

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KORY PENLAND KEATH
(CRD No. 1242675),

Respondent.

Disciplinary Proceeding
No. 2015044489701

Hearing Officer–MC

HEARING PANEL DECISION

July 10, 2017

Respondent failed to inform her firm that a client designated members of her family as beneficiaries of the client’s trust and paid for Respondent’s expenses when she accompanied the client on an international trip. Respondent’s misconduct violated FINRA Rule 2010. Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For the Complainant: Mitka T. Baker, Esq., Lane A. Thurgood, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Avi Lipman, Esq., Jehiel I. Baer, Esq., McNaul Ebel Nawrot & Helgren PLLC.

I. Introduction

After 12 years as a registered representative with another firm, Respondent Kory Keath associated with FINRA member Edward Jones (the “Firm”) in 1995, and was soon responsible for a Firm brokerage office in a small town. There, Keath became financial advisor to one of the Firm’s clients, HD, then 76 years old. In 2000, HD created a trust, named himself trustee, and transferred his brokerage account assets to it. HD remained a client of the Firm and Keath remained HD’s financial advisor.

In May 2009, HD resigned as trustee and named the Edward Jones Trust Company (“EJTC”), an entity separate from the Firm, as trustee in his place. HD designated Keath’s daughter and grandson as beneficiaries. HD also authorized Keath’s daughter to act on his behalf under a durable power of attorney for health care.

In April 2010, Keath accompanied HD on a trip to Egypt. HD paid her travel expenses of approximately \$12,000.

On June 20, 2016, the Department of Enforcement filed a Complaint alleging that the Firm's supervisory policies and procedures required Keath to inform the Firm when HD made her family members beneficiaries of the trust, and to report her trip to Egypt as a gift from HD. The Complaint alleges that Keath's failure to do so circumvented the Firm's procedures and violated FINRA Rule 2010. In her defense, Keath claims the Firm's reporting requirements did not apply to her because when HD made EJTC trustee, and EJTC took over the management of his assets, Keath ceased being his financial advisor.

II. Facts

A. Respondent and Jurisdiction

Keath first associated with a FINRA member firm in February 1984. She acquired registrations as a General Securities Representative, Securities Agent, and Investment Advisor.¹ In May 1995, she associated with the Firm.²

On April 24, 2015, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), terminating Keath's registrations effective March 25, 2015. Keath is not currently associated with a FINRA member firm. The Department of Enforcement filed the Complaint on June 20, 2016, less than two years after the termination of Keath's registration alleging misconduct committed while she was associated with a FINRA member. FINRA retains jurisdiction over Keath for the purposes of this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

B. Background

In her second year with the Firm, Keath moved to Enumclaw, a small town in Washington, to operate the Firm's office there.³ According to Keath, many of her clients were retirees.⁴ She met individually with all, and developed a personal relationship with many, of the Firm's clients.⁵ Keath testified that when she started, the office had \$20 million in assets under management, and when she left the total had grown to \$135 million.⁶ When the Firm terminated her, there were five Edward Jones offices in Enumclaw. Keath credits herself with having

¹ Hearing Transcript ("Tr.") 284-85.

² Stipulation ("Stip.") ¶ 2.

³ Tr. 288-89.

⁴ Tr. 294.

⁵ Tr. 290-91.

⁶ Tr. 289, 291.

established “Wall Street on Main Street” in Enumclaw, and growing Edward Jones’ business there.⁷

HD opened an Edward Jones account in 1993⁸ and was a client of the Firm when Keath took charge of the office. He was a retired scientist, divorced, and estranged from his only daughter.

Keath befriended HD. She testified that they got along well and shared interests in travel and fly fishing.⁹ Because HD had no relatives nearby, Keath included him in her family holiday gatherings where he met Keath’s daughter and grandson. According to Keath, HD developed friendships with both.¹⁰

In May 2009, HD, then ninety years old, moved to an assisted living facility. According to Keath, HD was unhappy there.¹¹ At about that time, Keath met DS, a healthcare worker who helped care for elderly people in their homes. According to Keath, DS became her client and close friend.¹² Keath testified that she introduced HD to DS. DS began to visit HD daily, and would take him to spend the day at his home, and then return him to the assisted living facility at night. After three months at the assisted living facility, HD moved back into his home. DS rented a room at Keath’s house and worked full time providing care to HD at his home located nearby.¹³

C. The Trust

HD created a revocable living trust in 2000. Keath testified that she was not involved in HD’s decision to create the trust. However, at the request of HD’s attorney, she contacted EJTC to obtain and provide the attorney with information about setting up the trust. This was Keath’s first experience working with EJTC.¹⁴

The Firm and EJTC are separate, affiliated entities, and subsidiaries of the Jones Financial Companies, L.L.P.¹⁵ EJTC provides trust services to clients who have accounts with the Firm.¹⁶ All of EJTC’s business comes from referrals by the Firm’s financial advisors.¹⁷

⁷ Tr. 291-92.

⁸ Complainant’s Exhibit (“CX”)-8.

⁹ Tr. 294-96.

¹⁰ Tr. 297, 299-301.

¹¹ Tr. 305-06.

¹² Tr. 60, 304-07, 392.

¹³ Tr. 306-08.

¹⁴ Tr. 309-10.

¹⁵ Tr. 179; Stip. ¶ 1.

¹⁶ Tr. 99.

¹⁷ Tr. 179.

HD designated himself as trustee of his trust. The trust account remained at the Firm, Keath and HD retained their advisor-client relationship,¹⁸ and the primary investment objective for the trust account remained income.¹⁹

1. The Amendments

HD amended the trust five times.²⁰ Keath was not involved in drafting the first two amendments and did not review them.²¹ However, she understood that in the second amended trust HD named an Enumclaw school and hospital, and his neighbors JR and VR, as beneficiaries, and removed family members he had previously included.²²

When HD informed Keath he wanted to amend the trust again in 2008, she referred him to an attorney she knew.²³ In September 2008, HD signed the third amended trust. He returned some family members to the list of beneficiaries, including his estranged daughter, a grandson, and two nieces.²⁴ Keath testified that she reviewed these changes with HD.²⁵

After signing the third amendment, HD told Keath he wanted to make her a beneficiary. Keath testified that she told HD she could not “take money” from him because she was his financial advisor, and if she accepted his offer, she would lose her job. According to Keath, HD then said he would leave money to her grandson for his college education and to Keath’s daughter because she had been helpful to him. According to Keath, she advised HD that if he made her daughter and grandson beneficiaries, she would have to transfer his account. Keath testified that she told HD, “I cannot be your financial advisor anymore. I cannot make decisions for you anymore,” and informed him that their advisor/client relationship “will have to end.” Keath explained to HD that the most convenient course would be to move his account to EJTC, because the company was “all set up” to manage his assets.²⁶

Asked why she did not report these discussions to the Firm’s compliance personnel, Keath answered it was “because they were just conversations at that time.”²⁷

¹⁸ Tr. 313–14. The Firm’s first statement for HD’s trust account appears identical to the statements for HD’s previous personal account, with the exception of a different account number and identification of the trust account as in the name of “[HD] TTEE ... [HD] REV LIV TR” on the first page. Compare Joint Exhibit (“JX”)-4, at 1 to JX-5, at 1.

¹⁹ Tr. 315–16.

²⁰ Tr. 317; JX-11; JX-16; JX-18.

²¹ Tr. 317.

²² Tr. 320.

²³ Tr. 317–18.

²⁴ Tr. 317, 321–23; CX-1.

²⁵ Tr. 321–26.

²⁶ Tr. 326–28.

²⁷ Tr. 328.

HD resigned as trustee in May 2009.²⁸ The third amended trust, in effect at the time, provided that HD's resignation would cause EJTC and HD's neighbor JR to become co-trustees.²⁹

On May 27, 2009, EJTC sent Keath an email with a copy of a disclosure of its fee schedule attached, for HD to sign.³⁰ The fee disclosure informed HD that EJTC would allocate to the Firm 30 percent of the fees it charged HD. The allocation was intended to "compensate the financial advisor"—Keath—"who helps with the administration of the account."³¹ Keath reviewed the fee disclosure with HD.³²

In mid-June 2009, on HD's behalf, Keath contacted EJTC to ask if HD could rescind his resignation and resume trusteeship himself.³³ However, HD decided not to rescind the resignation, and EJTC proceeded to serve as trustee.³⁴

According to Keath, by the time HD was contemplating the fourth amendment to the trust, he discussed possible changes to his beneficiaries with her "all the time".³⁵ Keath testified that HD had evolved in his thinking about beneficiaries, and had decided that instead of leaving money to people unknown to him, as he did in an earlier bequest to a local school, he wanted to leave his money to people he knew had helped him.³⁶

Keath played an active role in facilitating HD's fourth amendment to the trust. In June 2009, Keath arranged for a medical evaluation by a physician, and then forwarded it to HD's lawyer with an email on June 24, explaining that the doctor found HD competent to change the designation of beneficiaries and power of attorney. In the email, Keath wrote to the lawyer, "You indicated we could put this on a 'fast track' as there are lots of details to be attended to that are currently being ignored."³⁷

Two days later, Keath asked her office assistant to respond to an inquiry from HD's lawyer about the size of his bequest to his neighbors, JR and VR.³⁸ Under the third amendment,

²⁸ Tr. 329. The one-sentence resignation letter signed by HD appears to have been sent via Keath's fax. JX-19.

²⁹ JX-11, at 27.

³⁰ JX-70.

³¹ JX-43, at 1.

³² Tr. 331.

³³ Tr. 333-34; JX-21-JX-22.

³⁴ Tr. 334-35.

³⁵ Tr. 326.

³⁶ Tr. 325.

³⁷ Tr. 395-96; JX-12.

³⁸ JX-13.

JR and VR were to receive a 16 percent share of HD's funds.³⁹ Keath informed the attorney that HD was giving this further consideration, and that she was going to meet with HD later in the day, after which she would contact the attorney with HD's decision.⁴⁰

On July 2, 2009, Keath sent a hand-written memo to the attorney with the subject line "Beneficiary Changes to Trust." In it, Keath asked, "Can we get these changes made ASAP?" She signed it "Kory Keath for [HD]." The second page, also in Keath's handwriting, directed the attorney to remove JR as trustee, replace him with EJTC as the sole successor trustee, and make several changes to the list of beneficiaries. The changes included adding Keath's daughter, LK, and grandson, allocating 15 percent and 10 percent portions to them respectively, and reducing JR and VR's bequest to one percent of the funds. HD's signature appears at the bottom of the page.⁴¹

By this time, HD had moved back into an assisted living facility. The facility required HD to designate a power of attorney. Keath testified that HD wanted to name her, but she declined. Keath testified that the power of attorney would make her relationship with HD "just too close." Instead, HD designated LK, Keath's daughter, and the memo directed the attorney to the "change health care and durable [power of attorney]" to LK.⁴² Keath sent the memo on her Firm fax machine.⁴³

The lawyer made the changes as Keath instructed. Keath then took HD to the lawyer's office where he signed the fourth amendment to the trust on July 23, 2009.⁴⁴ The changes were indicated in ETJC's new account form for HD, which ETJC approved in August 2009.⁴⁵ The form identified Keath as the "FA" (financial advisor) and reflected HD's resignation as trustee and his fourth amendment to the trust making EJTC sole trustee.⁴⁶ Keath's daughter and grandson were now the beneficiaries of 25 percent of HD's estate.⁴⁷

Keath testified that she did not need to inform the Firm of the bequests to LK and to her grandson, because neither HD nor the trust was her client.⁴⁸

³⁹ JX-11, at 39.

⁴⁰ Tr. 396-97; JX-13.

⁴¹ JX-14.

⁴² Tr. 340-41; JX-14.

⁴³ Tr. 397-99.

⁴⁴ Tr. 399-400.

⁴⁵ JX-25, at 3.

⁴⁶ JX-25, at 1.

⁴⁷ Tr. 400-01.

⁴⁸ Tr. 400-01.

HD amended the trust for the fifth and final time in May 2010.⁴⁹ HD again tweaked the list of beneficiaries and the amounts of individual bequests. The most significant change was the addition of his caregiver DS, to whom HD allocated a 25 percent share of his estate. He accomplished this by eliminating a 10 percent bequest to a nephew, who died in 2009, and reducing the allocation to his daughter from 25 percent to 10 percent. HD's bequests to LK and Keath's grandson stayed the same.⁵⁰

2. The Administration of the Trust

Beginning in August 2009, when EJTC opened the new account for HD, Jonathan Amendola, an EJTC portfolio manager and team leader, along with the trust officer, had the fiduciary responsibility of managing HD's assets and administering the trust.⁵¹ Amendola scheduled a conference call with Keath to initiate their working relationship during which he questioned Keath about HD and his investment objective.⁵² Amendola testified that it was uncommon for him to obtain information about a client's investment objective from his financial advisor; normally, he would get the information directly from the client. However, he understood that communication had become difficult for the elderly HD, and therefore relied on Keath to tell him what he needed to know.⁵³

Amendola's notes of the August conference call stated that Keath was HD's financial advisor, and summarized the information about HD that Amendola obtained from Keath. The notes described HD's dislike of living in a nursing home and his poor memory, and stated that he had "no real family" and spent holidays with Keath's family. The notes characterized Keath's relationship with HD as being "as much friendship as business." Amendola also noted that "all letters" sent to HD were to go to Keath.⁵⁴ EJTC proceeded to copy Keath on all communications to HD—often the communications would go directly to Keath, and she would then deliver them to HD.⁵⁵

Amendola followed up the conference call with a letter to HD dated September 8, 2009, summarizing his review of HD's account. Amendola noted that he, Keath, and the trust officer were working as a "team." The letter invited HD to contact any member of the team if he had a

⁴⁹ Tr. 401-02; JX-18.

⁵⁰ Tr. 323, 402; CX-1.

⁵¹ Tr. 184.

⁵² Tr. 192-93; JX-24.

⁵³ Tr. 201.

⁵⁴ JX-24.

⁵⁵ Tr. 191.

question about anything. Amendola also wrote that, based on the information Keath had provided, the team had agreed to keep HD's investment objective as income.⁵⁶

Amendola testified that Keath was the broker of record on the account; in that capacity, she received the account statements, on which her name appeared as the designated financial advisor.⁵⁷ According to Amendola, he and Keath shared responsibilities for the account, describing their relationship as a "partnership" for the delivery of HD's trust services. For the Firm, Keath was the intermediary between EJTC and HD. She was the person with direct contact with HD,⁵⁸ described by Amendola as EJTC's "boots on the ground."⁵⁹

Because Keath acted as an intermediary between HD and EJTC, and as HD's financial advisor, she would have continued to have access to review HD's accounts,⁶⁰ and she apprised EJTC when HD had requests concerning management of his funds. For example, Keath informed EJTC that HD wanted to deposit \$8,000 monthly from the trust to his bank account. Keath sent the request on her Firm office fax machine, using her financial advisor letterhead.⁶¹ On another occasion, also using her Firm office fax machine, she conveyed HD's request for a one-time transfer of funds.⁶²

3. The Distributions

When HD died in May 2011, EJTC was responsible for handling the distribution of his assets as directed by the trust document.⁶³ In September 2011, EJTC's initial distribution of the HD Trust assets included a \$68,000 distribution to Keath's grandson⁶⁴ and \$102,000 to LK.⁶⁵ EJTC made the final distribution in January 2013, including \$27,817.09 to Keath's grandson⁶⁶ and \$41,725.64 to LK.⁶⁷ Thus, Keath's grandson received a total of \$95,817.64, 10 percent of HD's estate, and LK received a total of \$143,725.64, or 15 percent of HD's estate.⁶⁸

⁵⁶ JX-26. Two days later, Amendola sent the same letter, but dated September 10, to HD, in the care of Keath. JX-27.

⁵⁷ Tr. 179-82.

⁵⁸ Tr. 184-85.

⁵⁹ Tr. 200, 255.

⁶⁰ Tr. 219-220, 406.

⁶¹ Tr. 414-15; JX-28.

⁶² Tr. 415-16; CX-2.

⁶³ Tr. 237.

⁶⁴ Tr. 434-35; JX-35.

⁶⁵ Tr. 431; JX-34.

⁶⁶ Tr. 436; JX-38.

⁶⁷ Tr. 436-37; JX-38.

⁶⁸ Tr. 438; CX-8.

None of the distributions went directly to Keath. However, in June 2014, more than a year after the final distribution from HD's estate, Keath endorsed a cashier's check payable to herself and LK, transferring the second distribution of trust funds to LK, totaling \$41,725.64, to a credit union account held jointly by Keath and LK.⁶⁹ In addition, LK sent Keath a check for \$27,000, the second distribution to Keath's grandson, which Keath deposited into her credit union checking account. Subsequently, Keath transferred the \$41,275.64 distribution proceeds into a Washington state college fund for her grandson, and the \$27,000 distribution proceeds into a Firm Gift to Minors account, to be invested for her grandson.⁷⁰

D. The Trip

Keath testified that HD had often told her he wanted to travel to Egypt. In early 2010, according to Keath, HD and DS, who was by then HD's caregiver, began planning the trip. Keath testified that about a month before their scheduled departure in April, DS told her that HD wanted Keath to accompany him as well, because a single caregiver would be insufficient to attend to his personal needs. At 91 years of age, wheel-chair bound and suffering from a number of age-related ailments, HD needed the help of two assistants.⁷¹ When asked whether she planned the trip, Keath testified that she "planned nothing."⁷²

On February 23, 2010, one of Keath's office assistants sent a fax on the Firm's stationery to EJTC to convey HD's request to transfer \$50,000 from the trust account to HD's bank account.⁷³ Keath testified that she does not know if these transferred funds were used to pay for the trip to Egypt.⁷⁴ However, on February 25, 2010, two checks totaling more than \$47,000 were made payable to the travel agency that organized the trip. One check for \$33,570, signed by HD and drawn on his account, had a notation "Egypt tour." The second check, for \$14,070, signed by DS and drawn on her account, had the notation "Egypt/Aide."⁷⁵ When a Firm compliance investigator interviewed DS, she told him HD had given her the funds to cover the check she wrote for the trip.⁷⁶

When the Firm investigator interviewed the travel agent, his recollection differed from the account Keath gave. The travel agent said that Keath and DS both gave him directions to

⁶⁹ Tr. 438-41; JX-39-JX-41.

⁷⁰ Tr. 442-43.

⁷¹ Tr. 352-54. HD's physician also testified that HD needed the assistance of two persons on the trip. Tr. 206.

⁷² Tr. 357.

⁷³ JX-47.

⁷⁴ Tr. 429.

⁷⁵ CX-4.

⁷⁶ Tr. 70-71.

organize the trip, which involved a number of special arrangements because of HD's health needs.⁷⁷

Keath testified that she offered to pay her expenses for the trip, and asked the travel agent to provide her with a separate bill. According to Keath, the travel agent told her that HD insisted on paying.⁷⁸ Keath testified that prior to the trip, she gave DS a check for more than \$5,000 and directed her to deposit it into a separate account and give it to HD if he wanted Keath to pay for her expenses; if not, however, she expected DS to return the money to her. According to Keath, DS returned the money to her.⁷⁹

In April 2010, Keath accompanied HD and DS on the two-week trip to Egypt. HD paid all the expenses of the trip. Keath's share of those expenses was approximately \$12,000.⁸⁰

Keath did not consider HD's payment of her trip expenses a gift.⁸¹ She did not report it to the Firm.⁸²

E. The Firm's Investigation

When he testified at the hearing of this matter, Paul Slovacek had been the Firm's director of compliance investigations for approximately four years.⁸³ He testified that FINRA referred an anonymous tip it received in November 2014 to the Firm. The tip alleged that Keath's daughter and grandson had received money from one of Keath's clients, and that Keath had received gifts from the client.⁸⁴

On January 26, 2015, Slovacek and one of the investigators on his staff made an unannounced visit to Keath's office to interview her. The interview lasted approximately two hours. The investigator took notes that served as the basis for a memorandum he wrote and placed in an investigative file.⁸⁵

Slovacek testified that in the interview Keath appeared to focus on describing her relationship with HD, rather than answer questions about the trust beneficiaries and possible

⁷⁷ Tr. 73-74; JX-57.

⁷⁸ Tr. 356.

⁷⁹ Tr. 392-95. The Firm compliance investigator testified that when he first interviewed Keath about the matter, she said she had given a check for \$12,000 to DS to pay for her expenses, and DS later returned the check to Keath. JX-56, at 2.

⁸⁰ Tr. 428.

⁸¹ Tr. 355-56.

⁸² Tr. 430.

⁸³ Tr. 39-41.

⁸⁴ Tr. 41-42; CX-8, at 2.

⁸⁵ Tr. 58; JX-56.

gifts.⁸⁶ When Slovacek asked Keath about who paid for the trip to Egypt, Keath responded by saying that DS accompanied HD on the trip because HD needed assistance. When Slovacek asked about DS, Keath at first described DS as a client, but eventually acknowledged that DS was a close friend who had lived with Keath for a time. In answer to Slovacek's questions, Keath at first did not disclose that she, too, had gone on the trip. Keath then told Slovacek that she paid her own expenses. Keath later admitted HD had paid approximately \$12,000 for her expenses. Keath also told Slovacek she gave DS a check for \$12,000 to cover the costs.⁸⁷

Slovacek testified that when he asked Keath why she had not informed the Firm about the bequests to her daughter and grandson, Keath replied that she did not think the Firm would have approved. When he asked why she did not inform the Firm that HD paid for the trip to Egypt, she gave the same answer.⁸⁸

Slovacek's concerns were further aroused when he learned that DS had told another investigator that HD suffered from dementia, raising the question of his vulnerability.⁸⁹ When interviewed, DS contradicted Keath's assertion that Keath had given DS a check to cover her portion of trip expenses.⁹⁰

At the conclusion of the investigation, Slovacek made the decision to discharge Keath for violating the Firm's policies requiring a financial advisor to disclose gifts exceeding \$100 in value, and to notify the Firm if a member of the advisor's immediate family was named a beneficiary of a client's estate. He approved the Form U5 that served as the official notice of Keath's termination, stating that she "[f]ailed to report to the firm that Ms. Keath's daughter and grandson were designated as beneficiaries of a client's trust and Ms. Keath received a gift valued at approximately \$12,000 from the same client."⁹¹

F. Keath's Hearing Testimony

At the hearing, Keath testified that in May 2009, after HD resigned as trustee, she ceased trading on HD's account, because "he wasn't my client." She testified that HD had become a client of the trust company at that point.⁹² Keath maintained that she no longer functioned in her former role as HD's advisor,⁹³ and that serving as EJTC's "boots on the ground" and intermediary did not make her his financial advisor. She argued that Amendola and his team at

⁸⁶ Tr. 58.

⁸⁷ Tr. 61-62.

⁸⁸ Tr. 63-64.

⁸⁹ Tr. 69-70; JX-60.

⁹⁰ Tr. 70.

⁹¹ Tr. 101-02; JX-2.

⁹² Tr. 332-33.

⁹³ Tr. 335.

EJTC, responsible for managing HD's trust assets, had assumed that role.⁹⁴ Keath denied that any of her activity on HD's behalf—sending his mental competency report to HD's attorney, prompting the attorney to amend HD's trust "ASAP," informing EJTC to transfer funds to HD's bank account, receiving correspondence identifying her as HD's financial advisor, using the Firm's fax and email to intermediate between HD and EJTC, being compensated for her assistance—meant that she was his financial advisor, since she did not manage his assets.⁹⁵

According to Keath, the transfer of the trust account to EJTC changed the nature of the account from a brokerage account to a managed account, for which she did not act as the financial advisor.⁹⁶ However, she also testified that she had done "some work" with the Firm's managed account program and in those situations, she considered the Firm's clients to be her clients.⁹⁷

When HD died, Keath felt she should complete a list of tasks HD had given her. She went to his house to attend to his personal effects and sent boxes of documents and photographs to his niece. EJTC asked Keath to find someone to appraise the value of HD's household contents, and she found a service organization to accept them.⁹⁸

Keath testified about the financial benefits she received. She testified that EJTC compensated her for referring HD's trust account to EJTC, and for providing support. She noted that the payments came to her from EJTC through the Firm, and disagreed that the payments were for serving as financial advisor; she insisted that they were for merely helping EJTC to manage the client's account.⁹⁹

Keath's testimony describing the Firm's investigative interview with her differed dramatically from the account Slovacek gave. Keath claimed that the tone of the interview was accusatory. She described the interview as "very, very bizarre."¹⁰⁰ According to Keath, Slovacek's assistant became "very, very antagonistic," and "very aggressive." She claimed that the interviewers accused her of exerting undue influence on HD and forging a medical report, and by the conclusion of the interview, she felt "emotionally raped."¹⁰¹

Keath claims that the interview was "extremely traumatizing," and she was subsequently hospitalized four times.¹⁰² Keath admitted she did not explain to Slovacek that she believed the

⁹⁴ Tr. 344.

⁹⁵ Tr. 395–416.

⁹⁶ Tr. 344–45.

⁹⁷ Tr. 374–75.

⁹⁸ Tr. 346–47.

⁹⁹ Tr. 349.

¹⁰⁰ Tr. 365.

¹⁰¹ Tr. 366–67.

¹⁰² Tr. 368–69.

Firm's reporting requirements did not apply to her because she had ceased being HD's financial advisor after his trust account was transferred. Her reason, she testified, was that she answered only the questions she was asked.¹⁰³ Later, she changed her account, and implied that she may have told Slovacek this.¹⁰⁴

Keath denied telling Slovacek that her reason for not informing the Firm of her family members becoming beneficiaries of HD's trust, and of the trip to Egypt, was that she did not believe the Firm would have approved and claimed Slovacek's testimony that she said so was incorrect.¹⁰⁵

Keath acknowledged that she signed the Firm's compliance audit questionnaires stating she had reviewed and understood the Firm's policies, including the gift policy, requiring her to report any gifts other than of items with "insignificant" value. Keath testified that during her career, she had never once received a gift that she was required to report, and in her entire time at the Firm, she never had occasion to ask the Field Supervision Department if something she was given qualified as a gift. She does not recall if she ever had occasion to review the Firm's posting of Frequently Asked Questions related to receipt of gifts.¹⁰⁶

Because Keath considered herself HD's friend and no longer his financial advisor, and because he needed two caretakers on the trip to Egypt, she did not consider his payment of her expenses to be a gift.¹⁰⁷

III. Discussion

A. The Applicable Firm Policies and Legal Principles

The Firm's policy on client bequests to a financial advisor's immediate family was straightforward. It stated that if a client named an immediate family member of a person associated with the Firm as a beneficiary of the client, "the associate must notify the Field Supervision department . . . Associates should be aware the situation could be viewed as inappropriate." The purpose of the policy was to "avoid the appearance of a conflict of interest" and the risk of exposing the Firm and its employees to "unnecessary and costly litigation."¹⁰⁸

The Firm's policy on gifts was similarly unambiguous. It applied to gifts from a client to an associate, and prohibited acceptance of a gift from a client valued at more than \$100 a year. It specified that associates must use the Firm's reporting system to obtain approval from the Field

¹⁰³ Tr. 369.

¹⁰⁴ Tr. 451-52. When asked why, she didn't explain that she believed the disclosure was unnecessary.

¹⁰⁵ Tr. 452-53.

¹⁰⁶ Tr. 386.

¹⁰⁷ Tr. 355-56.

¹⁰⁸ IX-49, at 1.

Supervision department to accept a gift.¹⁰⁹ It also explained the purpose of the policy: “to avoid or minimize actual and potential conflicts of interest.”¹¹⁰

B. The Applicable Rule and Legal Principles

It is well established that FINRA Rule 2010, sometimes referred to as the Just and Ethical Rule,¹¹¹ establishes a broad ethical mandate for persons engaged in the securities industry. It requires a member or associated person, in the conduct of business, to “observe high standards of commercial honor and just and equitable principles of trade.” Even in the absence of a violation of another FINRA rule or securities law, a person violates Rule 2010 if she acts unethically or in bad faith.¹¹² It is also well established that a firm’s internal compliance guidelines and written supervisory procedures provide guidance to regulatory authorities who must determine whether specific actions violate the standards of ethical conduct mandated by Rule 2010.¹¹³ Failing to follow a firm’s written supervisory procedures requiring a representative to disclose specified information violates Rule 2010.¹¹⁴

C. Conclusions

1. Respondent Was Her Client’s Financial Advisor

Keath claims that when HD named her daughter and grandson beneficiaries of his trust and when she accompanied him to Egypt, HD was not her client. Her contention is that when HD resigned as trustee of his trust, and EJTC became the trustee, HD was “a client of the trust company at that point.”¹¹⁵ Keath claims this is because EJTC took over the responsibilities of a financial advisor, which she had performed until then, by handling HD’s portfolio, assessing his investment objective and making “certain that the portfolio was invested accordingly,” and making investment decisions on his behalf. According to Keath, she “did not function as a financial advisor” for HD as she did “with other clients” where she “actually worked with their portfolio.” From this time, Keath claims, she “had nothing to do with any management of the portfolio whatsoever.”¹¹⁶ Her position is that she was providing services to EJTC, not HD.¹¹⁷ Her

¹⁰⁹ JX-50, at 1.

¹¹⁰ JX-50, at 3.

¹¹¹ *Heath v. S.E.C.*, 586 F.3d 122, 133 (2d Cir. 2009) (NASD Rule 2110 is now FINRA Rule 2010).

¹¹² *See, e.g., Kirlin Securities*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *65 (Dec. 10, 2009).

¹¹³ *Id.*, at *66; *Dep’t of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 19, at *7 (OHO Jan. 11, 2013), *aff’d in relevant part*, 2013 FINRA Discip. LEXIS 45 (NAC Dec. 31, 2013); *Dep’t of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13–14 (NAC Apr. 23, 2010); *Thomas W. Heath*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *18 & n.21 (Jan. 9, 2009), *aff’d*, 586 F.3d 122.

¹¹⁴ *Skiba*, 2010 FINRA Discip. LEXIS 6, at *13–14; *Dep’t of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *65–66 (NAC Oct. 1, 2013); *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).

¹¹⁵ Tr. 332–33.

¹¹⁶ Tr. 335–36.

counsel argued that Keath was “not the decision maker and . . . not in control of managing [HD’s] assets.”¹¹⁸ Therefore, Keath contends, the Firm’s disclosure and gift policies did not apply to her because those policies only applied to financial advisors “working for the broker dealer.”¹¹⁹

Keath provides no legal authority for the proposition that HD’s resignation as trustee, marking the end of Keath’s responsibility for making investment decisions concerning HD’s assets, terminated her status as his financial advisor. Instead, Keath insists “the factual record is shot through with evidence” that her relationship with HD “fundamentally changed” when she ceased making investment recommendations to him.¹²⁰ Keath concedes she provided services as an intermediary between EJTC and HD, but denies she was HD’s financial advisor, because Amendola and EJTC were actively managing HD’s assets.¹²¹ According to Keath, the fees she received were compensation for referring HD to EJTC and for “ongoing support” of the trust company.¹²² Keath contends that Enforcement’s Complaint is flawed because the Firm’s policies and procedures applied to financial advisors working for the Firm, not to her.¹²³

Keath’s arguments are not persuasive. Keath remained actively involved in HD’s affairs after the trust account was transferred to EJTC. Keath continued to receive commission payments for working on HD’s behalf, as she had before HD resigned as trustee. The fact that they were commission payments is an indication that although the responsibility for making investment decisions for HD had been transferred to EJTC, Keath continued to serve HD in an advisory capacity. As Amendola testified, he relied on Keath to provide essential information about HD, and sought her opinion, leading him to recommend to HD that he continue to retain income as his investment objective, as Keath had previously advised him to do.

For these reasons, the Panel finds that Keath’s advisory relationship to HD, as a registered representative of the Firm, continued to the time of HD’s death. Consequently, we hold that the Firm’s disclosure requirements, as clearly stated in the policies and procedures that Keath repeatedly attested to having read and understood, applied to her.

2. Respondent Circumvented Firm Procedures and Violated FINRA Rule 2010

By Keath’s own account, she had developed a close personal relationship with HD over the years, and HD consulted her frequently about the changes he contemplated making to his

¹¹⁷ Tr. 537–38.

¹¹⁸ Tr. 539.

¹¹⁹ Tr. 541–42.

¹²⁰ Tr. 533–36.

¹²¹ Tr. 344.

¹²² Tr. 539–40.

¹²³ Tr. 541–42.

trust. There can be no doubt that HD sought and relied on Keath's advice during this period. Keath admits that she discussed with HD his desire to make her a beneficiary of his estate, but advised him that if he did so she would be unable to continue as his financial advisor. It was then that, according to her, HD decided instead to make Keath's daughter and grandson beneficiaries, and to empower Keath's daughter to act with his power of attorney. She facilitated the process by which her immediate family members became beneficiaries of 25 percent of his trust assets. Keath's interactions with HD, his attorney, and his physician, not only facilitated but expedited the process by which HD made Keath's family members beneficiaries of the trust.

Fully aware of the Firm's reporting requirements, Keath's testimony reflects that she consciously chose not to report these developments to the Firm, nor to seek the advice of the Firm's supervisory or compliance personnel to ask whether she should disclose the facts to the Firm.¹²⁴ That decision prevented the Firm from properly supervising a situation that, in the words of the Firm's policy manual, "could be viewed as inappropriate" because it presented, at the very least, "the appearance of a conflict of interest" potentially subjecting the Firm, and Keath, to untoward consequences.¹²⁵

There is also no question that HD's bequests to her daughter and grandson were, at least indirectly, beneficial to Keath. As noted above, Keath's daughter received \$143,725, and her grandson \$95,817, in distributions from HD's trust. Ultimately, the benefit was made direct, when Keath's daughter moved almost \$42,000 from the funds distributed to her into a joint account she held with Keath.

By failing to follow the Firm's procedures, and concealing the failure from the Firm, Keath circumvented those procedures, violating FINRA Rule 2010.¹²⁶

IV. Sanctions

A. Arguments of the Parties

Describing her misconduct as egregious, Enforcement recommends a bar for Keath.¹²⁷

As discussed above, the Complaint charges Keath with circumventing the Firm's policies and procedures regarding disclosure of client bequests to immediate family and receipt of gifts,

¹²⁴ See, e.g., Keath's testimony that she did not inform the Firm that HD wanted her to be a beneficiary of his trust, and that he wanted to make her daughter and grandson beneficiaries, because she and HD were having "just conversations" about the bequests. Tr. 326-28.

¹²⁵ JX-49, at 1.

¹²⁶ *Skiba*, 2010 FINRA Discip. LEXIS 6, at *13-14 (failing to submit accurate information and hiding the nature of transactions circumvented firm procedures and violated FINRA Rule 2010); *Davenport*, 2003 NASD Discip. LEXIS 4, at *10 (violating firm policy against borrowing from customers and concealing the conduct from the firm circumvented the firm's policy and violated NASD Rule 2110).

¹²⁷ Enforcement's Pre-Hr'g Br., at 11.

in violation of FINRA Rule 2010. FINRA's Sanction Guidelines ("Guidelines")¹²⁸ do not specifically address this particular type of Rule 2010 violation. Hence, for the purpose of its sanctions analysis, Enforcement suggests applying the Guideline pertaining to misrepresentations or omissions of material facts.¹²⁹ For intentional misconduct, the Guideline recommends strongly considering a bar. If mitigating factors predominate, the Guideline recommends suspension for six months to two years and a fine of \$1,000 to \$146,000.¹³⁰

Enforcement argues that Keath acted intentionally or recklessly. Intentional misconduct constitutes an aggravating factor for the purpose of determining sanctions.¹³¹ As evidence of the intentionality of Keath's conduct, Enforcement points out that Keath actively involved herself in HD's amendments to the trust and the resulting amendments bequeathed 25 percent of HD's estate to Keath's daughter and grandson, and another 25 percent to Keath's friend. Enforcement also notes that Keath received commissions from EJTC for three years for helping administer the trust, and her trip to Egypt for which HD paid her expenses.¹³²

Enforcement argues that an additional aggravating factor is that Keath's failure to inform the Firm of her family's bequests and the gift constituted an attempt to conceal her misconduct and deceive the Firm.¹³³

Keath insists her conduct was neither reckless nor intentional, but, rather, at "worst . . . an honest mistake."¹³⁴ In addition, she argues that imposition of any sanction would be "overbearing and unduly punitive" in light of her "excellent record for 32 years as a registered representative," and because she has retired from the securities industry.¹³⁵ Keath argues that "a nominal monetary sanction" and a brief suspension, 30 days or less, would suffice if the Panel deems it necessary to impose sanctions.¹³⁶

B. Discussion

After considering the testimony and evidence introduced at the hearing, and the arguments of the parties, the Panel concludes that Keath acted knowingly and intentionally. With three decades of experience in the securities industry, and lengthy employment with the Firm,

¹²⁸ FINRA Sanction Guidelines (2017), <http://www.finra.org/industry/sanction-guidelines.pdf>.

¹²⁹ *Id.* (citing *Pierce*, 2013 FINRA Discip. LEXIS 25, at *94 (applying the guideline for misrepresentations and omissions in a case involving violation of NASD Rule 2110 when respondent misrepresented facts during his firm's review of his activity)).

¹³⁰ Guidelines at 89.

¹³¹ Guidelines at 8 (Principal Consideration No. 13).

¹³² Enforcement's Pre-Hr'g Br., at 12.

¹³³ Guidelines at 7 (Principal Consideration No. 10).

¹³⁴ Tr. 554.

¹³⁵ Respondent's Pre-Hr'g Br., at 11.

¹³⁶ Tr. 554-55.

Keath should have known she had a responsibility to report HD's bequests to her immediate family members and the payment of her expenses for the Egypt trip. Policies and procedures focused on gifts and beneficiaries are not esoteric, abstract or rarely encountered; they are common sense provisions directed at issues advisors confront daily in the securities industry.

The Panel notes that Keath testified that when HD first mentioned his wish to make her a beneficiary, she told him that the Firm would not allow it. Furthermore, Keath referred HD to EJTC in her capacity as his advisor, and her receipt of a referral fee and continued commission payments were consistent with EJTC's identification of Keath on account documents as HD's advisor. The Panel rejects, therefore, Keath's assertion that the ability to trade on HD's account was the defining feature of the advisor-client relationship. We conclude that Keath's active involvement with HD, and the many services she provided on his behalf, were consistent with her advisor's role, as Amendola described. It is significant that Keath, when questioned by Slovacek, the Firm's director of compliance investigations, twice told him she decided not to inform the Firm of the bequests and gift because she believed the Firm would disapprove of them.

The evidence clearly establishes that Keath's violation of the Firm's procedures, as the National Adjudicatory Council observed in a similar case, "deprived the Firm of its ability to supervise properly."¹³⁷ Consequently, as Enforcement argues, Keath's misconduct resulted in the potential for monetary gain.¹³⁸ The Panel also finds that Keath's misconduct prevented the Firm from determining whether to permit her to remain as HD's advisor after he named Keath's daughter and grandson as beneficiaries. If Keath had properly disclosed the facts to the Firm, and if the Firm had investigated, it may not have permitted Keath to continue serving as HD's advisor and to receive the commissions she was paid for three years for the assistance she rendered to HD in the administration of the trust. And even though the initial distributions from HD's trust were made to Keath's daughter LK, a substantial sum then went into a bank account held jointly by Keath and her daughter, enabling Keath to direct funds for the benefit of her grandson.

The Panel finds that Keath's conduct reflected a disregard for basic rules formulated by the Firm and fundamental to Rule 2010. When asked why she did not simply call a field supervisor for guidance after HD announced his intent to make her family members beneficiaries, she testified that she had "figured it out,"¹³⁹ implying that she had no need to ask for guidance and decided on her own not to make the disclosure to the Firm.

The Panel also finds additional aggravating factors to be present. Keath has not accepted responsibility for her misconduct.¹⁴⁰ Indeed, despite the strong evidence to the contrary, Keath

¹³⁷ *Skiba*, 2010 FINRA Discip. LEXIS 6, at *16.

¹³⁸ Guidelines at 8 (Principal Consideration No. 16).

¹³⁹ Tr. 450.

¹⁴⁰ Guidelines at 7 (Principal Consideration No. 2).

continues to cling to her untenable contention that the Firm's policies and procedures concerning disclosure did not apply to her because she ceased being HD's advisor upon the transfer of his trust account to EJTC. In addition, Keath's misconduct consisted of numerous acts over an extended period, constituting a pattern of misconduct.¹⁴¹

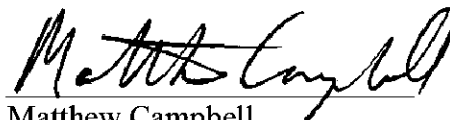
Enforcement did not argue that Keath exercised undue influence over HD, which would be an additional aggravating factor,¹⁴² and the Panel makes no finding that Keath did so. However, we cannot avoid noting that the circumstances established by the evidence in this case—Keath's cultivation of a close personal relationship with HD, HD's frequent consultation with Keath over amendments to his trust, and his apparent reliance on Keath's advice and assistance while his age and failing health took their toll—created a potential for undue influence. The Firm had in place disclosure policies and procedures designed to prevent this type of occurrence, and Keath's nondisclosure circumvented them.

For these reasons, the Panel concludes that Keath's unethical conduct in this case was egregious, and that to achieve the goals of deterring her and others similarly situated from such misconduct, a bar is the appropriate sanction.

C. Conclusion

For failing to "observe the high standards of commercial honor and just and equitable principles of trade" as mandated by FINRA Rule 2010, by circumventing her firm's policies and procedures requiring her to disclose a gift from a client and a client's bequest to immediate family members, Respondent Kory Keath is barred from associating with any FINRA member firm in any capacity. In addition, Keath is assessed costs in the amount of \$2,890.35, including hearing transcripts and an administrative fee of \$750.¹⁴³

The bar shall become effective immediately if this decision becomes the final disciplinary action of FINRA. The assessed costs shall be due on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.



Matthew Campbell
Hearing Officer
For the Hearing Panel

¹⁴¹ Guidelines at 7 (Principal Consideration Nos. 8-9).

¹⁴² Guidelines at 8 (Principal Consideration No. 19).

¹⁴³ The Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.

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