United States Securities and Exchange Commission

(Appeal from FINRA NAC)
Re: JOHN M.E. SAAD

Complaint No. 2006006705601R

3-13678r

Respondent, John Saad, through his counsel, states the following.

Nearly a decade ago, during a period of severe emotional stress stemming from both professional and personal circumstances, Mr. Saad, a good man, made a terrible mistake. He submitted false internal expense reports totaling $1,144.63, improperly expensed the purchase of a $375 cell phone and pursued a clumsy effort to conceal his mistake. He has never before, nor since, been the subject of a disciplinary proceeding or harmed investors or members of the public in anyway. Instead through these trying times he continues to play by the rules and work diligently to support his aging parents and family.

It is time to put this matter to rest. Mr. Saad was terminated by his employer for his transgression and has effectively served a 9-year suspension. The parties agree that the only issue to be decided in this appeal is whether the Securities and Exchange Commission's imposition of a lifetime industry ban should stand despite the Court's explicit instructions to apply "all" mitigating factors. Is this really the case the Commission wants to use to affirm what is effectively capital punishment in the securities industry? Are there not more egregious wrongs to prosecute and spend hundreds if not thousand of hours of staff time pursuing? Are there not repeat offenders far more deserving of a lifetime ban? Finally, how does the Commission justify the same

sanction for masterminds of frauds involving losses to innocent investors or ongoing schemes involving millions and in too many cases billions of dollars; to the issue presented here -- conduct emanating from a single incident involving an internal company expense report.

In a rare remand of the Commission's enforcement authority, the United States Court of Appeals for the District of Columbia Circuit agreed that the lifetime sanction imposed by Commission in this case was outside the bounds of reasonableness. The Court could not have been more clear concluding that the Commission had "abused its discretion" by sentencing Mr. Saad to a lifetime industry ban without considering mitigating factors.

On remand the Court explicitly directed the Commission to [weigh] "*all*" (emphasis in the original) such factors.

[T] he SEC must carefully consider whether there are any aggravating or mitigating factors that are relevant to the agency's determination of an appropriate sanction. See PAZ Sec., Inc. v. SEC, 494 F.3d 1059, 1065 (D.C. Cir. 2007) ("PAZ I"). This review is particularly important when the respondent faces a lifetime bar, which is "the securities industry equivalent of capital punishment." Id.

Significantly, the Court reminded the Commission that they had cautioned them in the past in explicit terms that they must be held to a higher more rigorous standard, particularly in addressing, lifetime bans.

Ignoring the Court's admonition and explicit instructions, the Commission instead, directed FINRA to answer five questions (not supplied by the Court). In answering those questions, FINRA concluded that while there were some mitigating factors that existed, they did not apply to the facts and conclusion in this case.

Termination is A Mitigating Factor

FINRA's refusal's to accept "termination of employment" as a mitigating factor is squarely at odds with the Court's explicit instruction (consider "all" mitigating factors). Second, employment termination under these circumstances is the most relevant mitigating factor. Submitting accurate expense reports is a private matter between employer and employee. Mr. Saad's failure to do so accurately would not impose a statutory penalty, much less regulatory scrutiny. In most instances the matter would be governed by an employee manual. For example, if the expense report was sloppy or negligently miscalculated (a mathematical error), the employer, not FINRA, would have the complete discretion to determine the appropriate sanction. In some instances, like the present matter, that sanction is termination. This entire proceeding flows from private conduct that is not regulated by the SEC.

FINRA maintains that employment termination was not a mitigating factor because Mr. Saad soon obtained other work strains credulity. Surely being fired is a sanction; it harms one's reputation, in this case it may also have had a negative financial impact through the loss of a bonus or diminishment of some other entitlement to income (such as starting at a lower salary grade). And even though Mr. Saad was able to obtain new employment there is nothing in the record that illustrates that in the new position he would be paid the same or more or be entitled to benefits and commissions at the same rate. This mitigating factor was a sanction that FINRA seeks to ignore.

Finally, FINRA's very own manual makes clear that loss of employment (and other employment related matters) are explicitly referenced in its own manual as being

mitigating factors. How in good faith does FINRA make that contrary argument? See SANCTION GUIDELINES 7 (2011) available at http://www.finra.org.

Stress is a Mitigating Factor

FINRA, plays lip service to this factor. Although conceding that stress can be a mitigating factor, FINRA concludes it does not mitigate the sentence of a lifetime ban imposed in this case. In reaching that conclusion, FINRA wrongfully relies on cases where a respondent's conduct involves the theft or misappropriation of customer funds. Respondent concedes that stealing from investors changes the paradigm but there is no evidence whatsoever that Mr. Saad misappropriated one dollar of customer money. Indeed he had no access to client funds. He was mostly in the recruitment side of the business where his job was to recruit other brokers. FINRA cannot point to one fact that supports its wildly prejudicial conclusion that Mr. Saad poses a serious risk to the investing public. Instead it is based on inferences from conduct limited to this one transaction. That is simply insufficient and should be rejected.

Mr. Saad's Conduct emanated from one expense report

The wrongful conduct at issue in this proceeding emanates from one expense report nothing more. Mr. Saad's behavior while far from exemplary was not part of some diabolical scheme FINRA's NAC seems to have concocted. Mr. Saad was scared, worried and desperate. He did not intend to harm anyone. At issue here is an expense report and a cell phone. That's it. Mr. Saad's conduct during FINRA's investigation was regrettable but it did not change the nature, scope and gravity of his offense. To be sure, he pursued a clumsy effort to hide his offense. But that effort was limited to the narrow scope of his offense. He was not a serial offender; he did not have a long history

perpetrating such offenses. As the record makes clear all of his conduct emanates from one transaction. [1]

Conclusion

For the reasons stated herein, FINRA'S affirmance should be reversed and the Commission should end this matter with a suspension of 9 years.

Respondent Respectfully Requests Oral Argument.

Respectfully Submitted on behalf of John Saad

Steven N. Berk
Berk Law PLLC
1625 Massachusetts Avenue NW
Suite 605
Washington, DC 20036

[1] Moreover, some of the conduct highlighted by FINRA were the result of choices made by his trial counsel. Mr. Saad followed the advice of counsel, which in hindsight might look like he was being evasive

CERTIFICATE OF SERVICE

On June 11, 2015, I served by facsimile an original and 3 copies of the following document on the SEC's Office of the Secretary and by first class mail with the following document:

Appeal From FINRA NAC to the SEC
John M.E. Saad
2006006705601R

BY FACSIMILE
The Office of the Secretary,
Securities and Exchange Commission
100 F. Street N.E.
Mail Stop 1090-Room 10915
Washington, DC 20549

BY FIRST CLASS MAIL
Office of the General
Attn: Michael Garaweski
FINRA
1735 K Street NW
Washington, DC 20006

Steven N. Berk