

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

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| In the Matter of District Business Conduct Committee For District No. 10, Complainant, vs. Lawrence P. Bruno, Jr. Brooklyn, New York, Respondent. | <u>DECISION</u> COMPLAINT NO. C10970007 District No. 10 (NY) Dated: July 8, 1998 |
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Pursuant to Procedural Rule 9310, Lawrence P. Bruno, Jr. ("Bruno" or "Lawrence P. Bruno, Jr.") has appealed the September 30, 1997 decision of the District Business Conduct Committee for District No. 10 ("DBCC"). After a review of the entire record in this matter, including Bruno's opening and reply briefs on appeal, we find that Bruno violated NASD Conduct Rule 2110 and NASD Membership and Registration Rule 1070 by having an imposter take the Series 7 Qualification Examination ("Series 7 exam") on his behalf on September 1, 1993. We affirm the DBCC's findings and sanctions. Accordingly, we impose on Bruno a censure, a bar in all capacities, a \$25,000 fine, and disgorgement of the commissions that he received while employed with his current firm. We also assess hearing costs against him.

Background

Bruno entered the securities industry in 1993, working in an unregistered capacity. Since December 1993, Bruno has been registered with the Association as a general securities representative of Gaines, Berland Inc. ("Gaines, Berland" or "the Firm").

Discussion

The central issue in dispute is whether Bruno took the Series 7 exam on September 1, 1993. Bruno testified that he had taken the Series 7 exam and that he signed his name on the exam Sign In Log twice, once before each session of the exam. A handwriting expert for District No. 10 testified, however, that the two signatures on the Sign In Log were not Bruno's, but rather were written by someone who had no knowledge of how Bruno actually wrote. Bruno called a handwriting expert of his own, and she testified that the two signatures in question were in fact his. We will discuss and evaluate the evidence by first considering Bruno's testimony and his on-the-record interview, and then considering the expert witnesses' testimony.

Bruno's Test Taking. The Central Registration Depository ("CRD") reflects that in 1993 and 1994 Bruno took five different NASD examinations. In July 1993, Bruno took the Series 62 examination, the exam for a corporate limited representative, at NASD Regulation's office in Manhattan. Bruno failed the exam, attaining a score of 54 out of 100. Bruno's next NASD exam is the subject of this decision. On September 1, 1993, in Richmond, Virginia, an individual identifying himself as Bruno took the Series 7 exam, the general securities registered representative exam, and attained a passing score of 77. At the time, Bruno was living in Brooklyn, New York.

Bruno next took the Series 63 exam, the uniform securities agent state law exam, in December 1993, at a testing center in Melville, on Long Island. Bruno received a failing score of 68. In January 1994, Bruno twice took the Series 63 exam, on both occasions in Melville, New York. In what was his second attempt to pass the Series 63 exam, Bruno failed again, scoring 68. On his third attempt, Bruno passed the Series 63 exam, scoring 78. Two years later, in 1996, Bruno twice took the Series 24 exam, the general securities principal qualification exam. Bruno took the test on both occasions in Melville, New York. He failed the test with a 66 on the first try and passed with a 72 on the second occasion.

Events at the Test Center in Richmond, Virginia. The September 1, 1993, Sign In Log for the Richmond, Virginia test site showed that two candidates took exams on that day. A candidate signed in as "Lawrence Bruno" for the first portion of the Series 7 exam at 8:38 a.m. and signed out at 10:12 a.m. The candidate signed in again as "Lawrence Bruno" at 10:47 a.m. for the second portion of the Series 7 exam and signed out at 11:50 a.m. The second candidate who took an exam that day signed in for a Series 63 exam at 1:00 p.m.

In an on-the-record interview taken by NASD Regulation staff in June 1996, Bruno testified that there were approximately 10 other candidates taking exams at the Richmond facility while he was taking his exam. Before being shown the Sign In Log, Bruno testified that he started the first part of the exam at 8:30 and finished it

between 11:30 and 12:00. Bruno further testified that he started the second session at about 12:15 and finished the exam at about 3:05 or 3:10. Bruno recalled that he had no lunch on the day of the exam because there were no convenience stores nearby. Bruno testified that he then drove back to Brooklyn, arriving at his home around 10:30 p.m. At the DBCC hearing in May 1997, however, Bruno changed his testimony and stated that he arrived home between 7:00 and 8:00 p.m.

Bruno further testified at the hearing as follows: In January 1993, he injured his knee while playing football. A doctor diagnosed the injury as a torn anterior cruciate ligament. Bruno's leg was placed in a cast for several weeks, after which he underwent physical therapy for several months, followed by visits to a chiropractor. As a result of the injury and failure of the knee to recover fully, Bruno periodically experienced substantial pain in his knee. Shortly before his doctor removed the cast, Bruno reported his pain and the doctor prescribed painkilling medication. Bruno experienced recurrent pain in his knee from the time the cast was removed until September 1, 1993, and thereafter. When he experienced pain, he would take the prescribed medication.

Although asked, Bruno could not recall the name of the drug prescribed by his doctor, nor the dosage strength, recalling only that it was pain medication. Bruno testified that he had been unable to obtain a record of the prescription from the pharmacy that had dispensed the medication because the pharmacy had since gone out of business. At the hearing, Bruno reviewed medical records from his doctor and from his physical therapist relating to his knee injury, but admitted that those records contained no reference to any medication prescribed for his pain.

Bruno further testified as follows: In July 1993, he lived in Brooklyn, New York and had been working as a cold caller for two to three months. He worked long hours, often 12 hours a day. His supervisors wanted him to become registered and, in July 1993, he took the Series 62 exam. He failed. Bruno became discouraged with his prospects in the securities industry and was uncertain whether he wanted to continue with his efforts to become a registered representative. Bruno had previously accumulated some college credits and was considering whether he would resume attending college instead. While considering this option, he called three colleges to inquire about visiting their campuses: the University of Richmond, Old Dominion University, and the American University. Bruno explained that he was interested in colleges in the Virginia area, because he wanted "to work his way towards Virginia Beach." Bruno decided that he would visit the University of Richmond and he intended to decide during the trip whether to visit the other universities. Bruno stated that he visited the University of Richmond the day before taking the Series 7 exam so that he could "kill two birds with one stone."

Bruno testified about visiting the University of Richmond as follows: He drove his car from Brooklyn to Richmond on August 31, 1993, going directly to the University of Richmond. Although he had no appointment, Bruno went to the

admissions office, requested brochures, and asked if someone could show him the campus. A young woman gave him brochures and then escorted him around the campus for about an hour and a half. He then left and spent the night at a nearby motel.

Other than his testimony, Bruno provided no evidence of his trip to the University of Richmond. He did not have the university's brochures. He said that he had not filled out any forms while visiting the campus and did not later apply to the university. He testified that he did not have a credit card and that he paid cash for gas and food on his way from Brooklyn to Richmond. He had no receipts for these purchases. He also had no receipt for his lodging. He could not remember the name of the person who escorted him around campus. He also could not remember the name of the motel where he stayed or the street it was on. During his on-the-record interview, however, Bruno successfully identified the building that houses the Richmond test center from a group of 14 photographs.

Bruno testified that on the morning of September 1, 1993, he felt pain in his knee and took one capsule of the prescribed pain medication at about 7:30 a.m. The record showed that a candidate purporting to be Bruno signed "Lawrence Bruno" both times he signed the Sign In Log, omitting the middle initial "P." and the appellation "Jr." Bruno testified that when he took the painkillers, he experienced no side effects and had no problem writing his name.

Bruno testified that after completing his Series 7 exam, he learned that he had passed. Bruno then decided not to visit Old Dominion University, which is in Norfolk, Virginia. He began his trip home, on the way calling a friend who attended American University, thinking he might stop there. Bruno's friend said that he was busy moving into his room. Bruno then drove directly home.

Standard of Proof. Bruno argues that the DBCC erred in not applying the "clear and convincing" standard of proof to the evidence in this case. The United States Supreme Court, however, has held that in Securities and Exchange Commission ("SEC") disciplinary proceedings the correct standard of proof is the preponderance of the evidence. Steadman v. SEC, 450 U.S. 91, 96 (1981). The same standard of proof is used in NASD disciplinary proceedings. See Wall Street West, Inc. v. SEC, 718 F.2d 973, 974 (10th Cir. 1983); Seaton v. SEC, 670 F.2d 309, 311 (D.C. Cir. 1982).¹ Consequently, Bruno's argument is manifestly incorrect.²

¹ See also In re Gerald James Stoiber, Exchange Act Rel. No. 39565, at 3 (Jan. 22, 1998) (order denying request for reconsideration) ("The proper standard to be applied is the preponderance of the evidence standard.") (citing Steadman); In re FundCLEAR, Inc., 51 S.E.C. 1316, 1319 n. 13 (1994) ("In this de novo proceeding we make our findings against Applicants on the basis of the preponderance of the evidence; the 'clear and convincing' standard on which Applicants rely does not apply").

Bruno argues that several of the cases applying the preponderance of the evidence standard did not involve a bar and, therefore, those cases have no precedential value for his case. This argument is refuted by the relevant case law. For example, a review of the Supreme Court's opinion in Steadman shows that the sanctions imposed included a bar. Steadman, 450 U.S. at 94.³ NASD disciplinary cases imposing a bar have also been repeatedly upheld based on the preponderance standard.⁴

Bruno's additional argument, that disciplinary actions involving proof by circumstantial evidence must be proven by clear and convincing evidence, is also contrary to the law.⁵ See Steadman, 450 U.S. at 95 (rejecting Steadman's argument that the SEC must use the clear and convincing standard of proof because of the circumstantial and inferential nature of the evidence).

Credibility of Bruno's Testimony. The DBCC discredited Bruno's testimony based upon the inconsistencies between the documents in the record and Bruno's testimony. We fully agree with this conclusion.

We find that several circumstances support the conclusion that Bruno's testimony was false. First, Bruno's testimony about the specifics of taking the Series 7 exam was incorrect. Although the candidate claiming to be Bruno was the only candidate taking a test that morning, Bruno testified that he took the Series 7 exam

² Bruno's reliance on SEC v. Moran, 922 F. Supp. 867, 890 (S.D.N.Y. 1996), is misplaced. There, the court applied the preponderance of the evidence standard. Id. at 890 ("[T]he court finds that this case shall be governed by the preponderance of the evidence standard.").

³ Charles Steadman, a mutual fund manager, was permanently barred from associating with any investment adviser or affiliating with any registered investment company. Id. at 93-94. He was also suspended from associating with any broker or dealer in securities for one year and given 90 days in which to sell his stock in Steadman Securities Corp. Id. at 94 & n.8.

⁴ See, e.g., In re Jay Michael Fertman, 51 S.E.C. 943, 949 n.26 (1994) (Fertman's bar upheld where NASD met preponderance of the evidence standard); In re Ernest A. Cipriani, Jr., 51 S.E.C. 1004, 1006 (1994) (same); In re Kirk A. Knapp, 50 S.E.C. 858, 859 (1992) (same).

⁵ Bruno further argues that the Due Process Clause of the United States Constitution requires a clear and convincing standard of proof for his case. The legal authorities upon which Bruno relies, however, do not require the use of any particular standard of proof. Consequently, these authorities do not even cast doubt upon the applicability of the preponderance standard.

with approximately 10 other people. In Bruno's appeal brief, he argues that his taking the exam in a cubicle made it difficult for him to tell how many others were taking exams. Bruno's brief, however, overlooks his previous testimony. During his on-the-record interview, Bruno stated that he believed that some of the cubicles were empty. When Bruno gave his on-the-record interview, he did not indicate that he could not observe how many other people were taking exams.

Furthermore, Bruno was wrong about when the individual purporting to be him started and finished the first and second sessions of the exam. Bruno testified that he did not finish the second session of the exam until 3:05 or 3:10 p.m. The Sign In Log, however, showed that the candidate claiming to be Bruno finished the second session at 11:50 a.m. Bruno's brief now claims that he was wrong because his memory of the Series 7 exam has melded together with the details of taking other exams. We reject this explanation and find instead that Bruno was incorrect about how many other candidates were taking exams and the duration of his exam because he did not take the Series 7 exam. During the on-the-record interview, Bruno expressed no doubts about his ability to recall taking the Series 7 exam. To the contrary, he stated that he remembered not eating lunch during the break between the sessions of the exam because there was no convenience store located close by. We also find that Bruno's statement about lunch reinforces our conclusion that his story was a fabrication. The Sign In Log shows that the candidate claiming to be Bruno was finished with the Series 7 exam before lunch and took a break between exam sessions, not at lunch time, but from 10:12 a.m. to 10:47 a.m.

Moreover, in light of the unique circumstances under which Bruno supposedly took the Series 7 exam, we find that his inaccurate description of the exam supports the conclusion that an imposter took the exam. According to Bruno's claims, the exam he took in Richmond was the first and only Series 7 exam that he took, and he took the exam in an unfamiliar city far from his home. We find that the unusual circumstances under which Bruno supposedly took the Series 7 exam would have ingrained in his memory a lasting and accurate impression of the experience.

We also find that the speed with which the candidate purporting to be Bruno completed the Series 7 exam supports our conclusion that an imposter took Bruno's exam. Although candidates are allowed three hours per session, the candidate who signed in as Bruno completed the first session in about an hour and a half and finished the second session in about an hour, leaving approximately three and one-half hours of available test time unused. Given that Bruno did not take a special study course to prepare for the Series 7 exam, but rather studied for the exam during his evenings and weekends, we find that his passing the exam in such a rapid manner is incredible. We find it significant that Bruno's only previous registration exam gave him no reason to move quickly through the Series 7 exam. He had failed the Series 62 exam two months before.

We also find Bruno's assertion that he took the Series 7 exam in Richmond because he wanted to combine taking the exam with visiting the University of Richmond to lack credibility. We find it implausible that someone taking the Series 7 exam for the first time would do so in a strange location far from home while on a two-day trip for a completely unrelated purpose. We find it much more likely that a candidate taking the Series 7 exam for the first time would do so near his home so that he could complete his final test preparations without distractions and so that he could more easily plan his travel to the test center. On the other hand, two more logical reasons may explain why Bruno scheduled the exam in Richmond. First, Richmond might have been more convenient for the imposter. Second, Bruno reduced the likelihood of being caught by arranging to take the exam in Richmond. If he had arranged for an imposter to take his exam in the New York metropolitan area, he would have increased the risk that someone who knew him would coincidentally encounter the imposter and expose the deceit.

Handwriting Expert Witnesses

We also find that the testimony of the handwriting expert witnesses further supports our conclusion that Bruno arranged for an imposter to take his Series 7 exam. We first summarize the expert testimony and then evaluate it.

District No. 10's Expert. Gus R. Lesnevich ("Lesnevich") was retained by District No. 10 as an expert witness in the area of handwriting analysis. Lesnevich has been employed as a forensic document examiner, commonly referred to as a "handwriting expert," for 29 years. He completed a two-year apprenticeship and course of instruction at the United States Army criminal investigation laboratory. For seven years, he was employed by the United States Secret Service as an examiner of questioned documents, working exclusively on signatures and writings in a forensic laboratory. Among other certifications, he has been board certified by the American Board of Forensic Document Examiners, a certification that requires two years of training, three years of additional supervision, full-time employment as a forensic document examiner, and periodic recertification. He has testified as a handwriting expert in numerous state and federal courts.

In analyzing the handwriting in this case, Lesnevich compared the two signatures on the Sign In Log to writings of Bruno, primarily signatures, whose authenticity was unquestioned. The signatures on the Sign In Log were referred to by the experts, and are referred to herein, as the "questioned" signatures. Bruno's undisputed signatures and other writings used for comparison were referred to by the experts, and are referred to herein, as "known" signatures or writings. The known signatures that Lesnevich examined were written both before and after September 1, 1993. Lesnevich testified that in his expert opinion the two signatures on the Sign In Log were not written by Bruno.⁶

⁶ Attached as Exhibit A to this Decision is a comparison chart which

Lesnevich testified as to the basis of his conclusion as follows: Although his examination of Bruno's known signatures revealed "a great deal of variation," Lesnevich stated that the known signatures all exhibited the same writing pattern, which was not present in the questioned signatures. Bruno's known signatures reflected that Bruno naturally signed in a rapid style that frequently made the signature difficult to read. Conversely, the questioned signatures were carefully written and legible. In writing "Lawrence" on the Sign In Log, the writer in both instances stopped writing after forming the "n," lifted the pen, and re-commenced writing in forming the adjacent "c." Lesnevich did not observe this break between the "n" and "c" in Bruno's known signatures. In addition, the questioned signatures exhibited "tremendous variation in the ending of the 'o' in Bruno" when compared to the known signatures. The questioned signatures were also inconsistent with Bruno's known signature because they omitted the middle initial "P" and the appellation "Jr."

Lesnevich further testified that he found significant discrepancies between the questioned signatures and the known signatures with regard to the way in which the capital "L" in Lawrence and the capital "B" in Bruno were written. Whereas in the questioned signatures the "L" and "B" were written in print or a style close to print, no known signatures he examined exhibited a print-style "L" or "B." Rather, the capital "L" and "B" in the known signatures were written in a script style. Moreover, the known signatures reflected a continuation in writing from the "L" to the small "a" that follows. The questioned signatures, in contrast, had a break between the capital "L" and the adjacent "a." Similarly, Lesnevich observed that the questioned signatures reflected a different writing movement in going from the capital "B" to the small "r" compared to the known signatures.

Lesnevich acknowledged, in response to questioning by Bruno's counsel, that in conducting his analysis he did not ask whether Bruno had taken medication on September 1, 1993. Lesnevich stated, however, that the answer would have had no impact on his opinion. Lesnevich testified that taking pain medication could -- but would not necessarily -- affect a person's signature. He further explained that a

was part of Lesnevich's report. The questioned signatures appear at the top of the page and are labeled as "Exh. 1." Below the questioned signatures appear four reproductions of known signatures, labeled as "Exh. 2, 3, 7, and 10," that District No. 10 staff provided to Lesnevich to use in conducting his examination. The signatures derived from Exhibits 2 and 3 appeared on, respectively, a Receipt for Service dated June 5, 1996 by which Bruno acknowledged receiving a letter from District No. 10 and a form Bruno completed for District No. 10 when he appeared to testify on June 10, 1996. The signature from Exhibit 7 appeared on a check Bruno wrote dated May 27, 1994. The signature from Exhibit 10 appeared on a test center Sign In Log dated December 27, 1993, which Bruno signed when taking the Series 63 exam in Melville, New York.

signature affected by medication or drugs would still resemble the person's normal signature. In general, he stated, the affected signature would be more sloppily written, but the subconscious elements of writing, such as using script capital letters or breaking the writing motion between letters would not vary. He stated that the person who wrote the signatures on the Sign In Log did not attempt to replicate Bruno's signature, but rather appeared to have no knowledge of how Bruno actually wrote.

Lesnevich concluded that the questioned signatures were completely dissimilar in style and format compared to the known signatures. He stated there were "no real similarities at all" between the questioned signatures and the known signatures, and he characterized the questioned signatures as "absolutely totally different signatures."

Bruno's Handwriting Expert. Kay Micklitz ("Micklitz") was retained by Bruno's attorney as an expert witness in the area of handwriting analysis. She had been employed as a document examiner for just under two years. Her training included completing a questioned document course that required more than 315 hours of study, training, and testing. She also completed an apprenticeship and attended several specialized training courses. Micklitz was a candidate to be certified by the National Association of Document Examiners. She had been qualified to testify as a handwriting expert in two County Courts in Texas.

Micklitz was retained by Bruno to render an expert opinion concerning whether his purported signatures on the Sign-in-Log were genuine. In conducting her analysis, Micklitz compared the two signatures on the Sign In Log to known writings of Bruno, primarily signatures. In her written report and testimony, she opined that the questioned signatures were written by Bruno.

In formulating an opinion, Micklitz examined many if not all of the known signatures that Lesnevich examined as well as other signatures and writings obtained from Bruno. The additional signatures and writings she examined included numerous signatures that Bruno wrote at her request specifically for her to use in conducting her analysis.⁷ We will refer to these signatures as the "Requested Writing." Micklitz also examined signatures appearing on a sequence of 13 canceled checks Bruno wrote between December 8, 1994 and January 2, 1995.

⁷ Micklitz explained that for purposes of her analysis, she asked Bruno: to sign his name repeatedly on a couple of pages of paper; to prepare a handwritten statement regarding how he learned he was being investigated; and, to complete a form which required, among other things, writing the letters of the alphabet in upper and lower case.

Micklitz observed "a great deal of variation" in Bruno's writing. She acknowledged in her report and testimony that the questioned signatures were pictorially dissimilar from Bruno's known signatures. She explained that the pictorial appearance is the general overall look of the writing. She also noted that the questioned signatures omitted the middle initial "P" and the appellation "Jr.", and she conceded that the omissions merited consideration. She stressed, however, that a combination of factors and identifying characteristics that she found exhibited in both the questioned and known signatures outweighed the pictorial dissimilarity and omitted elements and led her to conclude that the questioned signatures were genuine.

Micklitz explained that she measured the angle of slant on the questioned and known signatures and found that the slant on the questioned signatures was within the range of the slant Bruno used. Other similarities and consistencies that she observed included: 1) the expansion of the questioned signatures, which was within the range of Bruno's known writing;⁸ 2) the size relationship of letter to letter, which was consistent with the known writing; and, 3) the ending strokes on "Bruno," which were consistent with the known writings. In addition, she testified that the questioned signatures and known writings, which included the Requested Writing, exhibited similarity in the fundamental structure of the letter "B" in Bruno.

Furthermore, in analyzing Bruno's known signatures, Micklitz observed that the letters "a - w - r" in "Lawrence" consistently appeared as "a - u - r" in his script writing. She stated that this letter structure resulted from Bruno's forming the "r" with the second stroke of the "w."⁹ The questioned signatures also exhibited this structure, constituting a significant factor in Micklitz's conclusion that they were authentic. She described this consistency between the questioned and known signatures as "one of the most pronounced [she] found."

Micklitz's report and testimony mentioned the possibility that Bruno's ingestion of pain medication the morning of the exam could account for the pictorial difference between the known and questioned signatures: "Since it has been established that Lawrence Bruno was taking pain medication, this could explain that the difference in the pictorial appearance of the signature of Lawrence Bruno on the questioned document and the Known Standards is the direct result of drug ingestion." She testified that before she completed her report, Bruno's counsel apprised her that Bruno had taken medication for a knee injury, although records of the medication

⁸ Micklitz did not explain the concept of expansion. Based upon the context in which the term was used and other circumstances, we understand the term to refer to the width of individual letters and the signature as a whole.

⁹ To demonstrate using a script font, the letters appeared as "aur" rather than "awr."

were not available. Bruno's counsel told Micklitz that she would be provided an affidavit executed by Bruno attesting that he had taken pain medication on the day of the test. She completed her report before receiving the affidavit, relying upon the representations of Bruno's counsel concerning the knee injury and Bruno's ingestion of medication. The affidavit Bruno executed was dated May 13, 1997, six days after the date of Micklitz's report. Micklitz testified that Bruno's taking medication was one of the possibilities explaining the pictorial appearance of the questioned signatures.

Relying upon published writings by authorities in the field of forensic document analysis, Micklitz testified that the effect of pain medication could have been exhibited in the questioned signatures by compressed letters and flattened ovals. Specifically, she noted that whereas the top of a small "e" and a capital "B" written in script are normally oval, in the questioned signatures the tops of the "e's" in Lawrence and the tops of the "B's" in Bruno were flattened.

Evaluation of the Expert Testimony. We credit Lesnevich's testimony over Micklitz's. First, we find that Lesnevich had substantially more training and experience than Micklitz. Lesnevich had 29 years of experience, and Micklitz had two years. Lesnevich worked for the Secret Service for seven years in a forensic laboratory that specialized in signatures, whereas Micklitz had never worked in a forensic laboratory. We conclude that Lesnevich's superior qualifications make his expert opinion more authoritative than Micklitz's.

Second, we find that Lesnevich's analysis more thoroughly considered the differences between the known and questioned signatures. Lesnevich considered as significant differences that the questioned signatures: were neatly written and legible; that they lacked the middle initial "P" and the appellation "Jr."; that the "L" and "B" were in a print style as opposed to script style; that the questioned signatures contained breaks between the "n" and "c" in Lawrence; that the "o"s in the questioned signatures were significantly different; and that the connections between the "L" and "a" and "B" and "r" were different. Micklitz, on the other hand, failed to address the break in writing between the "n" and "c" in Lawrence and the break between the "L" and the "a." These omissions reveal that Micklitz's analysis was incomplete and ignored crucial aspects of the questioned signatures. We also note that although Micklitz acknowledged that the questioned signatures were missing Bruno's middle initial and "Jr.", she ascribed slight significance to their omission. We find that Micklitz's treatment of this substantial variation shows a bias toward a predetermined conclusion on her part. Because Bruno's known signatures consistently included his middle initial and "Jr." before and after September 1, 1993, the omission of these components from both questioned signatures cannot be dismissed as inconsequential.¹⁰

¹⁰ American Jurisprudence, one of the sources on which Micklitz relied, comments: "To make an identification of handwriting, an expert must find (1)

Third, we find that Lesnevich's methodology was far superior to Micklitz's. Micklitz supplemented Bruno's known writings with the Requested Writing. Bruno submitted the Requested Writing in January 1997, after he had been shown the questioned signatures at his on-the-record interview in June 1996 and after his attorney had received Lesnevich's report. The obvious danger in collecting requested writings from an individual with a motive to disprove an allegation of forgery is that the individual may attempt to conform his writing to match the questioned writing.

We find that the dangers of requested writings have fully manifested themselves in this instance. In the Requested Writing, Bruno repeatedly signed his name without his middle initial and without the appellation "Jr." This is the only example among all of the known signatures of Bruno, other than the Requested Writing, in which he omits both of these components of his signature. Also, in the Requested Writing, Bruno occasionally wrote the "L" in his first name in a printed style. We agree with Lesnevich's testimony that these occasional print-style "L's" make the Requested Writing suspect. We conclude that the Requested Writing shows that Bruno attempted to conform his signature to the questioned signatures.

We find that Micklitz's use of the Requested Writing destroys the validity of her opinion that the questioned signatures are genuine. By including the Requested Writing in her sample of known signatures, she contaminated the sample that she used for comparison.¹¹ Micklitz's widespread use of the Requested Writing is evident in the six exhibits to her written report, each of which includes, on the

agreement in both the class and the individual characteristics in the known and questioned writings, and (2) an absence of fundamental differences between the writings." 27 Am. Jur. 3d Proof of Facts § 42 (1997). Micklitz's analysis avoided the second step in handwriting identification because she either overlooked fundamental differences or claimed they were insignificant.

¹¹ J. Newton Baker, whom Micklitz quotes on pages 5 and 6 of her report, comments on volunteered written specimens as follows:

"Specimens of writing, offered by the defendant as being written by himself, may be either genuine or deceptive and disguised. The presumption is that such specimens are offered for personal interest and are not genuine or reliable for comparison. The inference is that the party . . . whose writing is in dispute, will be prompted to disguise his writing in some part, or entirety, by writing a different style from his habitual one."

J. Newton Baker, Law of Disputed and Forged Documents 84 (1955).

"known" side of the ledger, a signature from the Requested Writing. In addition, Micklitz did not explain why Bruno's known writings were insufficient to conduct her analysis and, therefore, why she was required to ask for the Requested Writing. Lesnevich was able to render an expert opinion based on Bruno's known signatures that already existed. Consequently, we give no weight to Micklitz's conclusions that: 1) the angle of slant of the questioned signatures was within the range of the slant Bruno used; 2) the expansion of the questioned signatures was within the range of Bruno's known writing; and, 3) the size relationship was consistent with the known writing. Each of these conclusions was invalid because the known writings were infected with signatures that Bruno created after he saw the questioned signatures.¹²

Fourth, Micklitz's specific reasons for concluding that Bruno signed the Sign In Log are unpersuasive. We agree with Lesnevich's finding as to the "B" in Bruno, and we reject Micklitz's finding as to the "B." We credit Lesnevich's testimony that the "B" in the questioned signatures has a single horizontal line, called a backstaff, to which a 3 is added, making the letter "B." Bruno's known signature, in contrast, has a descending and rising motion for the backstaff, followed, without a break, by a script-style "B." For reasons discussed in the methodology section, above, we find that Micklitz's reliance on the Requested Writing is invalid for comparing the "B" in Bruno.

Fifth, we find that the experts' testimony about the effects of pain medication does not support the conclusion that the questioned signatures are Bruno's. Lesnevich testified that when a person's handwriting is affected by drugs, the writing becomes more sloppy and slurred. Lesnevich explained that the questioned signatures had a "nice smooth pattern" and were certainly not written by someone who was losing his dexterity. We credit this testimony.¹³ Although Micklitz opined

¹² As to Micklitz's conclusion that the ending strokes on "Bruno" were consistent with the known writings, our visual examination of the questioned signatures leads us to agree with Lesnevich, who testified that the "o's" in Bruno in the questioned signatures appear as: 1) an "o" with an "e" on top and coming up in the air, and 2) an "e" with an "e" on top of it. Neither of these "o's" is consistent with the known signatures.

¹³ Ordway Hilton, whom Micklitz quotes on page 5 of her report, describes drug-or alcohol-influenced writers as potentially having less coordination:

"A person decidedly under the influence of alcohol or drugs may not sign his name in a normal fashion. . . . Some of these impaired writers can produce almost normal writing even if their blood alcohol ratio is high; others find their writing coordination badly weakened and their signatures erratic and very significantly different from normal. The same situation can occur

that Bruno's ingestion of drugs could explain the pictorial differences between the known and questioned signatures, she did not testify that subconscious writing habits, such as breaking in the middle of a word or using script letters as opposed to printed letters, would change.¹⁴ In addition, Bruno testified that when he took the medication, he experienced no side effects and had no problem writing his name. Because of Bruno's testimony that he experienced no problem in writing his name, the break between the "n" and "c" in Lawrence, the use of print-style letters in the questioned signatures, and the other differences between Bruno's known signature and the questioned signatures, we do not credit the proposition that Bruno signed the Sign In Log and his signature was altered because he was on pain medication. Instead, we conclude that Bruno did not sign the Sign In Log.

Sanctions

Cheating on a qualification examination is so grave an offense that the NASD Sanction Guidelines ("Guidelines") explain that a bar is "standard."¹⁵ Here, Bruno deliberately deceived the NASD into believing he passed the Series 7 exam. In light of Bruno's deliberate misconduct, we conclude that excluding him from the securities industry is necessary to protect the integrity of the qualification examination process.

Moreover, Bruno's misconduct also threatened the investing public. The Series 7 exam requirement provides a basic protection for the investing public because it ensures "that salespersons are qualified to perform the functions they undertake on the public's behalf." In re L.C. Thomas, 49 S.E.C. 1053, 1054 (1989). When Bruno previously failed the Series 62 exam, he demonstrated that he lacked knowledge of the securities industry. In arranging for an imposter to take the Series

with some drugs. The defects of the signatures are very different from the flaws of forgery In the extreme cases coordination suffers significantly with free movement and poor form. The pen seems to have staggered across the paper."

Ordway Hilton, Scientific Examination of Questioned Documents 178-79 (1982).

¹⁴ We also find that Micklitz's noncommittal statement that Bruno's signature could have been affected by the medication reduces the credibility of her opinion. If her conclusion does not rest on the assumption that Bruno's handwriting was affected by the painkillers, then her conclusion must be equally valid if Bruno's handwriting was totally unaffected by the painkillers. As we have discussed above, we find this conclusion unpersuasive and invalid. When an expert has rendered a two-part opinion that is invalid in the first part, we have less confidence in the second part.

¹⁵ The recommended sanctions are consistent with the applicable guideline. See Guidelines (1996 ed.) at 39 (Qualifications Exams).

7 exam, Bruno intentionally sought to act as a general securities representative without being qualified. Because Bruno's continued participation in the securities industry presents a risk to the investing public, we find it necessary to bar him from association with any member firms.

We also order that Bruno disgorge the net commissions he received while employed by Gaines, Berland because he was not qualified to act as a general securities representative. Our purpose is to divest Bruno of the illicit profits he made.

The SEC approves of disgorgement sanctions when we can identify "direct financial gain obtained by a wrongdoer as a result of his or her wrongful activities." In re F.B. Horner & Assocs., Inc., 50 S.E.C. 1063, 1069 n.19 (1992), aff'd, 994 F.2d 61 (2d Cir. 1993).¹⁶

Accordingly, we order that Bruno be censured, barred from association with any member firm in any capacity, fined \$25,000, required to disgorge \$678,067, assessed DBCC costs of \$1,842, and assessed appeal costs of \$750. The bar is effective immediately upon the service of this decision.

On Behalf of the National Adjudicatory Council,

Alden S. Adkins, Vice President and General Counsel

¹⁶ We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.

July 8, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Martin H. Kaplan, Esq.
Gusrae, Kaplan & Bruno
120 Wall St.
New York, NY 10005

Re: Complaint No. C10970007: Lawrence P. Bruno, Jr.

Dear Mr. Kaplan:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange
Commission
450 Fifth Street, NW, Stop 6-9
Washington, DC 20549

The address of NASD Regulation is:
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Alden S. Adkins

Enclosure

cc: Anita Zigman, Esq.