SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58951 / November 14, 2008

Admin. Proc. File No. 3-11953r

In the Matter of the Application of

ALVIN W. GEBHART, JR.
and
DONNA T. GEBHART

c/o Charles F. Goria
Goria, Weber & Jarvis
1011 Camino Del Rio South, Suite 210
San Diego, CA 92108

For Review of Disciplinary Action Taken by
NASD

# OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDING

Redetermination of Liability on Remand for Fraudulent Sale of Securities

The Ninth Circuit Court of Appeals affirmed the Commission's finding that registered representatives of member firm of registered securities association engaged in private securities transactions without giving prior written notification to, or obtaining prior approval from, member. The Court remanded for further findings on whether representatives violated antifraud provisions with the requisite scienter when they made material misrepresentations and omissions in the sale of securities. Held, representatives recklessly made material misrepresentations and omissions, and association's findings of liability and the sanctions imposed therefor are sustained.

APPEARANCES:

Charles F. Goria, of Goria, Weber & Jarvis, for Alvin W. Gebhart, Jr. and Donna T. Gebhart.

Marc Menchel, James S. Wrona, and Michael J. Garawski, for Financial Industry Regulatory Authority, Inc., Department of Enforcement, for NASD.

Case remanded: January 15, 2008
Last brief received: June 13, 2008

I.

This proceeding is before us on remand from the United States Court of Appeals for the Ninth Circuit (the "Court"). On January 18, 2006, we issued an opinion and order (the "2006 Opinion") sustaining NASD disciplinary action against Alvin W. Gebhart, Jr., and Donna T. Gebhart, registered representatives formerly associated with Mutual Service Corporation, an NASD member firm. 1/ NASD found that the Gebharts, in offering and selling over $2 million in unregistered promissory notes from 1997 through early 2000, violated the registration and antifraud provisions of the federal securities laws as well as several NASD rules. NASD found that, because the promissory notes were securities, no registration statement was in effect as to the notes, and no exemption applied, the Gebharts' sales violated Section 5 of the Securities Act of 1933 2/ and NASD Conduct Rule 2110. 3/ NASD found further that the Gebharts had not obtained prior written permission from their firm to engage in the sale of the notes, thereby

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1/ Alvin W. Gebhart, Jr., and Donna T. Gebhart, Securities Exchange Act Rel. No. 53,136 (Jan. 18, 2006), 87 SEC Docket 437, remanded, Gebhart v. SEC, 255 Fed. Appx. 254 (9th Cir. Nov. 21, 2007).

On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member-firm regulatory functions of NASD and NYSE Regulation, Inc. See Exchange Act Rel. No. 56,146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007). Because the disciplinary action here was taken before that date, we continue to use the designation NASD in this opinion.

2/ 15 U.S.C. § 77e.

3/ NASD Conduct Rule 2110 requires adherence to just and equitable principles of trade.

violating NASD Conduct Rules 3040 and 2110. 4/ NASD also found that the Gebharts violated several antifraud provisions: Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and NASD Conduct Rule 2120, in connection with their offer and sale of the notes. 5/

For selling unregistered securities and engaging in securities transactions without permission from their firm, NASD barred Alvin Gebhart and suspended Donna Gebhart for one year and fined her $5,000. For their violations of the antifraud provisions, Alvin Gebhart received another bar, and Donna Gebhart received a second one-year suspension (to be served concurrently with her first suspension) and a $10,000 fine. We sustained both NASD's findings of violation and the sanctions imposed.

Following issuance of the 2006 Opinion, the Gebharts appealed those portions of the decision that found the Gebharts liable for selling securities without their firm's permission and for engaging in fraud. 6/ On November 21, 2007, the Court of Appeals affirmed the findings of liability with respect to the Gebharts' selling of securities without firm permission. 7/ However, the Court reversed the findings that the Gebharts had engaged in fraud, vacated the sanctions based thereon, and remanded the matter "for further findings on the factually intensive question of whether the Gebharts acted with the requisite scienter" to support the findings of fraud. 8/ In this opinion we address the Court's concerns, focusing on whether the Gebharts acted recklessly when they offered and sold the securities at issue in this case. 9/ We find that the Gebharts'

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4/ NASD Conduct Rule 3040, titled "Private Securities Transactions of Associated Persons," prohibits involvement by associated persons of member firms in a transaction outside the regular course or scope of employment without providing prior written notice to the member firm.

5/ 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. NASD Conduct Rule 2120 prohibits fraud in the offer and sale of securities.

6/ The Gebharts did not contest, in their appeal to the Court, the finding that the promissory notes in question were securities and that the Gebharts violated Securities Act Section 5 and NASD Rule 2110 by offering and selling the unregistered notes. Those findings are therefore final.

7/ Gebhart v. SEC, 255 Fed. Appx. at 256.

8/ Id.

9/ In reaching our decision, we have considered the arguments of the parties in briefs submitted pursuant to a scheduling order issued on February 6, 2008 as well as an order issued May 29, 2008 granting a request by the Gebharts to submit supplemental briefing

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conduct did, in fact, satisfy the Court's definition of recklessness, for the reasons explained below.

II.

For purposes of this opinion, the pertinent facts are as follows. The Gebharts were securities salespersons with Mutual Service Corporation ("MSC"), a broker-dealer and member of NASD. From 1997 to 2000, the Gebharts offered and sold to their clients nearly $2.4 million in unregistered promissory notes ("Notes") issued by MHP Conversions, LLC ("MHP"). MHP sold the Notes purportedly to finance the conversion of mobile home parks to resident ownership. MHP's sales literature represented that a related company, Community Service Group ("CSG"), would purchase the parks from the owner and then assist the park's residents with legal and financial arrangements so that they could ultimately purchase the property themselves.

Gebhart, who has been in the securities industry since 1983, learned about the Notes in late 1995, while working at Mutual of New York ("MONY"), from another MONY salesman named Jack Archer. Gebhart thought highly of Archer, an ex-Marine and Vietnam veteran with more experience selling securities than Gebhart. Archer had a short discussion with Gebhart in which Archer briefly described the MHP trailer park program and asked if Gebhart would be interested in it. Gebhart referred three of his clients to Archer; all three invested funds with Archer, who paid Gebhart a finder's fee. 10/ According to the Gebharts, the fact that these clients did not complain about their investments later served as a basis for their recommendation of the Notes to others.

The Gebharts understood that MHP was created to issue the Notes that were sold to individual investors to raise the funds necessary for CSG's purchase of the parks. However, the record is unclear as to these entities' actual roles in any transactions related to the ownership interests in the parks, and the Gebharts' own understanding of the mechanics of these transactions was vague. For example, asked why the Notes were issued by MHP, Gebhart testified, "Because

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on the relevance of a recent decision of the United States District Court for the Southern District of California, SEC v. Platforms Wireless Int'l Corp., 559 F.Supp.2d 1091, 1096-97 (S.D. Cal. 2008) (defining recklessness in the context of fraud as "'a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it'" and noting that "'recklessness only satisfies scienter under § 10(b) to the extent that it reflects some degree of intentional or conscious misconduct'" (quoting Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990) and In re Silicon Graphics, Inc. Sec. Litig., 183 F.3d 970, 977 (9th Cir. 1999))).

10/ Neither NASD nor we based any findings of liability on these three referrals.

of the fact that the parks – when they were trying to do a park [Archer] would tell us, 'I have this park that's going through a conversion.' We would get the name of the park to be done and get the check made out to that name and then it wouldn't work for some apparent reason and the check would be given back to the client. This is an easier way of facilitating the process, is what he explained to me." The Gebharts made no effort to understand or investigate why their clients were being sold second (and not first) deeds of trust, nor did they know or inquire about the identities of the first trust deed holders or the amounts of those outstanding first trust deeds. When asked to explain the process MHP used to issue and secure trust deeds on trailer parks it was converting, Donna Gebhart was unable to describe it, testifying, "I wish I could explain it more. I wish I would have known more."

The MHP Notes had one-year terms with fixed interest rates of 18% for new investments and 14% on reinvested funds. Each Note stated that it would "ultimately be secured by a deed of trust" on the particular park to be purchased with the funds, but that "[u]ntil such time as said deed of trust is recorded, the sole asset of [the issuer] will be a deed of trust for the property known as Eastern Trailer Park . . . in the amount of $100,000."

In late January 1996, Gebhart left MONY to join MSC; his wife soon thereafter became a registered representative and joined him in selling insurance and mutual funds and providing financial planning services in their California branch office. On October 2, 1996, at Archer's suggestion, the Gebharts themselves invested $7,000 in the Notes. 11/ On October 23, 1996, Archer asked the Gebharts if they were interested in selling Notes directly to their clients. The Gebharts had a lengthy discussion with him about the Note program. Archer represented that he had done his own due diligence and had received permission from his own firm to sell the Notes. In fact, Archer did not receive permission from his firm to sell the Notes. 12/ Archer also told the Gebharts that "all of the governmental agencies were involved," "the parks were in good shape," "had a lot of equity in them," and were only "45 to 55 percent leveraged." The Gebharts had also received from Archer a packet of marketing materials prepared by the issuer. 13/

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11/ The Gebharts eventually purchased nearly $70,000 in Notes, though some portion of this amount represents reinvestment of funds from matured Notes. As noted infra, the Gebharts had about half this amount invested in Notes when MHP eventually collapsed in the spring of 2000.

12/ Archer was a named respondent in the proceedings before NASD, but he defaulted and was barred by NASD from associating with any member firm.

13/ This included a sample promissory note, a "brochure" that featured a printout from CSG's Web site describing its park-conversion business, several local newspaper articles that reported successful park conversions, several one-page descriptions of converted parks, and "pro forma" financial information for one park conversion that provided a brief projected cash flow analysis and an investment summary that sketched the outlines of

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The Gebharts discussed the MHP Note program with their firm, MSC, in a single phone call soon after their conversation with Archer. Alvin Gebhart testified that, during this call, he had a relatively lengthy conversation with the compliance director at MSC, during which Gebhart explained the program in detail, disclosed that he would be receiving commissions on the sales, and answered "a lot" of questions. The MSC compliance officer testified that the call was "a casual five-minute conversation" in which Gebhart told him "very little" about the Notes. However, the parties agree that MSC did not give permission to the Gebharts to sell the Notes during that telephone call. The Gebharts forwarded a copy of the MHP marketing materials by courier to MSC but never received a response. Nevertheless, the Gebharts began offering and selling MHP Notes to their clients a few months later, in early 1997.

In addition to having contacted MSC for permission to sell the Notes (permission they never received), the Gebharts made available to MSC auditors in November 1997 and February 1999 their transaction logs and client files that contained some evidence of MHP Note purchases. The auditors did not raise any objections to the Note program. Although the Gebharts appear to have made no attempt to hide from the MSC auditors information about the MHP Notes, it is unclear whether the auditors actually saw any of the evidence of the purchases.

The Gebharts' administrative assistant also contacted MSC's operations department in September 1998 to inquire whether funds held in a retirement account could be used to purchase an MHP Note, and MSC's operations department faxed its approval of the MHP Notes for holding in a 403(b) account. The Gebharts' office assistant testified in a deposition in a related civil case that this communication with MSC about the Notes was limited solely to finding out what administrative steps the client needed to take to hold an MHP Note in her 403(b) account. Ultimately, two Note purchases were made with 403(b) funds, and the paperwork for these purchases cleared MSC's operations department without comment. It is undisputed, however, that MSC's compliance department, which was responsible for approving outside business activities, did not review these transactions.

Nevertheless, Gebhart testified that he had done "the proper due diligence" by talking to Archer, contacting MSC, and visiting two of the trailer parks to be converted. Other than these

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13/ (...continued)
CSG's plan to borrow funds to convert the park. MHP was mentioned in these materials only in that the company's name appeared on the cover of the brochure along with CSG's.

two site visits, the value of which was questionable, 14/ the Gebharts made no attempt to gather information on the individual parks in which their clients would be investing through MHP.

The Gebharts concluded that the Note program was a successful venture because they "didn't hear any complaints" from early investors. The Gebharts neither sought nor possessed any information about the management or financial health of MHP, apparently considering it irrelevant: Gebhart testified that he never imparted any information about MHP to clients because his clients "were, as I saw, lending money to a mobile home park itself." According to Donna Gebhart, "[i]t was always our understanding that [MHP] wouldn't have done a conversion on a park that wasn't – that didn't have good cash flow and that would be a deal worth them doing." Donna Gebhart did not explain what parameters she believed MHP used to determine if a deal was "worth doing," but testified that she simply "had faith with everybody that was involved that it was a good program."

In selling the Notes to their clients, the Gebharts presented the MHP program as an option for investors who needed a substantial, fixed monthly income. For example, investor Maribeth Trogdon, a recent widow with two dependent children whose only income was from a part-time teaching job, testified about her discussions with the Gebharts in a deposition in a civil case brought against Gebhart and MSC by clients who bought MHP Notes. 15/ Trogdon testified that the Gebharts recommended that she invest a large portion (more than a third) of the life insurance

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14/ Gebhart testified in a civil deposition in a related case that these site visits consisted of the following:

> What we did is I went up to the Flinn Springs trailer park, drove in, looked around to see the quality of it, to see if it's there, if it's a bona fide piece of real estate, there were mobile homes on it, people living in those mobile homes, whether it was upkept – kept up. Same thing in Aviation. I drove in, looked around, see if there's people living there, if mobile homes were there. In fact, they were.

In this connection, we note that the Gebharts' clients eventually invested in several other parks in addition to the two that Gebhart visited.

15/ NASD declined to base findings on depositions from Trogdon and other customers given in related civil proceedings brought by Note purchasers against Archer, the Gebharts, and their firms (the "Noteholder suit"). However, we see no reason not to consider this evidence. The Gebharts' lawyer was present during these depositions, and never objected to their inclusion in the record below (nor have the Gebharts objected subsequently). Moreover, the testimony appears credible in that the customers make similar assertions about what they were told by the Gebharts. See Frank J. Custable, Jr., 51 S.E.C. 643, 648 (1993) (finding that "similarities in each customer's [challenged] testimony regarding [the salesperson's] behavior and treatment of them" strengthened finding of credibility). The testimony is also consistent with that of the Gebharts themselves.

proceeds from her husband's death into MHP Notes to replace her husband's income. Notes that Trogdon made in preparation for the deposition state that "[t]he investment was presented to me as a proven, long term way for me to receive a substantial monthly income." 16/ Trogdon also testified during the deposition that, when she asked the Gebharts how she could be sure the money she was putting toward the MHP Note "isn't being sent to Tahiti," the Gebharts replied that MSC "looks at all our business . . . and would tell them if there was anything incorrect by law." 17/

Investors testified that the Gebharts told them that the Gebharts had invested their own money in the Notes and that the program had so far been successful. Investor Donald Townsend, a retiree looking to supplement his retirement income "to take care of the bills," testified that Gebhart represented that MHP was "basically solvent and steadily growing[,] obtaining more parks[,] and had been paying the monthly interest with no problems." At the hearing, Gebhart confirmed that he believed the trailer park program was a successful venture because he "didn't hear any complaints" from the three clients he had referred to Archer in early 1996.

Investors also testified that the Gebharts informed them that the MHP Notes would be secured by recorded deeds of trust, and that the parks would serve as sufficient collateral to secure all investments in the event of default. For example, Townsend testified, "I was told that [MHP] would purchase the mobile home parks with the money that's being loaned to them and that they would eventually secure the property with trust deeds . . . ." 18/ Investor Larry Tickel, a disabled former Wal-Mart store manager, testified that the Gebharts assured him that "there was no risk because [the Note] was secured by a deed of trust and then that [the parks] would not be overbought. So that way, if they had to sell the place, we would still get our money back." Following up, the NASD attorney asked Tickel, "Is that what Mr. Gebhart told you, that there was no risk?" Tickel responded, "Right." 19/

Similarly, Sylvia Kerr, a disabled former court reporter who made a total of four investments in MHP Notes, testified in a deposition in the Noteholder suit that she "didn't want

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16/ Trogdon invested $160,000 in an MHP Note in March 1999. Trogdon, and all other investors whose testimony is cited in this opinion, represented in a signed proof of claim submitted to the district court handling MHP's bankruptcy that MHP failed to record a trust deed securing their promissory notes, and there is no evidence in the record that refutes the investors' claims.

17/ The Gebharts corresponded with their customers using letterhead that stated "Securities offered by Mutual Service Corporation."

18/ Townsend invested $40,000 in an MHP Note in June 1998; he re-invested those funds in another Note and added another $2,200 to his investment in June 1999.

19/ Tickel invested $20,000 in an MHP Note in August 1999.

to have any risk" with the money she wanted to invest, and she "remembered us laughing and them [i.e., the Gebharts] saying, 'Well, if you don't want to take any risk, this would be the place to put your money again.'" 20/

The Gebharts' recollection of their representations to their clients is consistent with the clients' testimony. Gebhart testified that he told clients, "If they invested into [an MHP Note] they would get a recorded deed of trust. If the worst case scenario came down they would be part owners of that park." Donna Gebhart similarly testified, "If [clients] asked us about it, either [Gebhart] or I would say the type of thing it is; they are mobile home park conversions. We would give them the knowledge we had about them and we would tell them that they would own a piece of the park . . . . [I]f it was like worst case scenario, if something happened and the park were to default, we all would own a portion and we could be able to sell the park and we would all get cashed out."

However, MHP did not provide copies of the deeds of trust supposedly securing the Notes unless an investor requested one, and very few investors made such a request. The Gebharts recalled seeing one client's trust deed, but did not recall seeing any recording information. The Gebharts never asked for, nor received, a copy of the deeds of trust purportedly securing their own Notes. Indeed, the Gebharts point to only one trust deed contained in the record before us that was recorded; however, that recordation occurred in 1995, well before the Gebharts began selling Notes to their clients. Aside from the ambiguity of the recording status of the deeds purportedly securing their clients' Note purchases, the Gebharts did not have any information about the value of the properties that were intended to serve as collateral and did not know how many of these deeds of trust were supposedly filed against each property or the extent to which the properties were otherwise encumbered.

The Gebharts had essentially no contact with the issuer. Archer handled all the paperwork for the Gebharts' clients who bought MHP Notes and told the Gebharts not to contact MHP or CSG directly. Gebhart testified that he spoke to the principal of MHP once about an "administrative matter," but on the few other occasions the Gebharts tried to contact the company, the staff "kept referring [the Gebharts] back to Archer." Archer shared his commissions with the Gebharts, paying them checks drawn on his personal bank account. 21/ They were paid 6-7% for new purchases and 3-4% for reinvested funds. By early 2000, the Gebharts had sold over $2.4 million in MHP Notes to more than forty clients, for which they received over $110,000 in commissions.

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20/ Kerr invested $10,000 in an MHP Note in January 1998; she re-invested those funds in new Notes in February 1999 and February 2000. In September 1999 Kerr made an additional Note purchase in the amount of $11,000.

21/ Archer testified in a deposition in the Noteholder suit that the commissions he earned on MHP Note sales represented more than half of his income in 1998 and 1999.

In April 2000, MHP stopped making interest payments on the Notes. By this time, clients of the Gebharts had over $1.5 million invested in the securities; the Gebharts themselves had about $36,000 invested. On May 3, 2000, MHP sent a letter to Noteholders explaining that an illness of the company's owner was causing "cash flow problems." MHP claimed that approximately $605,000 worth of Notes had been secured by recorded deeds of trust but revealed that MHP owed nearly $3.7 million to holders of its promissory notes. 22/

The Gebharts reported in a May 2000 letter to their firm describing the collapse of the MHP Note program that "all of the mobile home parks appear[ed] to be substantially overencumbered," and that they had "no way of knowing this until May 11th of this year, when Mr. Archer showed us his note obligations." By their own admission, the Gebharts had been unaware that, by May 2000, Archer's clients had invested over $2 million in the same parks in which the Gebharts' own clients had invested over $1.5 million. By October 2000, the Gebharts had learned that MHP and related entities owned only "$500,000 - $700,000 in net assets" plus an insurance policy on the life of MHP's owner in the amount of $1 million. After the Gebharts notified MSC of MHP's collapse, MSC investigated the matter and, on August 11, 2000, terminated the Gebharts' association with the firm.

Following MHP's collapse, the Gebharts took steps to recover the money that they and their clients had invested, including filing a petition for involuntary bankruptcy against MHP. Purchasers of MHP Notes sued Archer, Gebhart, MONY, and MSC. When the Gebharts' liability insurer refused to indemnify Gebhart, the Gebharts sued the insurer to force it to pay for Gebhart's defense and any damages awarded to the Noteholders. The Gebharts' clients ultimately recovered approximately 84% of their investments.

III.

Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Rule 2120 prohibit fraudulent and deceptive acts and practices in connection with the offer, purchase, or sale of a security. Violations of these provisions may be established by a showing that persons acting with scienter misrepresented material facts or "engage[d] in deceit" in connection with securities transactions. 23/

The 2006 Opinion found that the Gebharts made misrepresentations and omitted to state facts necessary to make other statements not misleading in connection with their offer and sale of

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22/ It is unclear whether MHP's representation that $605,000 worth of Notes had been secured by recorded deeds of trust is accurate. Even if true, however, the Gebharts point to no evidence, and we have found none, that any of their own clients' trust deeds were recorded.

23/ Basic Inc. v. Levinson, 485 U.S. 224, 239 n.17 (1988); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); Rule 10b-5(c), 17 CFR § 240.10b-5.

over $2.4 million in MHP Notes to their customers. The Gebharts testified that they told customers that investments in the Notes would be secured – and therefore risk-free – because second deeds of trust on the properties purchased with client funds would be recorded, and because, in the event of a default on the MHP Notes, clients could recover their investments by foreclosing on the properties and liquidating the collateral. These statements were false: second deeds of trust purportedly securing the MHP Notes purchased by the Gebharts' clients in 1999 and 2000 were not recorded and, even had they been recorded, the properties would have been substantially overencumbered. 24/

The Gebharts also failed to tell their clients throughout the relevant period that their recommendation of the Notes as a sound investment was not based on a thorough investigation but on statements made in MHP's marketing materials, representations by Archer, site visits the Gebharts made to two parks that confirmed nothing but that these particular parks existed, the absence of complaints from other customers, and the silence of MSC and other entities. We found that these misrepresentations and misleading omissions were material, 25/ and the Court of Appeals did not disturb that finding.

We turn now to the question of whether the Gebharts acted with scienter in misleading their clients. As the Court of Appeals stated, "[s]cienter may be established by a showing that the [respondent] acted recklessly." Citing the definition of recklessness articulated in Sundstrand Corp. v. Sun Chem. Corp., the Court explained that "[r]ecklessness in this context is 'a highly

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24/ The Gebharts argue that there is insufficient evidence to determine whether any of the deeds of trust of customers who were purportedly defrauded were properly recorded. Thus, they assert that there is no basis for finding that the Gebharts misrepresented that status to customers.

We disagree. The Gebharts admitted more than once during the hearing that they generally told clients who purchased MHP Notes that their investments would be secured by recorded deeds of trust, as discussed infra. Moreover, NASD specifically asked Gebhart whether he told all the clients named on a stipulated list of all forty-five Gebhart clients who purchased Notes "that the trailer parks were secured by a recorded deed of trust." Gebhart replied, "As best I recall, yes." Although the record does not show whether deeds securing Notes purchased before 1999 were recorded, all of the forty-five Gebhart clients who purchased Notes in 1999 and 2000 represented in court filings in MHP's bankruptcy that MHP failed to record a trust deed securing their promissory notes. The Gebharts introduced no evidence, and we are aware of no evidence, that contradicts those client representations.

25/ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available. Basic, 485 U.S. at 231-32.

unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" 26/ The Court then described objective and subjective components of recklessness. The objective component asks what a reasonably prudent securities professional under the circumstances would have done, while the subjective component looks at an actor's actual state of mind at the time of the relevant conduct. As examples of situations in which a defendant would escape liability under the subjective component, the court in Sundstrand identified cases in which "a defendant genuinely forgot to disclose information" or where the omitted information "never came to his mind." 27/ The Court also asked us to address the situation in which a respondent seeks to establish a good faith defense to scienter.

After further review of the record in light of the Court's remand opinion, we remain convinced that the Gebharts' conduct satisfies this definition of recklessness. The Gebharts made critical representations – those related to the safety of the Notes as an investment – without having performed any meaningful investigation into the actual securitization of the Notes. This created the substantial risk – which would have been obvious to any reasonable person and which must have been obvious to the Gebharts – that their representations were not true. Evidence from the Gebharts about their subjective belief is not sufficient to overcome these conclusions.

The Gebharts admit that they told clients who invested in MHP Notes that they "would get a recorded deed of trust" and that the "worst case scenario" was that the investors could sell the park and all investors would "get cashed out." Yet the Gebharts knew they had no direct knowledge of the truth or falsity of these statements. The Gebharts testified that they remembered seeing only one client's trust deed but did not recall any recording information for that single deed. They never even saw, or requested to see, the trust deeds purportedly securing their own Note purchases. The Gebharts made no effort to investigate or understand why their clients were being sold second (and not first) deeds of trust; no effort to identify the first trust deed holders or the amounts of those outstanding first trust deeds; and no effort to ensure their clients' investments were actually being secured by recorded trust deeds.

Nor did the Gebharts have any direct knowledge about the value of collateral supposedly securing the Notes. Although Archer claimed that no park would have more than ten investors and that the parks would be only 45-55% leveraged, aside from Archer's assertion, the Gebharts

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26/ Gebhart v. SEC, 255 Fed. Appx. at 255 (quoting Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990) (quoting Sundstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir. 1977))). The Seventh Circuit recently observed with respect to the Sundstrand recklessness standard: "When the facts known to a person place him on notice of a risk, he cannot ignore the facts and plead ignorance of the risk." Makor Issues & Rights, Ltd. v. Tellabs Inc., 513 F.3d 702, 704 (7th Cir. 2008).

27/ Sundstrand, 553 F.2d at 1045 n.20.

had no way of knowing if those statements were true because the Gebharts admit they made no effort to confirm them. Indeed, the Gebharts testified that they did not keep track of the number or amount of investments their own clients made in each park and did not know or ask how many of Archer's clients were investing in those same parks; nor did they know how many investors, referred perhaps by other representatives or other intermediaries like Archer, might also have been purchasing Notes. 28/ The Gebharts admitted they never sought or examined any information or documents that normally help to estimate the value of real property, such as an appraisal, prior sale history, title report, or the like. They simply made no effort to confirm that the parks had sufficient assets to pay for the return of their clients' investments after any necessary payments to other lienholders.

Instead of making any effort to confirm the truth of their statements to clients, the Gebharts claim to have substituted reliance on the vague and conclusory statements made in the issuer's marketing materials, the uncorroborated representations of Archer, site visits the Gebharts made to two parks, the silence – interpreted without question, confirmation, or follow-up by the Gebharts as comprehensive approval – of MONY, MSC, and other entities, and the absence of complaints from the customers to whom they had already sold Notes. 29/ As Donna Gebhart put it, they simply "had faith with everybody that was involved that it was a good program."

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28/ Although the record indicates that Archer and the Gebharts were the only representatives selling MHP Notes, the Gebharts do not appear to have been aware of this fact at the time they were selling the Notes.

29/ The Gebharts claim that they relied in part on due diligence they believed was being performed by First Regional Bank, where certain of their customers maintained custodial accounts. They argue that the bank represented, in its investment authorization form, that when a customer wished to purchase a deed of trust with custodial funds, the bank was required to review escrow instructions, which "would reflect . . . the trust deed to be recorded." The fact that the bank would review trust deeds securing Notes purchased with custodial funds supposedly gave comfort to the Gebharts that their clients' investments were secured.

However, the bank's form notes only that, as part of its review for "administrative feasability," the bank expected to review the "proposed" promissory note before disbursing funds. The form states that the investor must forward to the bank "original documents" such as a "recorded mortgage/deed of trust," and specifically disavows responsibility "for obtaining these documents or verifying the position of the investment, e.g., first or second mortgage/deed of trust." The record does not demonstrate that the Gebharts had any relationship with the bank that would have permitted them to conclude that the bank's internal review processes precluded any need for their own due diligence. Moreover, if the Gebharts considered it to be MHP's responsibility to eventually provide recorded deeds of trust to the bank, they made no effort to ensure MHP (or anyone else) was doing so.

The Gebharts' misplaced "faith" does not overcome our finding of recklessness given the obvious warning signs that some investigation was necessary. For example, the Gebharts were effectively precluded from having any direct contact with MHP, which was purportedly responsible for securing the Notes, and were paid their commissions by Archer, through his own personal account, not by MHP. 30/ Moreover, the Notes explicitly stated that each Note would be collateralized by only a single (never-changing) asset purportedly worth $100,000 until the Notes would be "eventually" secured by recorded deeds of trust, with the result that when a particular park attracted more than $100,000 worth of Note purchases, those investments would be insufficiently collateralized, by the very terms of the Note program, unless and until second trust deeds securing the Notes were recorded. Further, the Gebharts' investors, as second trust deed holders, were by definition subordinate to holders of first trusts should the parks' creditors need to foreclose, making it even more critical that the Gebharts confirm their clients' chances of recovering their investments. 31/ Yet the Gebharts ignored these facts, performed no investigation, and asserted the truth of critical matters with no objective, independent basis for doing so. This constitutes reckless conduct, and the Gebharts are legally bound as knowing of the risk of misleading their clients. 32/

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30/ See Jay Houston Meadows, 52 S.E.C. 778, 785 (1996) (finding that salesman of a registered broker-dealer made misrepresentations that were reckless, based in part on a denial of unrestricted access to the issuer's records even though salesman claimed "not to have been troubled by this development"), aff'd, 119 F.3d 1219 (5th Cir. 1997).

31/ It is also unclear whether there may have been other second trust holders who, by virtue of having recorded their interests first in time, would have priority over MHP Note purchasers. There is no evidence that the Gebharts considered or investigated this possibility.

32/ As explained by the Sundstrand court:

> Under this definition [of recklessness], the danger of misleading buyers must be actually known or so obvious that any reasonable man would be legally bound as knowing, and the omission must derive from something more egregious than even "white heart/empty head" good faith. While this definition might not be the conceptual equivalent of intent as a matter of general philosophy, it does serve as a proper legally functional equivalent for intent, because it measures conduct against an external standard which, under the circumstances of a given case, results in the conclusion that the reckless man should bear the risk of his omission. When measured against this external standard, it may be said that such a reckless man "has use[d] or employ[ed a] deceptive device" within Section 10(b).

553 F.2d at 1045 (citations omitted). See also McLean v. Alexander, 599 F.2d 1120, 1198 (3d Cir. 1979) ("[F]raud 'includes the pretense of knowledge when knowledge there

(continued...)

The Gebharts nevertheless argue that they should not be found liable for fraud because they acted in good faith, and therefore without the requisite state of mind. They contend that, as found by the NASD Hearing Panel, the Gebharts "truly believed that they had fulfilled their responsibilities to assure that MHP and CSG were appropriate investments . . . ." The Hearing Panel decision on this point was overturned by NASD's National Adjudicatory Council ("NAC"), which found that the Gebharts were reckless and concluded that the four factors identified by the Hearing Panel provided "scant reasons for the Gebharts to believe they had fulfilled their duty to investigate." The NAC decision is NASD's final action. 33/

The Court of Appeals in its remand opinion identified subjective and objective components in an analysis of recklessness, and we acknowledge the Gebharts' assertions that they believed they had done enough to confirm the truthfulness of their statements to clients. We consider evidence of good faith to be relevant to a determination of whether a respondent acted with the requisite state of mind. That evidence must be considered with all other evidence of knowledge or recklessness because the reasonableness and, therefore, the credibility of that claim of good faith must be evaluated in light of the circumstances of each case and in light of the conduct expected from a reasonable person.

The Court questioned whether the 2006 Opinion should be interpreted as holding that good faith cannot be a defense to a finding of scienter whenever the evidence indicates that the respondents lacked a "reasonable basis for recommending the [securities], because they failed to discharge [their] duty to investigate before making the recommendations." 34/ The Court seems concerned that our view is that a good faith belief founded on negligent actions satisfies the recklessness prong of scienter. We take this opportunity to reiterate our adherence to the recklessness standard as an extreme departure from the standards of ordinary care and our view that negligence does not qualify as scienter.

Thus, the evidence the Gebharts forward to demonstrate their good faith beliefs is and should be part of the complete mix of facts bearing on an evaluation of their state of mind, but, in

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32/ (...continued)
is none.'") (citing Ultramares Corp. v. Touche, Niven & Co., 255 N.Y. 170, 179 (Ct. App. N.Y. 1931)); Oliver Wendell Holmes, Jr., THE COMMON LAW 135-36 (1881).

33/ See Philippe N. Keyes, Exchange Act Rel. No. 54723 (Nov. 8, 2006), 89 SEC Docket 792, 800 n.17, appeal filed, No. 07-15736 (11th Cir. Dec. 13, 2007); Chris Dinh Hartley, 57 S.E.C. 767, 776 (2004) ("[I]t is the NAC's conclusions that are before us for review, not those of the Hearing Panel."); NASD Code of Procedure Rule 9349(c) (providing that the NAC decision constitutes the final disciplinary action that is subject to review by the Commission). For the reasons given in the 2006 Opinion, we agree with the NAC's rejection of the Hearing Panel's finding.

34/ Gebhart v. SEC, 255 Fed. Appx. at 256 (alterations in original).

the end, a respondent's belief that he acted in good faith must be tested by reference to objective criteria; i.e., the applicable standard of conduct is determined in accordance with the degree to which the respondent had acted extremely unreasonably. A respondent's asserted good faith belief is not plausible if he ignores facts that place him on notice of a risk of misleading clients. The Court in remanding this proceeding recognized this when it said: "When warranted, the SEC is entitled to infer from circumstantial evidence that a defendant must have been cognizant of an extreme and obvious risk and reject as implausible testimony to the contrary." 35/ The Sundstrand court also emphasized the need to refer to external standards when it originally defined recklessness, 36/ and other courts have similarly identified the ultimate importance of objective measures in securities fraud cases. 37/

Unlike the examples given by the Sundstrand court in which the subjective component would preclude liability for objectively reckless misconduct, the Gebharts do not claim that they "genuinely forgot" to disclose material information, i.e., that their statements had no basis in fact. Rather, their claim is that they were not reckless because, even though they knew their representations were based primarily on Archer's assertions and the silence of others, they nonetheless thought that they had done enough. The Gebharts similarly argue that they were truly and completely unaware of the fraud that the principals of MHP were perpetrating, that they were

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35/ Gebhart v. SEC, 255 Fed. Appx. at 255; see also Sundstrand, 553 F.2d at 1047-48 (rejecting "as a matter of law" defendant's argument that he "genuinely forgot" to disclose material information based on circumstantial evidence that defendant "must have consciously decided not to disclose (and did not disclose)" the omitted information).

36/ 553 F.2d at 1045.

37/ See Makor Issues, 513 F.3d at 704 ("[A] popular definition of recklessness in this context [proof of scienter in a securities fraud case] is 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.' This looks like two different criteria – knowledge of the risk and how big the risk is – but as a practical matter it is only one because knowledge is inferable from gravity ('the danger was either known to the defendant or so obvious that the defendant must have been aware of it'). When the facts known to a person place him on notice of a risk, he cannot ignore the facts and plead ignorance of the risk.") (alterations in original); SEC v. Infinity Group Co., 212 F.3d 180, 192 (3d Cir. 2000) ("The SEC argues that scienter is evidenced by [the issuer's] guarantees of high rates of return that were unsupported by any honest due diligence. The defendants, on the other hand, contend that their actions 'were entirely consistent with the fact that they believed their representations . . . [to be] true.' However, good faith, without more, does not necessarily preclude a finding of recklessness. Therefore, even if the defendants believed [the] investments were sound, they may still be liable for securities fraud if their belief was based upon nothing more than a reckless disregard of the truth.").

victims themselves of that fraud, and that they therefore lacked scienter. As the Gebharts assert, "It is simply implausible to suggest that the Gebharts knew or suspected that MHP would be unable to repay these loans while, at the same time, loaning it money."

These arguments are insufficient. As discussed above, the Gebharts made no meaningful attempts to confirm the validity of their assertions to clients that the Notes would be fully secured. They made these unsupported representations to clients despite not knowing whether they were true or false and despite having several and varied reasons to doubt the truth of their own statements. Our de novo review of the evidence in this case therefore leads us to conclude that, contrary to the Gebharts' assertions, they must have known when they made their misrepresentations that their actions presented an unacceptable danger of misleading their clients.

Moreover, accepting arguendo that the Gebharts were unaware of MHP's fraud, this does not alter our conclusion: the Gebharts face liability not because they knew of or failed to discover MHP's fraud, but because they made specific representations to clients about the security of the Notes without taking any basic steps to verify the truthfulness of those representations. Even if the Gebharts were unaware of MHP's actual fraud, we conclude that they still must have known of the risk of misleading their clients given their extreme departure from the standards of ordinary care. The Gebharts are legally bound as knowing that the representations were false. 38/

We therefore conclude that the Gebharts made material misrepresentations during the offer and sale of the MHP Notes. We also conclude that the Gebharts – who ignored obvious risks, failed to make obviously necessary inquiries, and were aware that their recommendations were based primarily on Archer's statements and a failure of other parties, particularly their firm, to alert them to problems – acted recklessly and therefore with scienter. Their conduct was an extreme departure from the standard of care that presented a danger of misleading buyers of which the Gebharts must have been aware. We therefore sustain NASD's finding that the Gebharts thereby violated Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110. 39/

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38/ Cf. W. Page Keeton et al., PROSSER AND KEETON ON THE LAW OF TORTS 741-42 (5th ed. 1984) (noting that, in context of tort of intentional misrepresentation, sufficient intent is found where the defendant made the statement knowing it to be false, without any belief as to its truth, with reckless disregard whether it be true or false, knowing he had no sufficient basis of information to justify the statement and conscious ignorance of the truth.); RESTATEMENT (SECOND) OF TORTS § 526 (1977).

39/ Misrepresentations and omissions are inconsistent with just and equitable principles of trade and therefore violate NASD Conduct Rule 2110. Robert Tretiak, Exchange Act Rel. No. 47534 (Mar. 19, 2003), 79 SEC Docket 3166, 3180.

IV.

Exchange Act Section 19(e)(2) directs our review of the sanctions NASD imposed. We may reduce or set aside sanctions imposed by NASD if we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary burden on competition. 40/ NASD imposed two associational bars upon Gebhart: one for having sold unregistered securities and having engaged in private securities transactions, and another for having committed fraud. Donna Gebhart received a one-year suspension and a $5,000 fine for selling unregistered securities and engaging in private securities transactions as well as a separate one-year suspension and a $10,000 fine for the fraud. In the 2006 Opinion, we found that "the sanctions NASD imposed against the Gebharts are neither excessive nor oppressive, and we sustain NASD's findings of violation and imposition of sanctions." The Court of Appeals vacated only those sanctions related to the fraud. 41/ Therefore, Gebhart is already subject to a bar, and Donna Gebhart was already subject to a one-year suspension as well as a fine. We consider only whether NASD's imposition of additional sanctions for the fraud is excessive or oppressive. For the reasons below, we find that it is not, and we sustain NASD's decision in this regard.

For reckless or intentional misrepresentations or omissions of material fact, the NASD Sanction Guidelines recommend a fine between $10,000 and $100,000 and a suspension between ten business days and two years; in egregious cases, the Guidelines recommend a bar. 42/ NASD found that Gebhart's conduct was egregious in light of its analysis of the general principles applicable to all sanctions determinations under the Guidelines; however, NASD found that Donna Gebhart "played a less substantial role" and did not find her conduct to be egregious. In making its sanctions determination, NASD found it aggravating that the Notes were unregistered securities, that the Gebharts created the impression that their firm sanctioned their sales of MHP Notes, that the Gebharts' conduct resulted in monetary gain, and that the sales resulted in injury to investors.

NASD also considered several factors that the Gebharts argue should serve to mitigate sanctions. NASD accepted that "the preponderance of the evidence does not demonstrate that the respondents concealed their activities" from their firm. NASD also considered the Gebharts' efforts to help their customers reclaim a large portion of their investments and concluded those efforts were only "slightly mitigating," given that "the Gebharts' remedial efforts occurred only

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40/ 15 U.S.C. § 78s(e)(2). The Gebharts do not claim, and the record does not show, that NASD's action imposed an undue burden on competition.

41/ The Court "reverse[d] the SEC's scienter determinations with respect to Section 10(b), Rule 10b-5 and NASD Conduct Rule 2120 [and] vacate[d] the sanctions based thereon . . . ." Gebhart v. SEC, 255 Fed. Appx. at 256.

42/ NASD Sanction Guidelines 96 (2001 ed.).

after MHP collapsed, which we view as the functional equivalent of detection, and therefore were not purely voluntary on their part." NASD also noted that part of the investors' recovery was funded by pursuing litigation against the Gebharts, which "is not what we consider to be remedial conduct." NASD also gave only little mitigative value to the Gebharts' professed remorse, which NASD found to be "dampened" by the Gebharts' attempts to shift blame to others involved, and to evidence of the Gebharts' cooperation with NASD's investigation, which NASD determined was "not substantial enough to be mitigating." 43/

We conclude that NASD appropriately weighed the aggravating and mitigating factors relevant to imposing sanctions for fraud under its Sanction Guidelines. The Gebharts sold over $2 million in MHP Notes to numerous customers over an extended period based on reckless misrepresentations. The Notes were unregistered and, at least in later years, were unsecured. The Gebharts earned over $100,000 in commissions from these sales, while their customers incurred losses.

Moreover, we can find no fault with NASD's conclusion that the mitigating factors identified by the Gebharts do not outweigh the aggravating circumstances present in this case. 44/ As we noted in the 2006 Opinion, efforts to help defrauded customers recover their losses are acknowledged and encouraged, but those efforts do not always justify a reduction in sanctions. 45/ The sincerity of the Gebharts' contrition is lessened considerably by their continued objection that "it is simply unfair and unjust to lay at the Gebharts' doorstep the entirety of the misconduct of others that directly and more profoundly contributed to the resulting losses to the Gebharts' clients." 46/ Although we recognize that the Gebharts' disciplinary record was "unblemished" before these proceedings, we have consistently held that lack of disciplinary history is not a

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43/ The Gebharts point to no evidence that contradicts the NAC's finding that their cooperation was not substantial enough to be mitigating.

44/ See, e.g., Michael A. Rooms, 85 S.E.C. Docket 444, 450 (Apr. 1, 2005) (upholding bar notwithstanding arguments, among others, that applicant lacked disciplinary history and customer complaints, cooperated with investigation, and assertedly served as an "unwitting pawn" of another applicant involved in fraud), aff'd, 444 F.3d 1208, 1214-15 (10th Cir. 2006).

45/ See Hartley, 83 SEC Docket at 1247 ("We do not consider that [respondent] is deserving of a reduction in sanctions because his clients may be able to recover some of their losses.").

46/ Mike K. Lulla, 51 S.E.C. 1036, 1040 (1994) (upholding bar because "the fact that others also might have been remiss in their duties does not mitigate [respondent's] responsibility"); see also Castle Securities Corp., Exchange Act Rel. No. 52580 (Oct. 11, 2005), 86 SEC Docket 1466, 1472 (barring applicant based in part on finding that applicant "sought to shift the blame" for its violations on others "instead of accepting responsibility for its violations").

mitigating factor because "an associated person should not be rewarded for acting in accordance with his duties as a securities professional." 47/

As NASD noted in its decision, "[d]isciplinary sanctions are remedial in nature and are designed to deter future misconduct and improve overall business standards in the securities industry." The risk posed to the investing public by associated persons who engage in fraud is profound and obvious. As we noted in the 2006 Opinion, "conduct that violate[s] the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws." 48/ Under these circumstances, we concur in NASD's determination that Gebhart's misconduct demonstrates that he poses too great a risk to the investing public to be permitted to remain in the securities industry.

Although we recognize that Gebhart is already subject to a bar for having engaged in other violations of the securities laws and NASD rules, the additional bar for fraud is meaningful because Gebhart may eventually apply for reinstatement, and the basis for his disqualification from association will be relevant to his application. 49/ Moreover, the bar NASD imposed upon Gebhart is appropriate because it will serve as a deterrent to others who may be inclined to wholly abdicate their responsibilities to investors, thereby protecting the investing public by encouraging associated persons to make representations about, and recommendations of, securities to their clients only when they have a reasonable basis for doing so. 50/

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47/ Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655 (Apr. 11, 2008), 93 SEC Docket 5055, 5116 (citing Keyes, 89 SEC Docket at 801 n.20).

48/ Marshall E. Melton, 56 S.E.C. 695, 713 (2003).

49/ Under NASD's By-Laws, art. III, § 3(d), an NASD member firm may apply to NASD for permission to employ a representative subject to an associational bar. The By-Laws state that, in deciding whether to approve the application, NASD's Board of Governors may conduct an "inquiry or investigation into the relevant facts and circumstances," which may include "the background and circumstances giving rise to the failure to qualify or disqualification." See also Exchange Act Section 15A(g)(2), 15 U.S.C. § 78o-3(g)(2) (authorizing the Commission to direct NASD to "deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification" where doing so is "necessary or appropriate in the public interest or for the protection of investors").

50/ In making this determination, we are mindful that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry.'" PAZ Secs., 494 F.3d at 1066 (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

For similar reasons, we believe the sanctions NASD imposed upon Donna Gebhart also serve an important remedial purpose without being punitive. NASD found that a one-year suspension and a $10,000 fine was appropriate given Donna Gebhart's "less substantial role" in the conduct at issue. These sanctions are well within the range provided for reckless misrepresentations in the Sanction Guidelines and will encourage Donna Gebhart and other representatives to consider more seriously their obligations to customers. We conclude, therefore, that the sanctions imposed by NASD to redress the risk posed by the Gebharts serve the public interest and are neither excessive nor oppressive.

We therefore sustain NASD's findings of violation and imposition of sanctions. 51/ An appropriate order will issue.

By the Commission (Chairman COX and Commissioners CASEY, AGUILAR, and PAREDES; Commissioner WALTER not participating).

Florence E. Harmon
Acting Secretary

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51/ We have considered all of the arguments of the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58951 / November 14, 2008

Admin. Proc. File No. 3-11953r

In the Matter of the Application of

ALVIN W. GEBHART, JR.
and
DONNA T. GEBHART

c/o Charles F. Goria
Goria, Weber & Jarvis
1011 Camino Del Rio South, Suite 210
San Diego, CA 92108

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING DISCIPLINARY ACTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action by NASD against Alvin W. Gebhart, Jr. and Donna T. Gebhart, and NASD's assessment of costs be, and they hereby are, sustained.

By the Commission.

Florence E. Harmon
Acting Secretary