

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Nancy Kimball Mellon
Tampa, FL,

Respondent.

DECISION

Complaint No. 2017052760001

Dated: October 18, 2022

Respondent converted funds from her firm, filed false expense reports that caused her firm to maintain inaccurate books and records, and failed to respond truthfully to FINRA’s requests for information and documents. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Megan Davis, Esq., Kathryn M. Wilson, Esq., and John Guild, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro se

Decision

Pursuant to FINRA Rule 9311, Nancy Kimball Mellon (“Mellon”) appeals a July 11, 2019 Hearing Panel decision. The Hearing Panel found that Mellon converted \$4,300 from her employer firm, Wells Fargo Clearing Services, LLC (“Wells Fargo”), by submitting false expense reports, which also caused the firm to maintain inaccurate books and records. The Hearing Panel also found that Mellon provided false and misleading information to FINRA during its investigation into her expense reports. For this misconduct, the Hearing Panel imposed three separate bars. After an independent review of the record, we affirm the Hearing Panel’s findings of violations and the sanctions it imposed.

I. Factual Background

A. Mellon's Background

Mellon entered the securities industry in 1983 when she associated with a FINRA member. In August 2012, she registered as a general securities representative with FINRA through her association with Wells Fargo. Mellon worked at a Wells Fargo branch office in Tampa, Florida. The firm terminated Mellon's employment on December 7, 2016, as a result of the misconduct alleged in this disciplinary proceeding. Mellon has not been registered with a FINRA member since January 4, 2017.

B. Wells Fargo Expense Management Systems

Between January 2016 and December 2016 (the "relevant time period"), Wells Fargo maintained two separate systems to reimburse its employees for out-of-pocket business expenses. One system, Concur, enabled employees to enter their expenses for direct reimbursement from the firm. The other, the Financial Advisor Expense Management System ("FAEMS"), allowed employees to be reimbursed for their out-of-pocket business expenses from a flexible spending account to which employees contributed pre-tax dollars from their compensation ("FSA funds"). Employees forfeited any FSA funds not used by the end of the calendar year. Mellon contributed approximately \$1,667 a month to her FSA funds account. Wells Fargo required employees to pay their business expenses prior to seeking reimbursement from either the Concur or FAEMS systems.

C. Mellon Purchases an Outback Bowl VIP Club Membership

Mellon's friend and Wells Fargo client, RL, served on the Board of Directors of the Outback Bowl in Tampa, Florida. In late 2015, RL suggested to Mellon that purchasing an Outback Bowl VIP Membership ("Outback Membership") would be a good business networking opportunity for Mellon. The Outback Membership, which cost \$3,800, included tickets to the 2016 Outback football game on New Year's Day and admission to related networking events.

Mellon agreed to purchase the Outback Membership, but asked Outback Bowl staff if she could pay for the membership in 2016, after the event. Mellon wanted to use her 2016 Wells Fargo marketing funds because she had already depleted her 2015 funds. Mellon agreed to pay the invoice with a check that would be provided after the new year and provided her credit card number to secure her purchase. Because Wells Fargo, who RL believed to be the purchaser of the Outback Membership, had not done business with the Outback Bowl previously, RL agreed to become financially obligated for the Outback Membership payment if Wells Fargo ultimately did not pay.

On January 1, 2016, Mellon, her family, clients, and prospective clients attended the Outback Bowl.

D. Mellon Seeks Reimbursement for the Outback Bowl Expense

On January 6, 2016, the Outback Bowl sent Mellon an invoice for the \$3,800 Outback Membership. Mellon instructed her assistant, MM, to record the Outback Bowl expense as reimbursable, even though Mellon knew that she had not yet paid the invoice as required for reimbursement.

Several weeks passed, and Mellon still had not paid the Outback Bowl expense. On January 27, 2016, Mellon received an email from JK, the Outback Bowl's director of sales, asking when it would receive Mellon's check. JK noted that the Outback Bowl was planning on closing out its 2015 books later that week and would like to have Mellon's payment by then. Mellon responded, "[i]t will but I need it held til [sic] the end of February." JK responded that the Outback Bowl usually deposited checks upon receipt. Mellon pushed back, responding: "Nope, you said you would hold till end feb [sic]. I will set it up to go out then."

Later that same day, Mellon directed MM to submit the Outback Bowl expense to Wells Fargo's FAEMS for reimbursement. Mellon wrote a check from a personal Bank of Tampa checking account that she shared with her husband, dated January 2, 2016, payable to the Outback Bowl for \$3,800. Mellon approved MM's expense entry shortly thereafter. MM submitted a copy of the front of the check to FAEMS for reimbursement, but he was unaware that the check had yet to be sent to the Outback Bowl to cover the invoice.

The next day, Wells Fargo rejected Mellon's expense report, noting that she needed to resubmit and "provide proof of payment (front & back copy of cancelled check, copy of the bank or credit card statement) for [the] expense." MM informed Mellon of the rejection and told her that he needed to submit the back of the check as well. Mellon replied to MM that she would try to "dig out" the check. Mellon did not do so.

Nearly two months later, on March 17, 2016, RL inquired about the status of Mellon's check to the Outback Bowl. Mellon falsely claimed that she gave it to MM to be mailed in early March. However, it wasn't until the following day that Mellon mailed the check dated January 2, 2016, to the Outback Bowl.

As discussed in greater detail below, Mellon's Bank of Tampa checking account was consistently overdrawn during the relevant time period. As a result, on April 4, 2016, the \$3,800 check was returned to the Outback Bowl unpaid for insufficient funds. Nevertheless, on that same day, Mellon provided MM a copy of the back of her \$3,800 check and asked him to request approval to submit the Outback Bowl expense to Concur for reimbursement by the branch office. MM reached out to TS, the branch manager, for a marketing budget to which Mellon could apply the Outback Bowl payment. While MM waited for a response, JK notified Mellon that her check had been returned unpaid. Notwithstanding this information, Mellon did not inform MM or anyone else at Wells Fargo that this expense remained unpaid.¹

¹ Mellon's bank account also reflected that the bank had returned the check for insufficient funds.

Approximately two weeks after Mellon learned that her check to the Outback Bowl had bounced, TS agreed to provide Mellon with \$2,000 from Wells Fargo's marketing budget—payable in installments of \$500 per quarter—which Mellon could apply towards a portion of the Outback Bowl expense. As with all other expenses, Wells Fargo required Mellon to pay the expense prior to receiving reimbursement.

On April 18, 2016, Mellon directed MM to enter two reimbursement requests on her behalf. First, Mellon requested \$1,000 through Concur, which represented the first and second quarter payments approved by TS. Mellon also requested \$2,800 through FAEMS. MM submitted copies of the front and back of Mellon's January 2, 2016 check, which MM did not know had bounced, as evidence of payment for both the Concur and FAEMS expense reports. Between April 21, 2016 and June 3, 2016, Wells Fargo deposited a total of \$3,800 in Outback Bowl reimbursements into Mellon's Bank of Tampa account. Rather than pay the Outback Bowl, however, Mellon used this money to pay for personal expenses.

As of July 6, 2016, Mellon still had not paid the Outback Bowl, but had been reimbursed the full \$3,800 for the Outback Membership by Wells Fargo. Notwithstanding that Wells Fargo had already paid her the full amount of the Outback Membership, Mellon directed MM to request through Concur the \$500 third quarter reimbursement payment that TS had approved previously. As before, MM submitted the front and back of Mellon's January 2, 2016 check, which had been returned unpaid, as evidence of payment. On July 7, 2016, Wells Fargo sent Mellon's \$500 reimbursement to her Bank of Tampa account, which she again used to pay personal expenses.

E. The Outback Bowl Charges RL for Mellon's Expense and RL Seeks Reimbursement

Between February and May 2016, RL reached out to Mellon on multiple occasions inquiring when Mellon would pay the Outback Bowl invoice. By May 2016, RL was becoming increasingly concerned about the unpaid invoice. She emailed Mellon to inform her that the Outback Bowl sent RL the \$3,800 invoice, for which she was "on the hook," and told Mellon she was unable to afford the bill. Mellon misleadingly responded, "[i]t is being handled."

On July 19, 2016, RL informed Mellon that the Outback Bowl charged RL's credit card for Mellon's expense, and demanded Mellon repay her within two weeks or RL would take legal action. Mellon responded:

...Please stop emailing on Corp. email, this, as I mentioned has nothing to do with work. [T]hey did not provide me with any support or marketing funds and personally, I have enough on my plate, as I have mentioned on numerous occasions. I will do what I can when I can.

Mellon did not pay RL back and RL filed a civil suit in Hillsborough County Court. RL also contacted Wells Fargo's compliance office to report that she had filed a civil complaint against Mellon. The firm assigned another registered representative to RL's account.

F. Mellon's Financial Troubles and Repayment to RL

During the relevant period, Mellon was experiencing significant financial difficulties. On March 16, 2016, a Bank of Tampa commercial banking officer informed Mellon by email that her joint account had been overdrawn for nearly two months and had several unpaid or returned checks. Mellon testified that she would not have intentionally mailed a check that she knew would bounce, and that at the time she attempted to pay the Outback Bowl, she was expecting a \$25,000 payment of an annual performance bonus from Wells Fargo. Mellon received the \$25,000 bonus payment in the joint account on March 21, 2016, giving the account a positive balance.² Even with the \$25,000 bonus, however, multiple other payments depleted the balance in the joint account. Thus, by the time the Outback Bowl check was presented for payment on April 1, the joint account again had a negative balance exceeding \$6,000.

Near the end of July 2016, Mellon and her husband had incurred \$7,280 in returned item fees and \$1,295 in overdraft fees for the first half of the year and the Bank of Tampa no longer allowed overdrafts on their joint account. Mellon also owed the IRS \$537,569 in taxes and fees and was threatened with foreclosure of property adjacent to her home.³

On July 22, 2016, Mellon filed a petition for personal bankruptcy under Chapter 13. She included RL's lawsuit against her and listed RL as an unsecured creditor in a schedule attached to her bankruptcy petition.

On December 16, 2016, Mellon paid the Outback Bowl \$3,800, which in turn reimbursed RL. As of the date of this appeal, Mellon has not repaid Wells Fargo the \$500 reimbursement related to the Outback Bowl in excess of the \$3,800 due.

G. Wells Fargo Investigates Mellon's Expense Reports and Reimbursement Claims and Terminates Mellon

In late September 2016, Wells Fargo initiated an internal investigation into Mellon's expense reports. Wells Fargo concluded that Mellon had submitted false expense reports. Specifically, the firm determined that Mellon had submitted at least three expense reports seeking reimbursement of \$3,800 using the same check, even though the check had been returned unpaid for insufficient funds. In addition, because Mellon used the Outback Bowl

² When Mellon mailed the check to the Outback Bowl on March 18, 2016, the joint account had a negative balance.

³ Mellon submitted copies of the August 2, 2022 release of her federal tax liens. However, Mellon did not move to adduce these documents as required by FINRA Rule 9346(b). Notwithstanding Mellon's failure to make an appropriate motion, we have considered the releases and do not find them to be relevant. The fact that she was able to pay off her significant tax liens bears no relationship to the misconduct at issue here.

invoice and the same check for all her expense reports, Wells Fargo concluded that Mellon sought and received \$500 more than the amount of the invoice.

Wells Fargo terminated Mellon's employment on December 7, 2016. Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating her registration. On Mellon's Form U5, Wells Fargo reported that she was terminated because of "allegations that [Mellon] submitted expenses for reimbursement that were either not business related or not paid by [Mellon]."

The filing of the Form U5 triggered FINRA's investigation.

H. Mellon's False Responses to FINRA Rule 8210 Requests

On January 5, 2018, FINRA sent Mellon a FINRA Rule 8210 request directing her to provide evidence of her payment to the Outback Bowl, as well as copies of her Bank of Tampa statements and canceled checks for January 2016 through October 2016. FINRA's request explained that if Mellon was unable to obtain access to these bank records, she should provide to FINRA a copy of any written communications between her and the Bank of Tampa detailing the steps she took to obtain these documents from the bank.

Instead of providing the records FINRA sought, Mellon forwarded FINRA's Rule 8210 request to MB, a Bank of Tampa commercial banking officer, and asked for help in avoiding production of the requested documents. In her email to MB, Mellon asked MB to "provide a letter [denying] the documents or the docs." In a second email sent later in the day, Mellon asked MB, "Wouldn't it be illegal for [FINRA] to demand [the information] since it is a joint account and [my husband] would not want our laundry aired? [W]ould not that be an appropriate answer by Bank?" MB responded that Mellon should consult with an attorney.

On January 12, 2018, Mellon responded to FINRA's Rule 8210 request by email. While Mellon provided a copy of the receipt from the Outback Bowl confirming her payment of \$3,800 by credit card in December 2016, she did not provide copies of monthly bank statements, canceled checks, or an explanation of the steps she took to try to get these documents, or her correspondence with the Bank of Tampa. Rather, Mellon told FINRA that because she did not use a check to pay the Outback Bowl, "the banking document requests seem a bit broad of scope," and she explained that because the account was closed in the fall of 2016, she no longer had access to or copies of the statements.

After receiving Mellon's response, a FINRA's investigator contacted the Bank of Tampa to discuss the bank's policies regarding joint accounts. The bank told FINRA's investigator that only one individual owner of a joint account was needed to request bank statements, whether the account was opened or closed. The investigator testified that the bank account information was critically important to FINRA's investigation because it needed the records to prepare for

Mellon's planned on-the-record testimony ("OTR").⁴ The bank records were necessary to determine whether Mellon had requested and received reimbursement from Wells Fargo for an amount in excess of the amount due to the Outback Bowl, and the status of Mellon's January 2, 2016 check payable to the Outback Bowl.

On January 17, 2018, after discussing her deficient responses with Mellon,⁵ FINRA issued a second FINRA Rule 8210 request to Mellon. FINRA's request informed Mellon that her response to the January 5, 2018 request was inadequate because she had not produced copies of her bank statements and other items. FINRA also informed Mellon that the Bank of Tampa had confirmed that just one joint bank account holder could authorize the release of the requested bank statements.

Mellon responded the same day by email, telling the investigator that because the Bank of Tampa joint account was closed, she had no online access to copies of the statements. Mellon further claimed that she had tried to recover the documents from her "cloud accounts," including by contacting Apple trying to retrieve the documents. Mellon also wrote that MB advised her to consult with an attorney.⁶ Mellon maintained that she thought it was illegal for FINRA to request the records because the joint account holder, her husband, told her "in no uncertain terms that the information was not to be shared, that it was tantamount to an invasion of privacy." After receiving Mellon's emailed response, FINRA again asked Mellon if she intended to produce the requested documents, including the bank and credit card statements and cancelled checks. Mellon responded, "I have provided all I can produce."

On January 18, 2018, FINRA staff asked MB at the Bank of Tampa to provide a letter stating whether it would provide Mellon copies of statements for the joint account and detailing communications it had with her about obtaining account statements. MB responded the same day, telling FINRA that the bank would provide either account holder of the joint account with copies of bank statements and canceled checks. Accordingly, if Mellon asked for "any documentation" about her accounts, it "would provide her with any/all information requested." MB added that the bank "ha[d] not received any requests for account information" from Mellon. MB also told FINRA that Mellon had requested a letter from the bank stating that it could not produce the statements FINRA requested. In response to this request, MB told Mellon that she should consult an attorney. MB provided to FINRA the complete email chain between her and Mellon.

⁴ Mellon ultimately gave FINRA staff her written permission to obtain the requested records from the Bank of Tampa, but she did not do so until after her OTR, which took place in early February 2018.

⁵ During this conversation, FINRA's investigator told Mellon that the Bank of Tampa would provide account documents to one of the joint account owners.

⁶ To corroborate this, Mellon produced the portion of her January 5, 2018 email chain with MB in which MB said Mellon should consult an attorney. However, Mellon did not include the other portions of the email chain, thereby obfuscating the context of MB's statement.

At the hearing, Mellon admitted that the bank had told her that she could in fact obtain copies of statements for the joint account. But, according to Mellon, she did not ask the bank for the statements because her husband asked her not to. The bank never refused to provide Mellon with the account statements.

II. Procedural Background

On November 9, 2018, FINRA's Department of Enforcement filed a four-cause complaint against Mellon. Cause one alleged that Mellon converted \$4,300 from Wells Fargo, in violation of FINRA Rule 2010. Cause two alleged that Mellon also violated FINRA Rule 2010 by submitting false expense reports to Wells Fargo. Cause three alleged that by submitting false expense reports, Mellon caused Wells Fargo to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010. Finally, cause four alleged that Mellon violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA during its investigation.

Mellon filed an answer to the complaint in which she denied that her conduct violated FINRA rules and requested a hearing. Mellon argued that Wells Fargo's "expense process was not smooth in 2016" and contained administrative errors that caused the expense errors. She also maintained that Wells Fargo fostered a toxic work environment that prevented her from correcting errors in her expense reports, and that Wells Fargo mistreated and maligned her. A two-day hearing was held.

On July 11, 2019, the Hearing Panel issued its decision. It concluded that Mellon committed each of the violations alleged and barred her from associating with any member firm in any capacity. Mellon filed this appeal. Because Mellon did not request oral argument consideration of the appeal was conducted on the record.

III. Discussion

A. Mellon Converted Funds from Wells Fargo in Violation of FINRA Rule 2010

The Hearing Panel concluded that Mellon violated FINRA Rule 2010 by converting \$4,300 from Wells Fargo—\$2,800 of which came from her FAEMS account and \$1,500 from Concur. We affirm.

FINRA Rule 2010 provides that members and their associated persons, "in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2010 prohibits conduct that "may operate as an injustice to investors or other participants in the securities markets." *Dep't of Enf't v. Doni*, Complaint No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *19 (FINRA NAC Dec. 21, 2017). FINRA Rule 2010 extends beyond the law "because the rule's purpose is to serve as a tool to prohibit dishonest practices." *Dep't of Enf't v. Vedovino*, Complaint No. 2015048362402, 2018 FINRA Discip. LEXIS 20, at *16-17 (FINRA Hearing Panel July 5, 2018), *aff'd*, 2019 FINRA Discip. LEXIS 20 (FINRA NAC May 15, 2019). FINRA's authority to enforce Rule 2010 is "sufficiently broad to encompass any unethical, business-related misconduct, regardless of

whether it involves a security.” *Dep’t of Enf’t v. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. Governors May 9, 2014), *aff’d*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

Conversion is defined as an “intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.” FINRA Sanction Guidelines at 36 & n.2 (2021).⁷ It is well settled that conversion by an associated person constitutes a violation of FINRA Rule 2010.⁸ See *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *23 (Sept. 30, 2016).

We conclude that the record clearly supports a finding of conversion, as Mellon intentionally took funds she was not entitled to possess. Mellon knowingly caused her assistant to file false expense reports to obtain reimbursement for expenses she had not paid. Mellon knew that to receive reimbursement for a business expense she must have already paid for it, and therefore she was not entitled to any reimbursement. However, despite this understanding, Mellon submitted a check that she knew had bounced as proof of payment. Therefore, Mellon was not entitled to receive reimbursement from either the Concur or the FAEMS reimbursement system. In addition, even after seeking reimbursement for the entire amount of the Outback Bowl invoice, Mellon sought and received an additional \$500 from Wells Fargo using the same dishonored check. This \$500 was an amount that, again, Mellon had not paid for expenses and which she would never be able to claim as an unreimbursed expense. It was \$500 for which Mellon had no legitimate claim. Thus, Mellon converted firm funds in violation of FINRA Rule 2010.⁹

Mellon attempts to minimize the seriousness of her misconduct by claiming it involved an “error in judgment” and just “one returned check.” In fact, Mellon’s misconduct involved a great deal more. Mellon repeatedly sought reimbursement for a \$3,800 expense that she knew

⁷ *FINRA Sanction Guidelines* (2021), <https://www.finra.org/sites/default/files/SanctionsGuidelines.pdf> [hereinafter *Guidelines*].

⁸ “Because conversion casts doubt on a person’s “ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people’s money,” it is well established that conversion is contrary to the mandate of Rule 2010.” *Akindemowo*, 2016 SEC LEXIS 3769, at *22 n. 20.

⁹ We acknowledge that the money from the FAEMS account was funded by Mellon with pre-tax contributions from her Wells Fargo compensation. Mellon, however, submitted false reimbursement requests for the Outback Membership before she had paid it, and obtained money from the FAEMS account to pay for personal expenses. Under Wells Fargo’s policies, Mellon was not permitted to use the Wells Fargo FAEMS funds except for legitimate reimbursement. Instead of heeding these conditions, Mellon intentionally submitted false expense reports to collect monies to which she was not entitled. Thus, we conclude that Mellon converted the funds from her firm’s FAEMS account.

she had not paid, and she submitted misleading documentation to Wells Fargo in support of her reimbursement claims. Mellon continuously rebuffed JK's and RL's efforts to collect the amount due, even though Mellon knew RL was "on the hook" to pay the invoice if Mellon did not. Moreover, when she did receive reimbursements from Wells Fargo for the Outback Bowl expense, Mellon used the funds to pay other personal expenses.

B. Mellon Caused Wells Fargo to Maintain Inaccurate Books and Records by Filing False Expense Reports

We further find that, as articulated in causes two and three of the complaint, Mellon violated FINRA Rule 2010 by directing her assistant to submit false expense reports to Wells Fargo, thereby causing Wells Fargo to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.

1. Mellon Falsified Expense Reports in Violation of FINRA Rule 2010

The Hearing Panel concluded that Mellon, as alleged in cause two of the complaint, violated FINRA Rule 2010 by directing her assistant to submit four false expense reports to Wells Fargo. We affirm.

FINRA Rule 2010 requires that members and associated persons, "in the conduct of [their] business, [] observe high standards of commercial honor and just and equitable principles of trade." To determine whether a respondent's conduct amounts to an independent violation of FINRA Rule 2010, "we must determine whether the respondent has acted unethically or in bad faith." *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. Feb. 26, 2021). "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." *Id.* It is well settled that submitting false expense reports to a firm is unethical conduct that violates FINRA Rule 2010. *See Dep't of Enf't v. McCartney*, Complaint No. 2010023719601, 2012 FINRA Discip. LEXIS 60, at *7-8 (FINRA NAC Dec. 10, 2012) (respondent violated NASD Rule 2110 when he prepared and submitted a false expense report, false receipt, false verification letter, and falsified check to obtain monetary reimbursement to which he was not entitled); *Dep't of Enf't v. Hunt*, Complaint No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *16-17 (FINRA NAC Dec. 18, 2012) (respondent violated Rule 2010 when he falsified expense reports to collect reimbursement for expenses before they were actually incurred).

Mellon directed her assistant to enter four false expense reports on her behalf between January 27 and July 6, 2016. The expense reports were false because Mellon represented that she had paid \$3,800 to the Outback Bowl when she had not. She used the front and back of a dishonored check as evidence of that payment when she knew that the check had not cleared. In addition, she sought reimbursement of an additional \$500 more than the Outback Bowl invoice. Therefore, Mellon's misconduct violated FINRA Rule 2010.

2. Mellon Violated FINRA Rules 4511 and 2010 by Causing the Firm to Maintain False Books and Records

In addition, we affirm the Hearing Panel's finding that by submitting those four false expense reports, Mellon caused Wells Fargo to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010, as alleged in cause three.¹⁰

FINRA Rule 4511 requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act, and the applicable Exchange Act rules." Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3(a)(2) thereunder require broker-dealers to maintain current "[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." As such, firms have an obligation to regulators to accurately track and report business expenses. The SEC has repeatedly held that the duties to maintain records and file reports require that such records and reports be true and correct. *Dep't of Enf't v. Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *20 (NASD NAC Dec. 15, 2003). Thus, causing a firm to maintain inaccurate books and records violates FINRA Rules 4511 and 2010.¹¹

Mellon claims she "did not intend to disrupt Wells Fargo's books." Mellon's intent is irrelevant, however, as scienter is not an element of a FINRA Rule 4511 violation. *See, e.g., Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *47-48 (May 27, 2015) (proof of scienter not required to establish violation of NASD Rule 3110 (predecessor of FINRA Rule 4511)). In any event, the record establishes that Mellon knew the expense reports she submitted were false, and based on her decades of experience as a registered representative, she should have known that Wells Fargo would include her false expense reports in its books and records when she submitted them.

Accordingly, Mellon violated FINRA Rules 4511 and 2010 by submitting false expense reports thereby causing Wells Fargo to maintain inaccurate books and records.

C. Mellon Violated FINRA Rule 8210 by Providing False Information to FINRA

Cause four of the complaint charges Mellon with giving FINRA staff false and misleading information during the investigation into her expense reports, in violation of FINRA Rules 8210 and 2010. The Hearing Panel concluded that Mellon engaged in the misconduct as alleged. We agree. The Complaint alleged that Mellon falsely told FINRA staff that she was

¹⁰ A violation of FINRA Rule 4511 also violates FINRA Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. *See Dep't of Enf't v. Felix*, Complaint No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at * 23 (FINRA NAC May 26, 2021).

¹¹ FINRA Rule 0140 provides that FINRA rules apply with equal force to member firms and associated persons. Accordingly, as an associated person, Mellon had an obligation to comply with FINRA Rule 4511.

unable to provide copies of bank statements and cancelled checks when she knew that the Bank of Tampa would provide copies upon request. It further alleged that Mellon misled FINRA staff by representing that when she asked the bank for her account records, the bank instead told her to consult an attorney. Because she knowingly gave FINRA false and misleading information about the availability of the bank statements, Mellon violated FINRA Rules 8210 and 2010.

Pursuant to FINRA Rule 8210, FINRA may require any person subject to its jurisdiction to provide documents, testimony, and information regarding any matter under investigation. Because FINRA does not have subpoena power, it “must rely on Rule 8210 to obtain information . . . necessary to carry out its investigations and fulfill its regulatory mandate.” *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009). It is well settled that “[a]n associated person who provides false or misleading information to [FINRA] in the course of an investigation violates . . . Rule 8210.” *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008). An associated person also violates FINRA Rule 2010 when he or she violates any FINRA rule, including FINRA Rule 8210. *See Id.* at *23-24. In addition, providing false information to FINRA constitutes an independent violation of FINRA Rule 2010. *Id.*

FINRA requested, pursuant to FINRA Rule 8210, Mellon’s bank records for the account from which Mellon wrote the check that purported to pay the Outback Bowl invoice and in which she received her expense reimbursements. FINRA also requested that Mellon provide copies of the written communications between her and her bank and a description of any steps she took to obtain the documents from the bank if she was unable to obtain access to the requested documents.

Rather than attempting to obtain the requested documents, Mellon purposefully took steps to prevent their production. She requested that the Bank of Tampa provide a letter denying the production of the account statements. She also falsely responded to FINRA that the bank statements were unavailable and claimed that the Outback Bowl invoice was not paid by check, and therefore FINRA’s request for her account statements were “a bit broad of scope.”

Mellon maintains that she did “not violate 8210 because [she] produced the documents within the requested timeline and [] did not produce any false or misleading documents.” These arguments fail. The complaint alleges that Mellon’s responses were false and misleading, not the documents themselves. Mellon’s refusal to produce the bank statements that FINRA needed for its investigation was based on the false representation that she could not gain access to the records. Moreover, Mellon did not ask the Bank of Tampa for her bank statements until after her OTR.

Mellon also claims she relied on advice of counsel. She maintains that she “spoke with an attorney [], experienced in realm of Finra [sic] proceedings after your first investigative letters (multiple cases), at which point HE advised me that the bank statement production requests were broad reaching.” However, advice of counsel is not a defense to liability under FINRA Rule 8210 and is not mitigating unless a respondent develops the record to show that she “made complete disclosure to counsel, sought advice on the legality of the intended conduct, received advice that the intended conduct was legal, and relied in good faith on counsel’s advice.”

Howard Brett Berger, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *38 (Nov. 14, 2008); *aff'd*, 347 F. App'x 692 (2d Cir. 2009); *Toni Valentino*, 57 S.E.C. 330, 338 (2004) (“We have repeatedly held that reliance on counsel does not excuse an associated person’s obligation to supply information or testimony.”). Mellon has not attempted to make this showing. To conclude that she relied on the advice of counsel, Mellon would have to prove that she made full and complete disclosure to competent legal counsel familiar with FINRA rules and then reasonably relied on the advice. See *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *52 (Sept. 13, 2010) (“The advice must be based on full and complete disclosure, and the respondent asserting reliance must produce ‘actual advice from an actual lawyer.’”). Mellon has failed to establish the advice of counsel defense and the record does not support a reliance on counsel defense.

FINRA gave Mellon multiple opportunities to correct her misrepresentations. In response to FINRA’s renewed requests, Mellon continued to falsely respond that she did not have access to her bank statements. In addition, in furtherance of her attempts to mislead FINRA, Mellon provided an email that contained only part of her email communications with the Bank of Tampa recommending that Mellon consult an attorney, which Mellon took out of context in an attempt to misled FINRA. However, the bank confirmed to FINRA that it would provide Mellon’s bank statements to Mellon, but she had not requested the documents. Mellon knew that producing copies of statements from the joint account would reveal that she had not paid the Outback Bowl before Wells Fargo reimbursed her \$4,300. She also knew that the Bank of Tampa would produce the statements for her if she asked for them. Thus, Mellon violated FINRA Rules 8210 and 2010.

IV. Sanctions

The Hearing Panel imposed three independent bars for Mellon’s misconduct. We agree with the Hearing Panel that the bars are appropriately remedial sanctions for Mellon’s violations, and we therefore affirm.

A. Mellon Is Barred for Converting Firm Funds

We have considered FINRA’s Sanction Guidelines (“Guidelines”) in determining the appropriate sanctions for Mellon’s violations. The Guidelines governing sanctions for conversion direct us to “[b]ar the respondent regardless of amount converted.”¹² The recommended bar for conversion in the Guidelines “reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry.” *Dep’t of Enf’t v. Grivas*, Complaint No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (FINRA NAC Jul. 16, 2015); *aff’d*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173 (Mar. 29, 2016).

¹² *Guidelines*, at 36.

We have also looked to the Principal Considerations in Determining Sanctions. We find that several of these considerations are relevant to Mellon's misconduct and serve to aggravate sanctions. Mellon engaged in a troubling pattern of misconduct that occurred over an extended period, submitting four false expense reports over a period of six months.¹³ Mellon also repeatedly misled Wells Fargo, the Outback Bowl, and RL in an effort to delay payment and conceal her misconduct.¹⁴ In addition, Mellon minimizes her misconduct, choosing instead to blame a purported toxic work environment, for what she claims amounted to mere administrative failings.¹⁵ Contrary to her protestations, Mellon's misconduct was intentional.¹⁶ She knowingly sought reimbursement for expenses she had not incurred and used that money to pay for personal expenses.

Taking these factors into account, we conclude that this is an egregious case and Mellon presents a substantial risk to the investing public. Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012). Based on the record, and taking into consideration the many applicable aggravating factors, we conclude that barring Mellon serves a remedial interest and protects the investing public.¹⁷

B. Mellon is Barred for Filing False Expense Reports and Causing Her Firm to Maintain Inaccurate Books and Records

The Hearing Panel imposed a unitary sanction—a bar—for the misconduct alleged in causes two and three of the Complaint. We agree and affirm the bar.

The Guidelines state that, in certain instances, it may be appropriate to aggregate violations for purposes of imposing sanctions.¹⁸ We agree with the Hearing Panel that it was appropriate to assess a unitary sanction for the misconduct alleged in causes two and three because they both relate to Mellon's submission of false expense reports. Like the Hearing

¹³ *Guidelines*, at 7 (Principal Consideration Nos. 8, 9).

¹⁴ *Id.* at 7 (Principal Consideration No. 10).

¹⁵ *Id.* at 7 (Principal Consideration No. 2).

¹⁶ *Id.* (Principal Consideration No. 13).

¹⁷ We have considered Mellon's termination by Wells Fargo as a mitigating factor because it occurred prior to FINRA's detection and investigation of this matter. *Id.* at 5. We find, however, that the presence of this sole mitigating factor does not diminish the severity of Mellon's misconduct sufficiently to justify a sanction less than a bar.

¹⁸ *Guidelines*, at 4.

Panel, we have considered the Guidelines for falsification of records,¹⁹ as well as the Guidelines for recordkeeping violations²⁰ to determine the appropriate sanction for the aggregate causes of action.

The Guidelines for falsification of records instruct adjudicators to consider a fine of \$5,000 to \$155,000 if the falsification is done without authorization and in the absence of other violations or customer harm.²¹ When a respondent falsifies a document that causes customer harm, or if the misconduct is accompanied by significant aggravating factors, a bar is considered standard.²²

The Guidelines for recordkeeping violations instruct adjudicators to consider a fine of \$10,000 to \$155,000 where aggravating factors predominate and a higher fine where significant aggravating factors predominate.²³ The Guidelines also recommend a suspension of up to two years or a bar where aggravating factors predominate.²⁴

The Guidelines for recordkeeping violations and falsification of records recommend that adjudicators consider the nature and materiality of the inaccurate or missing information and the nature of the falsified documents.²⁵ Other relevant considerations include the nature, proportion, and size of the records at issue, and whether the respondent entered or omitted the inaccurate or missing information intentionally, recklessly, or as the result of negligence.

We find that the violations here are egregious. Mellon intentionally created false expense reports for her personal monetary gain. Wells Fargo relied on the accuracy of Mellon's expense reports to fulfill its regulatory obligations. The false reports deceived Wells Fargo into paying Mellon \$4,300 and facilitated Mellon's conversion. In addition, the filing of the false expense reports exhibited a troubling pattern of unethical behavior—Mellon filed four false expense reports over a six-month period—for the purpose of receiving reimbursement for an expense she had not paid and then using the money for other personal expenses.

¹⁹ *Id.* at 37.

²⁰ *Id.* at 29.

²¹ *Id.* at 37.

²² *Id.*

²³ *Id.* at 29.

²⁴ *Id.*

²⁵ *Id.* at 29, 37.

Ensuring the honesty and accuracy of financial records is critical to the protection of the public interest. We therefore agree with the Hearing Panel that it is necessary to bar Mellon from associating with any member firm in any capacity for falsifying firm records, in violation of FINRA Rule 2010, and causing Wells Fargo to maintain false books and records, in violation of FINRA Rules 4511 and 2010.

C. Mellon is Barred for Her Failure to Respond Truthfully

The Hearing Panel concluded that Mellon should be barred for failure to respond truthfully to FINRA's requests for information pursuant to FINRA Rule 8210. We agree and affirm.

For failing to respond truthfully to FINRA Rule 8210 requests, the Guidelines recommend a fine of \$25,000 to \$77,000 and state that, absent mitigating circumstances, a bar is the standard sanction.²⁶ *See, e.g., Ortiz*, 2008 SEC LEXIS 2401, at *32-33 (“[T]he failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry. . . . [A] bar is an appropriate remedy.”), *aff'd*, 444 F.3d 1208 (10th Cir. 2006); *Dep’t of Enf’t v. Harari*, Complaint No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (FINRA NAC Mar. 9, 2015) (“The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate.”). The importance of the information requested as viewed from FINRA’s perspective is a relevant principal consideration here.²⁷ The documents FINRA sought, that Mellon falsely represented she could not provide, were of critical importance to FINRA’s investigation. Mellon’s misrepresentations to FINRA were an attempt to stymie FINRA’s access to records central to its investigation, specifically the bank records that show that Mellon sought and received reimbursement for expenses she had not paid. Mellon repeatedly claimed that the bank statements from the Bank of Tampa joint account were not available, and she attempted to mislead FINRA staff to believe that the bank would not provide the statements without Mellon seeking legal counsel. Mellon’s misrepresentations prevented FINRA from accessing important documents prior to her OTR. “The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable.” *Ortiz*, 2008 SEC LEXIS 2401, at *29. Barring Mellon will protect the investing public and further FINRA’s ability to investigate effectively potential wrongdoing. Thus, Mellon’s repeated and troubling lack of candor with her regulator establishes that a bar is the appropriate sanction.

²⁶ *Guidelines*, at 33.

²⁷ *Id.*

D. Mellon's Mitigation Claims Fail

Mellon maintains that the effects of FINRA's disciplinary process and sanctions have been "catastrophic" for her and her family.²⁸ However, Mellon's professional and economic hardships do not mitigate her egregious misconduct. *See, e.g., Thomas C. Gonnella*, Exchange Act Release No. 78532, 2016 SEC LEXIS 2786, at *51 (Aug. 10, 2016) (finding the collateral consequences of respondent's misconduct, including the loss of employment, reputation, and income, to be not mitigating). As a FINRA associated person, Mellon was required to know her obligations under FINRA rules and the consequences of her noncompliance. Indeed, any hardship that Mellon as suffered as result of the sanctions we impose follows from her own wrongdoing. *See Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *28 (Dec. 22, 2008) (declining to find mitigating the economic disadvantages the respondent allegedly suffered because they were a result of his misconduct).

Mellon also discusses a Letter of Acceptance, Waiver and Consent ("AWC") in which a respondent was suspended for one year and fined \$10,000 for violating his firm's business expense reimbursement policies. But comparisons to sanctions in settled cases are inappropriate. *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *34 (Apr. 3, 2020) ("We have observed repeatedly that 'comparisons to sanctions in settled cases are inappropriate.'"); *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *39 ("As we have noted repeatedly, the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with action taken in other proceedings."), *petition for review dismissed in part and denied in part*, No. 20-1092, 2021 U.S. App. LEXIS 5724 (D.C. Cir. Feb. 26, 2021); *Dep't of Enf't v. C.L. King & Assocs., Inc.*, Complaint No. 2014040476901, 2019 FINRA Disc. LEXIS 43, at *136-37 (FINRA NAC Oct. 2, 2019) ("[C]omparisons to sanctions in settled cases are inappropriate because pragmatic considerations justify the acceptance of lesser sanctions in negotiating a settlement such as the avoidance of time-and-manpower-consuming adversary proceedings."). Sanctions imposed in matters resolved by AWCs are neither precedent nor significant for determining the appropriate sanction to impose on a respondent who chooses to litigate.

Mellon now asserts that she is "remorseful and did nothing with intent." The record belies these claims, demonstrating a troubling lack of remorse by Mellon throughout the proceedings below, and establishing that her misconduct was intentional. As the Hearing Panel

²⁸ During this appeal, Mellon submitted to the NAC, via email, documents reflecting her financial hardships (such as bankruptcy and foreclosure documents), as well as documents purportedly supporting her claims that Wells Fargo's work environment was toxic (e.g., an EEOC complaint against Wells Fargo and a right to sue letter). Mellon also provided a copy of Wells Fargo paystubs that purport to show a "\$2000 community support payroll deduction" that Mellon alleges should have been paid to the Outback Bowl. Mellon did not move to adduce these documents as required by FINRA Rule 9346(b). Notwithstanding Mellon's failure to make an appropriate motion, we have considered the documents and do not find them to be material or exculpatory. Significantly, none of the documents provide justification or mitigation for Mellon's misconduct or alter our view of the relevant facts.

observed, Mellon “has not acknowledged her misconduct, choosing instead to blame others, including her assistant, for supposed administrative failings,” and downplayed her actions. Even if we were to credit Mellon’s claim of remorse, it comes too late and is too limited to mitigate the severity of her misconduct.

We find that Mellon’s deception and dishonesty to Wells Fargo, the Outback Bowl, and FINRA undoubtedly makes her unfit to serve in an industry that heavily relies on the honesty and integrity of its securities professionals. The bars are imposed to protect the public interest. Given that aggravating factors predominate here and that Mellon has failed to establish the presence of any mitigating factors, she has not shown that sanctions less than a bar would protect the public and would be appropriate. Accordingly, Mellon is barred from associating with any member firm in any capacity for her violations.

V. Conclusion

We affirm the Hearing Panel’s findings that Mellon converted \$4,300 from Wells Fargo, in violation of FINRA Rule 2010, filed false expense reports that caused her employer firm to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010, and failed to respond truthfully to FINRA’s requests for information and documents, in violation of FINRA Rules 8210 and 2010. For her misconduct, Mellon is barred from associating with any member firm in all capacities, effective upon service of this decision. Mellon is also ordered to pay \$4,613.94 in hearing costs.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary