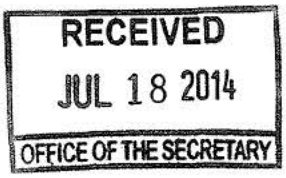
SECURTY and EXCHANGE COMMISSION

Respondent – Response to FINRA 7/7/14 response Dated July 16, 2014



In the Matter of

FINRA Department of Enforcement, Brief for Administrative Proceeding

Complainant, No. 3-15824

vs.

Steven Robert Tomlinson

Painted Post, NY

Respondent.

Respondents Response - To FINRA Response received 7/7/14:

I will do the best I can to respond to FINRA's assertions laid out in their document I received on July 7th, 2014. Their documented history of the case given, the assertions made, the intent insinuated by FINRA, all have a very strong bias that reads far worse than the actual events. The lengthy document "colors" the case, "inserts" intent, "floods" the document with cases, all making it far more nefarious than the reality of the actual events.

One point I want to make up front, is one that I have made from the beginning, I regret my actions that started this whole mess. If I had the blessing of a "do over", we would not be here. I have learned a lot and would do anything to avoid what my family has been through over the past 6 years. It has cost us our life savings, it has impacted the health of my wife, has negatively impacted my son, not to mention the impact to my career. We have been through hell and I am only trying to bring this nightmare to an end in a way that allows me to rebuild our lives with the only career I have known for 32 years. This is why we are here. FINRA cares not about the devastation to my family and only wants to have a case that they can use in future enforcement actions, no matter the cost or the reason for the complaint.

I do not have the ability to search the cases outlined by FINRA in their document or the ability to search supportive cases for me. It puts my response on a more personal level.

Request for documentation from NAC refused by FINRA:

- I feel the NAC decision was far from my sense of how the actual hearing went. As a human, we have the ability to assess other human's acceptance or rejection of us, based on a trait that stems from our survival instincts. The dynamics of the interactions of the hearing gave me the strong sense that "logic" was finally going to prevail. Needless to say, I was shocked to say the least with the decision I received.
    - I requested some back up of the decision by requesting the written recommendation by the two panelists who heard the hearing, Mr. Mahon and Mr. Margolin. They heard directly from each side and are the best suited to make a decision based on the appeal hearing. Not someone back at the headquarters who is researching case studies to support FINRAs desired enforcement action. This request was refused by FINRA.
    - I also asked for a copy of the section of the minutes covering my case at the NAC meeting in March 2014. This was refused by FINRA as well.
    - I am interested in seeing the "presentment" of my case to the full NAC council, because the "executive summary" presented to the council can be very "biased" by FINRA and as such, would not be a "fair" appeal. The appeal seems to provide for a huge "home court" advantage. Where FINRA controls the information, the referees, as well as the "nuances" of how a case is presented all directed to the outcome they want. Which I feel is the case here, hence my request for the actual supporting documentation. Refusal to provide these documents by FINRA only raises the "skepticism" that this is the case. With their refusal to provide any of these documents the question becomes, "What is the purpose of the appeal hearing?"

Dispute of Assertions made by FINRA – (in order of presentment by FINRA document)

- Page 5 - Raymond James client information was never disclosed to a third party as asserted by FINRA. Raymond James Financial Services Privacy Notice allowed Financial Advisors to "use non-public personal information" when changing broker dealers. (see attached exhibit 1 – Raymond James Privacy Notice) In addition, the claim by FINRA that no notice was given to clients about the Privacy Policy and "opt out" process. This is covered in the RJFS client agreement every account holder signs.
- Page 5 - "Christmas List" was all that was used or disclosed to Wachovia/Wells Fargo – as testified by Ms. Dutcher and supported by Wachovia Forensic analysis done and testified by LeWayne Kimbro that "no files transmitted or resided on any Wachovia/Wells Fargo computer system. "Christmas List" was used to send 160 "non-soliciting Tombstone style ad" to clients.
- Page 6 – No client personal identifiable information was disclosed to a third party.
- Page 7 – "Secretly" downloaded – "colorful wording" to make incident sound more "devious". Downloading client information was done as a part of my responsibilities with Corning Credit Union weekly for many years with their knowledge and approval. Some of the downloading that took place just prior to my departure was used for reports and projects right up until my departure.

- Page 8 – The downloading of client information on 11/20/08 was an "after thought" while cleaning out my office of personal items. The thought was to reach out "at some point in the future" to clients I had given away to the other advisors over the previous 2 – 3 years. Our office structure was not a traditional brokerage office structure. We were all on salary and my responsibility would be to make sure workloads were equal among advisors, client needs matched with advisor skills, service levels met, etc.
- Page 9 – Credit Union IT testimony – Credit Union was fully aware of the method I used to transport client information to work at home. This method was suggested by Mike Saurbaugh CU IT Security Officer and was done with the complete knowledge of Mr. Dauchy. No company owned flash drive or laptop was offered or required, despite Mr. Dauchy's testimony.
- Pages 9-10 – FINRA omits the testimony of Ms. Dutcher and her statements that she "never knew, saw" any personal information on my flash drive or disclosed to anyone at Wachovia any information on the flash drive. She testified she only saw the file (name address) used to generate the 160 labels for the mailing of the Tombstone ad.
- Page 12 – FINRA "insinuates" that I ran a program to prevent detection of files I deleted right after getting the letter from the Credit Union to return or destroy the client information I possessed. The "program" ran was one that was done regularly to keep laptop performance up to snuff by Norton 360. "Disk Defragment" was the program ran regularly that they are referring to. I learned in the OHO hearing that this program could "write over" deleted files making it more difficult to recover. No intention to "cover up" as FINRA insinuates.
- Page 13 – Procedural – 2000 RJFS customers were "never disclosed" as asserted. Even if this were done, which it was not as testified to by Ms. Dutcher and LeWayne Kimbro.
- I want to make clear that there is "no misunderstanding" on my part of the concern for customer privacy and keeping safe clients personal information. Over my 32 year career, I never even told my wife "who my clients were" she would find out from the client directly. So did I do something dumb, yes, but not with any "malicious intent" or for a "nefarious nature".
- Reference to DiFrancesco decision – FINRA asserts that "he inadvertently" downloaded PII on 36,000 customers. They fail to mention in their own decision that after knowing that fact "he still emailed, unencrypted" the list to a third party at National Securities". Which no matter if opened, printed etc. was "exposed" to the internet and because of that act was disclosed. FINRA's own decision to sanction was based on disclosure of that information. No client personal information was "disclosed" in my case.

Conclusion:

- My persistence with the multiple appeals, much to everyone's dismay, including mine, is solely based on survival. I am trying to survive, to be able to provide for my family. Plain and simple. Wells Fargo has a policy to "terminate" any representative with a suspension. I want to be able to "rebuild" and any suspension would most likely end my career, but a 90 day suspension would "absolutely" end it. I am asking that the review of my case takes into consideration the "price" I and my family have "paid" over the past 6 years.
- Recognize that "no client information was disclosed" in my case.

- Recognize that while I was at the Corning Credit Union Investment Services we operated under a "very different" office structure than the "normal" brokerage office that the industry is familiar with. We had "salaried advisors" and movement of clients among advisors occurred frequently.
- Recognize that I worked with this client information on a weekly basis with the knowledge and approval of the Credit Union IT using their suggested method to provide them with the required reports.
- Recognize that the Credit Union used "extreme" retaliatory and vindictive actions to harm my reputation, harm me financially and harm my career. That their actions to "protect" client information, is done so on a "selective basis", in spite of the testimony by the Credit Union IT.
- Recognize that the Credit Union filed a complaint with FINRA four months "after" a monetary and signed agreement was reached releasing my "non-compete" and their complete satisfaction of the client information handling and disgorgement. Where they acknowledged that no client information was disclosed or downloaded to a third party.
- Recognize that all other complaints by the Credit Union to other government organizations, except for FINRA, have recognized that the Credit Union complaints were "retaliatory" and were done for "vindictive" reasons.
- Recognize that I have been "forthright" from the beginning.
- Appreciate my "skepticism" of the NAC appeal. I still request that FINRA provide the documents I requested.
- I have attached my written comments at the NAC appeal in NYC September 27, 2013, which included my previous attorney's summary response to FINRAs accusations. (see exhibit #2)

I have to reiterate my apologies for having to go this far in the appeal process, for my actions that initially triggered this process. I am more than contrite and extremely remorseful for the impact it has had on my family. Again I apologize for the form of my response and the lack of case study due to the fact I am acting Pro Se, only because I cannot afford my attorney after his very generous representation for almost 4 years.

Sincerely

Steven R Tomlinson

[redacted]

Exhibit #1

Who we are	
Who is providing this notice?	See the Raymond James U.S. legal entities noted below.
What we do	
How does Raymond James protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Raymond James collect my personal information?	We collect your personal information, for example, when you: ■ open an account or perform transactions ■ make a wire transfer or tell us where to send money ■ tell us about your investment or retirement portfolio We also collect your personal information from others, such as credit bureaus, affiliates and other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: ■ sharing for affiliates' everyday business purposes – information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ Our affiliates include companies with a Raymond James or an Eagle name.
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *Raymond James does not share with nonaffiliates so they can market to you.*
Joint marketing	A formal agreement between nonaffiliated financial companies to provide or market financial products or services to you. ■ *Our joint marketing partners may include banks and credit unions.*
Other important information	
Financial advisors may change brokerage and/or investment advisory firms, and the nonpublic personal information collected by us and your advisor may be provided to the new firm so your advisor can continue to service your account(s). If you do not want your financial advisor to take or receive this information, please call 800-647-7378 to opt out of this sharing. Opt-in states, such as California and Vermont and others, require your affirmative consent to share your nonpublic information with the financial advisor or the new firm, and in those states you must give your written consent before the advisor can take or receive your nonpublic information. You can withdraw this consent at any time by contacting 800-647-7378.	
Vermont: In accordance with Vermont law, we will not share information about Vermont residents with companies outside of our corporate family, except as permitted by law, such as with your consent, to service your accounts or to other financial institutions with which we have joint marketing agreements. We will not share information about your creditworthiness within our corporate family except with your authorization or consent, but we may share information about our transactions or experiences with you within our corporate family without your consent.	
California: In accordance with California law, we will not share information we collect about you with companies outside of Raymond James, unless the law allows. For example, we may share information with your consent, to service your accounts, or to provide rewards or benefits you are entitled to. We will limit sharing among our companies to the extent required by California law.	
Raymond James U.S. legal entities	
Raymond James U.S. legal entities that utilize the names: Raymond James Financial, Inc., Raymond James & Associates, Inc., Raymond James Financial Services, Inc., Raymond James Financial Service Advisors, Inc., Eagle Asset Management, Inc., Eagle Fund Distributors, Inc., Eagle Family of Funds, Eagle Fund Services, Inc., and Raymond James Insurance Group, Inc. This notice does not apply to Raymond James Bank, N.A. and Raymond James Trust, N.A., as these affiliates deliver their own privacy notices.	

FACTS	WHAT DOES RAYMOND JAMES DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and investment experience ▪ Assets and income ▪ Account balances and account transactions When you are ***no longer*** our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Raymond James chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Raymond James share?	Can you limit this sharing?
For our everyday business purposes – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes – to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes – information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes – information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share

Questions?	Call 800-647-7378 or go to www.raymondjames.com

RAYMOND JAMES®

Exhibit #2

NAC Hearing September 27, 2013

Good Morning.

First - I would like to apologize for being the one bringing us here today.

With the current FINRA temporal suspension being imposed and the "real" impact that suspension will have, **termination** – it will be the end of the only career I have known for 32 years, all without a customer complaint - I felt that I had to do everything in my power to reverse this ruling to allow me the ability to "rebuild" in the only industry I have known my whole career.

FINRA will say that it's only a "temporary" suspension – but the reality is that Wells Fargo has a policy to terminate any employee that has "any" suspension, even 1 day. Plus I have spoken to many firms looking for a place to rebuild and a "suspension" makes it impossible to find a firm that will hire an advisor with that on their record. That coupled with low production and assets makes it impossible to be able to work and rebuild.

So - I hope you can appreciate my position of doing everything possible to reverse the suspension. Plus – with my current financial situation, a result of efforts taken by the Corning Credit Union when I left, I am looking to reverse the monetary fine being imposed as well. As a "non-payment" of a fine would result in a "suspension" and back to a career ending event.

One aspect that FINRA does not want and did not allow previously, was the inclusion of the acts that the Corning Credit Union did when I left them in November 2008. Their objective, was to do as much harm to my reputation, to me financially, to make it as difficult as possible for me to do business – out of revenge and to "preserve" as many clients and their revenue as well as advisors for the Credit Union.

They sent a letter to 2600 households that was very damning and created as much reputational damage as possible by saying that I was an "Identity Thief", offering Credit Watch Services and that they are cooperating with all authorities in the investigation. They also set up a call center to inform all clients that it was "illegal" for me to contact them and that "if" I did contact to let them know as soon as possible. This was all done to retain, clients and their revenues and advisors. They did all of this under the "guise" of "protecting member data".

This letter and calling campaign – was all done "AFTER" Wachovia and I "settled" with the Corning Credit Union - to their complete satisfaction that "no data" was compromised and they were handsomely paid.

The main point about this is that it illustrates their "intent" and that the public appearance of "protecting member data" is only that "appearance". There were 3 other member data breaches where client's personal information - name, address, social security numbers, account numbers, investment

details, investment objectives, etc. were exposed via the internet "Where no client notifications were made to inform the clients that their personal information was compromised". No letter as they did in my case, no call center - nothing. Why, because they had no "monetary" reason to do this, no vindictive reason, even though they were required to notify clients under the NCUA regulations - their regulatory agency, along with other state and federal requirements whenever there are "breaches" of client personal information. There were 1200 households personal identifiable information that were exposed in 2 separate Financial Advisor situations and 22,000 members exposed by a senior officer of the credit union where the information was unencrypted and emailed. The latter event, to the wrong non-affiliated and no connection whatsoever third party. So they are "selective" as to when they protect member data and when they don't.

These efforts, by the Credit Union, were designed to benefit them monetarily and to harm me financially and my reputation. The Credit Union filed their complaint to FINRA in April of 2009, a full 4 months after being completely satisfied and had agreed to a settlement. This also was against the advice of the FINRA registered broker dealer that they used and I was registered with, when I was employed at the Credit Union – Raymond James.

This was only part of what was done and the very "retaliatory" "vindictive" action they took in my case, which has been very debilitating to me financially and impacted a number of clients' decisions not to transfer.

The client information in question here I had used for years prior. Client information was frequently used to produce the required reports for the Credit Union, with the method of transporting the information that they recommended. This was part of my responsibilities that I had as a supervisor with the Credit Union. Because I did not have time to do these reports during the work day, I was advised by their IT Security person, Mike Saurbaugh, to use a thumb drive, like many of the other managers and IT personnel used to transport sensitive information. This information was used weekly and due to our compensation structure (salary) I was responsible for equalizing workloads between advisors, monitoring service levels, review portfolios, produce asset under management reports, who should get what service based on the size of relationship, RMD coordination, how many accounts were referred to lending, among many other reports and requests for information by top executives of the Credit Union. I did these reports right up the very end. So the argument that this was "new", "shocking" etc. to the Credit Union is outright theatrics.

My actions the evening of November 20th was not out of the ordinary, was information that I already had on the thumb drive and my laptop, was done without malice but with the idea at some point to cull out clients I had worked with in the past and had given to other advisors and maybe contact them in the future. This was a stupid act, but again one without malice, contrary to what is being asserted by FINRA and the Credit Union.

The information was not compromised, as testified by Lisa Dutcher and forensically proven by Lewayne Kimbro of Wachovia was not transferred to their systems and not used other than to produce labels to mail out a benign "Tombstone" ad.

There was no "exposure" or "disclosure" of the sensitive information, there was no use of the sensitive information, there was no threat to client information as purported by the Credit Union and FINRA.

FINRA has been a tool for Don Rouse and the Credit Union to carry out their revenge for my leaving.

With permission I would like to read from my attorney's July 2012 response to FINRA's case against me

In closing, I am asking for something that may "fall outside the norm" and is not the desired outcome of FINRA or the Credit Union and request that the 10 day suspension and fine being imposed by FINRA reversed and allow me to be able to go back to Painted Post and rebuild in the only career I know. The actions of the Credit Union and this ongoing 4 ½ year experience with FINRA, has taken its toll far beyond what I have laid out here. As I stated in one of my responses I wish I could have a "do over" and leave with no client information at all when I left the Credit Union. The past 5 years has had a devastating effect on me psychologically, financially (currently broke and the reason for no attorney to assist me here today) emotionally devastating, as well as the effects to my family that are far beyond what I have articulated. So instead of possibly following the "book", accept that a "penalty" has been paid and allow me the privilege and ability to rebuild a career that has been severely hampered by the efforts of a large former employer. And more importantly mend the pain that my actions have caused my family.

Thank you for your time and I defer my remaining time for rebuttal.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. STEVEN ROBERT TOMLINSON (CRD No. 723330), Respondent.	DISCIPLINARY PROCEEDING No. 2009017527501 Hearing Officer: LOM

RESPONDENT STEVEN TOMLINSON'S HEARING MEMORANDUM

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Steven R. Tomlinson

This case is not so much about disputed facts. The parties have stipulated to virtually all of the relevant acts and events and the joint exhibits will surely outnumber each side's separate exhibits. At his OTR, Steve Tomlinson was not evasive. He answered every question truthfully and fully, to the best of his ability.

Respectfully submits that this case is an egregious expenditure of valuable enforcement assets directed at the wrong person for behavior that no one in this industry regards as wrongful or in violation of any regulation.

There will be no evidence whatsoever that Steve intended to "disclose" this information or to provide it to his new firm or to anyone else. To the contrary, Wells Fargo Advisors (formerly Wachovia at the time Steve left the Credit Union) *did not want anything* from Steve Tomlinson other than the names and addresses to whom they planned to send the most basic "tombstone" notice of Steve's new business affiliation.

Nor was there any accidental "disclosure" of the information, to anyone, at any time.

We are aware of only one case in which a FINRA panel sanctioned a representative. It involved an individual who "inadvertently" downloaded tens of thousands of customer files (far more than just his own clients) and then emailed the entire file to his new employer. The facts and the events of this case could not be more different then that one.

There also should be no dispute but that even the name and address information on the data stick, once it was used by the mail label printing program, *was not retained on the Wachovia computer*.

Regrettably, the Department of Enforcement's focus appears to be the rights of the Corning Credit Union, not the FINRA member with whom Steve Tomlinson held his securities license. More to the point, Raymond James Financial Services Inc., where Steve was registered,

has absolutely no proprietary interest in the customer names on its books because this Raymond James affiliate is not the full service brokerage firm where the registered reps are Raymond James employees. To the contrary, Raymond James Financial Services provides a securities platform for unaffiliated firms, like the Corning Credit Union, and the individual licensed registrants are "independent contractors" as far as Raymond James is concerned.

It is for this reason that on the Raymond James Financial Services website and Raymond James Financial Services' account documentation disclose to its customers that, unless the customer acts to prevent it, customer information ***including financial records***, will go with a registered rep if he or she moves to another firm.

> Financial Advisors ("FA") may change brokerage and/or investment advisory firms and nonpublic personal information collected by your FA may be provided by your FA to the new firm so your FA can continue to service your account(s) at the new firm.

Even if Steve had "disclosed" the information to Wells Fargo (he didn't!) the FINRA member he was registered with didn't care!

There was never any "disclosure" – to anyone! This case is clearly not about improper communication or misuse of confidential customer data. Seemingly, this case is simply about the ***theoretical possibility*** that some disclosure ***could have occurred*** because of the happenstance that Steve's memory stick spent the evening in Lisa Dutcher's purse. Ms. Dutcher is a registered sales assistant at another Wachovia (now Wells Fargo) office who despite repeated questioning in her OTR, Ms. Dutcher was steadfast that she had not seen any other data in any of the other files on Steve's memory stick. She had no reason to go beyond the simple name and address file that Steve had created, and she didn't.

We are here, apparently, because the Department of Enforcement believes regulations predicated upon improper *disclosures* are nonetheless still violated where no disclosure has occurred, no disclosure was intended, and no disclosure was desired, by anyone involved.

To be sure, Steve Tomlinson made a bad judgment. Whether in hindsight his conduct was "stupid" is fair for discussion, but it is not the stuff of securities regulation and disciplinary proceedings. His mistake, well intentioned and limited in its scope, was that he put a truly powerful weapon in the hands of the Corning Credit Union, a weapon which they used mightily and without mercy to destroy Steve Tomlinson. Under the guise of a claim of "security breach" – which they knew was technical at best, and after Wachovia had already denied ever using or seeing the data – the Corning Credit Union sent out a written notice in December 2008 apparently to ***every account on its books*** concerning Tomlinson's "possible" possession of their private information, alluding to misconduct and piously offering credit monitoring services that it knew were not needed. The Credit Union had never made such a mailing before in comparable circumstances and lurid innuendo in a telephone campaign that followed accomplished everything the Credit Union wanted regarding Steve Tomlinson and more.

CONCLUSION

Unfortunately, securities industries – like all others – has its share of wrongdoers, people for whom regulations are to be ignored, for whom personal gain is the only goal. Steve Tomlinson is not one of those people. The resources and assets of the Department of Enforcement invested in this case, with all due respect to the staff, is seriously misplaced. If Steve Tomlinson intended to wrongfully use the information in his possession, he would have done so in the first 24 hours at his new firm. But instead, what he did is simply the best proof

there can be of what he intended: he only printed out mailing labels for just the people that he had previously served. That act is not a violation of any FINRA Rule 2110 or even a behavioral code.

We ask the Panel to deny the charge and to allow Steve Tomlinson to attempt to rebuild his career.

Date: July 30, 2012

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