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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

John M.E. Saad

for Review of

FINRA Disciplinary Action

File No. 3-13678r

SAAD'S REPLY BRIEF IN SUPPORT OF HIS APPLICATION FOR REVIEW

INTRODUCTION

FINRA's steadfast demand for imposing a lifetime ban (the administrative "death penalty") on Respondent John Saad is without merit and should be reversed for three reasons. First, FINRA's conclusion that Mr. Saad poses a risk to investors and the public is belied by his complaint free conduct over the last 9 years. Time has simply eroded any basis for FINRA's harsh appraisal of Mr. Saad and conclusion that he is a "risk to investors". His mistakes were an anomaly, born out of a unique storm of personal and professional stress. It was not a pattern of willful dishonesty deserving of a lifetime ban.

Second, FINRA's failure to apply mitigating factors is wrong and warrants reversal. The Court of Appeals could not have been clearer about the requirement that FINRA apply mitigating factors. RP 1181. (the SEC "abused its discretion" by

failing to address potentially mitigating factors with support in the record"). *Saad v. SEC*, 718 F.3d 904, 913-14 (D.C. Cir. 2013). Ignoring that clear guidance, FINRA instead concocts arguments for why these mitigating factors should not be applied. That effort is disingenuous and contrary to the Court's guidance.

Third, FINRA's ban for life is not remedial but rather an impermissible punishment that must be reversed. FINRA has 's s the last nine years without any complaints of misconduct demonstrate, FINRA has successfully deterred Mr. Saad from repeating his past mistakes. Any extension of the ban, and specifically one that continues for life, can only be seen as an impermissible penalty.

ARGUMENT

I. The Evidence Supporting Increased Risk To the Public Is Insufficient

To impose a lifetime ban, FINRA must establish that Mr. Saad presents an ongoing and future "risk" to the public. They do not. What the record suggests instead is that any propensity Mr. Saad may have had for what FINRA calls "egregious misconduct" was remedied in this proceeding. In support of a lifetime ban, 9 years after the fact, FINRA can point to nothing more than its tired claims surrounding the submission of a false $1141 expense report. But FINRA's mission is to look forward, not back, particularly in connection with a lifetime ban.

> As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors, other member of the firm ... and to promote the public interest.

FINRA Sanction Guidelines page 1.

In its 26-page opposition brief, FINRA fails to mention, let alone weigh the fact of Mr. Saad's clean record over the past nine years. FINRA's attention remains fixed on the summer of 2006, when Mr. Saad faced severe problems, both personally and professionally. [redacted].

A staff of skilled FINRA attorneys, spending hundreds, if not thousands of hours, attempt to construct a narrative that characterizes Mr. Saad's conduct as some well planned dishonest, or at least deliberate effort, to cheat his employer and profit from his misdeeds. But that narrative lacks evidence and must be rejected. Mr. Saad did not perpetrate a scheme. Mr. Saad made a series of blunders in desperate times and then foolishly (aided by poor legal advice) attempted to cover up that mistake. His conduct sprung from pressure and stress not innate dishonesty. The record and common sense support that conclusion.

Even if FINRA had facts to support a finding of investor "risk" in 2006, that finding would, at a minimum, be diluted over the past 9 years, particularly as Mr. Saad has been complaint free in that time period. By failing to even recognize that dilution, FINRA has abused its discretion and reversal is warranted. There is simply not enough evidence in the current record to sustain a finding of investor risk, the necessary predicate for sustaining a lifetime ban.

II. FINRA Erred by not applying mitigating factors

The Court of Appeals could not have been clearer: mitigating factors must be applied, particularly in sanctions imposing a lifetime ban.

> When evaluating whether a sanction imposed by [FINRA] is excessive or oppressive, as we have stated before, the Commission must do more than say, in effect, petitioners are bad and must be punished; at the least it must give some explanation addressing the nature of the violation and the mitigating factors presented in the record. The Commission must be particularly careful to address potentially mitigating factors before it affirms an order . . . barring an individual from associating with a[] . . . member firm – the securities industry equivalent of capital punishment.
> 494 F.3d at 1064-65 (citations omitted).

Indeed, FINRA is obligated to look at "potentially all" mitigating factors. In other words, before imposing the death penalty, provide Respondent's with every opportunity to explain and justify their conduct through recognized mitigating factors. FINRA largely ignores that obligation. Despite having no adverse disciplinary record, before or since, FINRA concludes Mr. Saad is fundamentally dishonest and forever a threat to investors and the public. That conclusion simply lacks adequate support in the record and must be reversed by this Commission. The record instead supports the conclusion that Mr. Saad's conduct was born out of stress and a desperate time. Stress is a recognized mitigating factor that would seem to be directly relevant and should have been applied by FINRA. Instead FINRA, rejects that argument and interprets "stress" in the most crabbed fashion so as not to be relevant in this proceeding.[1]

[1] "For stress to qualify as a mitigating factor, according to FINRA, a respondent must demonstrate that the stress interfered with his ability to comply with the relevant rules." FINRA Opposition Brief at page 18. FINRA interprets this language too narrowly and treats the application of the factor in a manner that is overly technical. A more accurate plain reading of the principle is: someone who is

Similarly, Mr. Saad also argues that his termination by his employer is a mitigating factor. Again, termination is an explicit mitigating factor. But again FINRA puts us through some mental gymnastics to reject consideration of this explicit mitigating factor. As the Court of Appeals made clear:

> When we explained in *PAZ I* that the SEC "must be particularly careful to address potentially mitigating factors," we meant that the Commission should carefully and thoughtfully address each potentially mitigating factor supported by the record. The Commission cannot use a blanket statement to disregard potentially mitigating factors – especially those, like an employee's termination, that are specifically enumerated in FINRA's own Sanction Guidelines. Because the SEC failed to address potentially mitigating factors with support in the record, it abused its discretion by "fail[ing] to consider an important aspect of the problem." *See State Farm*, 463 U.S. at 43. We must remand on that basis.

FINRA's failure to follow the guidance of the Court of Appeals constitutes an abuse of discretion that also warrants reversal.

III. FINRA'S lifetime ban is not remedial but punishment

It has now been nearly a decade since Mr. Saad was under investigation for wrongful conduct. His offense centered on the submission of a false expense report and related documents seeking reimbursement of $1141. He had no disciplinary issues before that offense and has had none since. His motive was simply to save his job so that he could provide for his family. This was not some ongoing scheme to defraud a group of investors or in any way harm the public.

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unduly stressed (like Mr. Saad) should be treated differently when imposing a sanction than someone who is under no stress. In other words, anyone claiming stress can take advantage of this factor, as opposed to FINRA's interpretation, which limits the scope to narrow situations where stress itself motivates the wrongful conduct.

FINRA is only authorized to mete out remedial sanctions. It has no authority to punish. The lifetime sanction in this case appears to be punishment for Mr. Saad's conduct during FINRA's investigation where he was accused by staff of failing to cooperate and misleading investigators. As punishment, the sanction imposed cannot stand, and the Commission must reverse at long last this injustice perpetrated by FINRA on Mr. Saad and his family.

CONCLUSION AND REQUEST FOR ORAL ARGUMENT

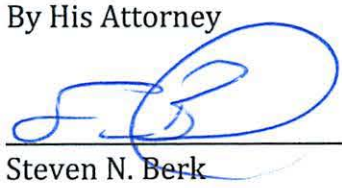
For the reasons set forth herein, Petitioner requests that the SEC reverse the decision of FINRA and vacate the imposed lifetime ban imposed. Petitioner also seeks oral argument in accordance with Rule 451(a). Mr. Saad has been portrayed harshly by FINRA. Not only has he repeatedly been described as unethical and dishonest, but "egregiously so". FINRA Brief at page 1. Similarly, FINRA claims Mr. Saad has a "tenacious willingness to engage in such dishonest behavior". FINRA Brief at page 26. These statements are false and gratuitous. He is not the person described by FINRA. Through his counsel at oral argument, Mr. Saad would like to respond to these false charges and characterizations.

Moreover, if the Commission is inclined to rule against him, he respectfully requests the opportunity to have one final response.

Respectfully Submitted,

John M. E. Saad

By His Attorney



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CERTIFICATE OF SERVICE

I, Steven N. Berk, certify that on August 3, 2015, I served a copy of the foregoing REPLY BRIEF IN SUPPORT OF HIS APPLICATION FOR REVIEW (File No. 3-13678r) by facsimile and via overnight delivery to:

Michael Garawski 202-728-8264
Associate General Counsel
FINRA
1735 K Street NW
Washington, DC 20006

and the original and three copies by facsimile and overnight delivery to:

Brent J. Fields 202-772-9324
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August 3. 2015

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Re: In the Matter of the Application for Review of John M.E. Saad
Administrative Proceeding No. 3-1-13678r

Dear Mr. Fields and Mr. Garawski:

Enclosed please find the original and three copies of John M.E. Saad's Brief in Opposition to the Application for Review in the above-captioned matter.

Sincerely,

Steven N. Berk