

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN PELLETIER  
(CRD No. 4205289),

Respondent.

Disciplinary Proceeding  
No. 2021071094401

Hearing Officer—MC

**EXTENDED HEARING  
PANEL DECISION**

June 25, 2024

**Respondent John Pelletier is suspended from associating with any FINRA member firm in any capacity for three months and fined \$10,000 for effecting 16 unauthorized transactions in a customer’s retirement account in violation of FINRA Rule 2010.**

*Appearances*

For the Complainant: Robert Kennedy, Esq., Nicholas Pilgrim, Esq., and John R. Baraniak, Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

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

**DECISION**

**I. Introduction**

This disciplinary proceeding illustrates the consequences of failing to fulfill the fundamental obligation of a registered representative to obtain a customer’s authorization before executing a trade in the customer’s account. In this case the customer—DP, a former factory worker—entrusted his employer-sponsored 401(k) retirement savings account, accumulated over a 25-year career and representing two-thirds of his financial assets, to Respondent John Pelletier to roll over into an Individual Retirement Account. DP expected to rely for years on \$500 monthly distributions from the account to supplement his Social Security income. However, after setting up the account, Pelletier executed 16 trades to enable distributions at the direction of the customer’s ex-wife—NP—who was not an authorized agent. Subsequently, NP nearly depleted the account by spending the funds without DP’s knowledge. Pelletier claims that DP gave him oral authorization to accept the ex-wife’s trade instructions.

FINRA initiated an investigation into the matter after receiving a Uniform Termination Notice of Securities Industry Registration Form (Form U5) filed by FINRA member firm BMO Harris Financial Advisors, Inc. The Form U5 reported the settlement of a civil suit arising from DP’s complaint that the firm, acting through Pelletier, made unauthorized distributions from his IRA account.<sup>1</sup> The investigation led FINRA’s Department of Enforcement to file the Complaint in September 2023.<sup>2</sup> Its single cause of action charges Pelletier with violating FINRA Rule 2010. Pelletier does not dispute that he executed the trades and that he did so acting on NP’s oral instructions.<sup>3</sup>

The table below summarizes the Complaint’s 17 allegedly unauthorized transactions, effected by Pelletier from May 2017 to July 2018:<sup>4</sup>

| Trade No.     | Trade Date | Amount Sold from IRA Account | Distribution Date | Distribution Amount |
|---------------|------------|------------------------------|-------------------|---------------------|
| 1             | 05/02/2017 | \$1,766.58                   | 05/09/2017        | \$1,500.00          |
| 2             | 07/11/2017 | \$2,944.00                   | 07/12/2017        | \$2,500.00          |
| 3             | 08/10/2017 | \$2,943.18                   | 08/11/2017        | \$2,500.00          |
| 4             | 09/28/2017 | \$4,708.00                   | 09/29/2017        | \$4,000.00          |
| 5             | 11/20/2017 | \$3,531.42                   | 11/22/2017        | \$3,000.00          |
| 6             | 01/29/2018 | \$707.89                     | 01/31/2018        | \$600.00            |
| 7             | 02/22/2018 | \$2,354.94                   | 02/23/2018        | \$2,000.00          |
| 8             | 03/05/2018 | \$1,766.71                   | 03/06/2018        | \$1,500.00          |
| 9             | 04/05/2018 | \$2,354.95                   | 04/06/2018        | \$2,000.00          |
| 10            | 04/16/2018 | \$1,178.48                   | 04/17/2018        | \$1,000.00          |
| 11            | 04/26/2018 | \$2,943.18                   | 04/27/2018        | \$2,500.00          |
| 12            | 05/09/2018 | \$1,766.71                   | 05/10/2018        | \$1,500.00          |
| 13            | 05/18/2018 | \$1,766.71                   | 05/21/2018        | \$1,500.00          |
| 14            | 06/04/2018 | \$3,531.42                   | 06/05/2018        | \$3,000.00          |
| 15            | 06/15/2018 | \$1,178.48                   | 06/18/2018        | \$1,000.00          |
| 16            | 07/16/2018 | \$590.00                     | 07/17/2018        | \$500.00            |
| 17            | 07/19/2018 | \$1,766.71                   | 07/20/2018        | \$1,500.00          |
| <b>Total:</b> |            | <b>\$37,799.36</b>           |                   | <b>\$32,100.00</b>  |

<sup>1</sup> Joint Stipulations of Fact (“Stip.”) ¶ 5; Complainant’s Exhibit (“CX-\_\_”) 2, at 9.

<sup>2</sup> Hearing Transcript (“Tr.”) 302 (FINRA Investigator).

<sup>3</sup> Stip. ¶ 14.

<sup>4</sup> Stip. ¶ 13.

For the reasons set forth below, the Extended Hearing Panel concludes that Enforcement proved by a preponderance of the evidence that 16 of those transactions, trades numbered 2 through 17 above, were unauthorized.

## **II. Respondent and Jurisdiction**

Pelletier first became registered as a General Securities Representative through a FINRA member firm in May 2001, more than a decade before associating with BMO Harris.<sup>5</sup> He registered as a General Securities Representative with BMO Harris in August 2012. In 2013 he also became registered as a General Securities Principal.<sup>6</sup> Pelletier is currently registered with another member firm.<sup>7</sup> He is therefore subject to FINRA's jurisdiction.

## **III. Findings of Fact**

### **A. BMO Harris's Call Center Operation**

The parties agree on the basic facts that provide the context for this case. During the relevant period, from May 2015 through September 2018, Pelletier worked at a call center operated by BMO Harris near Milwaukee, Wisconsin.<sup>8</sup> Pelletier was one of a dozen registered representatives BMO Harris employed there.<sup>9</sup> Eight of the call center representatives were designated as a "service team" and the other four, including Pelletier, were designated as a "sales team."<sup>10</sup> As a member of the sales team, Pelletier was paid a salary plus quarterly bonuses that varied depending on assets he brought into the firm.<sup>11</sup> Pelletier received no commissions or fees.<sup>12</sup>

At the call center, Pelletier's primary responsibility was to assist customers rolling over workplace retirement savings into BMO Harris IRA accounts.<sup>13</sup> Acting in his capacity as financial advisor, he also helped them obtain distributions from their IRAs and assisted them if

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<sup>5</sup> Stip. ¶ 2.

<sup>6</sup> Stip. ¶¶ 2, 3.

<sup>7</sup> CX-1, at 6.

<sup>8</sup> Tr. 37–38 (Pelletier).

<sup>9</sup> Tr. 42 (Pelletier).

<sup>10</sup> Tr. 42–43 (Pelletier).

<sup>11</sup> Tr. 40 (Pelletier).

<sup>12</sup> Tr. 40 (Pelletier).

<sup>13</sup> Tr. 38 (Pelletier).

they wished to change their investments.<sup>14</sup> He received no compensation for processing distributions from customers' retirement accounts.<sup>15</sup>

## **B. BMO Harris's Written Unauthorized Trading Policies**

BMO Harris's policy and procedure manuals in effect when Pelletier managed DP's account in the call center were clear. The manuals stated the basic rule that representatives must only accept orders to trade in an account from the owner or authorized agent. They explained how to verify the identity of a person calling in an order by phone and warned specifically against accepting orders from an account owner's spouse:

Orders should be accepted only from the beneficial owner of an account or their authorized agent. Authorized agents would include anyone holding third-party power to act on the customer's behalf . . . *For example, 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[.]*

If an employee receives a telephone order from someone they do not recognize or know to be the owner of the account or person authorized to act on behalf of the account, identity should be requested and confirmed before accepting the order. Identity verification information would include:

- account number; and
- social security number; or
- other identifying information on record such as mother's maiden name.<sup>16</sup>

A section titled Unauthorized Trading had other policy requirements particularly relevant here. It forbade BMO Harris employees from entering a transaction without first contacting the account owner or authorized agent "unless the employee has specific written authorization to act on the customer's behalf."<sup>17</sup> It also warned registered representatives to:

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.* Doing a customer a "favor" by

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<sup>14</sup> Tr. 39–40 (Pelletier).

<sup>15</sup> Tr. 41 (Pelletier).

<sup>16</sup> CX-72, at 82–83 (BMO Harris Broker Dealer Compliance Policy Manual § 10.21 (Jan. 29, 2015)); CX-75, at 86 (BMO Harris Broker Dealer Compliance Policy Manual § 10.22 (Feb. 2, 2016)); CX-77, at 10 (excerpts from BMO Harris Broker Dealer Compliance Policy Manuals § 10.23 (Dec. 2016, July 2017) (emphasis added)).

<sup>17</sup> CX-77, at 1 (excerpt from December 2016 Compliance Policy Manual).

entering an order when he or she cannot be reached may be construed as good customer service by the RR but in reality is a rule violation . . . .<sup>18</sup>

Brian Bonewell, manager of BMO Harris’s call center, explained these policies at the hearing. Bonewell has worked in the financial industry for 30 years—the first 15 as an advisor and thereafter as a manager.<sup>19</sup> He joined BMO Harris in December 2013.<sup>20</sup> At BMO Harris, his responsibilities include managing the representatives at the call center. Bonewell supervised Pelletier for five years, including the period of the alleged misconduct, until December 2018 when Pelletier moved from the call center to become a field advisor in a BMO Harris branch office.<sup>21</sup>

Bonewell testified that call center employees became familiar with these policies through an annual attestation process that included five or six training modules each representative received, completed, and submitted electronically.<sup>22</sup> Bonewell completed the annual certification process himself and ensured that all the representatives he supervised also did so.<sup>23</sup>

Bonewell confirmed that BMO Harris prohibited representatives from accepting trade instructions for a customer’s account from a spouse or ex-spouse without the written authorization of the account owner.<sup>24</sup> The prohibition has remained in place for the entire time he has managed the call center.<sup>25</sup> Bonewell explained that the language of the policy on “inadvertent” unauthorized orders is there because of the possibility that an advisor might consider doing a favor for a customer by taking an order from the customer’s spouse as an accommodation, a violation of BMO Harris’s policy.<sup>26</sup>

### **C. BMO Harris’s Unwritten Policy on Oral Authorization for Third-Party Directed Trades**

Bonewell testified that BMO Harris’s unwritten policy prohibited representatives from even talking on the phone with a third party about an account, much less accepting a trade instruction, without first adhering to a specific protocol that allowed for exceptions to first obtaining written authorization. Before speaking to a third party about a customer’s account, a

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<sup>18</sup> CX-77, at 1 (excerpt from December 2016 Compliance Policy Manual) (emphasis added).

<sup>19</sup> Tr. 237 (Bonewell).

<sup>20</sup> Tr. 239 (Bonewell).

<sup>21</sup> Tr. 240–41 (Bonewell).

<sup>22</sup> Tr. 241–42 (Bonewell).

<sup>23</sup> Tr. 242 (Bonewell).

<sup>24</sup> Tr. 242 (Bonewell).

<sup>25</sup> Tr. 243 (Bonewell).

<sup>26</sup> Tr. 243–44 (Bonewell).

representative had to speak with the account owner and “fully” verify the person’s identity.<sup>27</sup> Next, the representative was supposed to ask the verified account owner for “permission to speak” with the third party about the account.<sup>28</sup> Bonewell said, “that would be explicit,” requiring the representative to ask, “do I have your permission to speak freely about the activity in your account.”<sup>29</sup>

According to Bonewell, these conversations were common during tax season when a customer might want an accountant or someone assisting with preparation of a tax return to ask the representative questions about the customer’s securities holdings.<sup>30</sup> But those conversations were “usually informational,” involved “reviewing activity or account details” for tax purposes and did “not end with a trade.”<sup>31</sup>

Obtaining oral authorization from an account owner to allow a representative to enter a trade at the direction of a third party required more. First, the representative had to verify the identity of the account owner and explicitly ask if the account owner was giving permission to the representative to speak with the third party about the account. Then, the representative had to ask if the owner was giving the representative authorization to accept a trade instruction from the third party.<sup>32</sup> The representative then was required to do a “read-back and confirm the trade with the owner during that call.”<sup>33</sup> Only after completing these steps could the representative execute a transaction at the direction of an orally-authorized third party.

This protocol was not described in writing in the firm’s compliance manuals.<sup>34</sup> BMO Harris managers conveyed the requirements to representatives in team meetings.<sup>35</sup> Additionally, managers made representatives aware of the requirements through what Bonewell called “management compliance” and guidance given when a representative asked if it was permissible to take oral authorization for third-party trades.<sup>36</sup> Bonewell testified that, based on his more than ten years of managing the call center, he is “confident” all call center representatives understood that they could not “take a trade from an unauthorized person who is not technically listed” as a person authorized to trade on the account.<sup>37</sup> He also testified that it was “generally understood”

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<sup>27</sup> Tr. 264 (Bonewell).

<sup>28</sup> Tr. 264 (Bonewell).

<sup>29</sup> Tr. 264 (Bonewell).

<sup>30</sup> Tr. 265–66 (Bonewell).

<sup>31</sup> Tr. 282 (Bonewell).

<sup>32</sup> Tr. 264 (Bonewell).

<sup>33</sup> Tr. 266 (Bonewell).

<sup>34</sup> Tr. 265 (Bonewell).

<sup>35</sup> Tr. 273 (Bonewell).

<sup>36</sup> Tr. 265 (Bonewell).

<sup>37</sup> Tr. 283 (Bonewell).

by call center representatives that a customer could not give “a standing verbal instruction.”<sup>38</sup> In other words, one verified oral grant of permission authorized only that particular trade. In more than a decade managing the call center, Bonewell has never heard of another representative accepting one oral grant of authority as a continuing authorization for a third party to direct trades.<sup>39</sup>

#### **D. Customer DP and His Former Spouse NP**

DP was 70 years old at the time of the hearing in February 2024. He resided in a small town in Michigan’s Upper Peninsula where he has lived most of his life.<sup>40</sup> When he retired in 2015, he concluded a 25-year career working on an assembly line producing heavy equipment for the military.<sup>41</sup> He had a 401(k) retirement savings account, not held at BMO Harris, to which his employer contributed and through which his savings were invested.<sup>42</sup> When he initially contacted BMO Harris, he had a vested balance of approximately \$78,000 in the 401(k) account.<sup>43</sup>

At the hearing, DP explained that he and NP were married in the 1970s and had two children.<sup>44</sup> After 12 years, they divorced.<sup>45</sup> Later, the couple resumed living together but did not remarry.<sup>46</sup>

DP and NP maintained a joint checking account at DP’s credit union.<sup>47</sup> It was DP’s only checking account, and his Social Security income was deposited into it.<sup>48</sup> DP testified that NP controlled the account.<sup>49</sup> According to him, NP handled their household finances, which included paying the bills and preparing their income tax filings, but did not include anything involving his retirement account.<sup>50</sup>

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<sup>38</sup> Tr. 284 (Bonewell).

<sup>39</sup> Tr. 247 (Bonewell).

<sup>40</sup> Tr. 188 (DP).

<sup>41</sup> Tr. 189 (DP).

<sup>42</sup> Tr. 191 (DP).

<sup>43</sup> Joint Exhibit (“JX-\_\_”) 56, at 3 (Audio transcript (“Audio Tr.”) 6).

<sup>44</sup> Tr. 188 (DP).

<sup>45</sup> Tr. 193 (DP). NP did not testify at the hearing.

<sup>46</sup> Tr. 193 (DP).

<sup>47</sup> Tr. 198 (DP).

<sup>48</sup> Tr. 211–12 (DP).

<sup>49</sup> Tr. 212 (DP).

<sup>50</sup> Tr. 222–23 (DP).

## E. DP's IRA Account

On April 30, 2015, DP called BMO Harris and was referred to Pelletier.<sup>51</sup> DP was interested in rolling over his 401(k) account into an IRA.<sup>52</sup> DP wanted to receive regular monthly \$500 distributions.<sup>53</sup> Pelletier outlined the available options, gave DP advice on how to proceed, and agreed to send him information about BMO Harris's IRAs and forms to complete and return to enable him to open the account.<sup>54</sup>

DP signed his new account application for the BMO Harris IRA on May 6, 2015.<sup>55</sup> On the form, a checked box indicated that liquidity was "very important" to him and he wished to have access to the funds during the portfolio's "Investment Time Horizon" of 15 years.<sup>56</sup> The form identified his "Account Goal" as "Retirement Planning" and his investment knowledge as "None."<sup>57</sup> The new account application identified DP as the "Primary Account Owner" and "Authorized Signer."<sup>58</sup> The new account application showed DP was the sole owner of the account and the only one authorized to direct trades in it.<sup>59</sup> It described his marital status as single.<sup>60</sup> So did another account document, titled "Traditional IRA Adoption Agreement."<sup>61</sup> That document also identified NP as his ex-wife and primary beneficiary on the account, and named their son and daughter as contingent beneficiaries.<sup>62</sup>

The account held virtually all of DP's savings; he had no other investments or retirement accounts.<sup>63</sup> His annual income of \$19,200 was from his Social Security payments.<sup>64</sup> He testified that he intended to use the \$500 monthly distributions to supplement his retirement income to provide him with "the same amount of cash" he had coming in when he was still working.<sup>65</sup>

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<sup>51</sup> JX-56, at 2 (Audio Tr. 2–4).

<sup>52</sup> Stip. ¶ 6.

<sup>53</sup> JX-56, at 2–3 (Audio Tr. 5–6).

<sup>54</sup> JX-56, at 3 (Audio Tr. 7–9).

<sup>55</sup> CX-9, at 7.

<sup>56</sup> CX-9, at 4.

<sup>57</sup> CX-9, at 5.

<sup>58</sup> CX-9, at 1, 7.

<sup>59</sup> Stip. ¶ 7.

<sup>60</sup> CX-9, at 2.

<sup>61</sup> JX-1, at 1.

<sup>62</sup> JX-1, at 2–3.

<sup>63</sup> Tr. 194–95 (DP).

<sup>64</sup> CX-9, at 2, 4.

<sup>65</sup> Tr. 195–96 (DP).

Pelletier opened DP’s account in May 2015, invested DP’s retirement savings in a mutual fund, and arranged automatic \$500 monthly cash distributions into the joint checking account.<sup>66</sup> From then through April 2017, the only transactions in the account were effected to provide those monthly distributions.<sup>67</sup> For a time after establishing the IRA account, DP occasionally reviewed a monthly account statement showing the activity in the account. However, he testified, when the account statements “quit coming,” NP told him BMO Harris was “going paperless” and would mail information about how to access the account, but he never saw it.<sup>68</sup> Thus, DP was unaware of the activity in his IRA during the period when the unauthorized transactions alleged in the Complaint occurred.

## **F. The Recorded Phone Calls**

The evidence in this case consists primarily of call center audio recordings and transcriptions of phone calls between Pelletier, DP, and NP, that BMO Harris automatically recorded. They started with two calls in 2015 when DP spoke with Pelletier about creating the account. As detailed below, most of the calls were between Pelletier and NP—without DP participating—in which Pelletier accepted her requests for distributions from May 2, 2017, through July 2018.

### **1. Pelletier’s Initial Conversations with DP in April and May 2015**

DP never met Pelletier in person. Their only contact was by telephone.<sup>69</sup> The record of the hearing has just two recordings of telephone conversations in which Pelletier and DP spoke to each other. Both calls were about the creation of DP’s IRA account.

In their first conversation on April 30, 2015, Pelletier spoke only with DP about the account and the paperwork he would send.<sup>70</sup> Then, on May 6, Pelletier called DP’s home. NP answered. Pelletier asked if DP was there; NP said he was, but she was filling out the paperwork and needed help.<sup>71</sup> Pelletier talked at length with her. He initially assumed DP and NP were married, until NP corrected him, explaining that she and DP were “not married,” they were divorced but had “been back together for ten years.”<sup>72</sup>

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<sup>66</sup> Stip. ¶¶ 9–10.

<sup>67</sup> Stip. ¶ 11.

<sup>68</sup> Tr. 199 (DP).

<sup>69</sup> Tr. 190 (DP).

<sup>70</sup> JX-56, at 2.

<sup>71</sup> JX-58, at 2 (Audio Tr. 2–3).

<sup>72</sup> JX-58, at 2 (Audio Tr. 3–4).

NP informed Pelletier that DP was retired and confirmed that he wanted \$500 distributed from the account monthly.<sup>73</sup> Pelletier calculated that at that rate of monthly distributions, the \$78,000 in the account should last about 15 years.<sup>74</sup> NP asked if it would be possible to make withdrawals from the account in addition to the monthly \$500, and Pelletier answered “absolutely.”<sup>75</sup>

Pelletier then said he needed to talk to DP about “exactly what we’re going to invest in.”<sup>76</sup> In their ensuing conversation, Pelletier advised, and DP agreed, that a “moderate allocation” would be best.<sup>77</sup> Pelletier explained the available pricing options and offered to fill out another necessary form for DP to sign and return.<sup>78</sup> This was the last conversation between Pelletier and DP for which there is a recording in evidence.

Two years passed before Pelletier again spoke with NP in two related recorded phone calls about a distribution.

## **2. The Remaining May 2017 Recorded Conversations**

The first was a call between Pelletier and NP on May 2, 2017, the date of the first allegedly unauthorized transaction. DP is not heard in the recording.<sup>79</sup> NP began by identifying herself and said she was calling for DP. She informed Pelletier that she and DP needed to withdraw “some money” from DP’s IRA.<sup>80</sup> Pelletier—having apparently not spoken to DP or NP for two years—had to refresh his recollection, saying, “Let me look up my notes here and get what we’ve done in the past.”<sup>81</sup> After referring to the notes, he told NP that “because it’s been more than a year,” he would mail them a form to update their tax withholding information.<sup>82</sup>

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<sup>73</sup> JX-58, at 3 (Audio Tr. 6–7).

<sup>74</sup> JX-58, at 4 (Audio Tr. 10).

<sup>75</sup> JX-58, at 3–4 (Audio Tr. 7–11).

<sup>76</sup> JX-58, at 5 (Audio Tr. 16).

<sup>77</sup> JX-58, at 8 (Audio Tr. 26–27).

<sup>78</sup> JX-58, at 7–9 (Audio Tr. 27–30).

<sup>79</sup> CX-82.

<sup>80</sup> CX-82, at 2 (Audio Tr. 2).

<sup>81</sup> CX-82, at 2 (Audio Tr. 2).

<sup>82</sup> CX-82, at 2 (Audio Tr. 2–3).

NP said they needed \$1,500.<sup>83</sup> Pelletier explained that to provide a \$1,500 net distribution, he needed to generate “\$1,765 gross.”<sup>84</sup> He told NP “I’ll sell that from the mutual fund and then mail you guys the form with a return envelope. Just get it back to me.”<sup>85</sup>

NP asked Pelletier to mail the form to her daughter’s home in Milwaukee where she and DP were staying at the time because of a family emergency, because it “would be a lot quicker.” Referring to the distribution, she added that it was going to go to her daughter, saying, “That’s who’s getting it anyway.”<sup>86</sup>

Pelletier asked if DP was with NP. NP replied that he was, but “he already talked to you . . . . He told me he did.”<sup>87</sup> Pelletier said DP nonetheless needed “to sign the form unless we get, like, formal power of attorney paperwork on file.”<sup>88</sup>

The next recorded call, between Pelletier and NP only, was a week later, on May 9, 2017.<sup>89</sup> At the outset of the call, Pelletier said he had received the form he needed, signed by DP.<sup>90</sup> He then said that with the form he had also received a handwritten note instructing him to send the distribution directly to their daughter.<sup>91</sup> Pelletier told NP that was not possible: he had to send the distribution to the credit union on file because “we can’t do what we call a third party” distribution.<sup>92</sup> NP told Pelletier “that’s fine,” because she could “get it out of there for her then.”<sup>93</sup> Pelletier replied, “That’s exactly what I was hoping.”<sup>94</sup>

### 3. DP’s Memory of Two Conversations with Pelletier

There are recordings of only two calls between Pelletier and DP on April 30 and May 6, 2015. At the hearing, DP recalled two phone conversations with Pelletier.<sup>95</sup> He correctly

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<sup>83</sup> CX-82, at 2 (Audio Tr. 3).

<sup>84</sup> CX-82, at 2 (Audio Tr. 3–4).

<sup>85</sup> CX-82, at 2 (Audio Tr. 4).

<sup>86</sup> CX-82, at 2–3 (Audio Tr. 4–6).

<sup>87</sup> CX-82, at 2 (Audio Tr. 4–5).

<sup>88</sup> CX-82, at 2 (Audio Tr. 4–5).

<sup>89</sup> CX-83.

<sup>90</sup> CX-83, at 2 (Audio Tr. 2).

<sup>91</sup> CX-83, at 2 (Audio Tr. 2–3).

<sup>92</sup> CX-82, at 2 (Audio Tr. 2–3).

<sup>93</sup> CX-82, at 2 (Audio Tr. 3).

<sup>94</sup> CX-82, at 2 (Audio Tr. 3).

<sup>95</sup> Tr. 190 (DP).

remembered the first.<sup>96</sup> But he did not recall the second, on May 6. Apparently DP remembered a different conversation, for which there is no recording.

DP thought that his last conversation with Pelletier occurred when he wanted to make the distribution to his daughter.<sup>97</sup> He recalled that she was going to be in a wedding, and he wanted to take \$1,000 from his IRA account for her to buy a dress for the occasion.<sup>98</sup> DP testified that he explained this to Pelletier. DP testified that at the end of the conversation, he handed the phone to NP, because “she had all the information” about getting the money to their daughter.<sup>99</sup> DP recalled that NP spoke with Pelletier but he did not know what they said, because he left the room.<sup>100</sup> According to DP, this was the second and last time he spoke with Pelletier.<sup>101</sup>

This incident is described in the allegations of a civil suit DP filed in 2020 to recover the losses to his account.<sup>102</sup> That complaint places the conversation “on or about June 2016,” not May 6, 2015.<sup>103</sup> It states that this is when DP gave permission to Pelletier to speak with NP only for her to instruct him on where the check for their daughter was to be sent.<sup>104</sup>

At the hearing, Pelletier challenged DP’s testimony about this, stressing that there is no record of a June 2016 transaction resulting in a \$1,000 distribution.<sup>105</sup> Nonetheless, DP remained steadfast; he knew his daughter received the money.<sup>106</sup>

Pelletier was correct on one point: there is no record of a \$1,000 distribution from DP’s IRA in June 2016. And there is no recording of a conversation in which DP spoke to Pelletier about sending money to his daughter. But a careful review of the May 2 and May 9, 2017, conversations between Pelletier and NP show that DP indeed authorized NP to direct Pelletier to redeem funds from his IRA for his daughter, and that Pelletier distributed the money to the joint checking account on record.

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<sup>96</sup> Tr. 191–93 (DP).

<sup>97</sup> Tr. 190, 200–03 (DP).

<sup>98</sup> Tr. 202 (DP).

<sup>99</sup> Tr. 201–03 (DP).

<sup>100</sup> Tr. 201 (DP).

<sup>101</sup> Tr. 203 (DP).

<sup>102</sup> JX-54, at 2.

<sup>103</sup> JX-54 ¶ 11.

<sup>104</sup> JX-54 ¶¶ 12–13.

<sup>105</sup> Tr. 180–81 (Pelletier).

<sup>106</sup> Tr. 217 (DP).

#### 4. DP Authorized the May 2017 Trade and Distribution

In both conversations, NP and Pelletier discussed NP and DP's daughter. The intent to send funds to the daughter is clear: in the May 2 call NP told Pelletier the money was going to her daughter.<sup>107</sup> On the May 9 call, Pelletier referred to a note enclosed with the form DP signed that instructed him to send the distribution directly to the daughter.<sup>108</sup> When Pelletier said the distribution had to go to the joint checking account, NP's response confirmed that she would "get it out of there [the credit union] for her"—the daughter.<sup>109</sup>

Clearly, DP was mistaken about the date. It was not June 2016. The trade occurred on May 2, 2017, and the distribution on May 9.<sup>110</sup> Given that the call was seven years before DP testified, his mistaken recollection of the date is understandable. On May 2, 2017, NP stated that DP had already talked to Pelletier about the withdrawal<sup>111</sup> and Pelletier did not disagree or correct her. Pelletier agreed to sell part of a mutual fund held in the account to generate the distribution as soon as he received the updated form.<sup>112</sup>

The Hearing Panel finds these circumstances support the conclusion that DP and Pelletier had previously spoken about the May 2017 distribution—as NP indicated in the May 2 call—and DP allowed NP to instruct Pelletier where to send the check (although Pelletier ultimately could not send a check to the daughter's residence). The Hearing Panel notes that DP has been unwavering about the substance of the conversation: that he allowed NP to talk to Pelletier only about the details of getting the money to his daughter more quickly.

The May 2017 calls also explain why there is no record of a \$1,000 withdrawal from DP's account in June 2016, because it occurred a year later. And the two conversations also show that although NP directed Pelletier on May 2, 2017, to send the money directly to her daughter's address—where she and DP were staying at the time<sup>113</sup>—Pelletier said that he could not do so but would deposit the check in the credit union checking account.<sup>114</sup> The amount of the distribution was large enough to include the \$1,000 DP wanted to give his daughter and, presumably, the additional \$500 routine monthly withdrawal.

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<sup>107</sup> CX-82, at 2–3 (Audio Tr. 5–6).

<sup>108</sup> CX-83, at 2 (Audio Tr. 2).

<sup>109</sup> CX-83, at 2 (Audio Tr. 3).

<sup>110</sup> Stip. ¶ 13.

<sup>111</sup> There is no recording of DP talking to Pelletier about this transaction.

<sup>112</sup> CX-82, at 2–3 (Audio Tr. 3–6).

<sup>113</sup> CX-82, at 2–3 (Audio Tr. 4–6); CX-83, at 2 (Audio Tr. 3).

<sup>114</sup> CX-83, at 2 (Audio Tr. 3).

The Hearing Panel concludes that DP initiated and approved the May 2017 transaction, and therefore it was not unauthorized by DP, as the Complaint alleges.

## **5. Pelletier's Conversations with NP That Led to Unauthorized Transactions**

### **a. Four Unauthorized Trades, July 11 to November 20, 2017 (Trade Nos. 2–5)**

After their May 9, 2017, conversation, two months passed before Pelletier and NP spoke again.

Most of the calls followed a pattern that apparently became routine. NP would identify herself, tell Pelletier that DP needed funds withdrawn from the IRA and often gratuitously volunteer a story about what the money was for. Without asking to speak with DP, Pelletier would calculate how much he would sell from the IRA's mutual fund, and tell NP how soon the money would reach the credit union checking account.

For example, in the first call on July 11, 2017, NP told Pelletier that “[DP] would like to take out \$2,500. He wants to buy a boat.” Pelletier asked if it was a fishing boat.<sup>115</sup> He told her he would “put the trade through right now” and “send it to the bank tomorrow.”<sup>116</sup> He did not ask to speak to DP. Possibly surprised at the ease of the process, NP queried, “We don't have to sign no papers or nothing?”<sup>117</sup> Pelletier, referring to the document DP had signed and sent him the previous May replied, “No, because you did it last time, the paperwork we have on file is good for a good year.”<sup>118</sup>

On August 10, 2017, NP called Pelletier and announced, “[DP] needs some more money.” She volunteered that he “got a good deal” on a pontoon boat and needed \$2,500 to buy it.<sup>119</sup> After asking if the boat was new or used, Pelletier explained how much he had to sell from the fund to yield \$2,500 after taxes.<sup>120</sup> Without asking to speak with DP, Pelletier said he would execute the trade that day.<sup>121</sup> NP said, “I hope I'm not calling you anymore,” and Pelletier replied, “Not a problem,” ending the conversation with “enjoy the boat.”<sup>122</sup>

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<sup>115</sup> CX-84, at 2 (Audio Tr. 3).

<sup>116</sup> CX-84, at 2 (Audio Tr. 4).

<sup>117</sup> CX-84, at 2 (Audio Tr. 4).

<sup>118</sup> CX-84, at 2 (Audio Tr. 4).

<sup>119</sup> CX-85, at 2 (Audio Tr. 2–3).

<sup>120</sup> CX-85, at 2 (Audio Tr. 3).

<sup>121</sup> CX-85, at 2 (Audio Tr. 3).

<sup>122</sup> CX-85, at 2 (Audio Tr. 4).

NP next called on September 28, but Pelletier was not in the office.<sup>123</sup> When the representative who took the call refused to arrange a distribution because she was not an authorized person, NP left her cell phone number.<sup>124</sup> When Pelletier returned her call, an unidentified male answered the phone with a muttered “Hello.”<sup>125</sup> Pelletier asked, “Is this [DP]?” NP immediately took the phone and identified herself.<sup>126</sup> Pelletier then asked, “Are you taking a distribution from the IRA?” NP said she was, and the amount was \$4,000.<sup>127</sup> Pelletier asked, “Are you writing a check for another expense?” NP answered she was trying to pay off credit cards.<sup>128</sup> Pelletier said he would send the distribution to the credit union on the following day, concluding, “You’re all set.”<sup>129</sup> He did not speak to DP to verify his identity or ask him the questions required by BMO Harris’s protocol.

Following the two September calls, Pelletier facilitated one more distribution in 2017. Pelletier was out when NP called on November 15. When the representative who took the call refused her request “to take some money out,” NP said she would call when Pelletier returned.<sup>130</sup>

On November 20, 2017, NP succeeded in reaching Pelletier and said “[DP] told me to call you, because he wants some Christmas money.”<sup>131</sup> Pelletier asked how much; NP said \$3,000 after taxes. Pelletier told her, “Wednesday you should see it in the bank.”<sup>132</sup>

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<sup>123</sup> CX-86, at 2 (Audio Tr. 2–3). The first page of the transcript indicates the call was on July 11, 2017. That is clearly incorrect because the transcript corresponds to JX-13, the audio recording of the first call on September 28.

<sup>124</sup> CX-86, at 2–3 (Audio Tr. 5–7). In the call transcript, the number NP gave is redacted. However, it is audible in the audio recording, and it is the same number DP identified as NP’s cell phone in his conversation with call center representative Andrew Klinzing when he reported the unauthorized trading on May 10, 2019. JX-50.

<sup>125</sup> The transcript of the recorded call names the male as “[DP].” JX-63. After hearing the audio recording of the call, JX-14, played at the hearing, Pelletier testified he believed the voice to be DP’s. Tr. 106–07 (Pelletier). Then he conceded “it could be anyone,” including DP and NP’s son. Tr. 109 (Pelletier). Subsequently, noting that the conversation occurred seven years ago, Pelletier testified that he had assumed, because he called DP’s number, that the voice was DP’s. Tr. 110 (Pelletier). Pelletier’s counsel argued that “we all know that [DP] picked up that phone. And gave it to [NP].” Tr. 381 (Argument). The Hearing Panel disagrees. After listening to JX-14 and DP’s hearing testimony, the Hearing Panel concludes the voice of the male who answered the call does not sound like DP.

<sup>126</sup> JX-63, at 2 (Audio Tr. 2).

<sup>127</sup> JX-63, at 2 (Audio Tr. 2).

<sup>128</sup> JX-63, at 2 (Audio Tr. 3).

<sup>129</sup> JX-63, at 2 (Audio Tr. 4).

<sup>130</sup> CX-87, at 2 (Audio Tr. 2–3).

<sup>131</sup> JX-67, at 2 (Audio Tr. 2).

<sup>132</sup> JX-67, at 2 (Audio Tr. 2–3).

**b. Ten Unauthorized Trades, January 29 to June 15, 2018 (Trade Nos. 6–15)**

In 2018, the pace of the transactions increased. From January through June, at NP’s direction, Pelletier executed ten more sales from the IRA to make distributions to DP’s checking account.

NP continued to fabricate explanations for her requests to distribute funds from DP’s IRA account. For example, on January 29 NP volunteered that DP needed \$600 for “some work done on his teeth.”<sup>133</sup> On April 16 NP said “[w]e need one more thousand dollars . . . . We’re trying to remodel the kitchen, and decided we needed some new cupboards.”<sup>134</sup> Ten days later, NP said “you ain’t going to believe it . . . . They’re taking a wall out, the wall between the kitchen and the dining room . . . . So 2,500 bucks.” Pelletier replied, “So it’s turning into a major renovation?”<sup>135</sup> Two weeks later, on May 9, NP opened her conversation with Pelletier by saying, “Fifteen hundred more and done,” to which Pelletier replied, “Okay, that’s for the kitchen?” and “Must be some project,” and assured NP he would send the money to the bank the following day.<sup>136</sup> On May 18, NP told Pelletier, “We’ve got to have \$1,500 more because he wants to put in a bigger window in the kitchen.”<sup>137</sup> On June 4, Pelletier agreed to make a \$3,000 distribution that NP said was needed “to put new floors in the kitchen, living room, dining room and that should be the end.”<sup>138</sup>

**i. Pelletier’s Familiarity with NP**

By the start of 2018, Pelletier was clearly familiar with NP. For example, when she called on January 29, 2018, another representative transferred the call to Pelletier, saying NP “seems pretty adamant on talking to you.” Pelletier replied, “Yeah, she always does.”<sup>139</sup> After NP instructed him to make the \$600 net distribution to cover DP’s dental work, Pelletier asked, “Did you guys ever get that pontoon boat you were talking about last year?”<sup>140</sup> He was referring to the transaction he discussed with her five months earlier on August 10, 2017.<sup>141</sup> Pelletier mentioned the pontoon boat purchase again in a call from NP on April 16, 2018, when he inquired, “You

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<sup>133</sup> CX-91, at 2 (Audio Tr. 2).

<sup>134</sup> JX-77, at 2 (Audio Tr. 2).

<sup>135</sup> CX-96, at 2 (Audio Tr. 2–3).

<sup>136</sup> JX-83, at 2 (Audio Tr. 2).

<sup>137</sup> CX-97, at 2 (Audio Tr. 2).

<sup>138</sup> CX-99, at 2 (Audio Tr. 2).

<sup>139</sup> CX-91, at 2 (Audio Tr. 2).

<sup>140</sup> CX-91, at 2 (Audio Tr. 2–3).

<sup>141</sup> CX-85, at 2.

guys bought that pontoon boat last year, right?”<sup>142</sup> In fact, however, no boat was purchased, and no home renovations were made.<sup>143</sup>

When NP called on February 21, 2018, she just said “[w]e need some money put in the . . . . checking account.”<sup>144</sup> Just two weeks later, in a brief call on March 5, NP claimed “[DP] needs \$1,500 put in the checkbook.”<sup>145</sup> On April 5, 2018, a BMO Harris representative took NP’s call and told Pelletier, “I have somebody by the name of [NP]. She says you’ll know why she’s calling.” Pelletier responded, “Oh, God. She’s annoying.”<sup>146</sup> After NP said, “We need \$2,000 put into our checking account,” Pelletier said, “I’ll put the trade through right now.”<sup>147</sup>

## ii. Pelletier’s Growing Reluctance and NP’s Impersonations of DP

On June 15, 2018, NP announced that she and DP needed to increase the monthly deposit into their joint checking account to \$1,500.<sup>148</sup> Pelletier said that would require them to submit more paperwork. NP added that she and DP “need \$1,000 in the checking account, too.”<sup>149</sup> Pelletier confirmed that she just needed “\$1,000 for now,” then said he would redeem \$1,176 from the IRA and send her a net cash distribution of \$1,000.<sup>150</sup>

In the next call on June 22, 2018, NP told Pelletier, “We need a couple thousand put in the checking account.” Pelletier, apparently recalling the prior week’s distribution, responded, “we just did that, right?”<sup>151</sup> Then Pelletier told NP, “They’re really cracking down on this,” and that he had to speak to DP “if he’s available.” NP replied, “Okay. Just a minute.”<sup>152</sup> Then, speaking softly, she began an impersonation of DP, starting with, “Hello?”<sup>153</sup> Pelletier asked for the last four digits of DP’s Social Security number, his date of birth, and the named beneficiary of the IRA, for verification. NP, speaking as if she were DP, supplied the information. Pelletier then asked, “you’re giving me permission to speak with [NP]?” and NP answered, “Yes.”<sup>154</sup> Pelletier then said, “you can either put [NP] back on the line or you can give me the trade

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<sup>142</sup> JX-77, at 2 (Audio Tr. 3).

<sup>143</sup> Tr. 223 (DP).

<sup>144</sup> CX-92, at 2 (Audio Tr. 2).

<sup>145</sup> CX-93, at 2 (Audio Tr. 2).

<sup>146</sup> CX-94, at 2 (Audio Tr. 2).

<sup>147</sup> CX-94, at 2 (Audio Tr. 2–3).

<sup>148</sup> CX-101, at 2 (Audio Tr. 2–3).

<sup>149</sup> CX-101, at 2 (Audio Tr. 3).

<sup>150</sup> CX-101, at 2 (Audio Tr. 2–3).

<sup>151</sup> CX-102, at 2.

<sup>152</sup> CX-103, at 2 (Audio Tr. 2).

<sup>153</sup> JX-45; CX-103, at 2 (Audio Tr. 2).

<sup>154</sup> CX-103, at 2 (Audio Tr. 2).

instructions.” NP then identified herself, as if she had been given the phone by DP. Pelletier said he would “put the trade through today.”<sup>155</sup> Because of the impersonation, the Complaint does not charge this transaction as an unauthorized trade.

As the call concluded, Pelletier told NP that he had mailed the paperwork he mentioned to her the week before, when they had spoken about increasing the monthly distribution. NP replied that it had not arrived.<sup>156</sup> Pelletier also stated that he had sent “trading authorization” forms that would allow her to call and initiate trades “without getting [DP] on the phone . . . because we can’t just take trade orders from spouses anymore for the IRA account,”<sup>157</sup> implying that this was a new BMO Harris policy directive.

At the hearing, after listening to the recorded call, Pelletier testified that it was “very clear” that NP impersonated DP.<sup>158</sup> At the time of the conversation, however, he had no reason to believe that he was not talking with DP.<sup>159</sup> If Pelletier thought he had DP on the line, Enforcement asked, why did he not “just take the trade from him?”<sup>160</sup> Pelletier did not provide a clear answer, saying only that “[e]very other interaction” on the phone that he had with DP “followed a pattern,” with “a quick handoff” to NP “where [DP] never really got involved.”<sup>161</sup> Pelletier conceded, however, that none of the other recorded calls in evidence illustrated the “pattern” he described, of DP answering and immediately handing the phone to NP.<sup>162</sup>

Pelletier testified that telling NP that the firm was “really cracking down” was “kind of a fabrication” that he made up because he was “so sick of taking these calls.”<sup>163</sup> “Compliance wasn’t cracking down,” he said; nobody had spoken to him about needing the written authorization.<sup>164</sup> Pelletier testified that he said this to speed up “the process” with NP to obtain the proper forms.<sup>165</sup> NP’s calls, Pelletier testified repeatedly, were costing him compensation.<sup>166</sup> Each conversation with NP took him “out of the sales queue,” possibly missing “that next call . . . that could be a \$100,000 rollover, which is a big ticket back in those days.”<sup>167</sup> With the

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<sup>155</sup> CX-103, at 2 (Audio Tr. 3).

<sup>156</sup> CX-103, at 2 (Audio Tr. 3–4).

<sup>157</sup> CX-103, at 2 (Audio Tr. 4).

<sup>158</sup> Tr. 129–30 (Pelletier).

<sup>159</sup> Tr. 131 (Pelletier).

<sup>160</sup> Tr. 131 (Pelletier).

<sup>161</sup> Tr. 131–32 (Pelletier).

<sup>162</sup> Tr. 133 (Pelletier).

<sup>163</sup> Tr. 182 (Pelletier).

<sup>164</sup> Tr. 182 (Pelletier).

<sup>165</sup> Tr. 182 (Pelletier).

<sup>166</sup> Tr. 150, 175 (Pelletier).

<sup>167</sup> Tr. 150 (Pelletier).

written authorization in the file, when NP contacted the call center, any representative at the call center “could help her with the trade” because they would see the trading authorization on file.<sup>168</sup> He claimed it had been his “goal for a long time, to get that form in.”<sup>169</sup>

### **c. The Final Two Unauthorized Trades in July 2018 (Trade Nos. 16–17)**

NP called again on July 16 to complain that the monthly deposit had not yet been increased, saying, “we only got \$500 this month.”<sup>170</sup> Pelletier checked the account and told NP that he would arrange to have \$1,000 sent to the checking account the following day.<sup>171</sup> NP then asked for, and Pelletier agreed to send, \$500 more.<sup>172</sup>

On July 19, 2018, Pelletier executed the last transaction charged as unauthorized in the Complaint. NP said, “We need \$1,500” and informed Pelletier that she had that day received the letter he had sent, had signed and “mailed it right back.”<sup>173</sup> Pelletier replied, “You did? Okay . . . . Good.” He indicated he would send the money to the credit union the following day after the sale from the account’s mutual fund settled.<sup>174</sup>

## **G. The Aftermath**

### **1. DP’s Discovery of the Unauthorized Trades**

A year later, in May 2019, DP was at home watching television when his electricity cut off.<sup>175</sup> When he called the electric company, he was surprised to learn that NP had not paid the electric bill for months and he owed the electric company more than \$1,000.<sup>176</sup> DP called NP and learned from her that “she took all the money and spent it and never paid the bills.”<sup>177</sup> When he checked with his credit union, he discovered that the joint bank account had been depleted.<sup>178</sup>

On May 10, DP called BMO Harris to report fraudulent activity in his IRA account and learned, in his words, “my money’s gone.”<sup>179</sup> Call center representative Klinzing took DP’s call

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<sup>168</sup> Tr. 151 (Pelletier).

<sup>169</sup> Tr. 176 (Pelletier).

<sup>170</sup> CX-104, at 2 (Audio Tr. 2–3).

<sup>171</sup> JX-90, at 2 (Audio Tr. 2).

<sup>172</sup> JX-90, at 2 (Audio Tr. 2).

<sup>173</sup> CX-105, at 2 (Audio Tr. 2).

<sup>174</sup> CX-105, at 2 (Audio Tr. 2–3).

<sup>175</sup> JX-93, at 3 (Audio Tr. 8–9).

<sup>176</sup> Tr. 196 (DP).

<sup>177</sup> JX-93, at 3 (Audio Tr. 9).

<sup>178</sup> Tr. 196–97 (DP).

<sup>179</sup> JX-93, at 2 (Audio Tr. 2).

and told him that there was only \$318 left in the IRA.<sup>180</sup> Klinzing also informed DP that NP was named as an agent on the account pursuant to a notarized document with DP's signature giving her full trading authority.<sup>181</sup> DP protested that it was "not true," and said the sole occasion he had allowed NP to speak to Pelletier was when he wanted a distribution sent to his daughter, and he permitted NP to discuss how Pelletier could expedite sending the money from his IRA account to her.<sup>182</sup>

Later that day, DP and Klinzing spoke again. Klinzing said he spoke about the matter with Pelletier, who by then had left the call center. Klinzing said Pelletier told him that "every time that you guys called in to take distributions," after Pelletier verified DP's identity, DP would "give the phone over to [NP]" who would do "most of the talking."<sup>183</sup> Klinzing said that Pelletier told him that this led to DP conveying full trading authority to NP.<sup>184</sup> At the hearing, when he was shown the trading authorization/power of attorney form, appearing to have been signed by him on June 25, 2018, DP stated, "It is forged. I know that for a fact. This isn't speculation."<sup>185</sup> He testified, "[NP] signed it and admitted to it" when interviewed by his lawyer.<sup>186</sup>

Klinzing gave DP the name of the notary on the documents.<sup>187</sup> DP called the police to go with him when he confronted the notary, whose office was in the same building as the police department.<sup>188</sup> He told the notary that he had never met her before, and the signature was not his.<sup>189</sup> She denied it.<sup>190</sup> The police, apparently concluding DP was just angry that his ex-wife had spent the money, told him to leave, and that they were not going to help him.<sup>191</sup>

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<sup>180</sup> JX-93, at 3 (Audio Tr. 7).

<sup>181</sup> JX-93, at 2 (Audio Tr. 3-4).

<sup>182</sup> JX-93, at 2 (Audio Tr. 3-5).

<sup>183</sup> JX-94, at 2 (Audio Tr. 2-3). At the hearing, Pelletier testified he did not recall whether he told Klinzing this. He testified that it "doesn't sound accurate." Tr. 145. But he admitted he did not talk to DP when NP called with instructions. Tr. 144-45 (Pelletier).

<sup>184</sup> JX-94, at 2 (Audio Tr. 3).

<sup>185</sup> Tr. 224-25 (DP).

<sup>186</sup> Tr. 206-07 (DP).

<sup>187</sup> JX-94, at 4 (Audio Tr. 10-11).

<sup>188</sup> Tr. 224 (DP).

<sup>189</sup> Tr. 224 (DP).

<sup>190</sup> Tr. 224 (DP).

<sup>191</sup> Tr. 224 (DP).

## 2. DP's Lawsuit and Settlement

DP hired a lawyer and sued BMO Harris, NP, and the notary.<sup>192</sup> In his civil complaint, he claimed NP's unauthorized withdrawals totaled \$51,550, including the withdrawals both before and after June 2018 when BMO Harris received the forged trading authorization.<sup>193</sup> The parties settled the suit for slightly more than DP originally sought: BMO Harris paid \$35,000; the notary paid \$15,000; and NP paid \$5,115, for a total of \$55,115.<sup>194</sup> Pelletier was not required to contribute to BMO Harris's monetary settlement.<sup>195</sup>

## 3. The Consequences for Pelletier at BMO Harris

After DP called BMO Harris to complain, Pelletier met with representatives from the firm's management and legal and compliance departments. According to Pelletier, they discussed the seriousness of the situation.<sup>196</sup> BMO Harris placed him on probation and heightened supervision.<sup>197</sup>

Pelletier's supervisor, Michael Dawson, testified for Pelletier at the hearing. Now retired, Dawson was the manager of BMO Harris representatives in the area where the call center was located.<sup>198</sup> He hired Pelletier out of the call center in December 2018 when he had an opening for a field representative.<sup>199</sup> Later, Dawson oversaw Pelletier's heightened supervision. This involved reviewing reports Pelletier prepared of all the customer account distributions he made in the book of business he was assigned.<sup>200</sup> Dawson was responsible for contacting 20 percent of the clients from whose accounts Pelletier made distributions.<sup>201</sup> The heightened supervision spanned 18 months.<sup>202</sup> When it started, Pelletier was making distributions from about 20 customer accounts; when it ended, the number was reduced by half, which meant Dawson called two to four customers monthly for the duration of the heightened supervision period.<sup>203</sup>

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<sup>192</sup> JX-54, at 2. Pelletier was not a named defendant.

<sup>193</sup> JX-54 ¶¶ 15, 16, 29. Enforcement did not charge Pelletier with unauthorized trading for the transactions occurring after July 19, 2018, after BMO Harris processed the authorization paperwork NP forged.

<sup>194</sup> Tr. 222 (DP).

<sup>195</sup> Tr. 166 (Pelletier).

<sup>196</sup> Tr. 161 (Pelletier).

<sup>197</sup> Tr. 161 (Pelletier).

<sup>198</sup> Tr. 337 (Dawson).

<sup>199</sup> Tr. 337 (Dawson).

<sup>200</sup> Tr. 338 (Dawson).

<sup>201</sup> Tr. 338 (Dawson).

<sup>202</sup> Tr. 338–39 (Dawson).

<sup>203</sup> Tr. 343–44 (Dawson).

Pelletier successfully completed the period of heightened supervision.<sup>204</sup> Dawson also testified that as a registered representative, Pelletier has met BMO Harris’s expectations.<sup>205</sup> According to Pelletier, he has built his book of business and it now totals about \$90 million in managed assets.<sup>206</sup>

## H. Pelletier’s Defense

At the hearing, Pelletier claimed that in “[o]ne of the initial calls, DP gave me verbal instructions that I can take trade instructions from [NP].”<sup>207</sup> According to Pelletier, he “was under the assumption that the recorded phone line was part of the official client record . . . [and] authorization over the recorded phone line . . . took [the] place of the written trading authorization until we got that on file.”<sup>208</sup> He could not recall when DP provided the oral authorization, but guessed it would have been “[a]t the earliest 2015, maybe 2016.”<sup>209</sup>

In a nutshell, Pelletier’s defense is that in a single phone call, DP gave him oral authorization over a recorded phone line to speak with NP and allow her to direct transactions, for as long as the account was open, and that this was permissible because the phone calls were recorded.<sup>210</sup> “That was my understanding at the time,” Pelletier testified.<sup>211</sup> Pelletier acknowledged “[i]t was later determined” that he did not “follow house rules” and what he did was not allowed by BMO Harris.<sup>212</sup>

In support of his defense, Pelletier claimed that he had no motive and nothing to gain by accepting instructions from NP. NP’s calls were taking up his time, “costing” him compensation, and he “didn’t want to deal with her anymore.”<sup>213</sup> He testified that he sought to obtain written authorization to put “on file for [NP]” so all call center representatives could handle her calls and carry out her instructions, because they would see the authorization was on file.<sup>214</sup> Without it, only he could take orders from NP, because he alone knew of DP’s oral authorization.<sup>215</sup>

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<sup>204</sup> Tr. 340 (Dawson).

<sup>205</sup> Tr. 340–41 (Dawson).

<sup>206</sup> Tr. 165 (Pelletier).

<sup>207</sup> Tr. 134 (Pelletier).

<sup>208</sup> Tr. 135 (Pelletier).

<sup>209</sup> Tr. 136 (Pelletier).

<sup>210</sup> Tr. 171 (Pelletier).

<sup>211</sup> Tr. 136 (Pelletier).

<sup>212</sup> Tr. 137 (Pelletier).

<sup>213</sup> Tr. 150–51, 175 (Pelletier).

<sup>214</sup> Tr. 150–51 (Pelletier).

<sup>215</sup> Tr. 151 (Pelletier).

#### **IV. Discussion**

Pelletier's insistence that he acted on a good faith belief that DP had orally authorized NP to direct trades in the retirement account requires the Hearing Panel to evaluate the credibility of Pelletier's explanations of what he did, and why. The Hearing Panel's assessment finds that the evidence undermines Pelletier's credibility on several important points.

First, there is no evidence supporting Pelletier's claim that DP orally authorized him to accept trading instructions from NP. Second, the Hearing Panel is not persuaded Pelletier believed in good faith that a single oral authorization from DP gave him open-ended authority to accept future trade instructions from NP.

Furthermore, the Hearing Panel finds that, after DP reported the matter to BMO Harris, Pelletier gave BMO Harris inconsistent and unpersuasive explanations of why he traded at NP's direction. Finally, the Hearing Panel disbelieves Pelletier's assertion that he could not create any record to memorialize DP's purported oral authorization. The evidence contradicts Pelletier on these points, undermining his credibility.

##### **A. DP Did Not Authorize Pelletier to Accept Trading Instructions from NP**

Pelletier argues that there are calls missing from the audio recordings BMO Harris produced to Enforcement, and that the audio recording of the call in which DP gave him the oral authorization to trade on NP's instructions is one of the missing recordings.<sup>216</sup>

Bonewell conducted the search for the recorded phone calls related to the activity in DP's IRA.<sup>217</sup> The software program BMO Harris used to record phone calls between its employees and third parties preserved the recordings for up to ten years.<sup>218</sup> The program allowed Bonewell to search for calls by using a representative's phone number and calls dialed from it or to it.<sup>219</sup> He focused on calls related to the activity in DP's account and found most of the calls came from NP's cell phone number.<sup>220</sup> He was unaware of any recorded calls related to the account that BMO Harris did not provide to Enforcement.<sup>221</sup>

Bonewell acknowledged the possibility that, despite the thoroughness of his search, he did not retrieve every call.<sup>222</sup> However, the Hearing Panel is not persuaded that there is a missing call with DP providing the authority Pelletier claims. In his testimony, Pelletier admitted he had

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<sup>216</sup> Tr. 398–99 (Respondent's Argument).

<sup>217</sup> Tr. 249 (Bonewell).

<sup>218</sup> Tr. 247 (Bonewell).

<sup>219</sup> Tr. 250 (Bonewell).

<sup>220</sup> Tr. 250 (Bonewell).

<sup>221</sup> Tr. 251 (Bonewell).

<sup>222</sup> Tr. 263 (Bonewell).

no idea when that purported call occurred.<sup>223</sup> Despite its significance, Pelletier made no note of the grant of authority in DP's account file where, as Bonewell explained, he could have.<sup>224</sup> And he did not mention it to his supervisor or any colleagues.<sup>225</sup> Nothing in the numerous recorded calls in evidence suggests that there was a conversation like that which Pelletier claims occurred. The mere possibility that the calls in evidence are not all of the calls made to and from Pelletier, NP, and DP does not persuade the Hearing Panel that DP conferred the oral grant of authority that Pelletier claims he did.

DP testified that “[t]here was never even any conversation about that.”<sup>226</sup> DP insisted he would “never put anybody else” on his retirement account.<sup>227</sup> This is consistent with his assertion in the civil lawsuit he filed, stating that the only time he permitted Pelletier to speak with NP about the account was on the occasion when NP spoke with Pelletier about arranging for a distribution to be sent to NP and DP's daughter's address.<sup>228</sup> When DP discovered the losses in his retirement account and called BMO Harris, in a state of emotional upset, he told Klinzing that the last time he spoke with Pelletier was when he permitted Pelletier to speak with NP to discuss sending the money to his daughter.<sup>229</sup>

The Hearing Panel finds DP credible. His 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. Furthermore, DP had already recovered the lost funds. The Hearing Panel discerned no motive for him to have been untruthful.

#### **B. Pelletier Understood His Firm's Policies Prohibiting Unauthorized Trading**

By 2017, when he began making unauthorized trades in DP's IRA account, Pelletier had been employed in the securities industry for more than a decade. He was at the call center in 2014 when, according to Pelletier, BMO Harris was “starting this call center concept.”<sup>230</sup> By 2018, when he left BMO Harris's call center, Pelletier had worked there for about five years.<sup>231</sup>

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<sup>223</sup> Tr. 135–36 (Pelletier).

<sup>224</sup> Tr. 275 (Bonewell).

<sup>225</sup> Tr. 137–38 (Pelletier).

<sup>226</sup> Tr. 202 (DP).

<sup>227</sup> Tr. 204 (DP).

<sup>228</sup> Tr. 216–17 (DP); JX-54 ¶¶ 11–13.

<sup>229</sup> JX-94, at 2 (Audio Tr. 3).

<sup>230</sup> Tr. 169 (Pelletier).

<sup>231</sup> Tr. 167 (Pelletier).

In fact, he had obtained registration as a General Securities Principal in 2014 in anticipation of becoming a supervisor and acting in a principal capacity, although that never happened.<sup>232</sup>

Pelletier certified annually to BMO Harris that he understood the firm's policies and procedures.<sup>233</sup> He also understood that the firm's policies made clear that to accept trading instructions from a third party he had to obtain a third-party trading agreement signed by both the principal on the account and the third party.<sup>234</sup> And Pelletier was aware that the firm's compliance policy manuals stated that a representative should not even accept an order from a husband on behalf of his wife's account without a properly signed trading authorization.<sup>235</sup> The compliance manuals warned against "inadvertent" unauthorized trades, repeating that to accept an order from a husband for a wife's account is a rule violation, even if done as an accommodation.<sup>236</sup>

### **C. Pelletier Did Not Act in Mistaken Good Faith**

The Hearing Panel credits Bonewell's testimony that the registered representatives employed at the call center understood the basic policy requiring written authorization to allow a third party to direct transactions in a customer account. The Hearing Panel also credits Bonewell's testimony that the unwritten policy concerning oral authorization required representatives to verify the account owner's identity and obtain specific oral authorization to accept a third party's instructions to trade on each occasion. He made clear that a single oral authorization could not serve as a continuing authorization to accept third-party trade instructions without speaking to the customer about each trade.<sup>237</sup> Based on his management of BMO Harris's call center for more than a decade, the Hearing Panel is satisfied that Bonewell had a correct perception of the call center representatives' understanding of these basic rules. The Hearing Panel believes it fair to conclude that Pelletier, who worked in the call center under Bonewell for five years, shared in this general understanding.

It is significant that in his years at the call center, Bonewell had never encountered an instance in which another representative accepted third-party instructions to effect numerous trades over many months based on a single conversation with a customer.<sup>238</sup> It is also instructive that other call center representatives contacted by NP handled her requests in a manner consistent with Bonewell's description of the proper protocol. For example, on February 1, 2016, a BMO Harris call center representative named Heather took a call from NP who had questions about

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<sup>232</sup> Tr. 169 (Pelletier).

<sup>233</sup> Tr. 67–68 (Pelletier).

<sup>234</sup> Tr. 70–71 (Pelletier).

<sup>235</sup> Tr. 69 (Pelletier); CX-72, at 82.

<sup>236</sup> Tr. 74–75 (Pelletier); CX-77, at 1.

<sup>237</sup> Tr. 283–43 (Bonewell).

<sup>238</sup> Tr. 247 (Bonewell).

DP's account relating to the income tax return she was working on. Heather at once asked to speak to DP before she would discuss his account with NP.<sup>239</sup> She then verified his identity by asking him the name of the company that sponsored his retirement plan, his date of birth, and the last four digits of his Social Security number and confirmed that he wanted her to speak with NP.<sup>240</sup>

The hearing revealed that other representatives at the call center also followed the required protocol outlined in Bonewell's testimony when NP asked them to arrange distributions from DP's account. On September 28, 2017, Pelletier was away from the office when representative Jose Lopez received a call from NP. Lopez verified her identity, but when she asked him to distribute \$4,000 to the joint checking account, Lopez refused to do it despite NP's insistence that "I am an authorized party."<sup>241</sup>

In November 2017, call center representative Tim Norris took a call from NP when Pelletier was out of the office. Immediately upon looking up the account, he asked to speak to DP.<sup>242</sup> When NP said, "I'm allowed to talk for him. He's hunting. My name should be on there," Norris responded, "Well, it's not."<sup>243</sup> When NP said that DP "gave [Pelletier] the okay a long time ago," Norris still refused to go further, and told NP, "I can't take instructions on somebody else's account if you're not listed here."<sup>244</sup> After hearing the recorded call, Bonewell confirmed that Norris exemplified how a representative should properly deal with a call from someone who wanted to direct a transaction for a spouse.<sup>245</sup>

On July 25, 2018, after the forged paperwork purporting to authorize NP had been filed, call center representative Steve Terradista took a call from NP when Pelletier was not there. NP told him that "we just needed some money put in our checking account."<sup>246</sup> When Terradista looked up the account, he noticed that NP had filed the authorizing paperwork. But because the matter was still under review, he could not "take any instructions on the account" from NP.<sup>247</sup> NP then offered to get DP, whose voice, unknown to Terradista, she proceeded to impersonate as Terradista "verified" his identity.<sup>248</sup> Only then did Terradista say that if "DP," with whom he

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<sup>239</sup> CX-81, at 2 (Audio Tr. 2–3).

<sup>240</sup> CX-81, at 2 (Audio Tr. 3–4).

<sup>241</sup> CX-86, at 2–3 (Audio Tr. 3–6).

<sup>242</sup> CX-87, at 2 (Audio Tr. 2).

<sup>243</sup> CX-87, at 2 (Audio Tr. 2).

<sup>244</sup> CX-87, at 2 (Audio Tr. 2).

<sup>245</sup> Tr. 254–55 (Bonewell).

<sup>246</sup> JX-92, at 2 (Audio Tr. 2).

<sup>247</sup> JX-92, at 2 (Audio Tr. 3).

<sup>248</sup> JX-92, at 2 (Audio Tr. 3–5).

thought he was talking, wished, he could put NP back on the phone. He then accepted her instruction to withdraw \$3,000 from DP's IRA account.<sup>249</sup>

These examples provide circumstantial support for the Hearing Panel's conclusion that call center representatives, including Pelletier, understood the need to verify the identity of an account holder and obtain explicit oral authorization on each occasion before accepting instructions to trade from a third party, including a spouse or, as in NP's case, an ex-spouse.

#### **D. Pelletier Gave Inconsistent, Non-Credible Explanations of His Conduct to BMO Harris**

When Pelletier's unauthorized trades came to light, he offered to explain to Dawson, his manager at the time, why he had executed the trades and distributed funds from DP's IRA account at NP's direction.<sup>250</sup> What Pelletier told Dawson contrasted sharply from the explanation Pelletier offered at the hearing.

Dawson testified that Pelletier told him that DP "had a physical disability" that impaired his hearing and that DP "initially had his wife get on the call and to go through the distribution."<sup>251</sup> Dawson testified that Pelletier said he had "extensive empathy and sympathy" for DP, and "knew that in hindsight that he . . . shouldn't have gone down that path facilitating this without speaking to [DP]."<sup>252</sup>

There is, however, no evidence that DP had a disability of any kind. In his 2015 recorded phone conversations with Pelletier, DP exhibited no difficulty hearing.<sup>253</sup> In his 2019 phone conversations with Klinzing, there is no evidence that DP had a hearing impairment.<sup>254</sup> And when DP testified by videoconference at the hearing, the Hearing Panel observed that DP had no trouble hearing and responding to questions from the parties and the Hearing Panel.

What Pelletier told Dawson also differs from what he apparently told Klinzing when Klinzing went to Pelletier after first speaking with DP. In his second recorded phone conversation with DP, Klinzing told DP that he spoke about the situation with Pelletier, who said that on each call, after Pelletier verified him, DP handed the phone to NP who did "most of the talking."<sup>255</sup> Klinzing made no mention of Pelletier describing DP as having a hearing disability.

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<sup>249</sup> JX-92, at 2 (Audio Tr. 5–6).

<sup>250</sup> Tr. 344–45 (Dawson).

<sup>251</sup> Tr. 345 (Dawson).

<sup>252</sup> Tr. 345 (Dawson).

<sup>253</sup> JX-55; JX-57.

<sup>254</sup> JX-50; JX-51.

<sup>255</sup> JX-94, at 2 (Audio Tr. 2–3).

And DP did not speak with Pelletier and then hand the phone to NP in any of the recorded conversations in evidence.

#### **E. Pelletier’s Explanation for Not Memorializing DP’s Putative Oral Authorization Is Not Credible**

Pelletier had no explanation for why he did not mention the unique arrangement he had with DP and NP to a colleague or his supervisor, other than to say the subject “never came up.”<sup>256</sup> More significantly, when asked why he did not create a record by memorializing DP’s purported oral authorization by entering a note in DP’s account file, Pelletier claimed repeatedly that “there was no way to retain notes” in BMO Harris’s records system, and “there would be no way to document that.”<sup>257</sup> Questioned further, Pelletier insisted “there was no way to put a note on the screen that hey guys, [DP] gave me the okay . . . . No, there’s no way to make notes like that.”<sup>258</sup>

Bonewell flatly contradicted Pelletier. When asked if a broker could record notes about a customer on BMO Harris’s client contact management system, Bonewell answered, “Yes.”<sup>259</sup> He described a software program, called “Salesforce,” that BMO Harris used to “hold our client notes.”<sup>260</sup> The Hearing Panel finds that on this point, Bonewell was credible, and Pelletier was not.

#### **V. Conclusions of Law**

The Hearing Panel finds that Pelletier engaged in 16 unauthorized trades in DP’s account in violation of FINRA Rule 2010. It is undisputed that Pelletier executed the 16 trades after being instructed to do so solely by NP, without speaking to DP.<sup>261</sup> Nonetheless, Pelletier argues that he did not violate FINRA Rule 2010.

Pelletier points out that there “is no FINRA rule that required” him to have written trading authorization before taking orders from NP.<sup>262</sup> To counter Bonewell’s testimony that BMO Harris’s call center representatives “all generally understood” the firm’s policy on oral authorization,<sup>263</sup> Pelletier’s counsel asserted, “Well [Pelletier] misunderstood it.”<sup>264</sup> Furthermore,

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<sup>256</sup> Tr. 173 (Pelletier).

<sup>257</sup> Tr. 137 (Pelletier).

<sup>258</sup> Tr. 170–71 (Pelletier).

<sup>259</sup> Tr. 275 (Bonewell).

<sup>260</sup> Tr. 275 (Bonewell).

<sup>261</sup> Stip. ¶¶ 14.

<sup>262</sup> Tr. 381 (Respondent’s Argument); Respondent’s Pre-Hearing Brief 1.

<sup>263</sup> Tr. 283–284 (Bonewell).

<sup>264</sup> Tr. 393–94 (Respondent’s Argument).

Pelletier stresses that a “violation of a firm policy, without more, does not constitute a violation of FINRA Rule 2010,” and “there is no FINRA rule requiring written authorization to enter orders.”<sup>265</sup> Pelletier contends that to establish that he violated Rule 2010, Enforcement must prove that he acted unethically or in bad faith.<sup>266</sup> To the contrary, Pelletier claims that he “was motivated by . . . a good faith desire to properly service a client account,”<sup>267</sup> acted “in what he believed were the best interests of [DP],”<sup>268</sup> and “had no financial incentive whatsoever to execute unauthorized orders.”<sup>269</sup> Arguing that there is no evidence that he “acted unethically or in bad faith,” Pelletier insists that Enforcement cannot prevail.<sup>270</sup>

The Hearing Panel disagrees. Pelletier’s arguments ignore long-established, widely accepted precedents that stand for the principle that a registered representative may trade in a customer’s account only as authorized by the customer. This is not a novel concept. To trade without a customer’s authorization constitutes misconduct going “to the heart of the trustworthiness of a securities professional.”<sup>271</sup> Unauthorized trading is a “fundamental betrayal of the duty” owed by an associated person to each customer.<sup>272</sup> It is a “serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade.”<sup>273</sup> It is, unequivocally, a violation of Rule 2010.

Even if the evidence were to establish that Pelletier, as he claims, acted on a good faith but mistaken belief that he had proper authorization from DP, and believed that he was acting in DP’s best interests, he nonetheless traded without authorization in violation of FINRA Rule 2010. Belief that trades are in a customer’s best interests “does not negate the fact that a trade was unauthorized . . . . Nor is it relevant that the representative did not gain personally or monetarily from the unauthorized trade.”<sup>274</sup> In a number of cases, representatives have been found to have violated Rule 2010 despite holding a good faith belief that the trades were in a customer’s interest, or based on a misunderstanding that a customer authorized the trades.<sup>275</sup> And

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<sup>265</sup> Respondent’s Pre-Hearing Brief 5.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* at 2.

<sup>268</sup> *Id.* at 7–8.

<sup>269</sup> *Id.* at 3.

<sup>270</sup> *Id.* at 5.

<sup>271</sup> *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at \*6 (July 1, 2008) (quoting *Adam Stuart Levine*, Exchange Act Release No. 32214, 1993 SEC LEXIS 1108, at \*4 (Apr. 26, 1993)).

<sup>272</sup> *Id.* (quoting *Keith L. DeSanto*, Exchange Act Release No. 35860, 1995 SEC LEXIS 1500, at \*16 (June 19, 1995)), *aff’d*, No. 95-4127, 1996 U.S. App. LEXIS 5304 (Mar. 22, 1996).

<sup>273</sup> *Id.* (quoting *Bradley Kanode*, Exchange Act Release No. 26792, 1989 SEC LEXIS 825, at \*3 (May 8, 1989)).

<sup>274</sup> *Dep’t of Enforcement v. Burford*, No. 2019064656601, 2024 FINRA Discip. LEXIS 5, at \*12 (NAC March 14, 2024) (citations omitted).

<sup>275</sup> *See, e.g., Daniel S. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, \*20–21 (NAC June 15, 1999) (noting that in many cases with small numbers of unauthorized trades “there is credible evidence indicating that a

a bad faith or a fraudulent intent to profit by trading in a customer account without authority is not a required element to prove unauthorized trading in violation of Rule 2010.<sup>276</sup>

Thus, even if the Hearing Panel accepted Pelletier's arguments at face value, we would still conclude that he engaged in 16 unauthorized trades and thereby violated FINRA Rule 2010.

## **VI. Sanctions**

### **A. The Sanction Guidelines**

FINRA's Sanction Guidelines for unauthorized trading are straightforward. The Principal Considerations relevant to this case direct adjudicators to consider: (1) whether Pelletier reasonably misunderstood his authority; (2) the number of customers affected, and the magnitude of customer losses; and (3) the number and dollar value of the unauthorized transactions.<sup>277</sup>

The Guidelines for unauthorized trading also refer adjudicators to the Principal Considerations in Determining Sanctions that are generally applicable to all violations. Those relevant to this case include Principal Considerations:

- No. 2, acceptance of responsibility for and acknowledgment of the misconduct prior to detection;
- No. 8, whether the misconduct consisted of multiple acts or a pattern;
- No. 9, whether the misconduct occurred over an extended period of time;
- No. 11, whether the misconduct injured a member of the investing public;
- No. 13, whether the misconduct was intentional, reckless, or negligent; and
- No. 20, whether the customer is 65 years of age or older.<sup>278</sup>

The Guidelines for an individual who engages in unauthorized trading recommend that adjudicators consider imposing a fine between \$5,000 and \$30,000 and a suspension in any or all capacities of between one month and two years.<sup>279</sup>

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registered representative acted with a good faith belief that a trade, albeit unauthorized, would benefit his or her customer.”).

<sup>276</sup> *Dep't of Enforcement v. Puma*, No. C10000122, 2003 NASD Discip. LEXIS 22, at \*12 n.6 (NAC Aug. 11, 2003).

<sup>277</sup> FINRA Sanction Guidelines at 122 (March 2024), <https://www.finra.org/sanctionguidelines>.

<sup>278</sup> *Id.* at 7–8.

<sup>279</sup> *Id.* at 122.

## **B. Arguments of the Parties**

### **1. Enforcement's Sanction Recommendations**

Enforcement asks the Hearing Panel to suspend Pelletier from associating with any member firm in any capacity for three months and assess a fine of \$10,000.<sup>280</sup> Enforcement emphasizes that unauthorized trading is a serious breach of the duties imposed on all registered representatives by Rule 2010.<sup>281</sup> In addition, Enforcement notes, the prohibition against unauthorized trades is based on a simple, fundamental proposition: brokers must not trade in a customer account without the customer's permission. BMO Harris's policy and procedure manuals made this clear to Pelletier.<sup>282</sup> Pelletier annually certified that he reviewed and understood the firm's policies. They clearly stated that a third party cannot direct trades in a customer account without a signed trading authorization, and provided an example strikingly applicable to this case—that a husband may not direct trades in a spouse's account without written authorization. The manuals also had an explicit reminder to brokers to avoid "inadvertent unauthorized transactions," such as accepting an order by a person to trade in a spouse's account.<sup>283</sup>

Enforcement points to two aggravating factors present in this case: (1) Pelletier did not reasonably misunderstand his authority; and (2) his misconduct caused substantial losses to DP, depleting almost half of his modest retirement account. In addition, Enforcement points out that Pelletier made numerous unauthorized trades and they constituted a pattern of misconduct over an extended period.<sup>284</sup> Furthermore, Enforcement contends that Pelletier has not accepted responsibility for what he did, exemplified by his arguing that NP duped him, and BMO Harris provided insufficient guidance to him about the protocol for oral authorization.<sup>285</sup>

### **2. Pelletier's Sanction Recommendation**

For his part, Pelletier argues that he believed that it was permissible to receive oral authorization to accept third party trade instructions, and "there's nothing in writing that says otherwise."<sup>286</sup> He believed that because he used a recorded phone line, the firm allowed it.<sup>287</sup> He also emphasizes that he did not and could not conceal what he did because the phone calls were

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<sup>280</sup> Tr. 378 (Enforcement's Argument); Enforcement's Pre-Hearing Brief at 11.

<sup>281</sup> Tr. 348 (Enforcement's Argument).

<sup>282</sup> Tr. 353 (Enforcement's Argument).

<sup>283</sup> Tr. 354–55 (Enforcement's Argument).

<sup>284</sup> Tr. 375–76 (Enforcement's Argument).

<sup>285</sup> Tr. 376–77 (Enforcement's Argument).

<sup>286</sup> Tr. 403 (Respondent's Argument).

<sup>287</sup> Tr. 393 (Respondent's Argument).

all recorded, and he knew it.<sup>288</sup> And he argues that he has accepted responsibility by admitting he did not speak to DP when he took NP's instructions, claiming in mitigation that this constitutes "100 percent accepting responsibility."<sup>289</sup> Finally, Pelletier claims that the trades at issue do not constitute a pattern, "because it's the same customer."<sup>290</sup>

Pelletier asks, if the Hearing Panel must impose a sanction, that it not include a suspension for any length of time.<sup>291</sup> He argues that a suspension will not achieve the goal of protecting the investing public.<sup>292</sup> Instead, he suggests a fine of as much as \$30,000 would suffice as a "public deterrent and individual deterrent."<sup>293</sup>

### **C. Discussion of Sanctions**

The Hearing Panel has carefully considered the hearing testimony, evidence, and the parties' arguments in applying the relevant Sanction Guidelines in a fair and equitable manner to the facts before us.

First, the Hearing Panel finds no basis for concluding, as Pelletier contends, that he reasonably misunderstood a grant of authority orally given by DP to allow NP to direct trading in his retirement account. As shown above, there is no evidence supporting Pelletier's assertion that DP ever provided the oral authorization he claims to have relied on. Second, although this case involves only one customer, for DP the loss incurred by the 16 unauthorized trades was significant. Their total principal value came to \$36,032.78, approximately half of DP's accumulated retirement savings. In the context of DP's financial situation, the number of unauthorized transactions led to what is only fair to describe as a crushing depletion of the savings on which he was relying to supplement his Social Security income in his retirement.

Next, the Hearing Panel does not agree with Respondent that he has accepted responsibility. His admission that he did not speak to DP before acting on NP's instructions to effect trades is not the same as accepting responsibility for the misconduct. His explanation to Dawson that he traded on NP's instructions because of his empathy for DP's purported hearing disability was an attempt to deflect his responsibility for trading without authorization. As discussed above, there is no evidence that DP suffered a hearing disability. Similarly, Pelletier's claim to Klinzing that before each trade he verified DP's identity and then DP handed the phone

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<sup>288</sup> Tr. 403 (Respondent's Argument).

<sup>289</sup> Tr. 384 (Respondent's Argument).

<sup>290</sup> Tr. 401 (Respondent's Argument).

<sup>291</sup> Tr. 405 (Respondent's Argument).

<sup>292</sup> Tr. 400 (Respondent's Argument).

<sup>293</sup> Tr. 405 (Respondent's Argument).

to NP—a claim his counsel made at the hearing when he argued “we have recordings of [DP] giving the phone to [NP]”<sup>294</sup>—is unsupported by the evidence.

The Hearing Panel also finds that the 16 trades Pelletier executed from July 2017 to July 2018 constitute multiple acts over an extended period—an aggravating factor under the Sanction Guidelines. And under these circumstances, the Hearing Panel concludes that Pelletier acted knowingly, or recklessly, because, based on the evidence, he knew or should have known that he needed to consult DP before acting on NP’s instructions. Finally, we cannot escape noting that by the time Pelletier effected the last unauthorized trades in 2018, DP was 65 years old, and therefore, under the Guidelines, DP’s age may be considered an additional aggravating factor.<sup>295</sup>

Taking all of the above into consideration, the Hearing Panel concludes that a three-month suspension from associating with any FINRA member firm in any capacity, and a fine of \$10,000—sanctions at the lower end of those recommended by the Sanction Guidelines—are appropriately remedial and will serve to deter Pelletier and others similarly situated from similar misconduct.<sup>296</sup>

## VII. Order

Respondent John Pelletier is suspended from associating with any FINRA member firm in any capacity for three months and is fined \$10,000 for effecting 16 unauthorized transactions in a customer’s retirement account in violation of FINRA Rule 2010.

If this decision becomes FINRA’S final disciplinary action, the suspension shall become effective with the opening of business on Monday, August 19, 2024, and end at the close of business on Tuesday, November 19, 2024. Pelletier is also ordered to pay hearing costs in the amount of \$4,220.22, which includes a \$750 administrative fee and \$3,470.22 for the transcript. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA’s final action in this proceeding.



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Matthew Campbell  
Hearing Officer  
For the Extended Hearing Panel

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<sup>294</sup> Tr. 387 (Respondent’s Argument).

<sup>295</sup> DP was born in 1953. CX-9, at 2.

<sup>296</sup> The Extended Hearing Panel considered and rejects without discussion all other arguments of the parties.

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