

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51549 / April 15, 2005

Admin. Proc. File No. 3-11652

In the Matter of the Application of

ROONEY A. SAHAI
c/o Andrew Seewald, Esq.
46 Bayard Street, Suite 216
New Brunswick, NJ 08901

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY
PROCEEDINGS

Violations of Rules of Fair Practice

Unauthorized Transaction

Alleged Forging or Causing Forgery of Customer Signatures

Failure to Provide Requested Information

Registered representative of member firm of registered securities association (i) executed an unauthorized transaction in a customer's account; (ii) allegedly forged customer signatures; and (iii) failed to provide information requested by association in connection with investigation. Held, association's findings of violations are sustained in part, sanctions are vacated, and proceedings are remanded for redetermination of sanctions imposed.

APPEARANCES:

Andrew Seewald, for Rooney A. Sahai.

Marc Menchel, Alan B. Lawhead, and Deborah F. McIlroy, for NASD.

Appeal filed: September 13, 2004
Last brief received: December 14, 2004

I.

Rooney A. Sahai appeals from NASD disciplinary action. In 1999 and 2000, Sahai was registered as a limited representative - investment company and variable contracts products representative of The Key Group, Inc. ("Key Group"), an NASD member firm. NASD found that Sahai forged or caused the forgery of signatures on five documents for two customers and executed an unauthorized transaction in one customer's account, in violation of NASD Conduct Rule 2110. 1/ NASD further found that Sahai failed to provide information requested by NASD in violation of NASD Procedural Rule 8210. 2/ NASD barred Sahai from association with any NASD member for the forgery violation, imposed a separate bar for the failure to respond violation, and determined that a \$5,000 fine would have been appropriate for the unauthorized transaction. 3/ We base our findings on an independent review of the record.

II.

Sahai entered the securities industry in 1986 and became associated with Key Group in 1999. During his association with Key Group, Sahai worked out of his home.

A. Customer Sophia Ikonomou

Between 1999 and 2002, Sophia Ikonomou worked as an administrative assistant for Malcolm Coblentz, another Sahai customer. Ikonomou testified that in November or December 1999, she was notified by a former employer that he wanted to terminate the retirement plan that he had established for Ikonomou and other employees. Ikonomou testified that she asked Coblentz and his wife for the name of someone to reinvest the funds held in the retirement account. Coblentz and his wife recommended that Ikonomou speak to Sahai.

Ikonomou testified that, in December 1999, she spoke to Sahai by telephone and informed him that she wanted her retirement funds invested in "a traditional IRA." According to Ikonomou, she received by facsimile transmission from Sahai's office an American Skandia

1/ Conduct Rule 2110 requires the observance of "high standards of commercial honor and just and equitable principles of trade."

2/ Procedural Rule 8210, in pertinent part, requires persons associated with an NASD member to provide information if requested by NASD as part of an investigation, complaint, examination, or proceeding.

3/ Due to the imposition of the bars, NASD's National Adjudicatory Council ("NAC") declined to impose the fine.

Advisor Funds, Inc. ("American Skandia") "Mutual Fund Individual Retirement Account (IRA) Application" ("1999 Mutual Fund Application"), which she partially completed, signed, and dated December 17, 1999. Ikonomou testified that she returned the IRA application to Sahai. Ikonomou stated that she did not complete the section of the 1999 Mutual Fund Application entitled "Fund Selection" and that she never discussed fund selection with Sahai. 4/

Ikonomou testified further that, in January 2000, she received from American Skandia a copy of a letter, dated January 18, 2000, that was addressed to Sahai. The letter stated that Ikonomou's signature was missing from her IRA application. Ikonomou testified that she was confused by the letter because she specifically recalled signing her 1999 Mutual Fund Application prior to returning the application to Sahai.

Ikonomou testified that she telephoned American Skandia to inquire about the status of her 1999 Mutual Fund Application. Ikonomou was informed that her funds had been used to purchase a variable annuity. Ikonomou testified that she then requested that American Skandia forward copies of the documents related to the annuity account. According to Ikonomou, in January 2000, American Skandia sent her copies of two documents: a "Mutual Fund Individual Retirement Account (IRA) Application" dated December 17, 1999 ("2000 Mutual Fund Application"), 5/ and a copy of a "Group Annuity Application for Participation" dated December 27, 1999 ("Annuity Application"). Ikonomou testified that she had never before seen either the 2000 Mutual Fund Application or the Annuity Application. Ikonomou stated that, although the signatures appear similar, neither her handwriting nor her signature appears on either document. Ikonomou noted that her son's first and last names are misspelled in the beneficiary section of the Annuity Application. Ikonomou stated that she had never discussed particular mutual funds with Sahai and did not make the fund selections noted on the 2000 Mutual Fund Application. 6/

In his answer, Sahai alleged that an American Skandia annuity was purchased with Ikonomou's knowledge and consent. At the hearing, however, Sahai admitted that the transaction had been a "mistake" and a "clear error" resulting from a rush to comply with Ikonomou's wish

4/ The 1999 Mutual Fund Application does not specify any fund selection.

5/ Although this application is dated 1999, Ikonomou testified that she received this document in 2000.

6/ It appears that no mutual funds were ever purchased for Ikonomou's account at American Skandia.

that the IRA funds be reinvested before year-end 1999. Sahai admitted also that the purchase of an annuity for Ikonomou had been unsuitable. ^{7/}

According to Sahai, the \$200-\$300 commission that would have been generated on a \$5,000 to \$6,000 mutual fund investment was approximately the same as the commission that he had earned on the annuity transaction. At the hearing, the NASD investigator in this matter confirmed that the commission that Sahai would have earned on either transaction "would not have been materially different."

Sahai admitted that his handwriting appears in the "Investment Dealer" section of the 2000 Mutual Fund Application, but denied signing Ikonomou's signature on the document or authorizing anyone else to do so. Sahai admitted also that it is "likely" that he wrote "The Key Group" on the Annuity Application. The Hearing Panel credited Ikonomou's testimony that she had not authorized Sahai to purchase an annuity for her account and that she did not sign the 2000 Mutual Fund and Annuity applications. The writing that fills in the information requested by the 2000 Mutual Fund Application differs from the writing that provides the information requested on the Annuity Application. There is no evidence as to who completed this information on either the 2000 Mutual Fund Application or the Annuity Application.

B. Customer Malcolm Coblentz

Malcolm Coblentz, a physician, testified that, in 1998 or early 1999, he purchased health insurance from Sahai. Thereafter, Sahai visited Coblentz's office from time to time to discuss various investment products. In November 1999, Coblentz received a stock certificate worth approximately \$30,000 when Medical International Insurance Exchange of New Jersey ("MIIX"), a medical malpractice provider, became publicly traded. ^{8/} Coblentz testified that, on December 3, 1999, he and his wife met with Sahai. During this meeting, Coblentz requested that Sahai liquidate the stock and use the proceeds to establish an IRA account. Coblentz agreed with Sahai's recommendation that the stock certificate proceeds be invested in American Skandia mutual funds.

The MIIX certificate was transferred to Bear Stearns, Key Group's clearing firm, and sold on December 16, 1999. By that time, its value had dropped \$2,000. Coblentz testified that, in January 2000, he became concerned about the delays in liquidating the stock certificate and investing the proceeds at American Skandia. Coblentz asked his wife to telephone Bear Stearns for an explanation. According to Coblentz, Bear Stearns informed his wife that the firm had

^{7/} Ikonomou complained to American Skandia, which allowed Ikonomou to rescind the annuity agreement. She suffered no financial loss as a result of the transaction. Ikonomou transferred her account from American Skandia to another firm.

^{8/} According to Coblentz, MIIX distributed certificates for shares of stock equal to a percentage of the medical malpractice insurance premiums paid by each physician.

waited until Coblenz had signed and returned to Bear Stearns an IRS Form W-9, which had been sent to Sahai. ^{9/} Coblenz testified that, because he had "never signed a Form W-9," he requested that Bear Stearns send a copy of the Form W-9 to him by facsimile transmission. Coblenz stated that the signature on the form was not his and that he neither instructed nor authorized anyone to sign the form for him. He testified that, after receiving the Form W-9 from Bear Stearns, he telephoned Sahai's office and requested that "Deepa," an administrative employee in Sahai's office, send him by facsimile transmission copies of the documents that Sahai had on file for Coblenz. ^{10/}

Coblenz testified that he received from Sahai's office a handwritten note stating, "Please invest the entire proceeds in my account at American Skandia. Thank you." ("Note One"). Coblenz admitted that his signature appears on Note One. Coblenz testified that, at Sahai's request, he signed his name in the middle of a blank sheet of paper. He understood that Sahai would draft language reflecting Coblenz's "permission to transfer the stock document to American Skandia." Coblenz agreed that, although not in his handwriting, the text of Note One accurately reflected his investment intentions and objectives.

Coblenz also received a second handwritten note stating, "Please invest the entire proceeds in my account at American Skandia #736 26887. Thank you." ("Note Two"). Coblenz stated that he "believes" that Deepa sent him Note Two. Coblenz testified that his handwriting does not appear on Note Two.

At the hearing, Sahai denied that he had signed Note Two. He testified that he was not "sure" whether Sahai's handwriting appeared on Note Two. However, during the investigation, Sahai admitted that the language authorizing the transaction was in his handwriting. NASD concluded that Sahai's handwriting appeared on Note Two. There is no record evidence that either Note One or Note Two was used for any purpose.

Coblenz testified that he also received an American Skandia mutual fund application. ^{11/} Coblenz stated that he did not sign the mutual fund application or authorize anyone to sign it on his behalf. He noted that the mutual fund application contains several errors, including an extra middle initial in his name and an incorrect mailing address. Coblenz's office telephone number was recorded in the space requesting his home telephone number. Coblenz testified that his wife is the only person authorized to sign his name and stated that his wife did not sign his name to the Form W-9, Note Two, or the mutual fund application. Although the signatures on Note One,

^{9/} The stock certificate proceeds were held in a Key Group account at Bear Stearns until January 11, 2000, when the proceeds were invested in an American Skandia account.

^{10/} "Deepa" appears to be Deepa Patel.

^{11/} Coblenz said the application "could very well" have come from Deepa, or it was "possible" that he received the document from American Skandia.

the Form W-9, the mutual fund application, and Note Two appear similar, the hearing panel credited Coblentz's testimony that the signatures on the Form W-9, the mutual fund application, and Note Two are not his.

* * *

There are no original documents in the record. Sahai provided NASD with handwriting exemplars. Those exemplars are not in the record. No handwriting expert testified.

At the hearing, Sahai testified that he either had "no role" or minimal involvement with paperwork and that his clerical staff was responsible for processing paperwork, obtaining customer signatures, and other administrative tasks. Sahai testified further that, during this period, he employed part-time high school and college students who remained with his office for only short periods of time. Sahai was the only registered representative in his office.

Dawn Iorio, who was hired as full-time office manager beginning in February 2000, testified that she was responsible for general office work, including answering the telephone, sending documents to clients by facsimile transmission or mail, and obtaining customer signatures as directed by Sahai. Iorio acknowledged that she had sole responsibility for processing customer applications. Iorio confirmed that, for a time, Sahai employed students as part-time administrative employees.

C. NASD Requests for Information

On February 15, 2001, NASD sent Sahai a written request, pursuant to Rule 8210, for, among other things, the names and addresses of the employees that had been working for him while he was registered with Key Group. At the request of Steven Mannion, who represented Sahai during the investigation, NASD extended the response date from March 1 to March 16, 2001. Sahai failed to respond by the extended deadline to NASD's request for information.

On March 19, 2001, NASD sent Sahai a second written request. The March 19 letter informed Sahai that NASD had not received a response to its prior request and again requested the names and addresses of the employees who had worked for Sahai while he was registered with Key Group. The March 19 letter further advised Sahai that, if he failed to respond, he could be subject to disciplinary action. In addition, the staff enclosed a copy of the relevant sanction guideline for failure to respond violations. The March 19 letter required a response by March 30, 2001. On March 26, 2001, Sahai's counsel responded to the request by providing the names of three of his former employees, Patrick Haas, Deepa Patel, and Chris Marra, stating that the addresses of the former employees "[had] not yet been located." The letter repeated that the former employees had been terminated because Sahai "was generally not satisfied" with their performance.

On March 29, 2001, NASD staff sent a third written request to Sahai. The March 29 request informed Sahai that NASD had received a partial response to its prior requests and again requested, among other things, the addresses of the former employees. The March 29 request also informed Sahai that he had an unconditional obligation to respond to NASD's requests and that he could not determine what information requested would be material to its investigation. The response date for this request was April 9, 2001. On April 3, 2001, Sahai's counsel responded that Sahai had provided all documents contained in his personal files and would continue to search for additional records, and that, if any were found, Sahai would produce them. The response also stated that "[u]ntil that time the response tendered is complete." The April 3 response did not include, among other things, the requested addresses of Sahai's former employees. On April 18, 2001, Sahai's counsel sent an additional response, stating that Sahai "is seeking that his former accountant voluntarily produce [the addresses and possibly telephone numbers of the employees] from the payroll records."

On April 23, 2001, NASD sent Sahai a fourth request, again seeking the addresses of his former employees. On April 25, 2001, Sahai's counsel provided the last known address for Haas in Ridgefield, New Jersey, but stated that Sahai had not been able to locate addresses for the remaining two former employees, Patel and Marra. Sahai, through counsel, responded that, "These were temporary employees for whom records were not kept other than in a computer address book program which crashed sometime in 2000."

The NASD investigator testified that he contacted "411" and that no one named Haas had been listed at the address identified by Sahai. He also attempted unsuccessfully to run an Internet search for Deepa Patel. On April 27, 2001, NASD sent Sahai a fifth request seeking: (1) the source from which Sahai obtained Haas's address; (2) Social Security numbers for Haas, Patel and Marra; (3) payroll records for Sahai's former employees or an explanation of how they were paid; and (4) any employment applications for Haas, Patel, and Marra. The response date for this request was May 11, 2001. Sahai failed to provide the requested information or an explanation of why he could not provide it.

On May 10, 2001, NASD sent Sahai a written request reiterating its April 23 request for the addresses of his former employees. The May 10 request advised Sahai that, if he failed to respond, he could be subject to disciplinary action, and enclosed a copy of the relevant sanction guideline for failure to respond violations. The response date for the May 10 request was May 21, 2001. By letter dated May 10, 2001, Sahai's counsel informed NASD that Sahai could not locate the remaining addresses for his former employees. Counsel reiterated Haas's address and the fact that the computer address book had crashed. Sahai also did not provide the information requested in the April 27, 2001 request. 12/

12/ The April 23, 2001 NASD request directed Sahai to sign the responses by his attorney dated March 26, April 3, and April 18, 2001. Sahai's signatures were transmitted with the May 10, 2001 response.

On May 14, 2001, NASD sent Sahai a sixth and "final" request to produce, by May 24, 2001, the documents and information NASD had requested in the April 27, 2001 request. Sahai failed to provide the requested information or an explanation of why he could not provide the information.

At the hearing, Iorio affirmed that there had been a computer crash in Sahai's office. Iorio was unable to identify the date the computer crash occurred. Iorio testified, "I could have been there a year when the computer crashed. It's possible. I'm not sure [of] the exact date, but I remember it. I remember losing all the information," including employee information. Iorio testified further that, after the computer crashed, she had been instructed to create a database of information concerning former employees, but there was no "back-up" of that data stored on a separate disk. Iorio testified also that, when she began her employment with Sahai, she completed an IRS Form W-4 and sent it to Sahai's accountant via facsimile, but did not input that information into Sahai's computer.

At the hearing, Mannion testified that he had responded to "all" NASD requests that he had received and that, over his objection, Sahai had "directed [him] to provide the information that was available to him." Mannion testified further that "we provided information as timely as we could," and that, to his knowledge, "the accountant did not have" the information NASD requested concerning former employees. Additionally, Mannion testified that, "having seen Mr. Sahai's computer equipment," he was "definitely not" surprised to learn that Sahai's office computer had crashed. ^{13/}

III.

A. Unauthorized Trade

The record establishes that Ikonomou instructed Sahai to open an IRA account for her and to purchase mutual funds in that account. Sahai admitted that Ikonomou wanted a mutual fund and, instead, a variable annuity was purchased for Ikonomou's account. Sahai admitted that the variable annuity transaction was a "mistake." Yet there is no record evidence that he initiated any steps to correct the error or to reduce any financial losses that Ikonomou might suffer due to the purchase of the annuity. A registered representative is obligated to follow the customer's instructions when effecting a security transaction for that customer's account. ^{14/} Sahai failed to do so. Accordingly, we find that Sahai caused the execution of a transaction that was not authorized by Ikonomou in violation of Conduct Rule 2110.

^{13/} Mannion admitted that he first learned of the computer crash contemporaneously with his May 7, 2001 letter to NASD.

^{14/} See Carlton Wade Fleming, 52 S.E.C. 409, 412 (1995).

B. Alleged Forgeries.

NASD found that Sahai forged or caused the forgery of the 2000 Mutual Fund Application and Annuity Application in Ikonomou's name and the Form W-9, Note Two, and the mutual fund application for Coblentz. Sahai admitted completing the dealer information on both the 2000 Mutual Fund Application and Annuity Application and writing the text of Note Two. ^{15/} Otherwise, he denied completing any of the alleged forged documents or signing Coblentz's or Ikonomou's signatures or authorizing anyone else to do so. NASD credited the customers' testimony that they did not sign the allegedly forged documents.

NASD asserts that forgery violates Rule 2110 if it results in misappropriation of customer funds or falsification of firm records. ^{16/} We have sustained NASD findings of forgery where the forged documents defrauded another person or otherwise benefitted the forger. ^{17/} NASD asserts that Sahai profited from Coblentz's and Ikonomou's transactions. However, the alleged forgeries in Coblentz's name appear to effectuate transactions that Coblentz confirmed that he had authorized and wanted to proceed. ^{18/} Nor did Sahai benefit from purchasing a variable annuity for Ikonomou instead of a mutual fund. The NASD examiner confirmed Sahai's

^{15/} There is nothing in the record from which we can discern whether Sahai filled in the dealer information before or after the 2000 Mutual Fund Application or Annuity Application was completed.

^{16/} NASD cites Donald M. Bickerstaff, 52 S.E.C. 232, 235 (1995), but, in Bickerstaff, the applicant repeatedly forged customer signatures on insurance documents to use dividends on one policy to pay overdue premiums on another or to borrow against the policy's dividends and cash value to pay for a lapsed policy.

^{17/} See, e.g., Eliezer Gurfel, 54 S.E.C. 56, 62 (1999) (applicant agreed to split commissions with firm, but instead forged or caused forgery of commission checks and deposited the entire check into his own account), petition denied, 205 F.3d 400 (D.C. Cir. 2000); Ramiro Jose Sugranes, 52 S.E.C. 156, 157 (1995) (applicant falsified bank wires to customer to induce customer to open account with applicant); Brian G. Allen, 50 S.E.C. 509, 510 (1991) (applicant forged president's signature on check and deposited it in his own account). Compare Black's Law Dictionary 590 (6th ed. 1990) ("A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor . . . makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act . . .).

^{18/} We also observe that there is no evidence in the record that either Note One or Note Two (which contains, almost verbatim, the same language as Note One) was used for any purpose.

testimony that he would receive approximately the same commission whether Ikonomou purchased a mutual fund or a variable annuity from American Skandia. 19/

There is no evidence that Sahai personally signed the customers' signatures. Sahai's handwriting exemplars are not in the record. NASD did not produce original documents during the proceeding or engage a handwriting expert to analyze the allegedly forged signatures. Sahai asserts that other persons had an opportunity to affix the customers' signatures to the allegedly forged documents (e.g., Sahai's employees or employees of American Skandia). We note that Iorio and Mannion confirmed Sahai's testimony that he employed part-time workers and that he depended on them for administrative tasks, including obtaining customer signatures. We also note that, in January 2000, American Skandia informed Sahai and Ikonomou that American Skandia had received a mutual fund application with no signature.

The Commission has sustained NASD findings that an applicant "caused" violations. However, those determinations were based on affirmative acts or omissions by the applicant. 20/ The record is devoid of any evidence that Sahai performed any act that "caused" the alleged forgeries. There is no record evidence that Sahai either instructed anyone to forge the customer signatures or was aware that any customer signatures had been forged.

In support of its assertion that Sahai forged or caused the forgery of Coblentz's Form W-9, NASD cites Coblentz's testimony regarding a conversation that Coblentz's wife assertedly had with a Bear Stearns employee about the employee's conversation with Sahai. According to Coblentz, when Bear Stearns contacted Sahai about the Form W-9, Sahai stated that Coblentz was present in his office and would execute the Form W-9. Coblentz stated that he had never been to Sahai's office.

19/ We also note that NASD found the unauthorized trade in Ikonomou's account was neither "quantitatively egregious" nor "qualitatively egregious." NASD imposed only the minimum sanction for it.

20/ See James B. Jawitz, Exchange Act. Rel. No. 44357 (May 29, 2001), 75 SEC Docket 280, 288 (applicant's entry of fictitious limit orders caused firm to report non *bona fide* transactions to the market); James S. Pritula, 53 S.E.C. 968, 976-77 (1998) (financial and operations principal's failure to maintain accurate trial balances and firm books and records caused firm's net capital and recordkeeping violations); Charles E. Kautz, 52 S.E.C. 730, 732-33 (1996) (applicant caused false information to be recorded on the firm's records when he suggested and endorsed the practice of salespersons under his supervision taking credit for annuity sales made by applicant); Franklin N. Wolf, 52 S.E.C. 517, 524 n.33 (1995) (applicant caused firm's violation of Commission penny stock rule by determining to make a market in a stock subject to the rule without compliance with that rule).

Coblentz's testimony concerning Bear Stearns' receipt of the Form W-9 is hearsay. Hearsay statements may be admitted in evidence.

In determining whether to rely on hearsay evidence, it is necessary to evaluate its probative value and reliability, and the fairness of its use. The factors to consider include the possible bias of the declarant, the type of hearsay at issue, whether the statements are signed and sworn to rather than anonymous, oral or unsworn, whether the statements are contradicted by direct testimony, whether the declarant was available to testify, and whether the hearsay is corroborated. 21/

However, Coblentz's testimony is several levels of hearsay - - what Sahai told Bear Stearns who told Coblentz's wife, who told Coblentz. Coblentz's wife attended the hearing but did not testify. No one from Bear Stearns testified. Each stage of the hearsay concerning the Form W-9 was oral, unsworn, and uncorroborated. We conclude these statements are neither reliable nor probative. 22/

Based on the record before us, we are not able to find that Sahai forged or "caused" to be forged the customer signatures on the documents at issue. Accordingly, we set aside the NASD's finding of forgery. 23/

C Failure to Provide Documents Requested by NASD.

NASD found that Sahai failed to respond to the requests for information dated April 27 and May 14, 2001, concerning the source for the address that he provided for Haas, and Social Security numbers, payroll records, sources of payment, and employment applications for two other former employees. NASD also determined that Sahai's other responses to NASD's requests for information were "varied, evasive, and incomplete." Sahai agreed to search for the

21/ See Charles D. Tom, 50 S.E.C. 1142, 1145 (1992).

22/ Sahai argues that Coblentz was biased against him. Sahai claims that Coblentz was upset because he lost money in the liquidation of the MIIX stock and because Sahai refused to deposit Coblentz's stock certificate proceeds in an IRA. Sahai contends that he informed Coblentz that this transaction was impermissible. Sahai asserts that Coblentz persisted because he wanted to shelter his assets from bankruptcy. Coblentz and his wife in fact filed for bankruptcy in 2000.

NASD acknowledged that animosity may have existed between Coblentz and Sahai. However, NASD concluded that this possible animosity did not affect its determination to credit Coblentz's testimony.

23/ Sahai raises various due process and procedural challenges related to NASD's finding of forgery. We need not address these issues in view of our determination.

information regarding his former employees. Sahai provided the purported name and address for only one former employee in response to NASD's written requests dated March 19 and April 23, 2001.

In April 2001, Sahai, for the first time, informed NASD that he did not keep employee records, other than in a computer address book program that had "crashed" during the previous year. Iorio was unable to identify precisely when the computer "crash" occurred, but she thought it might have been in early 2001. Iorio confirmed that some information that was maintained in the computer also was maintained in paper files in the office. Iorio testified that, following the computer crash, she was unable to retrieve from the computer's database program certain personnel information (e.g., name, address telephone number, and date of birth), client information, or payroll records. Iorio stated that she attempted to re-create the database from paper back-up files but does not know whether the paper files included those of Sahai's former employees or encompassed all of the data that was lost as a result of the computer crash. Iorio noted that there was a copy of her W-4 in Sahai's office and that she previously had sent a copy of the W-4 to Sahai's accountant.

Sahai notes that he testified at length during his investigative testimony, as well as at the hearing. He asserts that he responded "to the best of his ability" to the inquiries about his former employees. The record demonstrates, however, that Sahai did not respond at all to NASD's requests on April 27 and May 14, 2001 that he provide the source of the information about Haas' address, and the other requested information. The NASD has a right to request information and require cooperation from those persons it investigates. 24/ When associated persons delay their responses to requests for information, they impede the ability of NASD to conduct its investigations fully and expeditiously. 25/ Although Sahai had access to his accountant and bank (to obtain check records), there is no record evidence that he contacted either of them for information responsive to NASD's request. If Sahai could not readily provide the information that NASD requested, he had an obligation to explain, as completely as possible, his efforts and his inability to do so. 26/

Sahai also argues that his retention of counsel demonstrated his good faith efforts to provide the information requested by NASD. As we have stated previously, it is the

24/ It is well settled that, because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines the NASD's ability to carry out its regulatory mandate. See, e.g., Joseph G. Chiulli, 54 S.E.C. 515, 524 (2000).

25/ See Mark Allen Elliott, 51 S.E.C. 1148, 1151 (1994); John A. Malach, 51 S.E.C. 618, 621 (1993).

26/ Robert A. Quiel, 53 S.E.C. 165, 168 (1997).

responsibility of an associated person to respond directly to the NASD's requests for information, and not the responsibility of counsel. 27/

We find that Sahai's failure to respond timely and fully to NASD's requests for information violated Rule 8210.

IV.

We have sustained NASD's findings that Sahai engaged in an unauthorized trade and failed to provide information. Exchange Act Section 19(e)(2) 28/ provides that we will sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 29/

NASD barred Sahai for failure to provide the information it requested. Sahai argues that the sanction is excessive and inconsistent with NASD Sanction Guidelines. He asserts that he did not ignore NASD's requests for information but responded on numerous occasions. Here, Sahai cooperated with certain NASD requests. Certain of those requests changed and expanded over the period at issue. The record, however, establishes that Sahai's responses were neither timely nor fully responsive to NASD's requests. Based on the record before us, we cannot assess the appropriateness of the bar imposed on Sahai in light of NASD's Sanction Guidelines. 30/

27/ See Sundra Escott-Russell, 54 S.E.C. 867, 873 n.12 (2000).

28/ 15 U.S.C. § 78s(e)(2).

29/ Id. Sahai does not claim, and the record does not show, that NASD's action imposed an undue burden on competition.

30/ See NASD Sanction Guidelines, at 39 (2001 ed.) ("If the individual did not respond in any manner, a bar is standard. Where mitigation exists, or the person did not respond timely, consider suspending the individual in any or all capacities for up to two years.") The Guideline also recommends a fine of \$25,000 to \$50,000 for failure to respond or to respond truthfully, a fine of \$10,000 to \$25,000 for failure to respond completely, and a fine of \$2,500 to \$25,000 for failure to respond in a timely manner.

Therefore, it appears appropriate to remand this case to NASD to consider what sanctions are appropriate in light of this opinion. We do not intend to suggest any view as to a particular outcome.

An appropriate order will issue. 31/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, ATKINS, and CAMPOS); Commissioner GOLDSCHMID not participating.

Jonathan G. Katz
Secretary

31/ We have considered all of the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

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ORDER REMANDING DISCIPLINARY PROCEEDINGS

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

ORDERED that the sanctions imposed by NASD on Rooney A. Sahai in this proceeding be, and they hereby are, vacated; and it is further

ORDERED that this proceeding be, and it hereby is, remanded to NASD for further proceedings in accordance with that opinion.

By the Commission.

Jonathan G. Katz
Secretary