

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Robert Earl Holaday  
La Mesa, CA,

Respondent.

DECISION

Complaint No. 2012032519101

Dated: October 3, 2016

**Enforcement failed to prove that the respondent forged or caused the forgery of three customers' signatures on four account forms. Held, findings reversed and complaint dismissed.**

**Appearances**

For the Complainant: Carolyn Craig, Esq., Jennifer Crawford, Esq., Leo Orenstein, Esq.,  
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Douglas Martin, Jr., Esq.

**Decision**

Robert Earl Holaday appeals a Hearing Panel decision issued on May 21, 2015. The Hearing Panel found that Holaday forged or caused the forgery of three customers' signatures on four account forms. The Hearing Panel suspended Holaday in all capacities for two years and fined him \$10,000 for the violation. On appeal, we have concluded that Enforcement failed to prove, by a preponderance of the evidence, that Holaday forged or caused the forgery of the forms.

Throughout these proceedings, Holaday insisted that he did not forge the customers' account forms, and that he did not instruct anyone else to do so. Because no witness testified that he or she observed Holaday forging the forms or ordering the forgery of the customers' signatures, and Holaday did not admit to forging the forms or causing the forgery of the forms, Enforcement relied on the circumstances surrounding the forgery to suggest that Holaday should be held liable for the violation. Enforcement argued that the circumstances surrounding the forgery demonstrated that Holaday had the opportunity and motive to engage in the misconduct. Enforcement's arguments concerning Holaday's opportunity and motive do not withstand its obligation to carry the burden of proof in this case.

While we acknowledge that Holaday had access to the forms, and the opportunity to forge them, Enforcement ignored the fact that at least three other individuals also had access to the forms. Enforcement therefore failed to foreclose the possibility that others in Holaday's four-person office forged the forms. Rather than vet other potential wrongdoers, Enforcement consulted with only one of the three individuals who shared Holaday's office and opted not to call any of the individuals from Holaday's office as a witness. As the complainant, Enforcement had the burden of proof in this case. Enforcement failed to meet that burden. Consequently, we reverse the Hearing Panel's findings and dismiss the complaint.

I. Factual Background

Holaday entered the securities industry in February 1981. In March 1984, Holaday registered as a general securities representative. In February 1987, he registered as a general securities principal. Holaday has been registered continuously since entering the securities industry, and he currently is employed with a firm.

During the period relevant to the conduct at issue, March 2012 to May 2012, Holaday was associated with Centaurus Financial, Inc. It is Holaday's process of transferring his customer accounts from his former firm, Royal Alliance Associates, Inc., to his new firm, Centaurus Financial, that gives rise to the events of this case. Centaurus Financial discharged Holaday for the conduct discussed here.

A. Holaday's Departure from Royal Alliance

Toward the end of 2011, Holaday decided to resign from Royal Alliance. When he decided to leave the firm, he informed his direct supervisor, Kimberly Hankins. Holaday testified that Hankins led him to believe that Royal Alliance would help him transfer his customer accounts to Centaurus Financial. The day after Holaday resigned from Royal Alliance, however, the firm revoked Holaday's access to the customer records on his computer, and he had to rely on his paper files to contact customers. Hankins sent Holaday's customers a letter to inform them that Holaday had left Royal Alliance, and she would be handling their accounts.

After his resignation in December 2011, Holaday sent packets to his customers to apprise them of his new employment with Centaurus Financial. Each packet included a "Centaurus Client Agreement/New Account Application" for the customers to complete to transfer their accounts to Centaurus Financial and a "Financial Advisor Change Form" to retain Holaday as their registered representative of record. When Holaday left Royal Alliance, he handled approximately 1,000 customer accounts, \$57 million in customer assets, and 800 customers.

B. Holaday's Transition to Centaurus Financial

Holaday operated a small, independent office while he was associated with Royal Alliance and Centaurus Financial. He was the only registered person in the office and the office's only general securities principal. Holaday described his office as a "family affair." During this period, Holaday had two employees who assisted him with office matters – his administrative assistant of seven years, Ruth Foster, and his office manager of 10 years, his son,

Bobby Holaday.<sup>1</sup> Holaday also received intermittent office assistance during this transitional period from a registered representative named Christopher Rossi, his daughter, Deborah Holaday, and three young grandchildren.

Foster and Bobby Holaday handled the bulk of administrative matters associated with Holaday's transition from Royal Alliance to Centaurus Financial, including the completion of forms to transfer Holaday's customer accounts to Centaurus Financial. To facilitate the customer account transfer process, Foster and Bobby Holaday mailed account transfer packets to customers. Foster and Bobby Holaday tried to "simplify" the customers' completion of the account transfer forms by pre-populating the forms with information contained in Holaday's paper files. Essentially, once customers received the account transfer packets, they only had to sign and return the forms to Holaday's office.<sup>2</sup>

When Foster and Bobby Holaday received account transfer forms from customers, they typically provided them to Holaday for his review and signature. They also forwarded completed customer forms to Centaurus Financial and maintained lists to track which customers had returned the new account application and financial advisor change forms and which ones had not. Foster and Bobby Holaday sent duplicate account transfer packets to customers who failed to complete and return the account transfer forms to Holaday's office by a certain date.<sup>3</sup>

### C. The Four Forged Forms

The Hearing Panel found, the documentary and testimony evidence in the record supports, and Holaday acknowledges that three customers' signatures were forged on four account forms while the forms were in his office:

- Holaday submitted a "New Account Application" form, dated March 28, 2012, to Centaurus Financial. The form contained the purported signature of Holaday's former Royal Alliance customer, SW, but SW did not sign the form or authorize anyone to sign the form for her.

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<sup>1</sup> Holaday testified that Foster was a "clerical person, fingerprinted," and Bobby Holaday was not registered.

<sup>2</sup> Some customers had one or two additional areas to complete on the forms. For example, some customers needed to update their address, employment, income, net worth, or tax bracket information.

<sup>3</sup> Bobby Holaday provided additional assistance with the forms. Bobby Holaday printed Holaday's name on forms, dated Holaday's signature, and handled Holaday's "computer work," particularly with respect to completing customer forms. Holaday testified that Bobby Holaday "did most of the computer work, getting those [forms] filled in . . . 'pre-populated,' I think is the term that's used."

- Holaday submitted a “Financial Advisor Change Form,” dated March 28, 2012, to Oppenheimer Funds.<sup>4</sup> The form contained the purported signature of SW, but SW did not sign the form or authorize anyone to sign the form for her.
- Holaday submitted a “Financial Advisor Change Form,” dated April 20, 2012, to Oppenheimer Funds. The form contained the purported signature of Holaday’s former Royal Alliance customer, AT, but AT did not sign the form or authorize anyone to sign the form for her.
- Holaday submitted a “Financial Advisor Change Form,” dated May 4, 2012, to Oppenheimer Funds. The form contained the purported signature of Holaday’s former Royal Alliance customer, EG, but EG did not sign the form or authorize anyone to sign the form for her.

Holaday acknowledges that Foster or Bobby Holaday completed or “pre-populated” most of the information contained on the forms, so the customer only had to sign the forms (or update one or two informational items) upon receipt. This included spaces where the customer and Holaday were required to date the form and print their names under their respective signatures.<sup>5</sup> Holaday unequivocally stated in the proceedings before the Hearing Panel, and he reiterates in this appeal, that he did not sign SW’s, AT’s, or EG’s names on any of the four account forms.

Holaday testified that his transition from Royal Alliance to Centaurus Financial resulted in the loss of \$10 million of the \$57 million in customer assets that he had handled. More than 80 percent of the assets that Holaday handled made the transition with him to Centaurus Financial. SW’s assets with Holaday totaled \$10,587 and provided him with annual trail commissions of \$21. AT’s assets with Holaday totaled \$114,621 and provided him with annual trail commissions of \$220. EG’s assets with Holaday totaled \$36,000 and provided him with annual trail commissions of \$70.

## II. Procedural History

FINRA commenced the investigation that led to the filing of the complaint in this case in July 2012, when Centaurus Financial filed a Uniform Termination Notice for Securities Industry Registration (Form U5) indicating that it had terminated Holaday because it had received complaints concerning “signature irregularities” on account forms. In June 2014, Enforcement filed a one-cause complaint against Holaday. The complaint alleged that Holaday violated FINRA Rule 2010 because he forged or caused the forgery of SW’s and EG’s signatures on three

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<sup>4</sup> Holaday had to submit “Financial Advisor Change Forms” to Oppenheimer Funds to apprise the mutual fund company of his move to Centaurus Financial and inform the company of the customer’s intention for Holaday to remain the registered representative and financial advisor of record for the account.

<sup>5</sup> Each of the four account forms also contain Holaday’s signature. Holaday testified that he provided his own signature on SW’s and AT’s forms, but he did not sign his name on EG’s form.

account forms. In July 2014, Enforcement amended the complaint to include allegations concerning the forgery of AT's account form.

Holaday filed an answer in June 2014. In August 2014, he filed an amended answer. Holaday denied that he forged or caused the forgery of the three customers' signatures on any of the four forms. A three-day hearing took place in San Diego, California, in January 2015. Seven witnesses testified at the hearing – Holaday, SW, EG, AT, two character witnesses who testified on behalf of Holaday, and James Blanco, a forensic document examiner who Holaday presented to testify concerning the authenticity of the customers' signatures on the account forms. The Hearing Panel issued its decision in May 2015. The Hearing Panel found that Holaday forged or caused the forgery of the three customers' signatures on the four account forms, as alleged in the amended complaint. The Hearing Panel suspended Holaday in all capacities for two years and fined him \$10,000 for the misconduct. This appeal followed.

### III. Discussion

Enforcement had the burden of proof in this case. *See Dep't of Enforcement v. Claggett*, Complaint No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at \*25 (FINRA NAC Sept. 28, 2007). That burden of proof is met only if Enforcement establishes the violation by a preponderance of the evidence. *See id.* The preponderance of evidence standard of proof required Enforcement to "prove it [wa]s more likely than not" that the allegations of the complaint were true. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (explaining the requirements to meet a preponderance of the evidence standard). Enforcement failed to meet its burden.

Holaday has consistently asserted throughout the duration of these proceedings that he did not forge SW's, AT's, or EG's signatures on the four account forms, and that he did not cause anyone else to forge them. Confronted with Holaday's persistent denials of his involvement in the forgery, Enforcement examined the circumstances surrounding the forgery and asserted that the circumstantial evidence supported the finding of a violation of FINRA Rule 2010 because Holaday had the opportunity and motive to engage in the misconduct.<sup>6</sup>

The Hearing Panel agreed with Enforcement's reasoning. The Hearing Panel found, "by a preponderance of the evidence, that Holaday forged or caused the forgery [of SW's AT's and EG's signatures on the four account forms], in violation of FINRA Rule 2010." In reaching this conclusion, however, the Hearing Panel did not find that Holaday was an untruthful witness, nor did it conclude that Holaday's testimony was not credible. To the contrary, the Hearing Panel focused on the credibility of the testimony of SW, AT, and EG in order to determine the authenticity of their signatures on the account forms. We accept these well-supported credibility findings.

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<sup>6</sup> FINRA Rule 2010 is FINRA's ethical standards rule. The rule states, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010, which generally applies to FINRA members, is applicable to associated persons pursuant to FINRA Rule 0140(a).

After finding the customers credible, however, the Hearing Panel chose to rest its conclusion that Holaday forged the account forms, or caused the forms to be forged, on its assessment of Holaday's opportunity and motive, not an assessment of his credibility. We have interpreted the Hearing Panel's failure to assess Holaday's credibility concerning the forgery as an inability to do so. The Hearing Panel stated:

The Hearing Panel finds that Holaday had opportunity and motive . . . . As the only registered person in the office and [Foster's and Bobby Holaday's] supervisor, he had the unique opportunity to forge the signatures himself or cause [Foster and Bobby Holaday] to do it for him. Although AT, EG, and SW were just three out of Holaday's many customers over [30] years in the business, he admitted that he was eager to move as many clients as possible with him when he left Royal Alliance.

A thorough review of the record has revealed fatal weaknesses in the Hearing Panel's findings. As an initial matter, the Hearing Panel found that Holaday had a strong financial motive to forge or cause the forgery of the account forms. The Hearing Panel highlighted that Holaday earned his living based on commissions, and it noted that there was "some urgency" in Holaday's transfer of the accounts to Centaurus Financial because his former Royal Alliance supervisor, Kimberly Hankins, was attempting to take over his accounts. The Hearing Panel exaggerated Holaday's motive. The small number of customers (3 out of 800), the minimal amount of customer assets (\$161,208 out of \$57 million), and the de minimis annual trail commissions (\$311) involved with the forgery undercut the arguments concerning Holaday's motive. Although Holaday had some financial motive, Enforcement proved only a weak one.

The Hearing Panel also determined that Holaday had the "unique opportunity" to forge the forms or cause the other individuals in his office to do so. We acknowledge that Holaday had the opportunity to forge the account forms or direct someone else to forge them. But this finding is insufficient to hold Holaday liable for the misconduct alleged in this case. Enforcement had the burden of proof, and Enforcement failed to address the possibility that other individuals in Holaday's office forged the forms, and that they did so of their own accord (i.e., not at Holaday's direction). While we do not intend to suggest that every case of forgery should include evidence from everyone in an office, there were only three other individuals who had access to the forms in Holaday's office, and Enforcement chose not to offer any evidence of whether any of those individuals were involved in the forgery.

As we contemplated how to handle the evidentiary gaps created by the lack of testimony from the persons who shared Holaday's office, for guidance, we consulted the Commission's decision in *Rooney A. Sahai*, 58 S.E.C. 276, 289-291 (2005). In *Sahai*, the Commission faced a similar set of circumstances concerning forgery allegations against Sahai, and the Commission decided that the lack of evidence warranted the dismissal of that portion of the case. When the Commission dismissed the forgery allegations, it explained:

There is no evidence that Sahai personally signed the customers' signatures. Sahai's handwriting exemplars are not in the record. NASD did not produce original documents during the proceeding or engage a handwriting expert to analyze the allegedly forged signatures. Sahai asserts that other persons had an opportunity to affix the customers' signatures to the allegedly forged documents (e.g., Sahai's employees or employees of [Sahai's firm]). We note that [Sahai's office manager and attorney each] confirmed Sahai's testimony that he employed part-time workers and that he depended on them for administrative tasks, including obtaining customer signatures.

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

*Sahai*, 58 S.E.C. 289-290.

We are in a similar quandary. There is no evidence that Holaday personally signed the customers' signatures or performed any act that caused the forgery. There is no evidence that Holaday instructed anyone to forge the customer signatures. Nor is there evidence that he was aware that any of the three customers' signatures had been forged. Holaday, like Sahai, also affirmatively argued that other specified individuals had the opportunity to forge the customers' signatures on the forms, and Enforcement failed to present any evidence to explore if those individuals forged the signatures. Finally, while the record does contain examples of Holaday's handwriting, there is no documentary or testimony evidence linking Holaday's handwriting examples to the forged signatures on the four forms.<sup>7</sup>

In order for Enforcement to satisfy its burden of proof, Enforcement needed to produce evidence, not offer speculation. *See Bakalar v. Vavra*, 619 F.3d 136, 151 (2d Cir. 2010) ("[S]cenarios, based on pure speculation, do not constitute findings by a preponderance of the evidence that what 'could have' happened, actually did happen"). The allegations in this case are not that Holaday should have known that the signatures were forged, or that he should have supervised the account transfer process better. The allegations are that Holaday committed the forgeries or directed them. Based on the record before us, we are left only with speculation of whether Holaday forged the account forms or caused their forgery. Consequently, we set aside the Hearing Panel's findings and dismiss Enforcement's complaint.

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<sup>7</sup> The Hearing Panel determined that Holaday's expert witness, the forensic document examiner, James Blanco, was unreliable, and the Hearing Panel correctly concluded that Blanco's statements concerning the authenticity of the customers' signatures were incorrect.

IV. Conclusion

We reverse the Hearing Panel's findings that Holaday forged or caused the forgery of three customers' signatures on four account forms, and we dismiss the complaint.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith  
Senior Vice President and Corporate Secretary