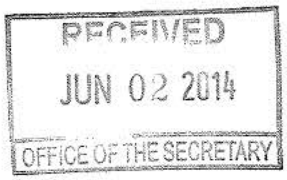
SECURTY and EXCHANGE COMMISSION

Respondent's Brief Dated May 30, 2014



In the Matter of

FINRA Department of Enforcement,

Complainant,

vs.

Steven Robert Tomlinson

Painted Post, NY

Respondent.

Brief for Administrative Proceeding

No. 3-15824

Respondent Brief:

Respondent requests suspension and fine to be reviewed to eliminate or reduce as precedent has been set by FINRA in previous enforcement actions where "actual disclosure to third party" occurred, which is not the case in this incident. 10 days for "actual disclosure to third party" of Personally Identifiable Information.

It also appears the increase in suspension time by the NAC was to offset inability to pay monetary fine and "feels" to be "retribution" for appealing to the NAC regarding the Office of Hearings decision.

Also my "sense", that the NAC appeal hearing September 27, 2013 appears to me to be a "sham" by FINRA, as the outcome was shocking to me and seemed to be "pre-determined" and the two panel members input had no bearing in the decision.

The reasons for the appeal are as follows:

1. Disclosure of Personal Identifiable Information never occurred, in spite of assertions made by FINRA. FINRA's position is based on the "possibility" and not on actual disclosure.

2. Personally Identifiable Information was never "transmitted", "downloaded" or "viewed" by a third party, as was the case of FINRA DOE v DiFransesco SEC LEXIS 54 2012.

3. Disclosure is defined as "revealing" information, where the information was actually "exposed" to a third party or "viewed" or "downloaded" by the third party of the Personally Identifiable Information. This never occurred as it had in the DiFransesco case. Testimony to FINRA by Wachovia and Ms. Dutcher affirmed that "disclosure" never occurred and was supported by forensic analysis by those that were supposedly granted access and agreed to by the Corning Credit Union in their agreement reached with Respondent and Wachovia Dec 2008/Jan. 2009.

4. "Intent" by respondent has been inserted by FINRA into their decision, where evidence of "intent" by the actual actions of the respondent was discounted as "inconsequential".

5. The evidence of the Personally Identifiable Information presented and used by FINRA and the Corning Credit Union in their case "lacked" any "dating" on the actual documents. But evidence provided by respondent, Raymond James Privacy Statement dated 2012, was dismissed by FINRA for a wrong date. In the environment over the past few years it is hard to believe that Raymond James would "relax" their protection of Personally Identifiable Information.

   These evidenced documents by the Corning Credit Union could have come from the previous 3+ years of working at home, using the method "suggested" by the Corning Credit Union, with their "full knowledge" of the information being transported, the reports generated from this information and the frequency of the work they required. These reports required by the Corning Credit Union of respondent were produced weekly/monthly/quarterly/annually. This type of work was done right up until the very end of my employment with the Corning Credit Union. The lack of consideration of the "non-traditional structure" of the Investment Services Group at the Corning Credit Union versus "traditional brokerage office structure" most firms use. We were all "salaried" advisors and my responsibility was to evaluate service levels, match client needs with advisor skills, workload equalization between advisors, plus the many required reports by the Credit Union. These, plus other responsibilities required me to work with this information constantly and move clients among advisors quite frequently for many reasons or report to management the current Assets Under Management, Service levels by advisors to clients, Production, Breakdown of where assets were, Clients transferring in/out and why, among many other reports required by Credit Union management.

6. My comment about the NAC appeal hearing dated September 27, 2013 as being a "sham" comes from my sense of how the "actual" hearing went. The line of questioning by the 2 panel members, their "very strong push back" of FINRA's interpretation of disclosure and of "FINRA's interpretation" of my "intent". I walked out of that hearing with an "extremely strong" feeling that the 2 panel members understood my side of the story and about the "role" and "intended harm" that the Credit Union wanted in pushing FINRA to pursue action against me (when many of the FINRA member firms client information evidenced by the Credit Union/FINRA, did not support and were not party to the complaint). This "feeling" that the hearing was a "sham" started with my shock of the NAC decision and supported by the refusal of FINRA to disclose the

recommendations of the two hearing panel members, Mr. Mahon and Mr. Margolin, regarding my case. (see letter from Celia Passaro dated 5/21/2014) My sense is that the hearing panel, no matter what they determined from the hearing, was not taken into consideration and NAC/FINRA proceeded to render a decision that they could use for future cases. Imposing the fine (but not requiring payment) and increasing suspension "far greater" than they imposed and upheld earlier. It almost seemed like it was "predetermined punishment" and "retaliation" for appealing and not determined by the hearing.

7. Lastly, FINRA's complete dismissal of the "torturous business interference" actions of the Corning Credit Union after they executed the settlement agreement with Respondent and Wachovia. Where the Credit Union was "completely satisfied" that there was no "damage, danger or disclosure" regarding the client information in question. Nor was there any weight given to The Corning Credit Union's responsibility in protecting the information they knew I worked with for years "regularly" at home, "transported" by their suggested method and with their complete knowledge of these activities they required as part of my responsibilities.

The last sentence of section 7 regarding the responsibility of the Corning Credit Union to the Personally Identifiable Information, in their defense, was probably an oversight as no "exit interview" occurred with Credit Union IT other than the "phone wipe".

As to the testimony of the Corning Credit Union's Chief Information Officer, Todd Dauchy, Mr. Dauchy was aware of a breach that occurred in May of 2008 by another advisor and also was aware of the subsequent 2 breaches, after I left, in 2009 and 2010. (As I mentioned in my previous submissions to NAC/FINRA) His "omission" of these events when asked during his testimony is concerning. It shows the "attitude" of the Corning Credit Union to "paint as harmful a picture" of respondent as possible. It also shows the "selective" nature of the Corning Credit Union's actions when it comes to "protecting" member's Personally Identifiable Information. No reporting to regulators, notification to impacted clients was done on these breaches as there was in respondent's situation. The actions done in the respondent's situation was to prevent clients and potentially advisors, from transferring with respondent to the new firm, preserving assets and revenue for the Credit Union and harming respondent. The lack of action in the other three breaches was done to protect the Credit Union and not protect those clients that were impacted by the exposure of their personal information.

I appealed for review by the SEC, to look at the facts of the "lack of disclosure" in this case, the "actual intent" as demonstrated by the respondent and consider the impact already felt by the respondent from the harmful actions taken by the Corning Credit Union to preserve assets, revenue and clients for their benefit.

In closing, I would be remiss in not recognizing the NAC decision to "not" require respondent to pay the financial fine and costs assessed due to the financial situation experienced by the respondent from all that has taken place since November 2008. This is extremely helpful, but the suspension imposed, is "far more costly" as it is "career ending" to a career that has lasted 32 years without a customer complaint.

My career has been "severely impacted" by the "retaliatory" actions, which the complaint to FINRA was just one of the many actions done by the Corning Credit Union, a disgruntled former employer, for their benefit. An employer that came to a monetary agreement with respondent and was completely satisfied that no harm was done to client's personal information and that complaint to FINRA 4 months after the settlement was only to bring harm to respondent financially and to his career. The complaint by the non-FINRA member Corning Credit Union, to FINRA was not supported by "any" of the various FINRA members whose client information was evidenced by the Corning Credit Union in their complaint and FINRA's enforcement action. As well as, all the other agencies that the Corning Credit Union reported respondent to, have "recognized" that the reporting was a "retaliatory act" on the part of the Credit Union.

Respondent respectfully requests that the suspension be eliminated or reduced and the monetary fine removed allowing a severely damaged career the opportunity to rebuild. A lot has been learned over the past 5 ½ years.

I offer apologies up front, regarding format, lack of case study supporting my assertions, as I am acting Pro Se and do not have access to the cases referenced or possibly provide cases to support my claims.

I again request of FINRA/NAC, the written recommendation of the two non FINRA hearing panel members (Mr. Mahon and Mr. Margolin) regarding my appeal hearing on September 27, 2013 or provide a copy of the minutes of the presentment to the NAC of my case in their March 2014 meeting.

Sincerely

Steven R Tomlinson

[redacted]

Painted Post, NY [redacted]

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