BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. John E. Pelletier Hartland, WI, Respondent.	DECISION Complaint No. 2021071094401 Dated: October 1, 2025

Respondent executed unauthorized trades in his customer's account.
Held, findings and sanctions affirmed.

Appearances

For the Complainant: Jennifer L. Crawford, Esq., Nicholas Pilgrim, Esq., Financial Industry Regulatory Authority

For the Respondent: James L. Kopecky, Esq., Howard J. Rosenburg, Esq.

Decision

John Pelletier appeals an Extended Hearing Panel decision finding that he engaged in unauthorized trading in violation of FINRA Rule 2010 when he made trades based on instructions from his customer's ex-wife, who lacked trading authority over the account. For this misconduct, the Hearing Panel fined Pelletier $10,000 and suspended him from associating with any FINRA member in any capacity for three months. After an independent review of the record, we affirm the Hearing Panel's findings of liability and the sanctions it imposed.

I. Introduction

This case involves allegations that Pelletier executed transactions in a customer's account at the behest of the customer's ex-wife (who was also the customer's long-term partner) without the customer's authorization. It is undisputed that Pelletier executed trades at the direction of the customer's partner without first obtaining the customer's written authorization, and that Pelletier did not obtain the customer's oral authorization for each of the transactions at issue. Pelletier claims, however, that he executed the trades based on a blanket oral authorization from the

customer to accept trade instructions from the customer's partner, which Pelletier believed permitted him to engage in the trading at issue. While the firm's written policies and procedures required that representatives obtain a signed third party trading authorization prior to executing third party trades, a purported exception to the firm's written policy allowed representatives in the call center where Pelletier worked to accept oral authorization for third party trades, but only on a per-call basis, and only when certain conditions were met.

The customer flatly denied granting his partner any authorization whatsoever to trade in his account. The Hearing Panel, after hearing the customer's testimony and observing his demeanor, credited his assertion that he never provided Pelletier oral authority to effect transactions to distribute funds from his retirement account at his partner's direction. Moreover, the other evidence supporting a finding of unauthorized trading, consisting primarily of recorded phone calls relating to the customer's account, does not reflect any such authorization from the customer. Based upon the customer's credible testimony that he did not authorize the transactions at issue, we conclude that Pelletier engaged in unauthorized trading, in violation of FINRA Rule 2010. We make this finding notwithstanding certain inconsistencies and potential gaps in the record, which do not amount to substantial evidence necessary to overturn the Hearing Panel's demeanor-based credibility determination.

For this misconduct, we impose a three-month suspension in all capacities and a $10,000 fine. Under the circumstances, we find that these sanctions are appropriately remedial.

II. Pelletier's Background

Pelletier entered the securities industry in 2000 and first registered with FINRA in 2001. During the relevant period, Pelletier was associated with BMO Harris Financial Advisors, Inc. ("BMO Harris"), as a general securities representative and a general securities principal. In April 2021, Pelletier associated with LPL Financial LLC ("LPL"), where he is currently employed.[1]

III. Facts

A. Pelletier's Role at BMO Harris

From May 2015 through September 2018, Pelletier worked as a registered representative at a BMO Harris call center in Brookfield, Wisconsin. The call center primarily handled customers investing less than $100,000. Pelletier assisted customers that wanted to roll over their retirement plans into individual retirement accounts ("IRAs"). Pelletier could also help customers obtain distributions from their IRAs or make changes to their investment portfolios.

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[1] In April 2021, BMO Harris switched clearing firms to LPL and, as part of that, Pelletier voluntarily resigned from BMO Harris in connection with a mass transfer of financial advisors from BMO Harris to LPL.

Twelve registered representatives, including Pelletier, worked in the call center. Customers contacted the call center using one of two general telephone numbers, after which they were transferred to a call center representative. Established customers could also call representatives directly. Pelletier was one of four financial advisors that comprised the call center's sales team, while the remaining eight representatives made up the service team. As a member of the sales team, Pelletier received an annual salary, as well as quarterly bonuses based on assets he brought into the firm. His pay was not based on commissions or fees, and he received no compensation for processing distributions from customers' retirement accounts.

In 2017 and 2018, Pelletier handled between 10 and 20 calls per day. Pelletier testified that it was loud in the call center, with multiple representatives taking phone calls from low-walled cubicles.

B. BMO Harris's Policies and Procedures

BMO Harris's written policies and procedures required representatives to obtain a signed third party trading authorization before accepting trades from someone other than the customer. There was evidence, however, that, pursuant to an unwritten exception to the written policies and procedures, call center representatives could accept oral third party trading authorization on a per-call basis if they first verified the customer and obtained the customer's permission to execute trades directed by a third party, as set forth below.[2]

1. BMO Harris's Written Policies and Procedures

Every year he was at BMO Harris, Pelletier attested electronically that he had access to and understood the firm's policies and procedures. BMO Harris's attestation process required representatives to complete several training modules. Pelletier acknowledged that, during the relevant period, BMO Harris's broker-dealer compliance policy manuals prohibited registered representatives from accepting trades from a third party in the absence of written authorization. For example, the firm's policy manuals provided that "[o]rders should be accepted only from the beneficial owner of an account or their authorized agent." The manuals defined authorized agents as "anyone holding third-party power to act on the customer's behalf such as a trustee, court-appointed guardian, authorized investment advisor, etc." The manuals warned registered representatives that "orders should not be accepted from a husband, on behalf of his wife's account, unless the wife has signed a trading authorization giving her husband authority to act on her behalf." Similarly, the manuals both stated, "[w]hen a third party . . . will give instructions regarding orders, disposition of funds, or other actions involving an account, [BMO Harris] must have a signed third-party trading authorization . . . signed by the principal of the account and the

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[2] As discussed in greater detail below, our finding that Pelletier engaged in unauthorized trading is based on the customer's credible testimony that he never provided any authorization at all for his partner to direct trades in his account and is irrespective of the fact that Pelletier's conduct also violated his firm's policies and procedures. We nonetheless find the firm's policies and procedures provide helpful background information and are relevant to our consideration of both liability and sanctions.

third party." The manuals provided as an example of a third party account "an account for a wife whose husband will give instructions regarding his wife's account" and specified that the signed trading authorization should be received before accepting trades from a third party.

BMO Harris's broker-dealer compliance policy manuals likewise contained warnings against unauthorized trading, including: "No employee may enter a transaction before contacting the owner of the account (or the authorized agent for the owner) unless the employee has specific written authorization to act on the customer's behalf"; "Engaging in unauthorized transactions subjects the employee to regulatory and Firm discipline which may include fines and/or termination depending on the seriousness of the violation"; "R[egistered] R[epresentative]s must also avoid 'inadvertent' unauthorized transactions such as accepting an order from a husband for a wife's account where the wife has not signed a trading authorization giving her husband authority to trade on her behalf"; and "Doing a customer a 'favor' by entering an order when he or she cannot be reached may be construed as good customer service by the R[egistered] R[epresentative] but in reality is a rule violation."

Pelletier testified that he received training on BMO Harris's policy regarding from whom he could accept trade instructions, and that he was familiar with the applicable policies and procedures at all relevant times.

2. The Call Center's Unwritten Exception to the Requirement that Third Party Trading Authorizations Be in Writing

Pelletier testified that BMO Harris's written policies and procedures covered all financial advisors, the majority of whom worked in the firm's affiliated bank, and there were not separate policies and procedures specifically for financial advisors in the call center. According to Pelletier, training for the call center involved sitting with a more experienced registered representative for two days, followed by less than an hour of role playing.

Pelletier testified that, when a caller asked him to execute a transaction, he first reviewed the appropriate account file to determine whether the caller was an authorized party. He testified, however, that if the caller was not an authorized party, in contrast to BMO Harris's written policies and procedures, call center representatives could accept third party trade instructions without written authorization from the customer if the representative first verified the account holder and received their oral authorization to take trade instructions from the third party. Brian Bonewell, Pelletier's supervisor from May 2015 to September 2018, confirmed the call center's unwritten exception to the written policies and procedures, adding that, after verifying the customer, representatives had to obtain the customer's explicit permission both to speak with the third party about the account and receive trade instructions from them. He also added that, after receiving instructions from the third party, the representative was required to speak to the customer again to confirm the trade. Representatives verified account holders by asking for information such as the account holder's social security number, birthday, and employer.

Bonewell testified that representatives were required to repeat this process for each call. Bonewell stated that he "would expect it's generally understood from [BMO Harris's] contact center associates [that receipt of oral authorization from the customer to accept trade instructions

from third parties] is a per call experience, not a standing verbal instruction." Bonewell confirmed, however, that the practice of allowing call center representatives to rely on oral third party authorizations was not documented in BMO Harris's written policies and procedures, nor was it part of the call center training. Bonewell stated that call center representatives learned about this exception during team meetings and that compliance personnel served as an internal resource for registered representatives who needed advice regarding accepting trades from third parties. He explained that line managers or "management compliance" communicated the oral authorization exception to the call center's registered representatives only in response to specific questions from the representatives.

BMO Harris recorded all phone calls to and from the call center. Pelletier understood that management reviewed call recordings for quality and training purposes. Bonewell confirmed that all registered representatives understood that BMO Harris recorded their calls and could therefore easily identify potential misconduct.

C. Customer DP

Customer DP retired in 2015. Prior to his retirement, he worked on an assembly line at a manufacturing plant for 25 years. DP married NP in the mid-1970's, and they had two children together. They divorced 12 years later. At some point prior to 2015, DP and NP reunited and resumed living together but did not remarry. They continued living together during the relevant period. DP testified that, during that time, he relied on NP to handle all his finances other than his IRA, including managing the couple's joint checking account, which was his sole checking account, paying their bills from the joint checking account, and completing his tax returns.[3]

DP had a 401(k) account at BMO Harris through his employment at the manufacturing plant. On April 30, 2015, DP contacted BMO Harris about rolling over his retirement account into an IRA. Pelletier, in his capacity as a registered representative at the call center, helped DP with the rollover. In this initial call, Pelletier spoke only with DP, and there was no mention of NP. DP did not express any difficulty hearing or understanding Pelletier, and there was no other indication that DP was hard of hearing.

In May 2015, DP, with assistance from Pelletier, opened his IRA with a starting balance of about $68,000 and established monthly distributions of $500 from the IRA to the joint checking account he shared with NP. Included with the authorization to deposit the distributions into their joint checking account was a copy of a voided check that listed both Ps' names on the

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[3] In February 2016, NP called BMO Harris with questions about a tax form relating to DP's retirement account as she was preparing DP's tax return. She spoke with someone identified only as "Heather" in BMO Retirement Services. Before discussing the account with NP, Heather asked to speak with DP. DP answered Heather's verification questions, including a question about his PIN number, which he did not know and which NP had to provide. DP then returned the phone to NP, who asked Heather a series of questions regarding how to complete the tax return based on the information provided in the tax form.

account. At the hearing, DP explained that the distributions were to provide him with a monthly cash inflow similar to what he received when he was working. DP was the sole owner of the IRA and the only person with documented authorization to execute trades in the account. The account opening forms listed DP as the "Primary Account Owner" and "Authorized Signer." The fields for additional account owners and authorized signers were blank, and there was a large slash through that section. The account opening forms identified DP as "single." NP, however, was listed as the sole primary beneficiary of the account.[4] DP was 62 years old when he opened the IRA, and Pelletier understood that DP wanted the funds in the account to "last for a while." The account opening forms indicated that DP had an investment time horizon of 15 years, that the investments in the account were more than two-thirds of DP's total financial portfolio, and that he wanted access to the funds in the account in the near term and during the portfolio's investment time frame. This was DP's only investment or retirement account.

NP filled out the forms required to open DP's IRA and establish monthly distributions, although DP signed the paperwork. On May 6, 2015, NP answered a call from Pelletier, who asked, "Are you—you must be N[]?" Pelletier then answered NP's questions as they went through the forms together over the phone. At the end of the call, Pelletier spoke with DP to discuss DP's investment selections. It is undisputed that, from account opening to July 2018, BMO Harris did not have written authorization permitting NP to direct trades in DP's retirement account.

D. Pelletier Effected Transactions in DP's IRA Based on Instructions from NP

From June 2015 to April 2017, the only transactions in DP's retirement account were the monthly distributions of $500. In May 2017, however, NP made the first of numerous requests that Pelletier effect additional distributions into the checking account she shared with DP. Between May 2017 and July 2018, Pelletier executed 17 trades in which he, at NP's behest, sold shares of the mutual funds held in DP's account and transferred the proceeds to the joint checking account.[5] The total principal value of the transfers was $37,799.36, and the total distribution amount was $32,100. The parties stipulated that Pelletier executed each of the below trades based solely on oral instructions from NP:[6]

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[4] At the hearing, DP was skeptical that he knowingly made NP the sole beneficiary of the account and speculated that NP did so on her own when she helped him fill out the account opening forms. He admitted that he may not have reviewed the forms before NP sent them to BMO Harris.

[5] In July 2018, NP forged DP's signature on a third party trading authorization form, which she provided to BMO Harris. *See infra* Part III.H. NP then continued to take distributions from the account until May 2019, when DP called BMO Harris to complain of unauthorized trading.

[6] Notwithstanding the parties' stipulation, the Hearing Panel found that DP authorized the May 9, 2017 distribution of $1,500 (which we discuss below) but found that the remaining 16 distributions were unauthorized in violation of FINRA Rule 2010. Enforcement did not cross-

[Footnote continued on next page]

Date of Corresponding Call	Principal Amount[7]	Distribution Date	Distribution Amount
5/2/2017	$1,766.58	5/9/2017	$1,500
7/11/2017	$2,944.00	7/12/2017	$2,500
8/10/2017	$2,943.18	8/11/2017	$2,500
9/28/2017	$4,708.00	9/29/2017	$4,000
11/20/2017	$3,531.42	11/22/2017	$3,000
1/29/2018	$707.89	1/31/2018	$600
2/22/2018	$2,354.94	2/23/2018	$2,000
3/5/2018	$1,766.71	3/6/2018	$1,500
4/5/2018	$2,354.95	4/6/2018	$2,000
4/16/2018	$1,178.48	4/17/2018	$1,000
4/26/2018	$2,943.18	4/27/2018	$2,500
5/9/2018	$1,766.71	5/10/2018	$1,500
5/18/2018	$1,766.71	5/21/2018	$1,500
6/4/2018	$3,531.42	6/5/2018	$3,000
6/15/2018	$1,178.48	6/18/2018	$1,000
7/16/2018	$590.00	7/17/2018	$500
7/16/2018	$1,766.71	7/20/2018	$1,500
Total:	**$37,799.36**		**$32,100**

E. Telephone Call Recordings

In addition to the witnesses' testimony, the relevant evidence consisted primarily of recordings of phone calls between call center representatives, including Pelletier, and DP and NP. In 2017 and 2018, BMO Harris used a third-party software provider to record all calls between BMO Harris employees and outside parties. The calls were preserved for up to 10 years.

In May 2019, after DP complained that NP had taken unauthorized distributions, Bonewell began reviewing calls involving DP's account, and he was subsequently responsible for compiling relevant audio recordings in response to FINRA Rule 8210 requests concerning Pelletier's potentially unauthorized trading in DP's account. Bonewell searched for responsive calls using several different methods, including by agent identification number and telephone number and by incoming and outgoing telephone numbers. His search included the telephone

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appeal any element of the Hearing Panel's decision, and we therefore do not revisit the Hearing Panel's finding that the May 9, 2017 transaction was authorized.

[7] The principal amounts to which the parties stipulated are each two dollars more than the net amounts that are reflected in Pelletier's account statements.

numbers on record for both NP and DP. Bonewell testified repeatedly that he believed his initial search had been "thorough," and he performed this search multiple times in the following years and did not identify any calls from the relevant period that he missed in his first search.[8] Nonetheless, Bonewell stated that it was "very possible" that he had not found every call between Pelletier and NP and DP. He testified that he listened to between 20 and 25 calls relating to DP's account and he was not aware of any recordings involving DP's account that BMO Harris had not provided to Enforcement.

F. General Pattern of NP's Calls with Pelletier

For each of the transactions at issue in this matter, BMO Harris produced a corresponding telephone recording of a call between Pelletier and NP. Generally, NP's calls with Pelletier followed a similar pattern. NP would reach Pelletier directly, or another call center employee would transfer NP to Pelletier at NP's request. After NP requested a distribution, Pelletier would confirm the amount NP wanted after taxes, note the applicable withholding percentage and the mutual funds he planned to redeem, and calculate the amount he needed to sell. Frequently, but not always, NP would provide a purported explanation for why DP needed the money. For example, on July 11, 2017, NP told Pelletier that DP needed $2,500 to buy a fishing boat, and on August 10, 2017, NP requested an additional $2,500, ostensibly so that DP could purchase a pontoon boat. On January 29, 2018, NP requested $600 that she claimed was to pay for DP's dental work. Beginning in April 2018, there was a series of calls in which NP asked Pelletier to execute trades to fund the couple's purported home renovations, including new floors and a larger kitchen window. Pelletier did not speak with, or ask to speak with, DP during any of these calls, nor did he ask whether DP had authorized the transactions.

Pelletier testified that, as an experienced securities industry professional, he knew he needed a customer's authorization to execute transactions in their account, or the customer's authorization for someone else to act on their behalf. Pelletier understood that BMO Harris prohibited transactions that were not authorized by the customer unless the customer had authorized someone else to act on their behalf. Pelletier claimed, however, that DP had at some point orally authorized him to take trade instructions from NP on an ongoing basis. Pelletier could not recall the date of that purported phone call but referenced a related state court proceeding in which DP described a call that allegedly took place in June 2016.[9]

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[8] Bonewell explained that his initial search had been limited to the period during which the unauthorized trades took place, but that time frame was expanded in subsequent searches. Although he identified additional calls in his subsequent searches, those calls had occurred "two or three years" before NP began directing trades in DP's account.

[9] In July 2020, DP filed a complaint in a Michigan state court that was based in part on the conduct at issue here. The complaint stated: "On or about June 2016, [DP] contacted John Pelletier and informed him that he needed to withdraw One Thousand and 00/100 Dollars ($1,000.00) from his 401(k)." The complaint further stated that DP gave Pelletier permission to speak with NP "*only* to discuss where the funds were to be deposited" (emphasis added). DP explained at the hearing that Pelletier only had permission to speak to NP about where Pelletier

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Pelletier explained that, because BMO Harris recorded all calls and maintained them for several years, he had assumed at the time that DP's oral authorization became part of DP's official client record and sufficed until BMO Harris received a written trading authorization. Pelletier never asked anyone whether his assumption was correct. He did not discuss the transactions he executed at NP's request with anyone at BMO Harris. According to Pelletier, he did not make a notation of DP's oral third party authorization in DP's client file because BMO Harris's customer relationship management ("CRM") system lacked that capability.[10] Nor did he otherwise document the authorization, although he realized in hindsight it would have been prudent to memorialize the conversation in an email. The record does not contain any audio recording in which DP orally authorized NP to direct trades in his IRA. In the "more than 20 or 25 calls" Bonewell reviewed involving DP's account, he never heard DP authorize NP to direct trades in the account.

Bonewell confirmed that Pelletier's execution of trades in DP's account based on NP's trade instructions was inconsistent with BMO Harris's policies regarding third party authorization, although he agreed that BMO Harris's written policies and procedures were "flexible tool[s]" and not "static." Bonewell was not aware of another situation in which a representative executed third party trades on an ongoing basis based on a one-time, oral authorization from the customer.

G. May 2 and 9, 2017 Phone Calls

As noted above, DP's complaint in the related state court proceeding referenced a June 2016 phone call in which DP requested $1,000 from his IRA and gave Pelletier permission to speak with NP "only to discuss where the funds were to be deposited." At the hearing, DP explained that the withdrawal that was the subject of the call referenced in the complaint was for his daughter. The record does not contain any recording in which DP asked to withdraw funds beyond the monthly distributions, and the account statements do not reflect a $1,000 distribution in June 2016. However, in a May 2, 2017 phone call, NP asked Pelletier for a $1,500 distribution from the account. The transaction required DP to sign a new tax withholding form, and NP asked if Pelletier could send the form to her daughter's house. She stated, "It would be a lot quicker and—yeah, because [DP] has allowed me to do whatever I've got to do on there." Pelletier then asked NP whether DP was with her. NP responded, "Since he already talked to you—he talked to you about that. He told me he did." Pelletier did not dispute that he had

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should send a distribution DP had requested on his daughter's behalf. He denied authorizing NP to direct trades in his account on either a one-time or ongoing basis. As discussed in greater detail below, the complaint may have inaccurately stated the date of this phone call.

[10] This testimony conflicted with that of Bonewell, who stated that the CRM software in place during the relevant period allowed registered representatives to make notations in a client's file.

spoken with DP but explained that, regardless, DP needed to sign the updated tax withholding form before he could receive the funds. NP provided Pelletier with her daughter's address, where she and DP were both staying, so Pelletier could send the required form. NP instructed Pelletier to address the form to her daughter because "[t]hat's who's getting it anyway."

Pelletier and NP spoke again on May 9, 2017, when NP returned an earlier call from Pelletier.[11] Pelletier had received DP's form and a handwritten note instructing him to send the money directly to NP and DP's daughter. Pelletier explained that he was unable to do a third-party transfer and would have to send the money to the joint checking account instead. Pelletier did not speak with DP on either of these calls.

H. NP Impersonates DP and Falsifies a Written Trading Authorization

As detailed above, after the May 9, 2017 distribution, Pelletier executed 16 more transactions in DP's account at the behest of NP. On June 22, 2018, in response to NP's request that he transfer $2,000 to the joint checking account, Pelletier advised NP that BMO Harris was "cracking down" and would no longer accept trades from spouses without a written trading authorization on file.[12] According to Pelletier, he said this because he wanted NP to be able to place trades with other call center employees, not because he thought it was true.[13] It was his understanding that, in the absence of a written trading authorization, NP could only place trades with Pelletier because it was Pelletier who had received DP's purported blanket oral authorization.

In the same call, Pelletier for the first time informed NP that he would need to speak with DP to obtain permission to take trade instructions from NP. Pelletier then spoke to an individual purporting to be DP, who provided DP's social security number, birthday, and the account beneficiary for verification. The individual gave Pelletier permission to speak with NP regarding trading in the retirement account. Pelletier then spoke with NP and agreed to make the requested trade. During the hearing, Pelletier acknowledged that the person he spoke to was in fact NP impersonating DP but explained that, at the time of the call, he believed he was speaking with DP. He acknowledged that it was an obvious impersonation when the recording was played at the hearing but suggested the sound would not have been as clear when he originally took the call.

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[11] BMO Harris did not produce a recording of Pelletier's earlier message.

[12] Pelletier nonetheless processed two additional distributions, on July 16, 2018, based solely on NP's instructions. During that call, NP noted that she had mailed the written trading authorization to BMO Harris earlier that day.

[13] Although Pelletier's calls with NP appeared to be amicable, in an April 5, 2018 audio recording between Pelletier and one of his colleagues, Pelletier referred to NP as "annoying." At the hearing, Pelletier explained that he did so because NP's frequent calls meant he had less time to spend on sales, to which his bonuses were tied.

On July 23, 2018, BMO Harris received a signed and notarized trading authorization in which DP purportedly authorized NP to trade in DP's IRA. DP testified that he believed NP had forged his signature on the authorization and that she had admitted to doing so in the related state court proceeding.

On July 25, 2018, after BMO Harris received the written trading authorization, NP spoke with ST, another call center employee, who informed her that the authorization was still under review. NP offered to put DP on the phone, and ST agreed, stating, "If I could speak with him, yeah, I could certainly get him verified." NP again impersonated DP for the purpose of requesting $3,000. NP, as DP, provided the requisite verification information and permission to speak with NP, NP pretended to get back on the phone, and ST agreed to the requested transaction.[14]

Once BMO Harris processed the trading authorization purportedly signed by DP, NP continued to take distributions from DP's retirement account. By May 2019, the account value was about $300.

I. DP Complains About Unauthorized Trades in His Account

DP testified that he did not learn NP had been taking distributions out of his account until May 2019, when his power was turned off because NP had failed to pay their electric bill. DP testified that, although he initially received monthly statements reflecting the activity in his IRA, he only reviewed the statements "once in a while." DP said that NP received any statements

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[14] Although ST initially followed the call center's process for obtaining an oral third party trading authorization by speaking with someone he believed to be DP, ST did not ask to speak with DP again to confirm the trade, as required by the unwritten procedures articulated by Bonewell.

On at least two other occasions NP asked call center employees other than Pelletier to make distributions from DP's account when Pelletier was unavailable. On July 7, 2017, NP spoke with call center employee, JL. When she asked JL for a $4,000 distribution, JL offered to relay the details of the request to Pelletier and have Pelletier contact her once he had completed the transaction. JL could not execute the transaction himself, he explained, because NP was not listed as an authorized party. JL told NP that Pelletier probably helped her because Pelletier was "aware of the situation and the information." Similarly, on November 15, 2017, after learning Pelletier was unavailable, NP asked call center employee TN for a distribution. TN refused to take trade instructions from NP because she was not listed on the account but acknowledged Pelletier "probably would know" whether, as stated by NP, she was "allowed to talk for [DP] . . . . [b]ecause [DP] gave [Pelletier] the okay a long time ago." In addition, Bonewell testified that call center employee SS once notified him that she had a call with someone she believed was NP impersonating DP. BMO Harris did not produce this recording.

reflecting activity in their joint checking account, and he did not review any of those statements during the relevant period. While DP's tax returns and related documentation would have reflected the distributions out of his account, he explained that NP handled the taxes, as he was not a "tax man."

On May 10, 2019, DP called BMO Harris to complain that unauthorized trading had occurred in his IRA. DP spoke with AK, another registered representative at the call center. DP told AK: "I went to the credit union [where DP and NP had their joint checking account] and got a printout of stuff, and I think there's lots of fraudulent stuff going on there because my money's gone." When AK asked whether DP was referring to his bank account or his brokerage account, DP replied, "My rollover or whatever that is."

AK verified DP. In response to AK's verification question about the account's beneficiary, DP stated that, in addition to his children, "[NP] might have been on there, but she's going to be off of there because she's the one who's doing this, I think." AK on multiple occasions referenced the fact that NP appeared to be an agent on the account, noting that DP's file contained a July 2018 notarized document, signed by DP, providing NP with full trading authority. DP replied, "That is not true. That is not true." DP repeatedly denied that he had ever provided such authorization or signed a trading authorization form. He said that NP "had no right in [his] business, really, because [they were] not married." DP told AK that he had only ever authorized NP to discuss a transaction during a call in which he asked Pelletier about transferring funds to their daughter "for a wedding gift or whatever it was," after which he allowed Pelletier to speak with NP about the transfer logistics.[15] He insisted, however, that he never authorized NP to withdraw money from the account, stating "how did she have permission to take money out is beyond me."[16] At the hearing, Enforcement asked DP whether he ever gave Pelletier a blanket authorization to take trade instructions from NP. DP stated, "I never talked to him after [the call in which he gave Pelletier permission to speak with NP about the funds transfer to their daughter]." DP also testified he was certain he never signed a trading authorization form because he "would never put anybody else on [his] account."

DP asked AK how much money was left in his account. AK advised that the balance was $318.65, and DP replied, "Out of $65,000 . . . . Or whatever I had at the time; I don't know." He then asked AK whether "this [was] insured in case she did—I mean, there's no doubt she stole my money." AK promised to escalate DP's complaints, and that BMO Harris would be in touch. DP gave AK his home phone number because the number BMO Harris had on file was NP's.

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[15] At the hearing, DP initially stated that he did not know what Pelletier and NP had said on the call, but he subsequently explained that the "only thing [NP] was involved with at all was if [BMO Harris] could send [the check] directly to [their daughter]."

[16] DP testified that the expenses NP used to justify the distributions, such as the boats and the home renovations, were fabricated.

In a subsequent call, AK told DP that Pelletier, who by that time had left the call center and was working as a financial advisor in one of BMO Harris's bank branches, claimed he only spoke with NP about trades after first speaking with, and verifying, DP.[17] DP again asserted that he had only ever permitted BMO Harris to speak with NP to discuss the details of a funds transfer to their daughter. Michael Dawson, Pelletier's direct supervisor at the time, testified that Pelletier claimed he accepted trade instructions from NP because DP was hearing impaired but admitted that it had been a mistake in hindsight. At the hearing, Pelletier acknowledged that the two audio recordings of his calls with DP contained no indication that DP had difficulty hearing him or that he had trouble understanding DP.

AK again asked DP about the written trading authorization, expressing doubt that a notary would risk their license to notarize a forged document. DP maintained that he did not sign the authorization. He told AK, "we just bought a couple of lots of land, and that was the first time I've ever been in front of a notary for 30 years."

DP told AK that he had stopped receiving account statements. DP said that when he asked NP about the statements, NP called Pelletier, who, according to NP, told her BMO Harris was "redoing their computers" but would send a statement shortly. DP told AK that he had directed NP to ask Pelletier for the account balance. DP said, "[NP] would shoot off some big number and I would think everything's kosher." At the hearing, DP testified that, according to NP, BMO Harris had stopped sending statements because it was going paperless. He also testified at the hearing that NP told him BMO Harris would send "a PIN number or something in the mail," but that he never received the PIN number.

J. BMO Harris Places Pelletier on Heightened Supervision for Unauthorized Trades

Following the allegations that Pelletier had executed unauthorized transactions in DP's account, Pelletier met with BMO Harris's management and legal and compliance departments, who emphasized the seriousness of the matter and reviewed with him the firm's policies and procedures. BMO Harris placed Pelletier on probation and heightened supervision for approximately 14 months. In Pelletier's new role as a financial advisor in a bank branch, heighted supervision required him to document all distributions, including his verification process. It also required Pelletier's supervisor Dawson to contact 20% of the clients on Pelletier's distribution list and confirm the distributions were made in accordance with BMO Harris's policies and procedures. Dawson did not identify any issues, and clients viewed Pelletier and his communications favorably. In addition, BMO Harris conducted an enhanced review of Pelletier's calls from the call center and his email correspondence. This review did not reveal further violations or prompt additional negative feedback.

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[17] Pelletier testified that he did not recall what he told AK at the time. He expressed doubt, however, that he would have lied about obtaining DP's permission to speak with NP on every call because he knew all the calls had been recorded.

Matthew Hilton, Pelletier's supervisor at LPL at the time of the hearing, stated that he had not had any issues with Pelletier. He testified that Pelletier is responsible and receptive to coaching.

K. BMO Harris Settles with DP

DP filed a lawsuit against BMO Harris, NP, and the notary of the forged trading authorization. The complaint did not name Pelletier as a defendant. BMO Harris ultimately settled with DP for $35,000. BMO Harris did not require Pelletier to contribute to the settlement.

IV. Procedural History

In April 2021, BMO Harris disclosed its settlement with DP. Following BMO Harris's disclosure, FINRA staff initiated an investigation into Pelletier's unauthorized trading. This disciplinary proceeding followed. The Department of Enforcement ("Enforcement") filed a single-cause complaint against Pelletier on September 21, 2023, alleging that Pelletier executed unauthorized trades in a customer's account, in violation of FINRA Rule 2010. In his answer, Pelletier denied he violated FINRA Rule 2010 because he made the trades in question based on oral instructions from the customer or the customer's authorized representative and he therefore acted to fulfill what he believed were the customer's wishes.

Prior to the hearing, Enforcement moved to preclude testimony from Hilton, Pelletier's then-current manager at LPL. Enforcement argued that the testimony Hilton would provide was not relevant to the question of whether Pelletier engaged in unauthorized trading. The expected testimony included, among other things, the fact that LPL would terminate Pelletier if he was suspended for any period. The Hearing Officer permitted Hilton to testify but did not allow any testimony about the potential collateral consequences of a suspension.

After a two-day hearing, the Hearing Panel issued its June 25, 2024 decision finding that Pelletier engaged in the misconduct Enforcement alleged. In so finding, the Hearing Panel observed that there was no indication in the call recordings in evidence that DP orally authorized NP to direct trades in his account. Further, the Hearing Panel credited DP's statement that he never provided oral authorization for NP to trade in his account. The Hearing Panel stated, "[DP's] consistency, demeanor, tone of voice, and evident emotion upon discovering the depletion of his retirement savings persuade us that he never gave Pelletier the oral authority to effect transactions to distribute funds from his retirement account at NP's direction." In contrast, the Hearing Panel did not find Pelletier credible, citing inconsistent statements Pelletier provided justifying the unauthorized transactions. For Pelletier's misconduct, the Hearing Panel fined him $10,000 and suspended him from associating with any FINRA member in any capacity for three months.

Pelletier timely appealed the Hearing Panel's decision.

V. Discussion

A. Pelletier's Execution of Unauthorized Trades Violated FINRA Rule 2010

The Hearing Panel found that Pelletier executed unauthorized trades in a customer's account, in violation of FINRA Rule 2010. We affirm these findings. As discussed below, we find, based on DP's credible testimony that he did not grant blanket or any other authorization for NP to trade in his account, that Pelletier executed trades in DP's account without DP's authorization.

1. Legal Standard

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[18] To determine whether conduct violates FINRA Rule 2010, the Commission examines whether the misconduct "reflects on the associated person's capacity 'to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money.'" *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002)). When an alleged FINRA Rule 2010 violation is not premised on the violation of another FINRA rule, the conduct must be business related and in bad faith or unethical. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *aff'd*, 989 F.3d 4 (D.C. Cir. 2021); *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015) (disciplinary action under FINRA Rule 2010's predecessor is warranted for business-related conduct that is unethical or done in bad faith), *aff'd*, 641 F. App'x 27 (2d Cir. 2016). "Unethical conduct is that which is 'not in conformity with moral norms or standards of professional conduct,' while bad faith means 'dishonesty of belief or purpose.'" *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28 (quoting *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *21 (Nov. 15, 2013)). It is appropriate to consider "internal firm compliance policies to inform our determination of whether applicants' conduct . . . violated the professional standards of ethics covered by [FINRA Rule 2010]." *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *17 (Jan. 9, 2009), *aff'd*, 586 F.3d 122 (2d Cir. 2009).

It is well-established that "'obtaining [a] customer's consent prior to [trading] a security in the customer's account'" is a fundamental responsibility of a broker. *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (quoting *Carlton Wade Fleming, Jr.*, 52 S.E.C. 409, 412 (1995)). "Executing or facilitating transactions for a customer without authorization constitutes 'a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade,' going to 'the heart of

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[18] FINRA rules apply to all members and persons associated with a member. FINRA Rule 0140.

the trustworthiness of a securities professional.'"[19] *Dep't of Enf't v. Burford*, Complaint No. 2019064656601, 2024 FINRA Discip. LEXIS 5, at *9 (FINRA NAC Mar. 14, 2024) (quoting *Sears*, 2008 SEC LEXIS 1521, at *9), *aff'd*, Exchange Act Release No. 103180, 2025 SEC LEXIS 1577 (June 4, 2025), *appeal docketed*, No. 25-60401 (5th Cir. July 30, 2025). Enforcement must show that Pelletier engaged in unauthorized trading by a preponderance of the evidence. *See Thomas Lee Johnson*, Exchange Act Release No. 99596, 2024 SEC LEXIS 444, at *11 (Feb. 23, 2024); *David M. Levine*, 57 S.E.C. 50, 73 n.42 (2003) (confirming that the preponderance standard applies to disciplinary proceedings before self-regulatory organizations), *aff'd*, 407 F.3d 178 (3d Cir. 2005); *see also Lindsay v. Nat'l Transp. Safety Bd.*, 47 F.3d 1209, 1213 (D.C. Cir. 1995) (noting that the preponderance standard does not require certainty or "the absence of any reasonable doubt").

2. DP Did Not Authorize NP's Trades in His Account

It is undisputed that Pelletier, in the conduct of his business at BMO Harris, executed 16 transactions in DP's account based on instructions from NP, and that he did so without first obtaining the signed third party trading authorization that was, according to BMO Harris's written policy, required for third party trades. It is also undisputed that DP did not provide Pelletier oral authorization to accept instructions from NP with respect to each of the 16 transactions. According to Pelletier, however, DP orally authorized him to accept trade instructions from NP on an ongoing basis. Pelletier further asserts that, because he was under the impression that DP's purported blanket oral authorization relieved him of his obligation to obtain DP's permission every time he executed a transaction at NP's behest, he believed in good faith that the trades were authorized.[20] Thus, while Pelletier concedes that unauthorized trading

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[19] Pelletier argues that FINRA Rule 2010 "is applied arbitrarily and capriciously with ill-defined terms." But courts have consistently upheld findings of violation of FINRA Rule 2010 when they have determined respondents had fair notice that the conduct to which the rule was applied was prohibited. *See, e.g.*, *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (upholding finding of violation under predecessor to FINRA Rule 2010 when a reasonable person would know misconduct did not conform to high standards of commercial honor and just and equitable principles of trade); *Alderman v. SEC*, 104 F.3d 285, 288-89 (9th Cir. 1997) (rejecting vagueness challenge because reasonable persons would know conduct at issue violated FINRA Rule 2010 predecessor). FINRA Rule 2010's application to unauthorized trading is well-established. *See, e.g.*, *William Coxe*, 45 S.E.C. 131, 134-35 (1972) (affirming that trading without authorization is inconsistent with "just and equitable principles of trade" and therefore violates FINRA Rule 2010's predecessor).

[20] As explained below, the record does not support Pelletier's claim that DP authorized NP to direct trades in the account or that Pelletier in fact believed that DP had provided such authority. In any event, a respondent's belief that unauthorized transactions were in fact authorized is not relevant to liability. *See Dep't of Enf't v. Hellen*, Complaint No. C3A970031, 1999 NASD Discip. LEXIS 22, at *20 (NASD NAC June 15, 1999) (explaining that unauthorized trades based on an honest, but mistaken, belief of authority are still "unauthorized and thus a violation of" FINRA Rule 2010).

generally constitutes a FINRA Rule 2010 violation, he maintains that the trades at issue here did not violate Rule 2010 because his conduct was not unethical or in bad faith.

a. The Hearing Panel Found DP Credible and Pelletier Not Credible on the Issue of DP's Grant of Authorization to NP

At the hearing, DP acknowledged that he gave Pelletier permission to speak to NP regarding the logistics of a single funds transfer to his daughter but emphatically denied that he ever authorized NP to trade in his account, on a one-time basis or otherwise. The Hearing Panel found DP to be credible, citing DP's "consistency, demeanor, tone of voice, and evident emotion," as well as DP's lack of motive to lie, having already been reimbursed for his losses. The Hearing Panel's credibility determination with respect to DP was based primarily on its first-hand observation of DP's testimony and demeanor and can be overcome only if there is "substantial evidence" for doing so. *Anthony Tricarico*, 51 S.E.C. 457, 460 (1993); *see also Wilfredo Felix*, Exchange Act Release No. 101733, 2024 SEC LEXIS 3309, at *14-15 (Nov. 25, 2024); *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *12 n.45 (Mar. 31, 2016) (explaining that credibility determinations "based on hearing the witness's testimony and observing demeanor . . . are entitled to considerable deference").[21]

Contrary to DP's testimony, Pelletier testified that, after DP opened the account but before the 16 trades at issue, DP orally authorized Pelletier to accept trade instructions from NP on his behalf. Pelletier stated that this was a blanket authorization that he believed allowed him to take trade instructions from NP on an ongoing basis. Although there is no recording of DP providing such authorization nor other evidence in the record corroborating the purported call,[22] and Pelletier could not recall even generally when the alleged call occurred, Pelletier points to

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[21] We review de novo the consistency of DP's testimony throughout the hearing and his previous statements about whether NP had authorization to trade in his account, as consistency is not demeanor-based. *See Felix*, 2024 SEC LEXIS 3309, at *14-15.

[22] In the May 2, 2017 phone call between NP and Pelletier, certain of NP's statements suggest that DP had granted NP at least some decision-making authority in the account. For example, when NP asked if Pelletier could send the tax withholding form to their daughter's house, she said, "It would be a lot quicker and—yeah, because [DP] has allowed me to do whatever I've got to do on there." And when Pelletier confirmed DP, whose signature was required on the form, was also staying with their daughter, NP responded, "Since he already talked to you—he talked to you about that. He told me he did." While NP asserted that Pelletier had DP's permission to deal with her in that instance, it is unclear whether the permission she referenced was limited to the funds transfer to their daughter or extended to the account more broadly. We therefore do not consider these statements corroborating of Pelletier's testimony that DP provided NP a blanket authorization. To the contrary, DP testified consistently that he did not provide such authorization, and that the purpose of this call was simply to discuss where Pelletier should direct a funds transfer in this one instance.

the fact that he knew all calls were recorded and therefore would not have risked making trades directed by NP absent authorization from DP.

In contrast to its credibility determination concerning DP, the Hearing Panel did not find Pelletier to be credible. The Hearing Panel based its determination on the inconsistency between the explanations Pelletier provided to Dawson and AK when the transactions at issue came to light and the explanation he provided at the hearing. The Hearing Panel also cited Bonewell's statement that call center employees had the ability to make notations in the CRM system, which contradicted Pelletier's testimony that the system did not allow him to memorialize DP's authorization. We review the Hearing Panel's credibility determination with respect to Pelletier de novo. *See Felix*, 2024 SEC LEXIS 3309, at *14-15 (credibility determinations based on fundamental implausibility or objective inconsistency with other record evidence should be reviewed de novo).

b. Substantial Evidence Does Not Exist to Overturn the Hearing Panel's Finding that DP Testified Credibly that He Did Not Authorize NP to Trade in His Account

We find that Pelletier failed to identify evidence in the record sufficient to overcome the Hearing Panel's finding that DP testified credibly that he did not provide Pelletier oral authorization to process distributions in his account at NP's direction. *See Tricarico*, 51 S.E.C. at 460. Although certain evidence in the record is arguably at odds with the Hearing Panel's credibility determination, we find it does not rise to the level of "substantial evidence" required to overturn the Hearing Panel's demeanor-based credibility determination concerning DP. *See id.* Consequently, we conclude that Pelletier engaged in unauthorized trading in violation of FINRA Rule 2010.

Pelletier argues that the record reflects calls relating to DP's account that were missing from BMO Harris's production. According to Pelletier, this supports an inference that BMO Harris also failed to produce other calls, including the one in which DP provided the purported authorization. Pelletier specifically points to: (1) his first call with NP, in which Pelletier appears to know who she is, suggesting, according to Pelletier, that another call took place after his initial call with DP; (2) NP's reference in the May 9, 2017 recording to an earlier message from Pelletier that was not among the recordings BMO Harris produced; (3) Bonewell's testimony that NP had impersonated DP in a call with call center employee SS, a recording of which BMO Harris did not produce; and (4) DP's testimony regarding a call in which he and Pelletier discussed the funds transfer to DP's daughter.[23] And, although Bonewell's review of the recordings between Pelletier and NP and DP appears to have been thorough and in response to a FINRA Rule 8210 request, and multiple different searches did not uncover additional recordings during the relevant period, Pelletier points to Bonewell's statement that it was "very

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[23] Enforcement argues that the first three purportedly missing calls are not relevant because DP could not have authorized NP to trade in his account in any of them. Enforcement also notes that the Hearing Panel concluded that DP was mistaken about the date of the fourth call.

possible" that he had missed calls between Pelletier and DP and NP. However, the possibility that some calls may have been missing from BMO Harris's production despite Bonewell's comprehensive searches for relevant recordings is not evidence of the specific call Pelletier claims he had with DP, which was never referenced elsewhere or otherwise documented by Pelletier, and which DP flatly denies.[24]

Pelletier also argues that evidence that DP entrusted NP to handle his finances and maintained a joint checking account with NP supports an inference that DP also trusted NP to make decisions in his IRA. We agree that the evidence demonstrates that DP ceded oversight of certain of his financial affairs to NP. DP testified that NP completed his tax returns and paid their bills out of the checking account they shared. She also helped him complete the paperwork to open the IRA and dealt with BMO Harris on matters such as tax forms relating to the account. Nevertheless, we find that DP's willingness to let NP manage other areas of his finances does not outweigh his explicit statements, credited by the Hearing Panel, that he never gave NP authority to trade in his IRA.

Based on the above, we acknowledge that the record contains circumstantial evidence, albeit limited, supporting Pelletier's claim that DP provided NP blanket authorization to direct trades in his IRA. However, we find it does not rise to the level of "substantial evidence" necessary to overcome the Hearing Panel's determination, based on its first-hand observation of DP's testimony and demeanor, crediting DP's testimony that he never provided Pelletier such authorization. *See Tricarico*, 51 S.E.C. at 460.[25]

Moreover, throughout the hearing, DP steadfastly maintained that he never provided NP blanket, or any other, authorization to direct trades in his account, and his testimony was consistent with the recordings of his conversations with AK in May 2019, in which DP stated repeatedly that he never gave Pelletier permission to accept trades from NP, either orally or in writing. Our de novo review of this evidence bolsters the Hearing Panel's credibility findings with respect to DP. Similarly, we agree with the Hearing Panel's determination that DP lacked

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[24] We note that Pelletier's knowledge that BMO Harris could retrieve and review recordings of his calls provides some support for his claimed belief that he had authority to accept trades from NP. *Cf. David B. Tysk*, Exchange Act Release No. 91268, 2021 SEC LEXIS 534, at *18-19 (Mar. 5, 2021) (finding respondent's lack of opposition to a forensic examination of his computer suggested "a lack of unethical purpose" when he supplemented his call notes after receiving a complaint from the client). In the absence of other corroborating evidence, however, it does not bear on the question of whether DP in fact provided the requisite authorization.

[25] *See also Dep't of Enf't v. Potter*, Complaint No. 2017052871401, 2021 FINRA Discip. LEXIS 8, at *45 n.23 (FINRA NAC May 27, 2021) (setting aside hearing panel's determination that testimony was not credible when hearing panel failed to consider corroborating documentary evidence); *Warren R. Schreiber*, 53 S.E.C. 912, 914-16 (1998) (declining to defer to initial fact finder's credibility determination when the credibility findings were "general" and underlying decisions did not discuss substantial contradictory evidence).

any motive to provide false testimony when FINRA could not compel his testimony and he had already settled in state court, which is consistent with the Hearing Panel's credibility findings.

Our de novo review of the Hearing Panel's credibility determination with respect to Pelletier's testimony supports our determination that the Hearing Panel properly credited DP's testimony over Pelletier's and that the trades at issue were unauthorized. *See Felix*, 2024 SEC LEXIS 3309, at *14-15. Based on the record, we find Pelletier's assertion that DP orally provided NP blanket authority to trade in his account on an ongoing basis implausible. In DP's initial phone call with Pelletier, DP was clear that he intended that his IRA serve as a long-term investment solution enabling him to maintain for several more years the level of income he had received when he was working. It is inconsistent, then, that DP would also grant NP authority to use the account as a source of liquidity for major purchases or home improvements. Moreover, DP did not list NP as an authorized agent when he opened the account, nor did he at any point attempt to add her as an authorized agent, despite opportunities to do so—such as the phone call to discuss tax forms relating to the account or his interactions with Pelletier regarding the transfer to his daughter—suggesting he did not want her directing trades in his account without his knowledge. In addition, Pelletier never documented DP's purported oral authorization, nor did he discuss NP's trades with anyone at the firm or seek advice on whether he could rely indefinitely on the purported oral authorization to execute her trades, notwithstanding that BMO Harris had compliance personnel available to answer questions about third party trading authorizations. Finally, we find Pelletier's credibility undermined by the statement he made to Dawson at the time regarding DP's hearing impairment, which is unsupported by the record.[26]

In sum, we do not disturb the Hearing Panel's findings that DP credibly testified that he did not authorize NP to trade in his account. Nor do we disturb the Hearing Panel's findings that Pelletier was not credible when he testified that DP granted a one-time, blanket authorization for NP to trade in his account.

3. Pelletier Engaged in Unauthorized Trading in Violation of FINRA Rule 2010

Having determined that DP did not authorize NP to trade in his account, we find that Pelletier engaged in unethical and unauthorized trading in violation of FINRA Rule 2010 by accepting and executing trades from NP. *Burford*, 2025 SEC LEXIS 1577, at *4-5; *Springsteen-*

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[26] The Hearing Panel also cited Pelletier's purported statement to AK, as recounted by AK during one of his calls with DP, that Pelletier first spoke with and verified DP every time he processed a distribution from NP, a claim that was not borne out by the call recordings. Because AK did not testify and there was no opportunity to hear from him regarding the veracity of his statement to DP, we decline to rely on it in our assessment of Pelletier's credibility. Similarly, in contrast with the Hearing Panel, we do not find sufficient evidence in the record to use Pelletier and Bonewell's conflicting testimony regarding BMO Harris's CRM system as a basis for a credibility determination.

Abbott, 2020 SEC LEXIS 2684, at *28; *West*, 2015 SEC LEXIS 102, at *20 ("Unethical conduct is that which is 'not in conformity with moral norms or standards of professional conduct.'").

Pelletier's acceptance of NP's trade instructions was a serious breach of his obligation as an associated person to obtain his customer's authorization before trading in the customer's account. It is well-settled that unauthorized securities transactions violate the "high standards of commercial honor and just and equitable principles of trade" required of all members under FINRA Rule 2010. *See Burford*, 2025 SEC LEXIS, at *4-5. Pelletier had been in the industry for more than 17 years and, as an experienced securities industry professional, understood that the customer's authorization, or that of an authorized agent, was required to trade in a customer's account.[27] There was no written authorization for NP to trade in the account during the relevant period, and we find that DP did not provide oral authorization for Pelletier to accept trade instructions from NP.[28] While FINRA Rule 2010 does not have a scienter requirement, *see id.* at *6, Pelletier regardless knew, or should have known, that NP could not direct trades in the account. In short, Pelletier had ample notice that his execution of third party trades without authorization was not in accordance with the standards to which securities industry professionals must adhere. *See id.*

Pelletier argues that FINRA's rules do not explicitly prohibit the conduct at issue here.[29] This argument, however, is rooted in the presumption that he made the trades based on a good

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[27] While our finding that Pelletier engaged in unauthorized trading is not based on his violation of BMO Harris's policies and procedures, we find relevant Pelletier's testimony that he understood the firm's guidance relating to third party trading authorization, which emphasized the risks associated with accepting third party trades in the absence of the customer's authorization. BMO Harris's policies and procedures prohibited transactions that were not authorized by the customer unless the customer had authorized someone else to act on their behalf (and specifically prohibited registered representatives from accepting instructions from a customer's spouse in the absence of written authorization). They also warned representatives against executing "inadvertent" unauthorized transactions, "such as accepting an order from a husband for a wife's account where the wife has not signed a trading authorization giving her husband authority to trade on her behalf."

[28] As discussed above, BMO Harris appears to have permitted call center representatives to accept oral trading authorization provided to a third party in certain circumstances. Because we find that DP did not orally authorize NP to trade in the account, we do not consider the circumstances under which executing third party trades based on a customer's oral authorization may be inconsistent with FINRA Rule 2010.

[29] While FINRA Rule 2010 does not explicitly prohibit unauthorized trading, it requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade," and applies any time "the misconduct reflects on the associated person's capacity . . . 'to fulfill [his or her] fiduciary duties in handling other people's money.'" *Grivas*, 2016 SEC LEXIS 1173, at *10. It is a broad ethical principle that "depends upon general rules of fair dealing, the reasonable expectation of parties, and marketplace practices," *Dep't of*

[Footnote continued on next page]

faith belief that the trades were authorized. Indeed, he cites several unauthorized trading cases that he claims are distinguishable from the facts at issue here primarily because the respondents never received customer authorization. But because we find that Pelletier, like the respondents in those cases, did *not* receive DP's authorization for NP to trade in his account, Pelletier's argument is unpersuasive. *Cf. Dep't of Enf't v. Colletti*, Complaint No. 2019061942901, 2025 FINRA Discip. LEXIS 14, at *22-23 (FINRA NAC June 17, 2025), *appeal docketed*, No. 3-22249 (SEC July 10, 2025) (finding respondent engaged in unauthorized trading when respondent never testified that the customer specifically authorized each transaction and respondent's belief that he had authority to execute the trades was based on general conversations he had with the customer in the past).

Citing *Tysk*, 2021 SEC LEXIS 534, Pelletier also argues that the Hearing Panel erroneously based its finding that Pelletier violated FINRA Rule 2010 on his failure to comply with his firm's policies relating to unauthorized trading. Pelletier's reliance on *Tysk* is misplaced. In *Tysk*, the Commission reversed FINRA's finding that the respondent deliberately produced a misleading document when he produced notes he had edited without notifying FINRA of the edits. *Id.* at *15-17. The Commission found that the hard copy of the respondent's notes clearly reflected the date on which the notes were edited (as opposed to the date of the events to which the notes pertained), which weighed against a finding of unethical conduct or intent to mislead. *Id.* at *16. Based on its separate finding that the respondent had not acted unethically, the Commission set aside FINRA's finding that the respondent was liable under FINRA Rule 2010 because he had violated his firm's policy prohibiting alteration of documents relating to an investigation. *Id.* at *19-20.

While *Tysk* is clear that a violation of firm policies is not an automatic FINRA Rule 2010 violation, here, our finding that Pelletier engaged in unauthorized trading in violation of Rule 2010 is irrespective of the fact that his conduct also violated BMO Harris's policies and procedures. It is a long-standing principle that unauthorized trades violate FINRA Rule 2010. Certainly, BMO Harris's policies and procedures, which Pelletier understood, put him on additional notice that he needed authorization to accept third party trades in a customer's account. As noted above, it is appropriate to consider "internal firm compliance policies to inform our determination of whether applicants' conduct . . . violated the professional standards

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Enf't v. Conway, Complaint No. E102003025201, 2010 FINRA Discip. LEXIS 27, at *29 (FINRA NAC Oct. 26, 2010), *aff'd*, Exchange Act Release No. 70833, 2013 SEC LEXIS 3527 (Nov. 7, 2013), and is "intended to encompass a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace," *Dep't of Enf't v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11-12 (NASD NAC June 2, 2000). For this reason, the rule is not "phrased in terms of . . . concrete proscriptions," and "a flexible evaluation of the surrounding circumstances" is required. *Shvarts*, 2000 NASD Discip. LEXIS 6, at *11, 15. A "member's failure to live up to obligations owed to a customer . . . constitutes a breach of 'just and equitable principles of trade.'" *Id.* at *12. Unauthorized trading in a customer's account certainly meets this criterion.

of ethics covered by [FINRA Rule 2010]." *Heath*, 2009 SEC LEXIS 14, at *18; *see also Burford*, 2025 SEC LEXIS 1577, at *5 (finding that respondent "plainly failed to observe high standards of commercial honor and just and equitable principles of trade by violating [his firm's] written supervisory procedures" when he effected unauthorized transactions in his deceased customer's account). However, Pelletier also testified that, as a long-time securities industry professional, he understood that he could not place trades in a customer's account unless the customer had authorized the trade or authorized someone else to trade on the customer's behalf. It is undisputed that DP did not himself authorize the trades in question or provide written authorization for NP to trade in his account, and DP testified credibly that he never orally provided NP trading authority in his account. Pelletier's execution of the trades was therefore unethical.[30]

Under these circumstances, that Pelletier understood his obligation to obtain his customer's authorization before trading in the customer's account yet continued to execute unauthorized trades for more than a year while NP drained DP's retirement savings clearly was at odds with the "standards of professional conduct." *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28; *see also Sears*, 2008 SEC LEXIS 1521, at *6 (unauthorized trades are "a fundamental betrayal of the duty owed . . . to customers" and a "serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade"). Thus, we find his conduct was unethical and a violation of FINRA Rule 2010.

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[30] Pelletier states that DP received statements from BMO Harris and his checking account, and signed his annual tax returns, all of which would have reflected the distributions from his IRA, yet DP did not complain about the unauthorized transactions until 2019. To the extent Pelletier suggests this absolves him of wrongdoing, it is well-established that ratification—if DP's receipt of statements could be characterized as "after-the-fact 'acceptance'" of an authorized trade—is not a defense to unauthorized trading. *Sandra K. Simpson*, 55 S.E.C. 766, 792 (2002) (rejecting a claim that a customer ratified unauthorized trades because they received statements but did not complain); *Colletti*, 2025 FINRA Discip. LEXIS 14, at *24 (same); *see also William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *26 (July 2, 2013) (noting that the Commission has repeatedly held that after-the-fact acceptance does not transform an unauthorized trade into an authorized trade and opining that the customer's failure to complain was more likely a consequence of "misplaced trust" rather than approval of the transactions).

B. Pelletier's Constitutional Arguments Lack Merit

Pelletier raises several constitutional challenges to FINRA's disciplinary proceeding against him.[31] His arguments lack merit.

1. FINRA Disciplinary Proceedings Do Not Implicate the Seventh Amendment

Pelletier, citing *SEC v. Jarkesy*, 603 U.S. 109 (2024), argues that FINRA's disciplinary proceeding violated his Seventh Amendment right to a jury trial. He is mistaken, for several reasons.

First, as a threshold matter, Pelletier fails to establish that FINRA disciplinary proceedings are subject to the constraints of the Seventh Amendment. *See Lugar v. Edmonson Oil Co*., 457 U.S. 922, 935 (1982) ("As a matter of substantive constitutional law, . . . most rights secured by the constitution are protected only against infringements by governments."); *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999) ("A threshold requirement of plaintiff's constitutional claims is a demonstration that in denying plaintiff's constitutional rights, the defendant's conduct constituted state action."). Pelletier does not dispute that FINRA, which he concedes is a private corporation, is not part of the government for constitutional purposes.[32] *See Silver Leaf*, 2025 SEC LEXIS 649, at *26 ("FINRA is not 'part of the government' under the applicable test from *Lebron v. Nat'l R.R. Passenger Corp.* because it was not created by the government and its leaders are not chosen by the government."); *see also Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911, at *43-44 (Apr. 3, 2020) ("FINRA is not 'part of the Government itself' for constitutional purposes."). Nor has he shown that FINRA's self-regulatory activities comprise one of the "few limited circumstances" in which the conduct of a private entity qualifies as state action such that it is subject to constitutional requirements. *See Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019). Indeed,

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[31] We deem these arguments waived because Pelletier did not raise them below. *See* FINRA Rule 9311(e); *see also Silver Leaf Partners, LLC*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649, at *24 & n.44 (Mar. 7, 2025) (finding that challenges premised on constitutional claims are not exempt from "ordinary principles of waiver and forfeiture"). Notwithstanding this waiver, we consider the arguments on the merits.

[32] Conflating disparate constitutional principles, Pelletier asserts in conjunction with his Seventh Amendment argument that "no FINRA officers or directors were properly appointed, pursuant to the Article II Appointments Clause." The Appointments Clause applies only to "Officers of the United States." U.S. Const. art. II, § 2, cl. 2. Individuals are not required to be appointed pursuant to the Appointments Clause unless they "occupy a 'continuing' position" that is part of the federal government for constitutional purposes. *Lucia v. SEC*, 585 U.S. 237, 245 (2018). Because FINRA is not part of the government, "[its] processes for hiring or selecting its personnel—including with respect to hearing officers and the composition of hearing panels—are not subject to the Appointments Clause." *Silver Leaf*, 2025 SEC LEXIS 649, at *26.

the courts and the Commission are in agreement that FINRA does not engage in state action when it carries out its regulatory responsibilities under the Exchange Act.[33] *See, e.g.*, *Desiderio*, 191 F.3d at 206 (rejecting plaintiff's Seventh Amendment and due process claims after finding "NASD is a private actor, not a state actor"); *Mark H. Love*, 57 S.E.C. 315, 322 n.13 (2004) ("We have held that NASD proceedings are not state actions and thus not subject to constitutional requirements.").

Second, *Jarkesy* has no bearing on FINRA disciplinary proceedings. The Court in *Jarkesy* made clear that the issues it confronted concerned "the basic concept of separation of powers that flows from the scheme of a tripartite government" and the ability of Congress to "withdraw from judicial cognizance" a matter that was the subject of a "suit at common law" at the time of the Founding under the Seventh Amendment. *Jarkesy*, 603 U.S. at 127. The separation-of-powers principles regarding the exercise of the "judicial Power of the United States," U.S. Const. art. III, § 1, do not apply to FINRA, a private entity. Disciplining FINRA members and associated persons for violating the professional norms of the securities industry is not "the stuff of" a suit at common law requiring a jury trial in an Article III court. *See Jarkesy*, 603 U.S. at 127-28 ("A hallmark that we have looked to in determining if a suit [requires adjudication in an Article III court] is whether it 'is made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.'"); *Daniel Turov*, 51 S.E.C. 235, 238 (1992) ("A disciplinary proceeding before a self-regulatory organization is . . . no[t] a 'suit at common law' within the meaning of the Seventh Amendment. The guarantees pertaining to trials by jury . . . are therefore inapposite.").

Although Pelletier asserts that FINRA's action in this case "sound[s] in common law claims of fraud and misrepresentation" and thus "belong[s] in an Article III court before a jury," he is wrong. In this decision, we find that Pelletier executed trades without authorization from a customer, in violation of FINRA Rule 2010. FINRA Rule 2010 fulfills FINRA's obligation under the Exchange Act to, among other things, "promote just and equitable principles of trade." *See* 15 U.S.C. § 78o-3(b)(6); *see also Nat. Assoc. Sec. Dealers, Inc.*, 19 S.E.C. 424, 436 (1945) ("In requiring observance of 'high standards of commercial honor and just and equitable principles of trade,' the rule . . . implements the requirement of Section 15A . . . that the rules of a registered securities association be designed 'to promote just and equitable principles of trade.'"). FINRA Rule 2010 thus does not reflect a legal standard. *See Nat. Assoc. Sec. Dealers*, 19 S.E.C. at 480 (Healy, R., dissenting in part) ("The 'just and equitable principles of trade'

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[33] Pelletier suggests that FINRA is a state actor because, under Section 19 of the Exchange Act, 15 U.S.C. § 78s, the Commission generally must approve FINRA rules before they become effective and may review certain final FINRA actions, including actions imposing disciplinary sanctions on FINRA members and associated persons. The Commission's oversight of FINRA, however, does not make FINRA a state actor. *See, e.g.*, *Jones v. SEC*, 115 F.3d 1173, 1182 (4th Cir. 1997) ("While its self-regulating powers are supervised by the SEC, . . . that review power does not convert the NASD's interest to the same interest as that of the regulating agency."); *see also Janus Distribs. LLC v. Roberts*, No. 16cv-2130-WJM-MJW, 2017 U.S. Dist. LEXIS 68986, at *8 (D. Col. May 5, 2017) ("[T]he SEC's oversight and approval of FINRA rules does not constitute state action.").

referred to in the NASD rule are not standards of law or rules of legal conduct."). It is instead an ethical rule. *See id*. ("They are standards of ethics and honor."); *see also All. for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 176 (5th Cir. 2024) ("[T]he [just and equitable] provision simply requires [self-regulatory organizations] to promote behavior that is morally right and in conformity with the rules and customs of the securities profession."). FINRA's disciplinary action against Pelletier, which imposes sanctions for a violation of the ethical requirements of the securities industry, a quintessentially self-regulatory act that protects investors and the public interest, does not as Pelletier claims require the involvement of an Article III court.[34] *See Jones*, 115 F.3d at 1182 ("Under the Maloney Act, the NASD is authorized to regulate itself by prohibiting and preventing fraud and unethical conduct by its members and promoting in them professionalism and technical proficiency, much as would any association of professionals seeking to better itself and instill confidence in the public."); *see also* 15 U.S.C. § 78*o*-3(b)(6) (requiring that the rules of a national securities association, "in general, . . . protect investors and the public interest"); 15 U.S.C. § 78s(e)(2) (requiring the Commission to review FINRA sanctions with "due regard for the public interest and the protection of investors"); *cf. In re Clark*, 678 F. Supp. 3d 112, 122, 124 (D.D.C. 2023) (disciplinary proceedings that "protect the public" and "safeguard the integrity of the profession" are not "of a character traditionally cognizable by courts of common law or equity").

Finally, Pelletier's Seventh Amendment argument fails because, by associating with a FINRA member, he submitted to FINRA's jurisdiction and rules, including its disciplinary procedures, and thus waived any right he might otherwise have had to a jury trial. *See CFTC v. Schor*, 478 U.S. 833, 848-50 (1986) (finding that Article III and jury-trial rights are "subject to waiver, just as are other personal constitutional rights"). Associated persons registered with FINRA affirmatively agree to abide by its rules, including the Commission-approved rules that govern FINRA disciplinary proceedings. *See* FINRA By-Laws Article V, Section 2(a)(1) (requiring that an application by any person for registration with FINRA contain an "agreement to comply" with the federal securities laws, the rules and regulations thereunder, MSRB and FINRA rules, "and all rulings, orders, directions, and decisions issued and sanctions imposed under [FINRA rules]"). Accordingly, when Pelletier applied for FINRA registration, he knowingly relinquished any rights he might otherwise have had to defend FINRA disciplinary

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[34] That we fine Pelletier for his misconduct, *see infra* Part VI, does not, as he asserts, alter the conclusion that FINRA's disciplinary action concerning him does not implicate the Seventh Amendment. *See, e.g.*, *Millennia Hous. Mgmt. v. United States HUD*, No. 1:24-cv-02084, 2025 U.S. Dist. LEXIS 79788, at *25-26 (N.D. Ohio, Apr. 28, 2025) ("[T]the Supreme Court has made clear that '[w]e need not, and do not, go so far as to say that any award of monetary relief must necessarily be legal relief'" (quoting *Curtis v. Loether*, 415 U.S. 189, 196 (1974))). Because a FINRA disciplinary action does not require the involvement of an Article III court, the Seventh Amendment does not apply and the Commission may review the sanctions imposed in accordance with Section 19(e) of the Exchange Act, 15 U.S.C. § 78s(e). *Cf. Jarkesy*, 603 U.S. at 128 (finding "no involvement by an Article III court in the initial adjudication is necessary" when a common law claim is not present).

charges before a jury in an Article III court. *See Schor*, 478 U.S. at 850. For each of these reasons, we reject Pelletier's Seventh Amendment arguments.

2. *Loper Bright* Does Not Apply to FINRA Disciplinary Proceedings

Pelletier also makes conclusory assertions that the Supreme Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), prohibits FINRA's proceeding against him. *Loper Bright* held that Article III courts must exercise their independent judgment rather than defer to a government agency's reasonable interpretation of ambiguities in a statute. *See id.* at 411-12. Pelletier does not explain how *Loper Bright* is applicable to the internal disciplinary proceedings of a private self-regulatory association such as FINRA, nor does he cite any statutory ambiguities requiring interpretation by an Article III court that are implicated in this matter. The Exchange Act expressly requires that FINRA have processes to discipline members and associated persons for violations of the securities laws and rules. *See* 15 U.S.C. § 78o-3(b).

VI. Sanctions

The Hearing Panel fined Pelletier $10,000 and imposed on him a three-month suspension in all capacities. After an independent review of the record and careful consideration of the FINRA Sanction Guidelines ("Guidelines"),[35] we affirm these sanctions.

A. Pelletier's Argument that the Hearing Officer Improperly Excluded Hilton's Testimony Is Without Merit

We first consider Pelletier's procedural argument, which has relevance to the sanctions analysis. Pelletier contends that the Hearing Officer improperly excluded testimony from Hilton, Pelletier's then-current supervisor, that LPL would terminate Pelletier's association if FINRA suspends him for any period. Under FINRA Rule 9263(a), the Hearing Officer must admit all relevant evidence and has discretion to exclude all evidence that is irrelevant, unduly repetitious, or unduly prejudicial. The Hearing Officer is granted broad discretion to accept or reject evidence under the rule. *Dep't of Enf't v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *110 (FINRA NAC Apr. 16, 2015). "Because this discretion is broad, the party arguing abuse of discretion assumes a heavy burden that can be overcome only upon showing that the Hearing Officer's reasons to admit or exclude the evidence were so insubstantial as to render the admission or exclusion an abuse of discretion." *Id.*

According to Pelletier, the testimony Hilton would have provided was "relevant[ ]and necessary" to the Hearing Panel's sanction determination because it would "provide[] the facts and context regarding what a suspension would mean to Pelletier's career." Pelletier has failed to meet his heavy burden to overturn the Hearing Officer's ruling on this evidence. FINRA sanctions are remedial in nature, not punitive. *See Dep't of Enf't v. Spartan Cap. Sec., LLC*,

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[35] *FINRA Sanction Guidelines* (Mar. 2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

Complaint No. 2019061528001, 2024 FINRA Discip. LEXIS 20, at *83 (FINRA NAC Oct. 9, 2024), *appeal docketed*, No. 3-22285 (SEC Nov. 4, 2024). They are designed to prevent future harm. *See id.* Therefore, the fact that Pelletier may lose his job or endure negative financial consequences if suspended is not a factor in determining sanctions. *See id.* (citing *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *35-36 (Feb. 20, 2014)). While the Guidelines instruct adjudicators to consider a firm's "*previous* corrective action" (emphasis added) based on the same misconduct, they do not contemplate consideration of a future termination.[36] This is consistent with the remedial purpose of FINRA sanctions—evidence of a firm's previous corrective measures is relevant to the extent that it demonstrates that action taken by a firm "has materially reduced the likelihood of misconduct in the future."[37] By contrast, evidence that a FINRA-imposed suspension would result in Pelletier's termination falls squarely in the category of collateral consequences resulting from a respondent's misconduct, which are not mitigating, and Pelletier does not argue otherwise.[38] *See Houston*, 2014 SEC LEXIS 614, at *35-36. We therefore find that the Hearing Officer did not abuse his discretion by excluding this testimony as irrelevant.

B. Sanctions Determination

In determining sanctions, we considered FINRA's Guidelines, including the General Principles Applicable to All Sanction Determinations and the Principal Considerations in Determining Sanctions.[39] The Guidelines state that sanctions "should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[40] To achieve this goal, the Guidelines direct adjudicators to "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct."[41] Adjudicators should impose sanctions that protect the public and that are remedial and not punitive. *See Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, *27 (June 2, 2016).

For unauthorized transactions, the Guidelines recommend a fine of $5,000 to $30,000 and suspending individual respondents for a period of one month to two years.[42] When aggravating

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36 *Guidelines*, at 5 (General Principles Applicable to All Sanction Determinations, No. 7).

37 *Id.* at 6 (General Principles Applicable to All Sanction Determinations, No. 7).

38 *See id.*

39 We apply the Guidelines in effect at the time of the Hearing Panel's decision.

40 *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

41 *Id.*

42 *Guidelines*, at 122 (Unauthorized Transactions and Failures to Execute Buy or Sell Orders).

factors predominate, the Guidelines strongly recommend a bar.[43] In addition to the Principal Considerations in Determining Sanctions, which are generic factors for consideration in all matters, the Guidelines also identify potential principal considerations that are specific to the violation at issue here: (1) whether the respondent reasonably misunderstood his or her authority or the terms of the customer's orders; (2) the number of customers affected and the magnitude of the customers' losses; (3) the number and dollar value of unauthorized transactions; (4) whether the respondent attempted to conceal the trading or to evade regulatory investigative efforts; and (5) whether the unauthorized transactions were made in furtherance of or in connection with another violation.[44]

We agree with the Hearing Panel that there are several applicable aggravating factors. First, the number and value of the unauthorized transactions, as well as the extended period during which Pelletier effected the transactions, are each independently aggravating.[45] For more than a year, Pelletier accepted trade instructions from NP without DP's authorization. During that time, Pelletier effected 16 unauthorized transactions, depleting DP's retirement savings by $36,000, more than half of the account's opening value.[46] Pelletier executed these transactions despite knowing that DP, who was in his sixties and was not a sophisticated investor, wanted his retirement savings to last several years.[47] Pelletier made a serious error, and his error resulted in substantial injury to his customer.[48]

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43 *Id.*

44 *Id.*

45 *See id.* at 122; *id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

46 Pelletier argues that the number of transactions should not be an aggravating factor because he purportedly believed the transactions were all authorized. The preponderance of the evidence, however, does not demonstrate that he actually had such a belief. His purported belief was premised on his claim that DP provided blanket oral authorization to NP, which, as explained above, was not credible. For the same reason, we find that Pelletier did not misunderstand his authority. *See id.* at 122. We therefore find the number of transactions to be aggravating. *See id.*

47 *See id.* at 8 (Principal Considerations in Determining Sanctions, Nos. 18, 20). DP was 62 in May 2015 when he opened the account and therefore was over 65 by the time Pelletier executed the last unauthorized transaction, in July 2018.

48 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 11). While Pelletier argues that DP was made whole through his settlement with BMO Harris, a firm's settlement with a customer harmed by an associated person does not absolve the associated person of the harm he or she caused. *See Dep't of Enf't v. Ortiz*, Complaint No. E220030425-01, 2007 FINRA Discip. LEXIS 3, at *41 (Oct. 10, 2007) (finding harm to customers even when firm settled with customers in connection with respondent's misconduct).

Pelletier argues that he reasonably believed NP had authority to direct trades in DP's account based on his interactions with DP and NP, the intertwining of their finances, and the degree to which DP relied on NP to manage his financial affairs, including helping DP set up the IRA account. The preponderance of the evidence, however, does not support Pelletier's claim that he actually believed NP had authority to direct trades in DP's account.[49] In this regard, the crux of Pelletier's purported belief that NP had such authority was Pelletier's claim that DP provided blanket oral authorization to NP. But, as explained above, that claim was not credible.[50] Even if Pelletier had believed he had authorization to execute transactions at the direction of NP—notwithstanding DP's credible testimony that he never provided such authority—that belief would have been unreasonable given, among other things, his admitted awareness of his firm's policies warning against executing unauthorized trades at the direction of a customer's spouse.[51] For similar reasons, we also find that Pelletier's misconduct was, at best, reckless.[52]

Pelletier also argues that he has accepted responsibility for his actions because he admits he violated BMO Harris's written policy requiring documented authorization for third party trades.[53] We agree with the Hearing Panel that this admission does not demonstrate that Pelletier has accepted responsibility for his misconduct. As discussed above, when BMO Harris questioned Pelletier about the trades, he falsely attributed his execution of NP's trades to DP's purported hearing impairment. Moreover, Pelletier continues to assert that, while the trades did not comport with BMO Harris's policies, they were in fact authorized, which demonstrates that he still does not fully comprehend his professional obligations or the seriousness of his misconduct. *See Burford*, 2025 SEC LEXIS 1577, at *8 ("Although Burford admits that his conduct violated [his firm's] procedures, we do not find this mitigating because he also maintains that his actions were lawful and that his 'moral obligation to help' [his customer's widow] was 'more important than following procedures.'); *Lek Sec. Corp.*, Exchange Act

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49 *See Guidelines*, at 122.

50 While the record does not demonstrate that Pelletier actually believed NP had authority, we acknowledge that, based on the facts described above, Pelletier may have believed his execution of NP's trades was in accordance with DP's wishes. However, that fact is not mitigating. *See Burford*, 2024 FINRA Discip. LEXIS 5, at *17.

51 *See Guidelines*, at 122. BMO Harris's written policies specifically warned against "'inadvertent' unauthorized transactions such as accepting an order from a husband for a wife's account where the wife has not signed a trading authorization giving her husband authority to trade on her behalf." The policies also warned against "[d]oing a customer a 'favor' by entering an order when he or she cannot be reached."

52 *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 13).

53 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 2).

Release No. 82981, 2018 SEC LEXIS 830, at *40 (Apr. 2, 2018) ("FINRA likewise was entitled not to credit [applicant] in mitigation for acceptance of responsibility when [applicant] did not acknowledge that its misconduct constituted a violation of the securities laws."); *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015) ("Applicants are entitled to present a vigorous defense. But Applicants' continued refusal to acknowledge that they were required to respond fully to FINRA's requests, even after their counsel explained the necessity of doing so, demonstrates a misunderstanding of, or lack of regard for, their professional obligations."), *aff'd sub nom.*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016). We therefore do not find this consideration mitigating.[54]

We also considered that Pelletier completed a 14-month period of heightened supervision. While the Guidelines direct adjudicators to consider whether a firm took corrective action to address an individual's misconduct, the Guidelines explicitly provide that firm-imposed fines or suspensions are "most comparable" to FINRA-imposed sanctions when FINRA's sanctions would include fines or suspensions. We find that BMO Harris's corrective measures, limited to the 14-month period of heightened supervision, are insufficient to remediate Pelletier's misconduct.[55] *See, e.g.*, *Dep't of Enf't v. Makkai*, Complaint No. 2018058924502, 2023 FINRA Discip. LEXIS 2, at *22 (FINRA NAC Jan. 6, 2023) (noting that a firm's termination of a respondent has been found mitigating when accompanied by other factors demonstrating that the termination "materially reduced the likelihood of future misconduct"). For these reasons, we do not assign mitigation credit based on BMO Harris's imposition of heightened supervision.

As the Commission has emphasized, "[u]nauthorized trading is very serious misconduct." *Sears*, 2008 SEC LEXIS 1521, at *21. Under these circumstances, we conclude that a three-month suspension in all capacities and a $10,000 fine, which are at the low end of the Guidelines' proposed ranges for unauthorized trading, are appropriately remedial sanctions for Pelletier's misconduct and sufficient to achieve the deterrent objectives of FINRA's Sanction Guidelines. The suspension serves to prohibit Pelletier, temporarily, from associating with a member firm and will allow him time to reflect on the importance of customer authorization, which will reduce the risk of harm to investors. The suspension will also help to ensure that Pelletier takes his responsibilities more seriously going forward. The fine serves as a financial deterrent, discouraging future misconduct and reinforcing the consequences of violating FINRA rules. Both the fine and the suspension are necessary to protect the investing public and to impress on Pelletier the seriousness of his misconduct.

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[54] Pellietier argues that he knew all calls were recorded and thus would not have risked making trades directed by NP without DP's prior authorization. To the extent Pelletier suggests that we should consider it mitigating that he did not attempt to conceal his misconduct, Pelletier is not entitled to mitigation credit based on the fact that he did not engage in additional misconduct by concealing his unauthorized trades. *See Colletti*, 2025 FINRA Discip. LEXIS 14, at *34. In any event, the fact that the calls were recorded does not, by itself, show that Pelletier did not attempt to conceal his misconduct, particularly where he later, among other things, falsely claimed that DP had a hearing impairment to justify his actions. *Guidelines*, at 122.

[55] *See id.* at 5 (General Principles Applicable to All Sanction Determinations, No. 7).

VII. Conclusion

We affirm the Hearing Panel's findings that Pelletier violated FINRA Rule 2010 by executing unauthorized trades in a customer's account. For his misconduct, we impose a three-month suspension in all capacities and a $10,000 fine. The three-month suspension shall begin with the opening of business on November 17, 2025, and end at the close of business on February 17, 2026. We also affirm the Hearing Panel's order that Pelletier pay hearing costs of $4,420.22, and we impose appeal costs of $1,996.65.[56]

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[56] Pursuant to FINRA Rule 8320, any member that 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.