

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 10,

Complainant,

vs.

Donald Clyde Bozzi
Basking Ridge, NJ,

and

Basking Ridge, NJ,

Respondent.

DECISION

Complaint No. C10970003

District No. 10 (NY)

Dated: January 13, 1999

Donald Clyde Bozzi ("Bozzi") has appealed the May 12, 1998 decision of the District Business Conduct Committee for District No. 10 ("DBCC") pursuant to Procedural Rule 9310. We find that Bozzi submitted three life insurance applications that contained false information to his employer and provided false information to the NASD. We order that Bozzi be censured, barred from associating with any member firm in any capacity, and fined \$30,000.

Background

Bozzi first became registered with the NASD in 1989 as an investment company and variable products representative of The Equitable Life Assurance Society of the United States ("The Equitable") and Equico Securities, Inc. ("Equico"), and he was registered as such at all times relevant to the complaint. Since 1995, he has been registered as an investment company/variable contracts representative with New England Securities.¹

Discussion

The complaint contained four causes, three relating to Bozzi's alleged submission of fictitious life insurance applications to his employer and one relating to his alleged provision of inaccurate information to the NASD. On appeal, Bozzi does not challenge the DBCC's findings of violation, and we find that Bozzi engaged in the misconduct alleged in the complaint.

Fictitious Life Insurance Applications. The complaint's first three causes alleged that, in violation of Conduct Rule 2110, Bozzi submitted three insurance applications containing numerous misstatements of fact which he knew or should have known were false. The applications, which were dated September 30, 1994, October 1, 1994, and January 2, 1995, were all canceled shortly after being issued.

When Bozzi answered the complaint, he did not deny the complaint's allegations about the applications. Instead, he acknowledged that the information in the complaint was "accurate." He asserted that he had submitted the applications because he had been under stress as a result of his failure to meet The Equitable's production standards and that he had submitted the applications on behalf of family members without any intent to harm or defraud anyone. He stated that he had, nonetheless, resigned from The Equitable at the beginning of 1995 because he did not meet the minimum productivity standards.

At the DBCC hearing held on July 14, 1997, Bozzi did not testify. NASD Regulation, Inc. ("NASD Regulation") staff introduced a transcript of an on-the-record interview that staff conducted of Bozzi (who was represented by counsel) in September of 1996. At that interview, Bozzi noted that the names on the applications were those of his wife and father-in-law. He admitted that he had "made up" much of the information on the applications and that he knew it to be inaccurate. He admitted

¹ The DBCC filed the complaint in this matter after reviewing the staff's investigation of an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5") that Equico filed in July of 1995. In the Form U-5, Equico alleged that Bozzi had submitted a fictitious insurance application. During the investigation, staff uncovered evidence of two other fictitious applications.

that his father-in-law had been unaware of at least one of the two applications purportedly submitted on his behalf, although he claimed that his wife had been aware of the application purportedly submitted on her behalf. He stated that he was "trying to meet a goal -- year-end goals" and that he was "under pressure to keep [his] position at Equico."

At the DBCC hearing, the staff offered the testimony of three witnesses: (1) an NASD Regulation examiner; (2) Thomas McClaren ("McClaren"), a member of The Equitable's internal audit department who investigated the applications; and (3) Michael Vesuvio ("Vesuvio"), a district manager with The Equitable who was Bozzi's supervisor. According to these witnesses, The Equitable's investigation of Bozzi began when Vesuvio noticed a refund check (for the January 1995 application) made payable to an applicant at Bozzi's home address.

Cause One. On January 2, 1995, shortly before resigning, Bozzi prepared and submitted a life insurance application to The Equitable purportedly on behalf of an individual identified as "William Aldridge" (the "William Aldridge Application"). Bozzi's father-in-law was named "William Carl Aldridge" ("Aldridge"). Staff investigation revealed and/or Bozzi admitted in his interview that the following information in the application was false:²

- the applicant's Social Security number (Bozzi made up a number);
- the applicant's date of birth (representing that the applicant was only 30);
- the applicant's address;
- the applicant's telephone number;
- the name of the applicant's employer;
- the name of the applicant's spouse; and
- the applicant's signature.³

Based on this evidence, we find that, as alleged in cause one, Bozzi violated Conduct Rule 2110 by knowingly submitting the William Aldridge Application with false information.⁴

² Although the transcript of the interview is hearsay evidence, we find it to be persuasive, credible evidence that Bozzi did, in fact, fabricate information on the insurance application forms. We note that Bozzi was represented by counsel during the interview and that he also admitted to the fabrications in his answer to the complaint.

³ In addition, attached to the application was a sample check written on an account in the name of "Janet S. Aldridge" to qualify for the systematic monthly payment plan. The checking account was closed at the time that Bozzi submitted the check.

Cause Two. Bozzi prepared and submitted an application dated September 30, 1994 purportedly on behalf of a "Janet Aldridge" (the "Janet Aldridge Application"). Bozzi's wife, "Janet S. Bozzi," was also known as "Janet S. Aldridge" or "Sue Aldridge." Staff investigation revealed and/or Bozzi admitted in his interview that the following information in the application was false:

- the applicant's Social Security number;
- the applicant's date of birth;
- the applicant's address;
- the telephone numbers of the applicant's home and business;
- the name of the applicant's employer; and
- the name of the applicant's spouse.

Based on this evidence, we find that, as alleged in cause two, Bozzi violated Conduct Rule 2110 by knowingly submitting the Janet Aldridge Application with false information.

Cause Three. Bozzi prepared and submitted a life insurance application dated October 1, 1994 purportedly on behalf of a "Harry Aldridge" (the "Harry Aldridge Application"). Bozzi claimed that this application was submitted for his father-in-law, although his father-in-law was named "William Carl Aldridge." Staff investigation revealed and/or Bozzi admitted in his interview that the following information in the application was false:

- the applicant's Social Security number;
- the applicant's date of birth;
- the applicant's address;
- the applicant's telephone number;
- the name of the applicant's employer;
- the name of the applicant's spouse;
- the signature of the applicant; and
- the assertion that the applicant did not smoke.⁵

⁴ The DBCC found that Bozzi knew or should have known that the information was incorrect. We find that the evidence -- namely, Bozzi's admission at his interview to having fabricated the information -- supports a finding that he knowingly placed inaccurate information on the forms.

⁵ As with the William Aldridge Application, attached to the Harry Aldridge Application was a sample check written on an account in the name of "Janet S. Aldridge." That checking account was closed at the time that the specimen check was submitted with the application.

Based on this evidence, we find that, as alleged in cause three, Bozzi violated Conduct Rule 2110 by knowingly submitting the Harry Aldridge Application with false information.

Providing False Information to the NASD. The fourth cause of action alleged that Bozzi provided false information in written and testimonial form during the course of the investigation conducted by the staff of NASD Regulation. As such, Bozzi was alleged to have violated NASD Conduct Rule 2110. When Bozzi answered the complaint, he completely failed to address the allegations in the fourth cause. We find that Bozzi knew or should have known that the following information that he provided was false:

- Bozzi advised the staff in written correspondence that he had submitted the William Aldridge Application to obtain a "life sales" award. This was false. In subsequent correspondence, Bozzi admitted that he had submitted the application to meet production requirements, not to obtain an award. At the interview, Bozzi admitted that he was not eligible for any award. Moreover, Vesuvio had never heard of a "life sales" award, and The Equitable's agent information guide contained no reference to such an award.
- Bozzi advised the staff that his father-in-law had exercised a 10-day "free look" option and had canceled the William Aldridge Application policy. This was false. Bozzi testified at the interview that Aldridge was unaware of the application and had not agreed to have the policy in his name and that he himself (Bozzi) had canceled the application.
- Bozzi advised the staff that Aldridge had endorsed the refund check issued upon the cancellation of the William Aldridge Application. This was false. Bozzi later admitted that Aldridge was not aware of the application and therefore could not have endorsed the refund check.⁶
- Bozzi testified during the interview that he had not submitted any inaccurate insurance applications other than the William Aldridge Application. This was false. In fact, as Bozzi acknowledged later in the interview upon being confronted with additional evidence, he submitted two other false applications to The Equitable.

⁶ The DBCC also noted as corroboration that the signature on Aldridge's driver's license did not resemble the signature that appeared on the refund check.

- Bozzi testified during the interview that he had submitted the Harry Aldridge Application on behalf of his father-in-law, whom he inaccurately identified as "William Harry Aldridge." In fact, Aldridge's middle name was "Carl."

Thus we find that, as alleged in the fourth cause of the complaint, Bozzi violated Conduct Rule 2110 by giving information that he knew or should have known to be inaccurate to NASD Regulation staff.⁷

Procedural Matters

On appeal, Bozzi argues that the DBCC hearing panel denied him due process by refusing to continue the hearing to allow time for his new lawyer to prepare and for a psychological evaluation to be conducted.

Request for Continuance. At the DBCC hearing, Bozzi's counsel stated that he had been retained only one business day prior to the DBCC hearing, and he asked the DBCC hearing panel to continue the hearing to give him time to prepare. The DBCC hearing panel denied the request, and the DBCC affirmed this action.

We find that the DBCC's action did not deny Bozzi the procedural fairness to which he was entitled under the Securities Exchange Act of 1934 and the NASD's Code of Procedure. A review of the record shows that Bozzi's request came even later than the proverbial "eleventh hour" continuance request. On April 21, 1997, the matter was first noticed for a DBCC hearing (on June 23, 1997). On June 19, 1997, only four days prior to the first scheduled hearing date, Bozzi requested a two-week delay of the hearing. He asserted that he had not previously retained counsel, due to financial difficulties, but that circumstances had changed, enabling him to retain counsel. The DBCC hearing panel granted a three-week continuance -- until Monday, July 14, 1997 -- and informed him that no further continuances would be granted.

On July 11, 1997, the Friday before the Monday on which the hearing was scheduled to be held, Bozzi's new attorney contacted the regional attorney and stated that he needed a continuance. Bozzi's attorney had just been retained that day. The regional attorney told Bozzi's attorney that staff would oppose any request for a continuance. Bozzi did not formally make a request to the DBCC hearing panel on that day. At the beginning of the DBCC hearing on July 14, however, Bozzi's counsel moved for a continuance. He argued that he needed time: (1) to prepare Bozzi to testify; and (2) to have a psychological evaluation of Bozzi performed. The DBCC hearing panel heard argument and denied the motion. During the DBCC hearing,

⁷ This misconduct also violated Procedural Rule 8210, but the misconduct was not charged as such in the complaint.

although the DBCC and the staff ordered Bozzi to testify, Bozzi's attorney instructed him not to do so, based on his lack of preparation. Bozzi's attorney did, however, cross-examine the staff's witnesses and present argument.

We reject Bozzi's argument that he should have been given the second continuance. We find that Bozzi was treated fairly in this matter and that the DBCC hearing panel's denial of a second continuance was not the sort of "unreasoning and arbitrary insistence upon expeditiousness" that invalidates a refusal to postpone a hearing. See In re Michael Markowski, 51 S.E.C. 553, 559 (1993), aff'd, 34 F.3d 99 (2d Cir. 1994). We do not believe that the DBCC hearing panel's action denied Bozzi access to counsel and we note that, in any event, Bozzi had no constitutional right to the assistance of counsel in this proceeding. Bozzi had ample opportunity to retain and prepare with an attorney, both before and after the first continuance was granted. His failure to do so, for whatever reason, cannot be cited as unfairness on the part of the NASD.

Request for Psychological Evaluation. Moreover, we do not believe that Bozzi's attorney's request for time to conduct a psychological evaluation warranted granting a last-minute continuance. Throughout these proceedings, it was Bozzi's responsibility to marshal the evidence in his own defense. Any proffer of psychological evidence should have been made in accordance with the Code of Procedure, but such evidence was not submitted -- or even created -- in a timely fashion. As we have already stated, we believe that it was reasonable for the DBCC hearing panel to deny Bozzi's last-minute request for a second continuance, and Bozzi's references to the evaluation do not alter our analysis in this regard.⁸ For the same reasons, we reject Bozzi's argument that the DBCC should have granted the continuance to permit him to develop evidence of the "pressure" that he was placed under by The Equitable. Such evidence should have been offered, if at all, in a timely fashion.

Sanctions

The DBCC ordered that Bozzi be censured, barred, and fined \$30,000: \$10,000 for the fictitious life insurance applications and \$20,000 for providing false information to the NASD. We affirm these sanctions.

The DBCC noted that Bozzi had submitted three false life insurance applications to his employer containing numerous misstatements of fact and that he had provided false information to the staff. The DBCC noted, citing In re Donald M. Bickerstaff, Exchange Act Rel. No. 35607 (Apr. 17, 1995), that submitting false insurance applications is serious misconduct that warrants a strong response. The

⁸ We do not, however, see any basis for the DBCC's characterization of the proposal to obtain a psychological examination as "suspect."

DBCC also found that Bozzi's providing false information to the staff was egregious. The DBCC noted that because the NASD relies on Procedural Rule 8210 to obtain information from its members, it is critical that members cooperate fully and assist its regulatory and investigatory functions.

On appeal, Bozzi argues that the sanctions imposed by the DBCC are unduly harsh. We find, however, that the DBCC sanctions are appropriately remedial. First, we reject Bozzi's characterization of his conduct as having been "merely negligent and not wilful." As discussed above, although the DBCC found that Bozzi "knew or should have known" that the information was false, we find that Bozzi knowingly put inaccurate information on the insurance forms. In addition, we reject Bozzi's assertion that he "cooperated fully" during the investigation of this matter. To the contrary, he attempted to mislead the NASD about his misconduct.

Under the NASD Sanction Guideline ("Guideline") for failure to respond truthfully to information requests made by NASD staff, a bar is "standard" in the absence of mitigation, and a \$20,000 fine is suggested.⁹ We note, upon reviewing the factors listed in the Guideline, that although Bozzi does not appear to have engaged in prior or similar misconduct, he willfully provided misleading information that impeded an investigation, he lacked a reasonable explanation for doing so, he corrected his misleading statements only under significant regulatory pressure, *i.e.*, being interviewed and confronted in the interview with the two additional fictitious applications, and the misinformation was of great regulatory importance, relating to his misrepresentations to his employer and forgery of signatures. Thus, we find that a bar and a \$20,000 fine are appropriate for the misconduct under cause four.

With respect to the fictitious life insurance applications, we note that under the Guideline for forgery and falsification of records, a fine of \$5,000 to \$50,000 is suggested and bars are to be considered in egregious cases.¹⁰ On reviewing the Guideline factors, we note that although Bozzi does not appear to have engaged in prior or similar misconduct, he forged and falsified three documents on three separate occasions, over a period of 15 weeks; he did so without any mistaken belief of authority to do so; he injured his firm by pocketing commissions for fictitious policies;¹¹ he falsified life insurance applications, documents whose accuracy is very

⁹ See Guidelines (1996 ed.) at 22 (Failure to Respond).

¹⁰ See Guidelines (1996 ed.) at 26 (Forgery and/or Falsification of Records).

¹¹ Bozzi was paid full years' commissions for the three policies when the applications were filed. Although the policies were canceled, Bozzi left The Equitable without repaying the commissions. McClaren testified that the commissions for the three policies at issue here amounted to approximately \$6,000 and that Bozzi's total liability to The Equitable amounted to approximately \$8,600. We are not ordering Bozzi to repay The Equitable, since the firm has already obtained a court

important; and he attempted to conceal his misconduct. As such, we find that a bar and a \$10,000 fine are warranted by causes one through three.

Potentially Mitigating and Aggravating Circumstances. The DBCC noted that Bozzi's counsel contended that Bozzi was under pressure to submit the applications to meet production requirements. The DBCC found that even if this were the case, Bozzi had not reacted to the pressure in a manner appropriate for a person registered with the Association. The DBCC also noted that Bozzi's misconduct (the submission of the three false applications and the providing of false information) occurred over a period of approximately two years and thus could not have been the result of a momentary lapse in judgment. We agree with the DBCC that Bozzi has not established any mitigation in this regard.

The DBCC, however, also stated that it found "particularly disturbing" Bozzi's refusal to testify at the hearing despite being requested to do so by the staff and ordered to do so by the DBCC hearing panel. The DBCC concluded that Bozzi had "demonstrated contempt for the process." We find, however, that Bozzi's refusal to testify -- although unjustified -- should not be used as a basis for increasing the sanctions being imposed against him in this case because Bozzi was acting pursuant to his attorney's advice and because a new complaint would have to be issued in order for sanctions to be imposed for that misconduct. The misconduct described in the complaint in the instant action fully justifies the sanctions that we are imposing, without reference to any other misconduct.

judgment ordering Bozzi to repay his total liability.

Accordingly, we order that Bozzi be censured, barred, and fined \$30,000. The bar is effective immediately upon service of this decision.¹²

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Corporate Secretary

¹² We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.