's admission that he used a customer's highly confidential information to falsify a $10,000 loan application, without that customer's knowledge

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14 Applicant's Mot. for a Stay at 15.

15 *Id.*

16 *Id.* at 16.

17 Br. of FINRA in Opp. to Request for Stay at 7-8.

18 *Id.* at 10.

19 *Id.*

or consent.[20] FINRA further found it aggravating that Hunt's misconduct was an intentional, premeditated act "designed to address his 'cash flow' problems."[21] FINRA also expressly rejected Hunt's claims of mitigation, including his claim of remorse. Nor was FINRA required, as Hunt claims, to explain why a less drastic remedy would not suffice.[22] Rather, FINRA was required only to articulate an adequate explanation of its decision.[23]

Regarding Hunt's claims that relevant precedent suggests a lesser sanction was more appropriate, the Commission has repeatedly stated that "the determination of appropriate remedial action 'depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings.'"[24] The record presently before the Commission therefore indicates that FINRA appropriately concluded that "significant aggravating factors and a lack of mitigating factors . . . justify a bar for Hunt's egregious and improper use of [his client's] confidential information."[25]

Hunt has also failed to establish that he will suffer irreparable harm without a stay. FINRA accurately states that Hunt's assertion that he will lose clients and income without a stay "confuse[s] *irreparable* harm with *substantial* harm."[26] As the Commission has repeatedly noted, "the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay."[27] Moreover, Hunt's admission of liability to two causes of

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[20] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *18 n.27 (Dec. 22, 2008) ("Although the Sanction Guidelines do not bind the Commission, they serve as a benchmark in reviewing sanctions under [the] Exchange Act . . . ."); *see also, e.g.*, *FINRA Sanction Guidelines* at 7 (Principal Consideration No. 17) (stating that adjudicators should consider whether the respondent's misconduct resulted in the potential for monetary or other gain); *id.* at 37 (Forgery and/or Falsification of Records) (stating that adjudicators should consider whether the respondent had a good-faith, but mistaken, belief of express or implied authority and that, in egregious cases, adjudicators should consider a bar).

[21] *Hunt*, 2012 FINRA Discip. LEXIS 62, at *14 (citing the *Sanction Guidelines'* Principal Consideration No. 13, which states that adjudicators should consider whether the respondent's misconduct was intentional).

[22] *Cf. PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009) (stating that "the petitioners err in arguing the Commission must, in order to justify expulsion as remedial, state why a lesser sanction would be insufficient").

[23] *Cf. id.* (noting that the court had previously cited *Steadman* "only for the well-established rule that an agency must adequately explain its decisions"); *cf. also Rizek v. SEC*, 215 F.3d 157, 161 (1st Cir. 2000) (explaining that *Steadman* says "no more than . . . that agencies must sufficiently articulate the grounds of their decisions").

[24] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *66 n.92 (Nov. 9, 2012) (quoting *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *30-31 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009)); *see also Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004) (declining to "compare this sanction to those imposed in previous cases"); *Hiller v. SEC*, 429 F.2d 856, 858 (2d Cir. 1970) ("[W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding.").

[25] *Hunt*, 2012 FINRA Discip. LEXIS 62, at *25.

[26] Br. of FINRA in Opp. to Mot. for Stay at 9 (emphasis in original).

[27] *See Robert J. Prager*, Exchange Act Release No. 50634, 2004 SEC LEXIS 2578, at *2 (Nov. 4, 2004); *see also William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *8 (Nov. 12, 1991) ("'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.'" (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958))).

action suggests that Hunt is likely to serve a significant suspension regardless of whether the Commission sets aside the bar on appeal.[28]

The Commission has also repeatedly noted that the securities industry "'presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants.'"[29] Here, Hunt has admitted that he improperly used a customer's confidential information in an attempt to falsely convince a loan provider that a customer had agreed to act as a guarantor, all without the customer's knowledge or consent. Such a clear abdication of his obligation to observe the high standards of commercial honor and the just and equitable principles of trade raises serious questions about Hunt's fitness to work in the securities industry, "a business that is rife with opportunities for abuse."[30] The Commission has found in other cases that such failures to appreciate one's regulatory obligations outweighed claims, such as Hunt's, about the possible impact to clients or the lack of evidence that the misconduct resulted in customer harm.[31] For these reasons, the record presently before the Commission suggests that the potential harm of allowing Hunt to continue participating in the industry pending his appeal outweighs the potential harm of not staying the bar.

Accordingly, IT IS ORDERED that, pending Commission review of his appeal, the motion by Harry W. Hunt to stay the effect of FINRA's decision is denied.

For the Commission by the Office of the General Counsel pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

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[28] *See, e.g.*, *FINRA Sanction Guidelines* at 6 (Principal Consideration No. 8) (stating that adjudicators should consider whether the respondent engaged in numerous acts of misconduct).

[29] *Bernard D. Gorniak*, Exchange Act Release No. 35996, 52 SEC 371, 1995 SEC LEXIS 1820, at *6 (July 20, 1995) (quoting *Richard D. Earl*, Exchange Act Release No. 22535, 48 SEC 334, 1985 SEC LEXIS 527, at *3-4 (Oct. 16, 1985)).

[30] *Mayer A. Amsel*, Exchange Act Release No. 37092, 52 SEC 761, 1996 SEC LEXIS 1053, at *19 (Apr. 10, 1996).

[31] *See, e.g.*, *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *20 (May 9, 2007) (rejecting applicant's argument that "allowing [him] to remain in the industry would serve the interest of investors"); *Barr Fin. Group, Inc.*, Investment Adviser Act Release No. 2179, 56 SEC 1243, 2003 SEC LEXIS 2340, at *32 (Oct. 2, 2003) (finding a bar "amply warranted" where, "[a]lthough there is no evidence that any customer lost money as a result of respondents' violations, their actions clearly posed a threat to the investing public").