BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of	DECISION
Department of Enforcement,	Complaint No. CAF980025
Complainant,	Dated: November 1, 1999
vs.	
Richard Stephen Levitov Bayonne, NJ,	
and	
Ralph Joseph Angeline Katonah, NY,	
Respondents.	

Where registered individuals refused to appear for on-the-record testimony after having been denied continuance requests, held that registered individuals violated NASD Conduct Rule 2110 and Procedural Rule 8210. NAC rejected allegations of bad faith on the part of staff of the Department of Enforcement, but considered staff's conduct as mitigative with respect to sanctions. Respondents are suspended for one year. At the end of one year, the suspension will convert to a bar if respondents have not at that time complied with the staff's request.

This matter was appealed by the Department of Enforcement ("DOE") and cross-appealed by respondents Richard Stephen Levitov ("Levitov") and Ralph Joseph Angeline ("Angeline"). Under review is a decision of an NASD Regulation Hearing Panel ("Hearing Panel") dated March 15, 1999. After a review of the entire record in this matter, we affirm the Hearing Panel's findings that Levitov and Angeline failed to appear to provide on-the-record testimony in connection with an NASD Regulation investigation. We suspend each respondent for one year.

At the end of the one-year suspension periods, each suspension will become a bar in all capacities for each respondent if such respondent has not fully and unconditionally testified on the record before NASD Regulation staff. We affirm the Hearing Panel's imposition of joint and several costs of $1,042.50 and impose individual appeal costs of $1,172.75 per respondent.

Background. Levitov entered the securities industry in July 1972 and first registered as a principal in August 1993. He was the director of compliance for Monroe Parker Securities, Inc. ("Monroe Parker") from August 1994 until the firm closed in January 1998. Levitov no longer is working in the industry. Angeline entered the securities industry in July 1966 and first registered as a principal in December 1993. He was the director of trading at Monroe Parker from August 1994 until the firm closed in January 1998. Angeline is no longer in the securities industry.

Facts. In May 1996, DOE commenced its investigation into Monroe Parker's involvement in the initial public offerings of Sonics and Materials, Inc. ("Sonics"), Big City Bagels ("Big City"), and Net Smart Technologies ("Net Smart"). In mid to late 1997, DOE deposed several individuals who were or had been associated with Monroe Parker. In April 1998, staff examiner Claire Catan ("Catan") assumed supervisory responsibility for this investigation. Catan and other DOE staff members were aware in April 1998 that criminal authorities also were investigating Monroe Parker, Angeline and Levitov.[1] In December 1997, NASD Regulation filed a complaint against Monroe Parker and other respondents, including Angeline and Levitov, in a matter unrelated to this investigation (Complaint No. CAF970011).

Angeline and Levitov's attorneys agreed to accept service of DOE's information requests in April 1998,[2] and both respondents originally exhibited willingness to testify. Angeline was scheduled to testify on May 27.[3] Levitov was scheduled to testify on May 28. On May 7, 1998, the New York State Attorney General filed charges against Angeline and Levitov based, in part, on testimony previously provided by Angeline in connection with DOE's investigation of Complaint No. CAF970011. Angeline's counsel thereafter requested that DOE adjourn Angeline's testimony until the criminal matter could be resolved. Levitov's counsel requested a

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[1] Catan testified that she was aware of a pending criminal investigation by federal authorities. New York State authorities also were investigating Angeline and Levitov and relied, in part, on information provided by NASD Regulation in filing charges against the two.

[2] DOE staff appropriately exercised jurisdiction over Angeline and Levitov. Article V, Section 4 of the NASD's By-Laws states that a person who is no longer associated with an NASD member continues for two years to be subject to NASD jurisdiction and may be required to provide information pursuant to Rule 8210.

[3] Angeline's attorney indicated to DOE staff that Angeline was available to testify earlier and specifically requested that he be allowed to testify in late April or early May. DOE refused to move up the date of Angeline's testimony because Catan had been on vacation until late April and needed several weeks upon her return to prepare for the interview.

four-week adjournment of Levitov's testimony "so that the direction of the criminal matters [could] be clarified prior to [the] on-the-record interview."[4] Both respondents argued that, given the existence of state criminal charges, a federal criminal investigation, and the certainty that DOE would turn over transcripts of the interview to criminal authorities, it appeared that DOE sought to interview respondents in order to assist the state and/or federal prosecuting authorities, not to further DOE's own legitimate investigation. DOE refused both adjournment requests, and neither respondent appeared to testify.[5]

Without renewing the requests that respondents appear to testify, DOE issued this complaint on June 22, 1998.

On July 27, 1998, Angeline voluntarily appeared with counsel before the New York State Attorney General and made an "innocence proffer." Angeline contended that the subject matter of the State's investigation involved issues related to both Complaint No. CAF970011 and the underlying investigation in this matter.

In the Fall of 1998, Angeline and Levitov were indicted by a New York grand jury on several counts, some of which involved Sonics, Big City and Net Smart securities (which are the

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[4] Levitov's request for adjournment indicated that Levitov was "more than willing to provide any information sought," but that his counsel was "concerned [about] the memorializing of [Levitov's] statements" at that time and that he had reason to believe that DOE staff was working closely with a prosecuting entity that might have been trying to compel statements from Levitov that would not otherwise have been available to the entity because of Levitov's right to assert his Fifth Amendment privilege against self-incrimination.

[5] Levitov's counsel had indicated to DOE staff that Levitov was discussing a possible settlement with the State of New York, but the negotiations were not fruitful. DOE staff indicated that, before denying Levitov's extension request, it confirmed with the State that such negotiations had ceased.

On a related point, Levitov moved to compel DOE's production of all communications that DOE staff had had with any law enforcement entity regarding DOE's investigation of Levitov. Levitov argued that such documents would contain exculpatory evidence if they demonstrated that DOE's request for Levitov's on-the-record interview and denial of Levitov's adjournment request were not undertaken in the good-faith furtherance of a DOE investigation and, instead, demonstrated that DOE was acting at the behest of state or federal prosecutors. The Hearing Officer noted that only one such document, a print-out of several email messages between DOE staff, existed. The Hearing Officer reviewed the document in camera and concluded that the document did not contain material, exculpatory evidence. The Hearing Officer denied the motion. Respondents have not objected to this ruling on appeal, and for the reasons stated in the Hearing Officer's November 13, 1998 order, we affirm the ruling.

subject of the investigation underlying this matter).[6] Angeline contended that the indictment was based, in part, on documents and analyses provided by NASD Regulation to the criminal authorities.

DOE did not renew its requests that Angeline and Levitov testify until November 12, 1998.[7] Respondents, however, also did not offer to make themselves available to testify and never responded to DOE's November 12 overture.

Proceedings Below. The complaint[8] alleged that DOE had requested that Angeline and Levitov appear for testimony in late May 1998, that neither respondent appeared to testify, and that, by failing to testify, they impeded the prompt and efficient conduct of DOE's investigation and violated NASD Rules. DOE requested that, in accordance with the applicable NASD Sanction Guideline, respondents be barred and fined $25,000 to $50,000 for refusing to testify and for impeding DOE's investigation.

Respondents' defenses were that their refusals to testify on the dates requested did not impede DOE's investigation, that DOE's refusal to continue the dates set for testimony was arbitrary and capricious, and that DOE's request for testimony was not made in furtherance of a legitimate investigation. Respondents argued that DOE was acting at the behest of criminal authorities when it sought respondents' testimony and refused their adjournment requests. Furthermore, Levitov argued that DOE's refusal to grant an adjournment of the scheduled date for his testimony was unfairly designed to force him to choose between forgoing his constitutional rights or exposing himself to a possible bar, thereby making it pointless for him to defend himself in Complaint No. CAF970011.

The Hearing Panel concluded that Angeline and Levitov did not present sufficient evidence to support either their speculation that DOE had acted on behalf of criminal authorities (rather than in furtherance of its own investigation) or their conjecture that DOE had denied the adjournments in order to further the interests of criminal prosecutors. The Hearing Panel found that respondents had failed to raise any legally valid defense and determined that they had violated Conduct Rule 2110 and Procedural Rule 8210. On December 21, 1998, the Hearing

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[6] As of the date of the appeal hearing in this matter, the criminal matter remained pending.

[7] DOE's November request for Angeline and Levitov to testify appeared to have been generated, in part, by assertions in Angeline's pre-hearing submissions that DOE's failure subsequent to May 1998 to request that Angeline and Levitov testify (even after learning of Angeline's "innocence proffer" to the New York Attorney General) strongly suggested that DOE never really needed to interview the respondents in order to further its own investigation.

[8] DOE filed separate complaints against Angeline and Levitov on June 22, 1998. On August 13, 1998, the two proceedings were consolidated.

Panel granted DOE partial summary judgment and found that respondents had violated Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for testimony. The Hearing Panel thereafter conducted a hearing on the issue of sanctions.

With respect to sanctions, the Hearing Panel concluded that a bar was not an appropriate sanction. The Hearing Panel found that the evidence strongly suggested that Levitov and Angeline would have cooperated once the criminal case had been resolved. Although the Hearing Panel acknowledged that respondents were not relieved of their obligation to supply DOE staff with information because they were subject to criminal prosecution, the Hearing Panel concluded that several factors mitigated the severity of respondents' misconduct. The Hearing Panel considered: that respondents had cooperated with DOE's investigation in Complaint No. CAF970011; that they had demonstrated "respect" for Procedural Rule 8210 by responding timely, albeit to indicate that they required adjournments; that respondents did not intentionally conceal information; and that the requested adjournments would not have had a substantial impact on DOE's investigation.[9] The Hearing Panel imposed sanctions well below the range suggested in the Sanction Guidelines. The Hearing Panel censured respondents, fined them $10,000 each, suspended them for 18 months (applied retroactively to begin May 22, 1998), and assessed joint and several costs.

NAC Appeal. On appeal, respondents reiterated their earlier arguments and requested reversal of the Hearing Panel's summary disposition order and/or reduction of the sanctions imposed.[10] DOE argued that the Hearing Panel's imposition of a suspension in lieu of a bar was unjustified and detrimental to NASD Regulation's regulatory function, that the factors considered by the Hearing Panel to mitigate the sanctions should not have been considered as mitigative, and that, if the suspension is upheld, it should not be applied retroactively.

Discussion. Based on the record evidence, we affirm the Hearing Panel's findings of violation, but revise the sanctions imposed.

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[9] In this regard, the Hearing Panel noted that the underlying investigation was two years old, that DOE had already collected numerous documents from Monroe Parker and had interviewed at least five former registered representatives, and that Catan had admitted that a delay of four weeks would not have diminished the value of respondents' testimony.

[10] Angeline moved to adduce on appeal an affidavit signed by his counsel that stated that on May 25, 1999, Angeline appeared before Securities and Exchange Commission ("SEC") staff in response to a subpoena and answered every question posed by SEC staff, including questions regarding his and other individuals' activities at Monroe Parker. The National Adjudicatory Council ("NAC") Subcommittee that heard this matter on appeal determined that Angeline's cooperation with other regulators did not relieve him of his responsibility to comply with Rule 8210. The Subcommittee determined, however, to allow the evidence into the record and considered it in connection with determining the appropriateness of the sanctions imposed. We adopt the Subcommittee's ruling on this motion.

Rule Violations. Procedural Rule 9264 states that a Hearing Panel may grant a motion for summary judgment if there is no genuine issue with regard to any material fact and the party that files the motion is entitled to summary disposition as a matter of law. The moving party (in this case, DOE) bears the burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). If the moving party meets this burden, the opposing party must come forward with specific facts showing that there is a genuine issue in dispute. Matsushita Elec. Indus. Corp. v. Zenith Radio Co., 475 U.S. 574 (1986). Absent such a showing, summary judgment is appropriate.

There is no dispute that NASD Regulation appropriately exercised jurisdiction over respondents, that respondents were notified of the information requests, that their attorneys accepted service of the requests, and that they did not appear on the designated date to provide testimony. These facts establish a violation of Rule 8210. The only issue remaining therefore is whether, as a matter of law, respondents have raised valid defenses to their refusals to appear for testimony. Because we find that they have raised no valid defenses, we conclude that the Hearing Panel's summary disposition order was appropriate.

Respondents argue that they would have cooperated with DOE's investigation if DOE staff had agreed to reschedule their testimony.[11] Although it appears that DOE staff may have acted somewhat rigidly in refusing to reschedule respondents' testimony (particularly with respect to Levitov, who had requested an adjournment of only four weeks), staff's actions cannot excuse respondents' failure to provide testimony.[12] The respondents were not entitled as a matter of right to adjourn the dates set for their Rule 8210 testimony, regardless of New York State's filing of criminal charges. As persons associated with a member firm, respondents had a duty to cooperate fully and promptly with NASD Regulation's requests. In re Brian L. Gibbons, 52 S.E.C. 791 (1996). Associated persons are not free to impose conditions on their responses to NASD Regulation's inquiries, including determining the appropriate time for responding to such requests. In re Charles R. Stedman, 51 S.E.C. 1228 (1994); In re Michael David Borth, 51 S.E.C. 178 (1992). Furthermore, respondents' desire to resolve the criminal proceedings or, as Levitov requested, to clarify the direction of the criminal matter, provides no excuse for their failure to appear to testify. See In re Darrell Jay Williams, 50 S.E.C. 1070 (1992) (the possibility of litigation in connection with the underlying transaction provided no excuse for respondent's failure to testify).

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[11] Indeed, Angeline originally sought to move up the scheduled date for his testimony to late April or early May. Levitov had requested an adjournment of only four weeks.

[12] Although we conclude that the staff's refusal to grant adjournments does not excuse respondents' misconduct, we also find that, under the unique circumstances of this case, the staff's refusal should be considered as a mitigative factor with respect to sanctions.

Respondents also argue that DOE's requests were not made in furtherance of a legitimate NASD investigation. We find that this argument is factually unsupported and that, in any event, respondents in failure-to-respond cases cannot raise the purpose of the information requests as part of a substantive defense. DOE commenced its investigation into potentially fraudulent activities at Monroe Parker in May 1996. DOE first gathered documents to develop and understand the state of the market in the securities at issue during the period under review. Thereafter, DOE began taking testimony from employees of Monroe Parker. DOE contended that, after it had built a base of information regarding the initial public offerings in the three securities at issue, it sought to obtain the testimony of individuals who ran the firm (Monroe Parker's president, vice president, director of trading (Angeline), and director of compliance (Levitov)).[13] DOE asserted that it sought to question Angeline and Levitov about their own conduct and the conduct of others at the firm and that, although the investigation may have proceeded slowly because of turnover in Enforcement staff, the investigation was ongoing until respondents refused to cooperate. DOE staff contended that respondents' refusals essentially closed the investigation. We find that DOE's requests for Angeline and Levitov's testimony were made in furtherance of a legitimate investigation.

Furthermore, the fact that state and federal criminal authorities also had commenced similar investigations or that DOE may have shared information with those authorities does not alter our finding that DOE had commenced and was conducting its own official investigation. NASD Regulation, a self-regulatory organization, is not obligated to consolidate its enforcement efforts with state or federal governmental entities, and was therefore not required to postpone its investigation in this matter or its interviews of respondents because of pending criminal investigations or charges. See District Business Conduct Committee for District No. 9 v. Nicholas A. Rudi, Complaint No. C9A970019 (NAC Dec. 22, 1997) (NASD Regulation has no obligation to postpone its regulatory efforts because of actions taken by other regulators); In re Dan Adlai Druz, 52 S.E.C. 416 (1995) (Exchange was not obligated to stay its proceeding until the resolution of a related criminal matter), aff'd, 103 F.3d 112 (2d Cir. 1996).

As supposed evidence of DOE staff's bad faith, respondents point to DOE's failure, after the initial request in April, to renew the request that respondents appear to testify. We disagree that the staff's actions demonstrate bad faith. Given Angeline and Levitov's reasons for requesting adjournments of the scheduled dates, i.e., pending criminal cases, DOE staff had no reason to believe that respondents would react any differently to subsequent requests while the criminal matters were pending. See Farni, supra (rejecting respondent's argument that the NASD erred in not repeating its request for information before issuing a complaint against the respondent). Furthermore, respondents overlook an obvious flaw in their reasoning. They could have come forward and testified at any point in this process. Even Levitov, who requested a four-week adjournment, never came forward after the four weeks had elapsed. Indeed, to this

[13] DOE also was unable to secure the testimony of Monroe Parker's president and vice president.

date, respondents have not provided the requested testimony, even after DOE staff repeated the request in November 1998.

Levitov also argues that DOE's refusal to grant an adjournment was designed to force him to choose between forgoing his right to avoid self-incrimination or exposing himself to a bar, thereby making it useless for him to defend himself in Complaint No. CAF970011. We reject this argument. At the outset, we note that NASD Regulation is charged with investigating potential wrongdoing in the securities industry. It cannot refrain from conducting one investigation simply because another proceeding is pending against the individual or firm under investigation. To do so would subvert NASD Regulation's regulatory function. Furthermore, it is well established that the self-incrimination privilege does not apply to questioning in proceedings by self-regulatory organizations, since such entities are not part of the government. In re Vladislav Steven Zubkis, Exchange Act Rel. No. 40409 (Sept. 8, 1998); Druz, supra.

We next address respondents' argument that their refusals to testify did not impede the underlying investigation. Respondents cannot excuse their failures to respond with the assertion that NASD Regulation did not need the information requested. See Borth, supra (respondent's refusal to respond because he did not believe that the NASD needed the information provided no excuse for his failing to respond). Furthermore, we need not find that respondents impeded the underlying investigation in order to find that they refused to testify in violation of Rule 8210.

The purpose of Rule 8210 is to provide a means for the NASD, in the absence of subpoena power, to obtain information from its members in the course of its investigations. In re Daniel C. Adams, 47 S.E.C. 919 (1983). A registered person's failure to comply with this rule subverts the NASD's ability to carry out its regulatory functions. In re Edward C. Farni, 51 S.E.C. 1118 (1994). "Since the NASD lacks subpoena power, it must rely heavily upon Rule 8210 in connection with its obligation to police the activities of its members and associated persons." In re Joseph P. Hannan, Exchange Act Rel. No. 40438 (Sept. 14, 1998), at 5.

In sum, we conclude that the evidence supports our finding that Angeline and Levitov failed and refused to respond to NASD Regulation's requests for on-the-record interviews and that their refusals contravened high standards of commercial conduct and just and equitable principles of trade, and violated Conduct Rule 2110 and Procedural Rule 8210.[14]

[14] The Commission consistently has maintained that a violation of another NASD rule constitutes a violation of the requirement to adhere to "just and equitable principles of trade" and therefore contravenes Rule 2110. In re William H. Gerhauser, Exchange Act Rel. No. 40639 (Nov. 4, 1998).

Sanctions. With respect to sanctions, we have determined to eliminate the censures[15] and the $10,000 fines,[16] affirm the Hearing Panel costs, and amend the suspensions to run prospectively for one year. At the end of one year, each respondent's suspension will become a bar in all capacities if the respondent has not fully and unconditionally provided NASD Regulation staff with the requested on-the-record testimony. If either respondent appears as requested and fully and unconditionally testifies before the expiration of the one-year suspension, he must report in writing to the NAC (via the NASD Regulation Office of General Counsel) that he has done so. At the end of the one-year suspension, if either respondent has not fully and unconditionally testified, DOE is ordered to report in writing to the NAC (via the NASD Regulation Office of General Counsel) as to the status of DOE's investigation and to provide an indication as to each respondent's efforts to appear to testify.[17] We also impose appeal costs.[18]

At the outset, we note that Procedural Rule 8210 is widely accepted as one of NASD Regulation's most important tools for investigating potential wrongdoing, particularly in the absence of subpoena power. Thus, we find that the 18-month retroactive suspensions imposed by the Hearing Panel (which would end in November 1999) are insufficiently remedial in that they would not encourage respondents to cooperate with NASD Regulation staff and would not preclude respondents from participating in the industry unless and until they respond to the staff's inquiries. We therefore conclude that one-year suspensions and potential bars are necessary to remedy sufficiently respondents' misconduct.

While acknowledging the gravity of respondents' misconduct, we nonetheless have found that compelling mitigating factors exist. We note that our conclusions are based on the unique

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[15] Consistent with our newly adopted policy regarding censures, we have eliminated the censures imposed by the Hearing Panel. Under this new policy, we have determined not to impose censures in cases in which respondents are barred or suspended, since bars and suspensions are severe sanctions that already signify the NASD's disapproval of a respondent's misconduct. See Notice to Members 99-59 (July 1999).

[16] In view of the one-year suspension and potential bar that we have imposed, we have determined that no further remedial purpose would be served by the imposition of fines.

[17] Copies of all reports required to be filed with the NAC must be provided to all other parties to this proceeding.

[18] In reaching our conclusions with respect to sanctions, we have considered all of the factors listed in the applicable Sanction Guideline and find that, taken as a whole, these factors require imposition of the aforementioned sanctions. The sanctions are below the range recommended in the Guideline, but for the reasons outlined in this decision, we feel that the sanctions are appropriate in the public interest. See Guidelines (1998 ed.) at 31 (Failure to Respond or Failure to Respond Truthfully, Completely, or Timely to Requests Made Pursuant to NASD Procedural Rule 8210).

circumstances of this case and should not be applied generally to cases involving a respondent's violation of Procedural Rule 8210.

We acknowledge that registered individuals are required by the NASD Rules to cooperate in NASD Regulation investigations and that staff is not required to grant continuances of dates scheduled for on-the-record testimony. Nonetheless, under the unique circumstances of this case, we find it appropriate to consider as a mitigating factor DOE staff's refusals to grant respondents' continuance requests. Catan stated that a four-week adjournment of Levitov's testimony would not have diminished the value of the testimony. The investigation in this matter had been pending since May 1996, and respondents had cooperated in a recent, similar DOE investigation. Respondents suspected that DOE staff had shared information uncovered in this and other DOE investigations with criminal authorities and feared that their on-the-record testimony similarly might be made available to state and federal criminal authorities. Additionally, respondents had been willing to cooperate prior to the inception of a parallel criminal proceeding. None of these factors excuse respondents' misconduct, and any one of these factors, taken alone, may not be mitigating. Placed in the context of this case as a whole, however, we believe that staff acted rigidly when it denied respondents' requests for continuances. The investigation already had been pending since May 1996, and staff has not suggested that the investigation would have been compromised if a four-to-six-week adjournment had been granted. We acknowledge and concur with NAC and SEC precedent that indicates that none of the factors listed excuses respondents' misconduct, but we find that in this case respondents' unique and temporary circumstances in light of their recent arrests and indictments mitigate the gravity of respondents' refusals to testify.[19] For this reason, we have determined to depart from the Sanction Guidelines by not imposing unconditional bars and fines.

By concluding that DOE staff's refusal to grant respondents' continuance requests should, in this case, be considered as a mitigating factor in our determination of sanctions, we do not intend to depart from the long line of NAC and SEC cases that state that respondents may not second-guess the NASD's need for information and may not impose conditions on their responses. Similarly, we are not departing from our previous holdings that NASD Regulation has no obligation to postpone investigations because of actions taken by other regulators or criminal authorities. To do so would, in our view, severely undercut the usefulness of Procedural Rule 8210. Indeed, we also do not suggest that a respondent's cooperation with a DOE investigation in one case should excuse the respondent's failure to cooperate in another investigation. A registered person's failure to respond to a request for information pursuant to Procedural Rule 8210 compromises the NASD's ability fully to investigate potential wrongdoing, regardless of whether the registered person cooperated in a different investigation. We find,

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[19] We note that Levitov requested a four-week extension and that Angeline requested an open-ended extension. We do not find that staff should have granted Angeline's request for an open-ended extension, but we conclude that a limited extension for a brief period, absent compelling reasons for insisting on expediency, might have been appropriate.

however, under the unique facts of this case, that the staff's refusal to grant respondents even a few weeks' time supports a departure from the sanction range recommended in the Guidelines.[20]

Accordingly, Angeline and Levitov are each suspended in all capacities for one year. At the end of one year, each will be barred if he has not fully and unconditionally provided NASD Regulation staff with on-the-record testimony. At the end of the one-year suspensions, if either respondent has not fully and unconditionally testified, DOE is ordered to report in writing to the NAC as to the status of DOE's investigation and to provide an indication as to each respondent's

[20] Although we have determined that significant mitigating factors exist in this case, we do not concur with the Hearing Panel that certain other factors should be considered as mitigative. We do not consider mitigative the fact that respondents answered timely by requesting an adjournment of the scheduled interviews. Rule 8210 indicates that Association staff may require a person to provide information and/or to testify. A request for an adjournment of a scheduled appearance for testimony, regardless of the reason for the request, is not a response and should not be considered as mitigative of the failure to respond. Treatment of an adjournment request as mitigative of the underlying misconduct would encourage individuals who are not inclined to respond, first to request an adjournment or continuance in order to reduce the sanction that ultimately may be imposed for a failure to respond.

The Hearing Panel concluded that respondents did not intentionally conceal information. Unlike the Hearing Panel, we are not in a position to conclude that respondents did not intentionally conceal information. While respondents have not answered questions untruthfully and have indicated that they possess no documents responsive to DOE's request, they have not provided on-the-record testimony, as requested. As such, it is difficult to determine if the Hearing Panel's conclusion is correct.

We next address the three cases cited by the Hearing Panel in support of the sanctions that it imposed. The Hearing Panel cited three cases in support of its proposition that sanctions lighter than those requested by DOE (a bar and a fine of $25,000 to $50,000) should be imposed. At the outset, we note that in two of the three cases (Farni, supra and District Business Conduct Committee for District No. 8 v. Martin Patrick Flanagan, III, Complaint No. C8A930038 (NAC Jan. 5, 1996)), the respondents ultimately responded to the information requests or provided the requested testimony, albeit not in a timely manner. In contrast, neither Angeline nor Levitov has appeared before NASD Regulation to testify with respect to this investigation. The third case, In re Joseph P. Hannan, Exchange Act Rel. No. 40438 (Sept. 14, 1998), also is distinguishable from the case presently before us in that the respondent in that matter: had cooperated with NASD Regulation in the underlying investigation; had provided a partial response; was not registered (although was associated) with a member firm; was confused as to his responsibilities to respond further; and no longer was employed in the securities industry and therefore had difficulty leaving work to appear in person to respond to questions. Thus, we believe that these three cases are distinguishable from the case before us and that they are not instructive as to sanctions in this matter.

efforts to appear to testify. The suspensions imposed herein shall commence 30 days after issuance of this decision. Angeline and Levitov jointly and severally are assessed Hearing Panel costs of $1,042.50 and each are assessed individual appeal costs of $1,172.75.[21]

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Senior Vice President and Corporate Secretary

[21] 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, the registration of any person associated with a 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 revoked for non-payment.