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Joseph Dondero



July 8, 2025

U.S. Securities and Exchange Commission
Office of the Secretary
100 F Street, NE
Washington, DC 20549

RE: Motion to Vacate Final Order – In the Matter of Visionary Trading LLC, et al. (File No. 3-15823)

Dear Secretary,

Please find enclosed my formal *Motion to Vacate Final Order* issued against me in the above-referenced matter, pursuant to Federal Rule of Civil Procedure 60(b)(2), (b)(4), and (b)(6). This motion presents substantial constitutional and legal grounds for reconsideration, including:

- The use of an Administrative Law Judge in violation of the Seventh Amendment, as recently determined by the U.S. Supreme Court in *Jarkesy v. SEC*;
- New and material evidence that directly contradicts the SEC's extrapolated factual findings;
- Procedural and statutory violations under *Liu v. SEC* and *Kokesh v. SEC*, concerning disgorgement limits and statutes of limitation; and
- Extraordinary personal and financial harm resulting from an enforcement process that denied me access to a fair and constitutional forum.

I respectfully request a thorough and timely review of this motion by the Commission. I remain committed to resolving this matter directly with the SEC. However, I am also prepared to explore all available legal and public avenues should that become necessary to restore fairness, accuracy, and justice in this case.

Please do not hesitate to contact me should any additional information or clarification be needed.

Sincerely,
Joseph Dondero

OS Received 07/26/2025

Motion to Vacate Final Order
In the Matter of Visionary Trading LLC, et al.
File No. 3-15823 (April 4, 2014)
Submitted Pro Se by: Joseph Dondero
Date: July 8, 2025

To the Office of the Secretary, U.S. Securities and Exchange Commission:

I, Joseph Dondero, respectfully submit this pro se Motion to Vacate the final order issued against me in *In the Matter of Visionary Trading LLC, et al.*, File No. 3-15823 (April 4, 2014), pursuant to Federal Rule of Civil Procedure 60(b)(2), 60(b)(4), and 60(b)(6). This request is based on the following grounds:

1. The unconstitutional forum in which the case was adjudicated, as recently confirmed in *Jarkesy v. SEC*;
 2. The SEC's factual reliance on a single outlier trade to extrapolate nearly \$1 million in penalties, despite receiving rebuttal evidence;
 3. The extraordinary personal harm and due process violations resulting from the SEC's conduct;
 4. Improper use of gross figures rather than net profits in calculating financial penalties, in violation of *Liu v. SEC*;
 5. The inclusion of time-barred activity from 2008–2009, which violates the five-year statute of limitations as established in *Kokesh v. SEC*;
 6. The imposition of penalties that were punitive in nature and not tied to any compensatory or equitable purpose, contrary to Supreme Court guidance.
-

I. Constitutional Violation (Rule 60(b)(4))

The administrative proceeding that resulted in the final order was presided over by an SEC Administrative Law Judge (ALJ), a forum that the U.S. Supreme Court later held unconstitutional in *Jarkesy v. SEC*, 603 U.S. ____ (2024), for violating the Seventh Amendment right to a jury trial in cases involving civil penalties.

At the time, I was advised by counsel that contesting the SEC's charges before an ALJ was functionally hopeless: the Commission prevailed in approximately 90% of such cases, and in some categories, the rate approached 98%. Lacking the financial means to continue the fight, I

accepted a lifetime bar and significant financial penalties under extreme pressure. The judgment rendered under this now-invalid system is void and should be vacated under Rule 60(b)(4).

This position is further supported by *Axon Enterprise, Inc. v. FTC*, 598 U.S. ____ (2023), in which the U.S. Supreme Court held that individuals may challenge the constitutionality of administrative agency structures—such as those used by the FTC and SEC—directly in federal court, without first exhausting the agency's internal process. This reinforces that my inability to contest the administrative forum at the time of enforcement was not a waiver of my constitutional rights, and that structural defects—like the use of an ALJ in my case—render the order void.

II. SEC Ignored Critical Factual Context (Rule 60(b)(2))

The SEC's order claimed that "nearly 100% of Dondero's profitable trading was manipulative," based on a single trade involving the low-volume stock FCAP in 2009. After receiving the Commission's settlement offer—which reflected a \$984,398 disgorgement based on this extrapolation—I submitted a rebuttal analysis prepared by attorney John Vazquez titled *Joseph Dondero's Loss Analysis – 2011*.

I no longer had access to my 2009 trading records, but I did have complete records for 2011. My trading strategy was consistent between 2009 and 2011, and the analysis showed:

- FCAP-like, low-volume stocks represented less than 5% of my total trading profits and volume;
- The majority of my trading came from high-volume stocks like AAPL, SPY, and AMZN, where the alleged manipulation strategy (layering) is technologically implausible due to tight spreads and high algorithmic trading activity.

This rebuttal, submitted in response to the SEC's proposed penalty, clearly undermined the factual basis of their calculation. Nonetheless, the SEC ignored the data and finalized penalties based on a flawed extrapolation from an unrepresentative trade. Relief is warranted under Rule 60(b)(2).

III. Procedural Due Process Violations and Extraordinary Circumstances (Rule 60(b)(6))

I fully complied with the SEC's subpoena and appeared as requested. On advice of counsel, I invoked my Fifth Amendment rights due to potential criminal exposure. This was a legal and

constitutional choice, not an admission of guilt. Nonetheless, the SEC appears to have treated my silence as confirming their narrative.

The consequences of the process were life-destroying:

- I lost my career and accepted a lifetime industry bar;
- My home was foreclosed, and I eventually filed for bankruptcy;
- I am over \$3 million in debt, with ongoing wage garnishments;
- My credit score is in the 500s;
- I lived in my mother-in-law's garage for over two years while trying to rebuild;
- I struggled with alcoholism as a result of the stress and loss, from which I am now in recovery.

Today, I work as a high school counselor, trying to help young people avoid the mistakes and hardships I faced. These are the kinds of extraordinary, life-altering consequences that Rule 60(b)(6) is meant to address.

IV. Additional Fines and Procedural Irregularities – Misuse of Gross Instead of Net (*Liu v. SEC*)

In addition to the \$984,398 disgorgement and \$785,000 civil penalty, I was fined approximately \$200,000 for allegedly acting as an unregistered broker-dealer. This was based on Visionary Trading's receipt of \$474,407 in shared commissions from 2008 to 2011. The SEC applied a gross calculation, assigning me one-quarter of that amount without accounting for legitimate business expenses:

In *Liu v. SEC*, 591 U.S. ____ (2020), the Supreme Court held:

"Courts must deduct legitimate expenses before awarding disgorgement, or the remedy ceases to be equitable."

The SEC's refusal to use net income—despite arguments from the attorneys representing the other partners—violates this standard. It further exemplifies the unfair and overstated nature of the penalties imposed.

V. Improper Use of Time-Barred Data (*Kokesh v. SEC*)

Portions of the penalties assessed appear to be based on alleged conduct dating back to 2008 and early 2009—well more than five years before the SEC issued its order on April 4, 2014. In *Kokesh v. SEC*, 581 U.S. 455 (2017), the U.S. Supreme Court ruled that disgorgement is a **penalty** subject to the **five-year statute of limitations** under 28 U.S.C. § 2462.

To my knowledge, the SEC did not formally initiate an enforcement action before April 4, 2014. Therefore, any conduct occurring before April 4, 2009, including portions of the commission-sharing allegations and the FCAP trade cited as a basis for extrapolated penalties, may have been time-barred and should have been excluded from the final order.

VI. Penalties Were Punitive, Not Remedial (*Kokesh* and *Liu*)

The SEC imposed cumulative penalties totaling nearly \$2 million, based on a single trade and without identifying any specific investor harm. As established in both *Kokesh v. SEC* and *Liu v. SEC*, civil penalties and disgorgement must be remedial—not punitive. The Supreme Court has emphasized that such remedies must be tied to actual net profits and should aim to return funds to harmed investors where possible.

The SEC's penalty structure in this case, including a \$984,398 disgorgement based on speculative extrapolation, a \$785,000 civil penalty, and a \$200,000 unregistered broker-dealer fine, served no compensatory purpose. These figures were untethered to investor loss, based on gross amounts, and resulted in financial devastation—fitting the definition of a **punitive sanction**, contrary to Supreme Court precedent.

VII. Relief Requested

I respectfully request that the Commission:

1. Vacate the final order entered against me on April 4, 2014;
2. Acknowledge that the FCAP trade was not representative of my overall trading activity;
3. Recalculate any potential financial penalties in accordance with *Liu v. SEC*;
4. Exclude any time-barred activity in accordance with *Kokesh v. SEC*;
5. Acknowledge that the penalties imposed were punitive and not legally permissible;

6. Refer any future action, if necessary, to an Article III court in accordance with *Jarkesy v. SEC*.
-

VIII. Conclusion

This request is submitted in good faith. I do not seek to re-litigate the matter recklessly, but to restore fairness and correct a series of actions now shown to be unconstitutional, unsupported by the evidence, and personally devastating. I ask only for the opportunity to have this matter reviewed in a just and lawful forum.

Sincerely,



Joseph Dondero

