

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 1

Complainant,

vs.

Leonard John Ialeggio
Danville, California,

Respondent.

DECISION

Complaint No. C01930044

District No. 1

Dated: July 3, 1997

In a decision dated October 31, 1996, the Securities and Exchange Commission ("SEC" or "the Commission") affirmed findings of violation of NASD rules made by the NASD's National Business Conduct Committee ("NBCC") concerning Leonard John Ialeggio ("Ialeggio"). The Commission remanded the matter to the NBCC for reconsideration of an appropriate sanction.

The SEC affirmed the NBCC's findings that Ialeggio requested and received from his employer \$9,868.50 in reimbursement for travel expenses he did not incur, as well as the findings that Ialeggio induced his employer to pay \$35,000 for personal country club initiation fees when he was not entitled to such payment, in violation of Article III, Section 1 of the NASD Rules of Fair Practice (now Conduct Rule 2110). The SEC remanded the matter for reconsideration of sanctions because of a reference in the NBCC decision to uncharged misconduct.

Upon consideration of the briefs of the parties in the NBCC proceedings on remand, we reimpose the sanctions which we previously affirmed on appeal from the decision of the District Business Conduct Committee for District No. 1 ("DBCC"). We thus reaffirm Ialeggio's censure,

\$15,000 fine, costs of \$1,265.90, and requirement to requalify as a general securities representative within 90 days.

Procedural History

Background. Ialeggio, formerly an executive for Home Life Insurance Company ("Home Life"), was employed by W.S. Griffith & Co., Inc., a member of the Association and a subsidiary of Home Life, from May 1976 to September 5, 1990. Ialeggio is not currently employed by or registered with a member of the Association.

In 1979, Ialeggio became the manager of the San Francisco office of Home Life. In 1987, Ialeggio agreed to become Home Life's Senior Vice President of Marketing, and to relocate to New York, with the understanding that he was to retain his San Francisco office and return to it at the end of two years. Ialeggio began his service as Senior Vice President of Marketing on October 1, 1987, and served in that capacity until October 1989, when he returned to San Francisco.

DBCC Action. The complaint, issued on December 3, 1993, was in two causes. Cause one alleged, and the DBCC found, that from September 1988 through February 1990, Ialeggio submitted expense vouchers to Home Life and received payment for expenses totaling \$8,502.50, as set forth in Schedule A to the complaint, to which he was not entitled.¹ Cause one further alleged that on or about July 31, 1989, Ialeggio induced Home Life to pay \$35,000 for his country club dues at Blackhawk Country Club ("BCC"), a payment to which he was not entitled. Ialeggio was found by the DBCC to have engaged in violations of Article III, Section 1 (now Conduct Rule 2110), as alleged in cause one.

Cause two alleged that in or about May 1989, in connection with the payment of Ialeggio's country club dues by Home Life as described in cause one, Ialeggio provided to Home Life a statement reflecting that the payment involved a placement fee, on letterhead of BCC which had been altered to read merely "Blackhawk." Ialeggio was charged with violations of Article III, Section 1 of the Rules (now Conduct Rule 2110). Following its consideration of all of the evidence, the DBCC dismissed the allegations of cause two.

In a decision of the DBCC dated May 19, 1995, Ialeggio was censured, fined \$15,000, ordered to requalify by examination as a general securities representative within 90 days of the date of the decision, and assessed costs of \$1,265.90. An appeal followed.

¹The Schedule to the complaint showed that, in fact, improper double payments of \$9,868.50 were made.

NBCC Action. In a decision dated December 7, 1995, the NBCC affirmed the DBCC's findings of violation as to cause one, its dismissal of the allegations of cause two, and the DBCC's sanctions.

In a discussion which the Commission subsequently criticized as going beyond the allegations of cause one of the complaint, the NBCC decision stated as follows:

As to what we consider the more serious allegation of cause one, it is clear that Ialeggio, lacking corporate agreement to reimburse him for about \$148,000 in pre-existing branch office expenses, undertook by means of self-help to even the score. As he admitted in the appeal hearing, Ialeggio directed, in his capacity of Senior Vice President of Sales, that credits totaling \$148,000 be entered in his contingency account. These credits were never authorized by Home Life, and Ialeggio has not produced a scintilla of evidence apart from his own testimony that they were. As counsel for the respondent explained, once the proper expenses of the branch office were satisfied, any surplus could be withdrawn at year end by the branch manager as additional compensation. We thus believe that by directing the entry of the unauthorized credits, Ialeggio increased his potential personal compensation by a total of \$148,000.

The question remained how to take advantage of the unauthorized credits. While the DBCC found insufficient evidence to conclude that Ialeggio altered the two BCC invoices to defraud his company, he did not deny that he submitted the bills, which totaled \$35,000, for payment. We note that the BCC initiation fees bought access to facilities in an exclusive and highly desirable upper-bracket residential development, suggesting that in causing the unauthorized credits to the contingency account to be made and in submitting the misleading BCC invoices, Ialeggio was consciously operating to benefit his personal interest rather than any purported interest of his company. We believe that in submitting the bills, which purported to cover "Placement Fees," a type of business expense with specific legitimate meaning within the industry and the company, Ialeggio sought to conceal what he knew would, if fully disclosed, be impermissible and unlikely to be approved in a routine manner.

The NBCC affirmed what it characterized as the "relatively lenient" sanctions imposed by the DBCC. The NBCC believed that the sanctions were appropriate given the gravity and number of the respondent's violations, his lack of contrition, and in order to further the Association's

regulatory policies of special and general deterrence. Ialeggio then sought Commission review of the NBCC decision.

Commission Decision. On review, the Commission affirmed the NBCC's determination that Ialeggio had submitted vouchers and collected payments for \$9,868.50 in travel expenses which had previously been paid by Home Life. The Commission rejected Ialeggio's contention that he reasonably could have overlooked these overpayments, citing the DBCC's observation that "over the [one-and-one-half-year] period of time he must have realized that he wasn't paying the expenses himself, yet was being reimbursed for them."

The Commission further observed that between April 26, 1989, and September 22, 1989, Ialeggio had arranged for the company to transfer \$148,875 to the contingency override account of the San Francisco branch office which he managed, and that Ialeggio admitted that he had thereafter submitted to Home Life two invoices for a total of \$35,000 for payment of a BCC initiation fee for himself and his family. The Commission concluded that by submitting these vouchers for payment through the contingency override account rather than directly to Home Life, Ialeggio used "back door" means to obtain payment of personal expenses which otherwise would have been rejected by Home Life.

Having affirmed the NBCC's findings of violation, the Commission took issue with the portion of the NBCC decision quoted above, viewing the NBCC's discussion of the origins of the funding of the contingency override account as "a violation not charged in the NASD's complaint." Noting that the NBCC had highlighted this "found-but-not-charged misconduct" in sustaining the DBCC's "relatively lenient sanctions," the Commission remanded the matter to the NBCC for reconsideration of an appropriate sanction.

NBCC Proceedings on Remand

This matter was considered on the basis of the record, as supplemented by the briefs of the parties, on January 30, 1997, before a Subcommittee of the NBCC. Although the respondent requested oral argument, we have determined that the limited issues before us are capable of resolution based on the briefs of the parties.

Respondent's Argument on Remand. Counsel for the respondent submitted an initial brief and a reply to the staff's brief which sought to reargue Ialeggio's view of the facts in extenuation of the violations and in mitigation of the sanctions of the NBCC. Among other things, counsel reiterated that Ialeggio had been unaware of the fact that he was receiving checks for travel expenses for which he had already been reimbursed, and that his secretary and other Home Life officials had failed to notice the overpayments.

As to sanctions, counsel for Ialeggio argued that the NBCC's sanctions had established a "ceiling" that could not be exceeded on remand, and that any sanctions imposed that were not less

severe than previously imposed must be considered punitive rather than remedial. Counsel maintained that the NBCC had wrongly considered uncharged misconduct involving "purported misappropriation" of \$148,000, an amount far exceeding the \$44,000 figure which Ialeggio had offered to repay to Home Life almost six years earlier. Counsel argued that the NASD Sanction Guidelines ("Guidelines") for "Recordkeeping" and "Forgery and/or Falsification of Records," were most closely analogous to the misconduct herein, and each authorized a fine of as little as \$2,500. Counsel also criticized the requirement that Ialeggio requalify by examination as "whimsical at best," owing to the respondent's lack of prior disciplinary history and the fact that the findings of violation do not relate to any substantive requirement tested in the Series 7 examination. Counsel thus argued that the sanctions should be reduced to eliminate the fine and requalification requirement in light of the totality of the circumstances, including the number of violations (one), the absence of prior misconduct, the lesser perceived gravity of the misconduct as a result of the SEC's action, and the requirement that NASD sanctions be remedial.

Staff's Argument on Remand. Staff's brief noted that the SEC had remanded the matter solely as to sanctions, and staff argued that the "relatively lenient" sanctions of the DBCC and NBCC should be sustained on reconsideration.

Addressing the rationale for remand, the staff identified the Commission's objection to the NBCC's purported reliance on the method used by Ialeggio to obtain the credit in his office contingency account to pay the BCC initiation fee. The staff observed that the complaint did not allege, the staff did not argue, and the DBCC did not find that the activity in obtaining the credits constituted violations, but merely explained the method Ialeggio used to effect the improper payment of his country club initiation fee. The staff thus argued that the sanctions imposed by the DBCC were not based on the \$148,000 in credits, and thus should be sustained.

In reply to Ialeggio's arguments, the staff maintained that the Commission's remand did not require lesser sanctions, only reconsideration of sanctions without reference to the \$148,000 in credits. The staff also urged, in opposition to the respondent's position, that the NASD Sanction Guideline for "Improper Use of Funds" not rising to the level of conversion be employed as the most closely analogous guideline, authorizing a fine of between \$2,500 and \$20,000, a suspension in all capacities from six months to a year, and requalification by examination. The staff maintained that under this guideline, the DBCC sanctions were in fact lenient, and the staff invited the NBCC to consider whether the sanctions imposed were adequate under the circumstances.

Discussion

We observe at the outset that the Commission remanded this proceeding solely for the purpose of requiring reconsideration of sanctions. Given that the Commission has sustained the findings of violation alleged in the complaint, we believe that it is not necessary to revisit those

findings. See In re Bruce Martin Zipper, Exchange Act Rel. No. 35606 (April 17, 1995); In re William Jackson Blalock, Exchange Act Rel. No. 37955 (November 15, 1996).

In view of the nature of the violations in this case and in careful reconsideration of the appropriate sanctions, without reference to any uncharged matters, we find it necessary to reaffirm the sanctions of the DBCC. Like the DBCC, we find the misconduct in this case to be very troubling. As found by the SEC, Ialeggio obtained funds from his employer to which he was not entitled, by means which cannot be condoned.

We note that throughout these proceedings, Ialeggio has displayed neither the understanding that his conduct with respect to expense over-payments and the payment of the BCC initiation fees was improper, nor remorse for his actions. To the contrary, he has attempted to minimize the gravity of Home Life's losses and shift blame for them, by arguing that Home Life was responsible for the double payment of his travel expenses, and that he was entitled to have Home Life pay his country club initiation fee. The Commission has rejected these arguments in the most explicit terms, and we agree. We also give little weight to the respondent's argument that he offered to repay these sums once his misconduct was discovered, but was thwarted because Home Life refused to accept repayment in resolution of their differences. We find that Home Life was under no obligation to accede to Ialeggio's wishes in this regard, and that the company's tactical position cannot be viewed as forestalling the respondent's ability to effect restitution unilaterally. No party to this proceeding has argued that restitution has been made in this matter.

We cannot credit Ialeggio's argument that the SEC's decision limits the range of sanctions we might consider. Similarly, we do not believe that the Commission decision in this matter found misconduct of lesser gravity than that originally alleged and found by the DBCC, or directed us to do anything more on reconsideration than to impose sanctions without reference to uncharged misconduct.

We note that no NASD Sanction Guideline is expressly applicable to the serious misconduct in this matter. The misconduct herein, cannot be trivialized as a mere recordkeeping violation. Ialeggio's actions were a flagrant breach of his duty towards his employer and constituted a serious violation of high standards of commercial honor and just and equitable principles of trade under Article III, Section 1 of the Rules (now Conduct Rule 2110). We thus find no reason to reduce the sanctions imposed by the DBCC. We find that our conclusion is supported, notwithstanding the respondent's lack of disciplinary history, by the injury to the employer, the monetary amounts involved, the fact that two discrete instances of misconduct were alleged and proven, the respondent's lack of remorse and continued claim of justification for his misconduct, and the necessity for specific and general deterrence.

Accordingly, Ialeggio is censured, fined \$15,000, assessed costs of \$1,265.90, and required to requalify by examination as a general securities representative within 90 days of the date of this decision.²

On Behalf of the National Business Conduct Committee,

Joan C. Conley, Corporate Secretary

²We 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.