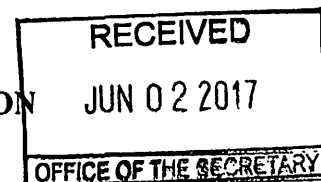


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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC



In the Matter of the Application of

SHAREMASTER

For Review of Action Taken by

FINRA

File No. 3-14104r

FINRA'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE

On May 25, 2017, FINRA moved to adduce additional evidence in this matter under Rule 452 of the Commission's Rules of Practice. On May 31, 2017, the applicant, Sharemaster, caused to be filed with the Commission a brief in opposition to FINRA's motion. Sharemaster's opposition, however, provides no reasonable objection to FINRA's motion and instead plainly reinforces the conclusion that the additional evidence FINRA seeks to adduce is material to the issues in this matter. The Commission should thus grant FINRA's motion to supplement the record.

This matter is before the Commission on remand from the U.S. Court of Appeals for the Ninth Circuit.¹ The Ninth Circuit remanded the matter after concluding that the \$1,785.00 in costs the FINRA Hearing Panel imposed on Sharemaster included a \$1,000.00 late-filing fee that equated to a reviewable disciplinary sanction. *See Sharemaster v. SEC*, 847 F.3d 1059, 1068-71

¹ The Commission has ordered the parties to submit briefs addressing, among other topics, whether the Commission has jurisdiction to consider Sharemaster's application under Section 19(d) of the Securities Exchange Act of 1934 ("Exchange Act"). *See Sharemaster*, Exchange Act Release No. 80471, 2017 SEC LEXIS 1181 (Apr. 17, 2017) (order scheduling briefs on remand).

(2017). Exhibit 1 establishes that the Ninth's Circuit's assumption was in error and that the record in this case must be clarified. Sharemaster's opposition to FINRA's motion to adduce simply reinforces, rather than undermines, the materiality of FINRA's additional evidence.² The evidence in Exhibit 1 is plainly relevant and material to the question of whether the costs imposed by the FINRA Hearing Panel can serve as a firm footing on which the Commission may base jurisdiction in this case. *See Sharemaster*, Exchange Act Release No. 70290, 2013 SEC LEXIS 2597, at *24 (Aug. 29, 2013) (“[W]e are not empowered to review FINRA’s assessment of costs or fees.” (quoting *Marshall Fin., Inc.*, 57 S.E.C. 869, 877 n.21 (2004))).

Exhibit 2 is likewise material to the issue of whether the costs imposed by the Hearing Panel can serve as the basis for Commission jurisdiction. The Ninth Circuit agreed with the Commission's conclusion that jurisdiction under Section 19(d) of the Exchange Act permits only the review of “live” disciplinary sanctions. *See Sharemaster v. SEC*, 847 F.3d at 1068. Exhibit 2 demonstrates that, even if some element of the \$1,785.00 in costs the Hearing Panel ordered Sharemaster to pay constitutes a reviewable disciplinary sanction, that sanction is no longer live. Jurisdiction in this matter may not, despite Sharemaster's claims to the contrary, be based on a “sanction” that is now moot. *See Marshall Fin., Inc.*, 57 S.E.C. 869, 877 (2004) (“[W]e have declined to consider an appeal where even a favorable decision by the Commission would entitle [the applicant] to no relief.” (internal quotations omitted)).

² As Sharemaster correctly notes in its opposition brief, the \$1,000.00 late-filing fee on which the Ninth Circuit premised jurisdiction was imposed by FINRA prior to the issuance of the Hearing Panel's decision in a pre-suspension notice sent to Sharemaster by FINRA staff on May 3, 2010. RP 803-05. Whether that fee can serve as a basis for Commission jurisdiction in this case is an issue that is distinct from the question of whether the costs imposed by the Hearing Panel serve to confer jurisdiction upon the Commission. FINRA will address this issue in its brief in response to the Commission's order.

For the foregoing reasons, the Commission should accept Exhibits 1 and 2 as evidence in this matter.

Respectfully submitted,



Gary J. Dernelle
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

Date: June 2, 2017

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on June 2, 2017, I caused the original and three copies of FINRA's Reply Brief in Support of Its Motion for Leave to Submit Additional Evidence in the matter of the Application for Review of Sharemaster, Administrative Proceeding No. 3-14104r, to be served by messenger and facsimile on:


Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090
Fax: (202) 772-9324

and by electronic mail and Federal Express Overnight Delivery on:

Howard Feigenbaum
Sharemaster
460 Tewell Drive
Hemet, California 92545
feigenbaum@sbcglobal.net

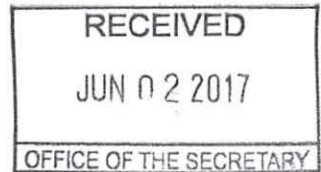
Service was made on the Commission by messenger and the applicant by FedEx and electronic mail due to the distance between the offices of FINRA and applicant's address.

Respectfully submitted,



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Associate General Counsel

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June 2, 2017

VIA MESSENGER AND FACSIMILE

Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Room 10915
Washington, DC 20549-1090
Fax: (202) 772-9324

Re: In the Matter of the Application of Sharemaster
Administrative Proceeding No. 3-14104r

Dear Mr. Fields:

Enclosed please find the original and three copies of FINRA's Reply Brief in Support of Its Motion for Leave to Submit Additional Evidence in the above-captioned matter.

Please contact me at (202) 728-8255 if you have any questions.

Very truly yours,

Gary Dernelle

Enclosures

cc: Howard Feigenbaum