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SECURITIES EXCHANGE COMMISSION
DEPARTMENT OF ENFORCEMENT

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Complainant,

v. **Admin. Proc. File No. 3-15811**

BLAIR ALEXANDER WEST,

Respondent.

BLAIR ALEXANDER WEST'S REPLY BRIEF

Blair Alexander West ("**Respondent**") hereby submits his reply to FIRNA's Answer Brief. Distinguished from the approach taken by FINRA, Respondent will not repeat unnecessary or stipulated facts, use inappropriate characterizations, or misrepresent the record. Rather, Respondent will use this Reply to illustrate why, contrary to FINRA's characterizations, Respondent's position has remained constant throughout the proceedings and the sanction of a permanent bar is inappropriate.

FIRNA's asserts that Respondent "ignores his previous admissions and changes his theory".[1] FINRA would have the Commission believe that Respondent is now arguing "for the first time" that Respondent believed he was authorized to use the funds,[2] and counters this allegedly new argument by claiming that there is absolutely no evidence to support Respondent's position.[3] Using this manufactured construct, FINRA concludes that Respondent should be barred from now presenting this position to the Commission.

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[1] FINRA's Brief in Opposition, Pg. 21.
[2] Id.
[3] Id.

FINRA's argument is unsupported and, indeed, contrary to the record and any reasonable reading thereof. Respondent testified before the FINRA panel that he believed that he was allowed to use the funds as he saw fit.[4] Respondent testified and Mouton confirmed repeatedly in his own writings and in his own testimony that no restrictions on the use of the funds were discussed, imposed, agreed, codified or memorialized before the funds were transmitted or at any time thereafter. Respondent presented the same argument to the NAC on numerous occasions.[5] FINRA's bold representation that there is no evidence to support the theory that Respondent believed that he was allowed to use the funds is refuted by the complainant's own written statements (two of them [6,7]) support Respondent's presentation and no attempt to recast or to recharacterize the clear content of those statements can create a restriction that never existed. FINRA refers to Mouton's statements as "West's letters", but that crafty creation is belied by the proven facts and is unsupported by any evidence to the contrary.

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[4] Respondent testified that there was an oral agreement between Respondent and Mouton wherein Mouton told Respondent he didn't care how the funds were used "as it was going to be [Respondent's] fee anyway." FINRA Panel Hearing Transcript, Pg. 524-25.

[5] Opening Brief of Blair West, NAC, Pg. 5 ("[W]hat is clear is that Mr. West did not think it was improper to advance himself the compensation"); Opening Brief of Blair West, NAC, Pg. 3 (Both sides to the underlying agreement with the respect to the use of the funds testified that a misunderstanding existed between them").

[6] "[T]here … was no written agreement between either myself or [ACII] and Crusader Securities governing or restricting how the equipment loan deposit was to be held, used, invested or otherwise."

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"[S]ince there was no written agreement with Crusader governing the deposit, the deposit was unrestricted and was at Crusader's discretion during the intervening period until the expected closing of the equipment loan or until the possible return of the deposit, if a transaction did not ultimately close."
May 26, 2009 Letter from Mr. Mouton to FINRA (emphasis added).

[7] "[A]s a point of fact, part of the reason I offered the May 26th letter was because I felt I should have done a better job specifying use and any restrictions to use of funds prior to submitting those funds to be held by Crusader, rather than mistakenly assuming that the funds were being held in a separate account until closing."
September 23, 2009 Declaration of Mr. Mouton (emphasis added).

Respondent has always taken the position that Respondent contemplated, believed and understood that he was permitted to use the subject funds pending the closing. In the complete absence of any evidence there was no (and could not have been any) intentional misuse of customer funds. To overcome the absence of express evidence, FINRA relies only on its after-the-fact characterization of the surrounding circumstances to create an inference that some restriction existed that was intentionally violated. Even if FINRA's stacking of inferences derived from its own advocacy-laden portrayal of what happened presented an accurate picture of the circumstances (and its does not), that alone cannot create a basis for a finding that there was an intentional violation of an inferred obligation to hold the funds. This has never changed.

FINRA continues to misinterpret and misrepresent Respondent's previous admissions. Respondent has never stipulated or admitted to *intentional misuse* of customer funds. Respondent has admitted and is willing to take responsibility for his failure to get written confirmation of the agreement regarding use of the funds and for his failure to keep his client fully informed regarding the status of the funds. Respondent never admitted and never believed that his use of the funds was intentional misuse. Respondent could have handled it better but he did not commit any intentionally wrongful act; and even Mouton agreed.

FINRA also takes the position that Respondent is prohibited from arguing the following mitigating factors because Respondent failed to raise these factors before the NAC:[8]

(1) Lack of customer harm;
(2) Previous sanctions for similar conduct;
(3) Whether there were prior warnings from regulators;
(4) The character or nature of the subject transaction; and
(5) Level of sophistication of the customer affected.

[8] FINRA's Brief in Opposition, Pg. 40.

In so arguing, FINRA willfully chooses to ignore the record. Respondent argued repeatedly to the NAC that Respondent returned the funds and that no client/customer was harmed; Respondent had never been subject to any previous inquiries or sanctions from regulators[9]; the customer was a large public company with many shareholders[10]; and the transaction was a non-securities, equipment-leasing transaction.[11] FINRA's assertion that Respondent is making these arguments for the first time to the Commission is patently false.

Unfortunately, FINRA's misrepresentation of the record does not end there, for example:

FINRA'S "STORY"	**FACTS**
Ability believed and expected that the deposit would be held by Crusader in escrow.[12]	There is not one shred of evidence supporting what Ability (the third-party lender) believed or expected. No person from Ability was called to testify or was even interviewed by FINRA.
Respondent's claim of misunderstanding does not make sense in light on the commercial expectations of the parties.[13]	No evidence of "commercial expectations" was presented by any party at any time. This is nothing more than pure conjecture.
Regarding Mouton's May 26, 2009 letter to FINRA, FINRA writes, "[Respondent]'s after-the-fact letter does not stand up in light of the contemporaneous written agreements and communications."[14]	This is further evidence of FINRA's unrelenting contortion of the facts. Mouton signed the May 26, 2009 letter and TWICE confirmed its authenticity and the accuracy of its contents.[15] Yet, for unknown reasons FINRA discredits the letter and disparagingly refers to it a "West's after-the-fact letter".
The NAC carefully considered all the possible mitigating factors.[16]	FINRA's position is that many of the mitigation arguments were not made to the NAC. So, how could the NAC have consider arguments that

[9] Opening Brief of Blair West, NAC, Pg. 18.
[10] Opening Brief of Blair West, NAC, Pg. 1.
[11] Opening Brief of Blair West, NAC, Pg. 2.
[12] FINRA's Brief in Opposition, Pg. 24.
[13] FINRA's Brief in Opposition, Pg. 24.
[14] FINRA's Brief in Opposition, Pg. 27.
[15] See Footnote #6 and #7.
[16] FINRA's Brief in Opposition, Pg. 35.

	were not made? FINRA cannot have it both ways.
Respondent only returned the funds after Mouton complained to FINRA.[17]	FINRA argues that Respondent returned the funds only after he received his rental income.[18] Yet, FINRA also argues that Respondent only returned the funds after Mouton complained to FINRA. The facts are that Respondent transmitted the funds before Respondent knew that Mouton had complained to FINRA.
FINRA asserts that lack of customer harm is not mitigating.[19]	Whether or not a customer was harmed is a well-established FINRA Sanction Guideline.[20] FINRA cannot use its arbitrary interpretation to eliminate the lack of customer harm as a mitigating factor.
FINRA says, "despite the voluminous evidence to the contrary … [Respondent] denies that there was any writing that explicitly restricted the use of the money."[21]	Respondent, (Mouton) and Respondent's employee (JT Jacus) all testified that there was no agreement restricting the use of the money. There is no evidence, "voluminous" or otherwise, of any written agreement restricting the use of the money.

Respondent respectfully requests that the Commission review fairly and impartially the evidence presented and consider the complete absence of an intentional violation of any expressed or communicated restriction. This was an isolated incident in the otherwise spotless and exemplary 20-year career of Respondent. Unusual circumstances involving questionable intentions of a client's employee collided with Respondent's efforts to provide much needed services for his true customer, ACII. Then, FINRA failed to conduct any meaningful, fair or impartial investigation to get to the truth of the matter and proceeded to construct a nefarious-sounding story often contradicted by the record simply to prove its might. FINRA's mischaracterization of the record goes beyond the contemplated scope of its intended regulatory

[17] FINRA's Brief in Opposition, Pg. 38.
[18] FINRA's Brief in Opposition, Pg. 2.
[19] FINRA's Brief in Opposition, Pg. 40.
[20] FINRA Principal #11.
[21] FINRA's Brief in Opposition, Pg. 2.

authority. There is no evidence of *intentional mis*use of customer/client funds and there is no evidence of any *intentional* violation of FINRA Rules.

Application of the FINRA *Sanctions Guidelines* cannot justify a permanent bar because there was, at worst, a lack of express concurrent understanding that caused no harm and substantial competent mitigating factors are present. A permanent bar is grossly disproportionate to the alleged wrongdoing of Respondent.

Respondent looks forward to the oral presentation before the Commission to finally set the record straight.

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