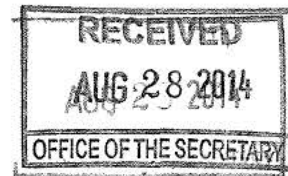


UNITED STATES OF AMERICA  
SECURITIES AND EXCHANGE COMMISSION

**HARD COPY**



In the Matter of the Application of  
WILLIAM M DRATEL AND THE DRATEL GROUP INC

For Review of Disciplinary Action Taken By

FINRA

File No. 3-15869

**APPELLANT'S REPLY BRIEF IN  
SUPPORT OF APPEAL**

August 22, 2014

To: The Office of the Secretary  
Securities and Exchange Commission  
100 F Street NE  
Mail Stop 1090 - Room 10915  
Washington, DC 20549

William M. Dratel  
For Appellants

William M. Dratel and The Dratel Group, Inc.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

# Table Of Contents

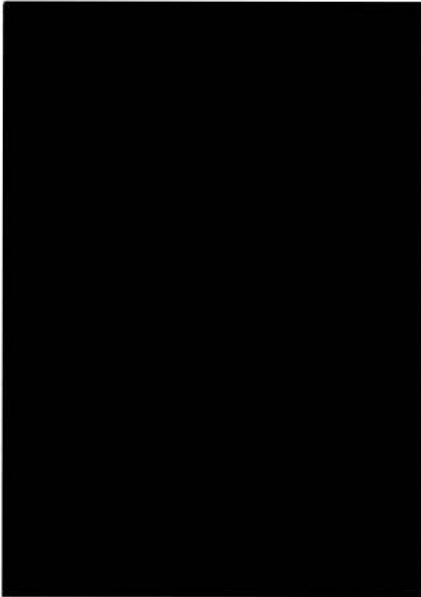
LIST OF EXHIBITS.....	2
Preliminary Statement .....	3
I. Overview.....	3
II. The Witnesses: Hatzfeld and Perez .....	4
III. Trading the Same Stocks on the Same Days as Customers .....	9
IV. Delayed Allocations and Tickets.....	10
V. Increase in Day-Trading, Use of Average Price Account, Customer Performance, and RTP.....	12
VI. Day Trade Versus Two-Day Trade .....	14
VII. Cross-Trades.....	14
VIII. The Customers .....	15
IX. The Dissent.....	18
X. The Lesser Allegations.....	19
XII. DGI and Dratel Disciplinary History.....	19
Conclusion .....	20

LIST OF EXHIBITS

AX-1: Dissent in Extended Hearing Panel Decision Dated September 28, 2012

AX-2: Letters From Customers Allegedly Harmed

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.



AX-3: CD of FINRA Hearing of December 13-22, 2011

AX-4: Page 27 of "DOE Expert Report"

## Preliminary Statement

Appellants The Dratel Group, Inc. ("DGI") and William M. Dratel ("Dratel"), respectfully submit their appellant's reply brief in support of appeal. In this case, it was, in fact the Department of Enforcement ("DOE") and the panel majority that engaged in cherry-picking, not Dratel. DOE cherry-picked and distorted data to manipulate and falsify results. The majority also deceitfully cherry-picked and distorted the record to manufacture an unjust and insupportable decision that should be reversed and vacated in its entirety and with prejudice.

### I. Overview

FINRA's brief, dated August 14, 2014, talks about "abundant evidence" and "victimized customers" among other conclusions that are wholly unsupported by the established facts of the case. FINRA's entire case relies on the fact that for a nine-month period in 2006, Dratel made \$489,000 day-trading and his customers lost money day-trading. They could never explain why they picked this one nine-month period as opposed to the eight years (96 months) from 1999-2006 when Dratel had the exact same systems in place and other than those nine months, his customers made more money day-trading than Dratel himself.

Dratel presented un rebutted evidence showing that during the entire period from 1999-2006, the 25 accounts at issue made approximately \$1.7 million day-trading. During the same period, Dratel made \$860,000 from day-trading. Dratel further established that from 1999-2004, these 25 accounts made \$1,783,000 while Dratel made \$374,000 in day-trading profits. Digging deeper, from 2001-2004, the 25 accounts made more than \$1.1 million day-trading while Dratel *lost* over \$220,000 in day-trading.

From January 2005 through March 31, 2006, the 25 accounts made \$159,529 day-trading while Dratel made \$155,355 in day-trading profits. From 1999-2006, **all of the same trading, allocation, OMS, Finet, ticket-writing, and data entry systems were in effect at DGI**. Additionally, from 1999-2006, Dratel was a one-man shop and he himself exercised discretionary authority over his clients' accounts. During the same time, Dratel always used the average price account.

Although day-trading activity increased from October 2005 through December 2006,(from lower levels in early 2005), there was no evidence presented by the DOE that this activity was more than at any other time between 1999 and 2004. The prior paragraph lists most of the criteria used by the DOE to allege cherry-picking. It is in fact they who cherry-picked a nine-month period out of 96 months (during which identical trading ,allocation and data input systems were in effect at DGI) where Dratel made more than his customers. Before this difference in day-trading profits between Dratel and his customers for FINRA'S " relevant time period", FINRA had no problem with any of Dratel's trading procedures and, in fact, none of them are violations.

## II. The Witnesses: Hatzfeld and Perez

Hatzfeld was FINRA's point person and main witness in this case. Perez was a DGI employee for parts of 2005 and 2006. In its brief, FINRA cannot seem to say enough times how "credible" Hatzfeld was as a witness. As such, FINRA must rely on speculation manufactured from Hatzfeld's testimony. On cross-examination, Hatzfeld demonstrated that she had nothing relevant to add to the case other than rank speculation, that she destroyed or failed to maintain documents and may have altered others, that she intentionally engaged in a selective and misleading analysis, and that she could not even explain what some of her own exhibits meant [Hatzfeld cross, Tr. 852,3-895; 1250,20-1317].

An objective reading of her testimony finds it in tatters. For example, FINRA in their brief makes a cause célèbre over the “numerous” “falsified and manipulated” tickets produced by Dratel. So much so that Hatzfeld said that (because there were ‘so many’ in her opinion) she could not trust the reliability of Dratel’s documents. To see if this charge holds water, let us look at Hatzfeld’s own testimony with regard to “manipulated and falsified” order tickets:

Irwin Wertz (Dratel's attorney): I think during the first part of your testimony, which was last week, and this morning you went over some tickets that had a disparity in the time stamp, right?

Patricia Hatzfeld: Yes.

IW: I think we went over now the count was maybe 10, right, give or take?

PH: It could have been more than that.

IW: Okay. So maybe it was 12, is that fair?

PH: It could be - I would say anywhere from 10 to 20, 12 to 20. [Tr. 1250, 22-1251,10]

\* \* \*

IW: I am asking you as the lead investigator who just looked at 12 instances that prompted you to do something, do you know, as we sit here today, how many tickets you looked at for 2006 for The Dratel Group?

PH: A lot. There were a couple of boxes.

IW: Only a couple of boxes?

PH: Of tickets, of order tickets.

IW: For 2006?

PH: Yes.

IW: As we sit here today, it's your testimony that there were less than 10,000 order tickets for The Dratel Group?

PH: I didn't count them. [Tr. 1252, 16-1253,5]

\* \* \*

IW: Do you know, can you tell me if any of those [mistamped[sic] tickets] were written by Billy Dratel?

PH: If any of them were written - we could look at them, I could tell you.

IW: Do you know though?

PH: I don't believe so. [Tr. 872, 21-873,2]

\* \* \*

PH: When I looked at the customer order tickets today they looked like they were written by one of the administrative assistants?

IW: Okay. And administrative assistants make errors sometimes, don't they?

PH: I guess so. [Tr. 837,6-11]

Can any objective person believe that between 12 and 20 *clerical* mistakes out of the 35,000 tickets produced by Dratel in 2005 and 2006 is a cause for the conclusions by Hatzfeld about the reliability of Dratel's documentation? Dratel's clerical staff made an average of one mistake for every 1,700 tickets written. Not only is this not cause for concern, but it is an astonishingly good record of accuracy by Dratel's staff. Yet FINRA's brief is replete with innuendo about "fraudulent and "manipulated" tickets.

Now, let us go to the issue of the "as-ofs." Hatzfeld claimed that one of the impetuses for her investigation was a "report regarding a significant number of as-of trades executed by DGI." No such report was ever produced, Hatzfeld could not explain the two exhibits she used on this issue (which, if anything, demonstrated DGI's stellar performance with regards to as-ofs), and each of the purported as-of "blips" were easily explained and supported by Dratel, Lopez, Duncan, and Perez [See e.g. Tr. 888,10-891,12; 1262,16-1264,23; 1259,10-1260,15; 1253,9-1285]. Hatzfeld testified that she could not harmonize DGI's explanations with her cryptic description of the information she purportedly obtained from OPCO (DGI's clearing broker), but she never provided any document or witness to support such an unreliable and self-serving hearsay [Tr. 1300,20-1304,19]. Hatzfeld repeatedly refused to answer the question regarding the profits and losses of the as-ofs, even when directly asked by two different panelists.

**Q. (HOLLEMAN): Were the as-of trades more profitable for Mr. Dratel personally than the trades that were entered without a mistake?**

**A. The as-of trades, the focus of the as-of trade investigation was to find out – the stock was – the allocation was delayed the next day and that was for a number of customers, not favoring others... [Tr. 1304,20-1305,21 and 1308,12-1309,5 for same Hearing Officer question**

Yet Hatzfeld had, in fact, done a P&L on the As Of trades and well knew the answer.

**Q. I.WELTZ** Now, with respect to the as-of trades, did you do any type of P&L to see whether – who was winning and who was losing on the as-of trades?

**A.** Yes.

**Q.** Is that in the binder anywhere?

**A.** I don't believe so. I have individual analysis of each stock.

**Q.** Okay. But we don't, right?

**A.** I don't think so.

[Colloquy]

**Q.** But it's not in the binder, right? And you would think that if there was some improper purpose for the as-of, you would want to show that Dratel was making money and his clients were losing money, right?

**A.** For the as-ofs, that was not my –

**Q.** Okay.

**A.** – that was not my focus. [Tr. 893,19-894,17]

**A.** Yes.

**Q.** Why is that?

So we see that instead of admitting that the as-of trades were profitable for DGI's customers, Hatzfeld repeated FINRA's false claim that Dratel was favoring some customers over others, a theory flatly rejected by even the DOE's purported expert [Tr. 732,13-15]. Add to that the fact that Dratel and his staff provided un rebutted testimony concerning the reasons for the as-ofs and that Dratel was not happy about them, these facts destroy any contention that Dratel sought to delay allocations. As Perez (whom FINRA found credible yet ignored the majority of her testimony--- which supported Dratel) testified:

**Q.** Did it take some time for you to get the procedure down with respect to OMS and FINET?

**A.** Yes.

**Q.** It was new to you?

**A.** Right. [Tr. 925,15-19]<sup>2</sup>

**Q.** And I think you testified that 40 percent of the time the as-ofs were based on your own human error. Do you agree with that?



- A. Yes, I did say that. [Tr. 926,21-25]
- Q. I believe you testified that as-of trades happened once a month, there would be one a month?
- A. Yes.
- Q. And when there was an as-of trade Mr. Dratel would make sure to get you the ticket or the allocation sheet immediately the next morning, right?
- A. Correct.
- Q. That was something he was not happy about, right?
- A. No. [Tr. 928,17-929,4]

When confronted with Perez's testimony that 40% of the as-of trades were mistakes on her part, Hatzfeld attempted to get around that testimony only to grudgingly relent that she "would agree with whatever is written on the document" [Tr. 866,18-877,9]. Hatzfeld also claimed that she had evidence disputing the testimony of each of the former employees that the FINET system shut down often due to problems out of DGI's control. She claimed that this evidence was "in the documents," but no such documents ever surfaced [Tr. 1741,13-1745,6]. This also means that Hatzfeld is calling Perez a liar.

Next, let us discuss the boxes of documents that FINRA ( indignantly) promised to produce in order to respond to Dratel's assertions that they were not copies of originals and that they had been altered. Despite DOE's representations that they would get the originals "from downstairs," they did not comply with their representation, never produced the documents, and never established that the fax hashings were genuine and unaltered. Without the promised production of the originals, *the panel, not Dratel*, was left to speculate about theoretical possibilities (not facts) [Tr. 1741,13-1745,6]. Hatzfeld's testimony on the subject was evasive and untrustworthy, suggesting that there was a good reason that the DOE did not produce the documents while unsuccessfully trying to prove that the documents copied by Hatzfeld had not been altered. Hatzfeld and Perez's testimonies were a disaster for FINRA, so they needed to either ignore or misstate the actual words of these witnesses.

### III. Trading the Same Stocks on the Same Days as Customers

FINRA's brief makes many mentions of Dratel often trading the same stock on the same day as his customers and getting better prices. This is one of the pillars of FINRA's allegations of cherry-picking; they state it early and often. ***The problem for FINRA is that this statement is a lie and they know it.*** Both parties agreed that there were 1,701 day trades between Dratel and his customers during the relevant time period ( RTP). FINRA states that on 27 occasions, Dratel and his customers traded the same stock on the same day and Dratel got better prices every time. Even if this were true, ***(it is not)***, it would mean that Dratel traded the same stock as his customers 1.5% of the time. ***1.5% is not equal to often or even sometimes.*** Of these 27 instances cited by FINRA, they well know that in 22 of them, Dratel and his customers got ***the exact same price on both the buy and the sell.*** If Dratel's losses were smaller or profits bigger on those 22 trades (usually by an amount of \$10-20), it was because Dratel ***charged himself slightly less commission on these trades.*** FINRA's insistence on repeating a knowing falsehood about these 22 trades shows either ignorance of the actual prices of the 22 trades, a shocking lack of knowledge between price and net proceeds of a trade, or pure old disdain for the facts.

On page 27 of his report (AX-4), FINRA's expert admits that he found just ***ONE*** instance of Dratel getting a better price on the same stock on the same day as a customer. This instance was explained by Dratel when he showed that for the trade in question, he had bought and sold a stock before 11 a.m. and then bought and sold it for a customer in a completely separate trade more than three hours later. So, to recap, ***out of 1701 day trades, on 1700 of them Dratel did not trade in the same stock as the customers or the 1.5% of the time that he did, he did not receive a better price.*** This allegation is one of the pillars of FINRA's case.

It is time that this ridiculous and untrue allegation is put to bed. When something happens one out of 1,701 times, (and the one instance is easily explained) it is almost nonexistent in comparison to

FINRA's characterization of it being 'many', 'numerous' or whatever other misrepresentation FINRA uses to characterize it.

#### IV. Delayed Allocations and Tickets

FINRA repeatedly asserts that because Dratel's clerical staff received allocations throughout the day but would hold them to input later on, Dratel had not allocated the trades before their execution. There was absolutely no evidence presented by FINRA to show that this happened. The DOE called Perez to try to improperly bolster Hatzfeld's speculative and unsubstantiated testimony on the contrived time stamp and allocation allegations. The facts are that Perez never witnessed anyone doing anything wrong at DGI, never suspected Dratel of any wrongdoing, and was never instructed by Dratel to backdate or fabricate any documents or do anything improper [Tr. 918,2-919,9; 924,22-925,7; 929,23-930,8].

As the Dissent correctly stated, the majority intentionally confused the times allocations were *made* as opposed to *transmitted*. Dratel presented contemporaneous timestamped order tickets, allocation sheets, OPCO reports, OMS records, and his testimony in order to support the fact that he did not delay allocations. The DOE presented no testimony, evidence, or rule to suggest that there must be a contemporaneous "fax hashing" in order for there to be a timely and proper allocation [Tr. 1991,13-1992,4]. The FINET system stays open until 7 p.m. for a reason; Wall Street does trade processing after the close of the market. Otherwise, FINET (an OPCO system which DGI had no control of) would shut down at 4 p.m. [Tr. 1619,19-1620,2]. The majority's inference of impropriety based on the fact that Dratel had "opportunity" is pure speculation disputed by Dratel, DGI's former employees, and the record itself.

Dratel did not delay allocations, never created phony order tickets after the fact, and never instructed anyone to alter time stamps (all confirmed by his former employees) [Tr. 1329,12-16; 1652,21-1654,8; 1366,2-6]. The contemporaneous time stamp order tickets show the time the customers purchased, sold, shorted, and or covered stocks [Tr. 1366,2-14; 1203,23-1204,7].

Dratel also testified about every single DOE exhibit admitted into evidence that included any allocation sheets, order tickets, or other trade data, and established, without contradiction, that there were no improprieties, that the exhibits were often irrelevant or did not show what the DOE had implied, that the DOE's summary exhibits contained numerous mistakes, and that most of them had nothing to do with day-trading [Tr. 1385,23-1416,14; 1416,18-1475,8; 1622,15-1746,9].

FINRA witnessed Hatzfeld's collapse while testifying on this matter, so they hedged by placing the focus on Perez. Perez did not support the majority's attribution of delayed allocation to Dratel. To the contrary, Perez testified in response to a leading and suggestive DOE question that the time of the day she received the allocations or "otherside instructions...varied" [Tr. 725,19-727,2]. On cross, her testimony is as follows:

Testimony of Perez

- Q. The instructions, the allocation instructions [would] come throughout the day, right?
- A. Right.
- Q. And that could be at any time?
- A. Right.
- Q. And no matter what time Mr. Dratel gave the instructions you waited until the end of the day to process through FINET, right?
- A. Correct.
- Q. So you had the allocation instructions [for] the customers, but you waited until the end of the day to process it?
- A. There was – yes. [Tr. 930,15-931,3]

FINRA also states incorrectly that there was no record of Dratel filling out allocation sheets throughout the day. The indisputable fact is that Dratel provided FINRA with every ticket, allocation, and OMS sheet they asked for, and not once did FINRA say that there were any missing allocation sheets.

One final note about the testimony of Perez on this issue: Perez explained that *she* rolled back the time stamp machine because sometimes there was so much trading that she could not physically stamp everything at once. It was a processing measure to make sure that the previous instructions to stamp the ticket were carried out, **and she never spoke to Dratel about this** [Tr. 933,10-934,4; 918,2-919,9]. Perez had no prior experience with FINET, Perez and Duncan made errors, and there were frequent technical problems with FINET [Tr. 922,19-924,18]. The only times Dratel ever reprimanded Perez was if she input an order incorrectly or she left out a trade [Tr. 925,15-926,14]. Perez said that when she made a mistake with data entry, Dratel would make sure that she promptly corrected it [Tr. 926,15-25; 928,21-929,3].

## **V. Increase in Day-Trading, Use of Average Price Account, Customer Performance, and RTP**

FINRA alleges that another problem was that Dratel's day-trading, both for himself and customers, increased dramatically from its January through September 2005 rate. The DOE presented no evidence to show that the rate of day-trading in 2006 was any more than during the periods of 1999-2004, when the same trading and allocation systems were in place at DGI.. Secondly, Dratel clearly explained and was corroborated by Charles Lowlicht that in mid 2005, he had started to subscribe to theflyonthewall.com. This service provided Dratel, a veteran day-trader of over 30 years, with a tremendous amount of day-trading stocks each day. Dratel explained the research he conducted on a daily basis that culminated in his review of the Fly website. He gave the reasons he traded certain stocks

for himself and others for himself as well as his aggressive personal approach to day-trading. Dratel went over the documents (including the specific Fly on the Wall recommendations) in great detail, the mechanics of his day-trading, and how he or his staff completed and contemporaneously time-stamped order tickets and prepared allocation instruction sheets [Tr. 1398,16-25; 1362,11-1364,22; 1016,11-1111,17; 1170,5-1213; 1325,21-1382; 92,9-93,6; 96,7-100,4; 111,16-112,6; 117,14-16; 331,17-334,17].

Dratel consistently testified without contradiction that he used the average price account because it was simpler, cheaper (for both DGI and its customers), generated fewer confirms and order tickets, provided better executions at an average price, facilitated position building, and it was the way DGI had always conducted trading [Tr. 565,9-566,8; 487,11-497,23; 68,17-69,12; 71,16-72,7; 85,20-90,16; 315,11-323,21; 499,6-501,20; 1172,10-13; 1961,11-14; 1356,7-15; 1566,18-25]. Dratel established that ***using the average price account saved DGI and its customers over \$25,000 in 2006 alone from just day-trading.*** As even the DOE admits, day-trading accounted for under 10% of DGI's business during the RTP. It stands to reason ***that if DGI and its customers saved \$25,000 by using the average price account for less than 10% of its trades, the amount saved on the other 90% of DGI's trading was well into six figures.***

On page 28 of FINRA's brief, among other places, they purposely misrepresent the trading results for DGI's customers. The incontrovertible facts are that the customers mentioned in the DOE's complaint *made* an average of 26.5% in their accounts for the year 2006. This performance was better than the Dow Jones, S&P, or NASDAQ for that year. Unlike the DOE and the majority, Dratel provided a proper basis for the true relevant time period (RTP), 1999-2006, not just a nine-month period in 2006. Dratel and these 25 accounts have been day-trading through the average price account, with Dratel following the same trading procedures and mechanics throughout the RTP.

The DOE and the majority's attempt to justify their arbitrary and ever-shifting RTP is wholly unsupported. DOE says that in October 2005, Dratel's day-trading for himself and his customers

increased dramatically and his profits skyrocketed. The truth is as follows: between October and December 2005, Dratel had day-trading profits of \$45,078, the 25 accounts profits of \$42,415. Thus the suggestion of “skyrocketing profits” in October 2005 is false. Further, as Dratel and Lowlicht testified, the day-trading increased in this period because of the Fly website, which gave him many more day-trading ideas [Tr. 1025,11-21; 1012,20-1016,10; 1014,6-12; 1009,12-1012,9; 243,19-245,5; 2012,24-2015,12].

## VI. Day Trade Versus Two-Day Trade

In footnote five on page five of FINRA’s brief, they say that in its decision, the hearing panel referred to a day trade as “any trade done within one day or two days”. This highlights how arbitrary their whole case is. A day-trade is a trade bought and sold within the same market session. Any position held more than a day is subject to the vagaries of the market and is out of the control of anyone. It is clear that the DOE redefined the term day-trade because adding in the two-day trades made the customers’ results( for purposes of their case) much worse. A two-day trade is nothing resembling a day-trade. A stock can be sold on the second day of holding it for a multitude of reasons, including but not limited to: bad news on the security, a sudden change in the stock market itself, re-examination of original premise for buying, news on a related stock in the same sector, etc. To include two-day trades with day-trades is an arbitrary farce perpetrated by FINRA and the DOE.

## VII. Cross-Trades

On footnote 23 of page 31 of FINRA’s brief, they allude to cross-trades made by Dratel in 2004 and 2005 where he suffered, *for himself*, losses to minimize the losses of his customers, and they say it

was a contributing factor to Dratel's strained financial situation. FINRA's theory on the cross-trades, that they are somehow nefarious and self-serving to Dratel is idiotic. First of all, the cross-trades occurred in 2004 and early 2005, and thus are not in the RTP. The majority, however had no problem with allowing them in as evidence. These trades were not customer day-trades, but were executed by Dratel because he felt, as a fiduciary, that his customers should not suffer for his poor judgment with regard to two stocks (Nortel and Charter) that later went bankrupt. Dratel and DGI never hid these trades, as customers received confirms and statements for all of them.

Regarding Dratel's financial position, contrary to DOE and the majority's contentions, they failed to establish that Dratel was having financial problems in 2005 and 2006 [Tr. 263,3-5; 521,25-522,22]. The allegation is nonsense, and they failed to present any type of even cursory review of Dratel's assets and income necessary to even make such a claim. In order to conclude that Dratel was in financial distress in 2006, one would have to believe that: A). Willingly, in 2004 and 2005, Dratel did cross-trades with customers that cost him \$200,000 in his IRAs with no tax advantage, B). In 2006, he stole the money back from customers by cherry-picking day-trades for his own account and was taxed at the highest rate on those gains, C). Paid these same customers as per DOE's complaint, over \$211,000 between 2006 and 2010 in after-tax money. Dratel would have to be a madman to conduct his business in this fashion. It seems, according to FINRA and the DOE, whether Dratel is giving customers his own money or making more than they are on day-trading for a nine-month period out of eight years, he is doing something wrong.

## VIII. The Customers

FINRA based their findings on a total of 25 accounts that Dratel allegedly cheated with his cherry-picking scheme. FINRA portrays Dratel as a blight on the securities industry, and his customers as idiots who



know nothing. FINRA's decisions give no weight whatsoever to the fact that two of the allegedly harmed customers testified, in support of Dratel, without cross-examination from the DOE. Not only that, FINRA then mischaracterized their testimonies in blatant fashion. They say that the customers testified about the activity in their accounts, when that is not true. In fact, the customers testified about Dratel's integrity and character.

The two customers, [REDACTED] and [REDACTED], are named in the DOE's expert report as defrauded customers [REDACTED] has known Dratel for over 25 years, and described him as, "a man of high character and morals" [Tr. 2128-2130]. [REDACTED], a New York City attorney, has known Dratel since college and testified that Dratel "is the most honest person I think that I know" [Tr. 2130-2132]. Lowlicht, Dratel's former partner in DGI, has known Dratel for 49 years. Lowlicht's testimony supported and confirmed Dratel's testimony concerning theflyonthewall.com, that Dratel cares about his customers, and is "a very honest person" [Tr. 2011-2017].

FINRA's briefs in this case have consistently talked about Dratel's willingness "to victimize friends and family," take advantage of customers, etc. as if his customers are sheep being led to slaughter. The support Dratel has received from his customers belies this ridiculous DOE notion. The DOE's case is based on a total of 25 accounts. Because in some cases, multiple accounts are held by one customer, the total number of customers is in reality 21. Of these 21 customers, two are deceased; we are left with 19 customers. Below is a list of 15 of those customers, comprising 19 of those accounts, with letters attached (AX-2) attesting to the Billy Dratel they know and, in some cases, have known for over 50 years. FINRA glibly demeans the letters by calling them "short," as if that has any bearing on their content or relevance. FINRA also states, in one of their 31 cases cited (none of which have remotely the same facts as this case), that a lack of customer complaints does not mean that the allegations have not taken place. Equating a "lack of complaints" with actual testimony and letters in support of Dratel is farcical.

	Name	Years Known	Occupation
1	[REDACTED]	15	Chief Rabbi, Temple Beth Am, Jupiter FL
2	[REDACTED]	49	Former President, Darcel Group, New York NY
3	[REDACTED] ([REDACTED]'s daughter)	55	Psychologist, New York NY
4	[REDACTED] (Two accounts)	59	Retired, New York NY
5	[REDACTED]	39	Attorney, Named Partner, New York NY
6	[REDACTED]	46	Retired Professional Photographer, New York NY
7	[REDACTED] (Two accounts)	30	President, Lawall Communications, Maplewood NJ
8	[REDACTED] (Two accounts)	19	Actress, Voice Actress, New York NY
9	[REDACTED]	31	Retired, Boynton Beach FL
10	[REDACTED] (Two accounts)	48	Attorney, Partner, Venable, San Francisco CA
11	[REDACTED]	45	Office Manager, Sprechman Law Firm, Miami FL
12	[REDACTED]	22	Owner, Clothing Manufacturer and Importer, New York NY
13	[REDACTED]	44	Attorney, Senior Partner, Farmingdale NY
14	[REDACTED]	24	Attorney, Senior Partner, East Hampton NY
15	[REDACTED]	39	Attorney, UJA-Federation, New York NY

All fifteen of the customers were aware of the FINRA and NAC decisions at the time the letters were composed.

These letters prove how far from the facts and testimony FINRA has strayed with its innuendo and wholly unsupported conclusions. Not only that, these unfounded conclusions are a crucial part of their vindictive decision. If, by FINRA'S own admission --that-their case is circumstantial, how can these letters and testimony be construed as being even remotely close to proving scienter, is baffling.

## IX. The Dissent

The Dissent found that FINRA “did not present a prima facie case” and found their circumstantial evidence unreliable. On page 66, paragraph 3, the dissenter stated that since there was no direct evidence of cherry picking, the case was circumstantial and built exclusively on statistics that “did not establish a credible case.”

On page 67 he states that in other cherry-picking cases the RTP began with either the opening of the account at issue or the hiring of the problem employee. “Further when a case did not provide information about a triggering event, sample period of four or seven years were used. A different time frame could provide very different results. For example Dratel maintains that from 1999-2006 his clients made \$1.7 million overall, and he made \$860,000 from day trading.” He is saying that the RTP should be 1999-2006, not the cherry-picked nine month period chosen by FINRA. On page 68 The Dissent notes that “DOE’s methodology in counting trades was not explained nor defended. Their expert was unable to defend his methodology and repeatedly conceded that there were many ways to compute their statistics without explaining why the method he chose was appropriate...The expert’s inability to defend his methodology undermined the reliability and objectivity of his calculations.”

On page 69 The Dissent properly agrees that the Slocum Case is the proper analog to this case, as opposed to the thirty one cases cited by FINRA in its latest brief.

Also on page 69, “Perez, Lopez, and Duncan...Testified that they had no knowledge of Dratel’s alleged cherry-picking. [They] also testified that **they had never seen Dratel do anything improper, nor direct them to do anything improper.** Because none of them are currently employed by DGI (and, in fact, Duncan and Lopez had recently been laid off) they had no motivation to lie.”

Also on page 69 he says, “Lastly, Dratel’s clients were family, friends, and long term family friends. Dratel has been a broker for many years, and there was no evidence of his intent to harm any of his clients...his customer cross trades at above market prices, and payments to his customers...demonstrate a concern for his customers rather than an intent to harm them.”

Faced with this scathing Dissent, FINRA misstates its words. FINRA makes a big deal of the fact that The Dissent was based on the panelist’s belief that circumstantial evidence should not be used to decide the case. In reality, that is not at all what he said. The dissenting panelist never stated that he had a problem with circumstantial evidence per se. His problem was that **FINRA’s circumstantial evidence was unreliable, unsupported by the facts, and in a word, completely unconvincing.** Once again it must be noted that on page 70 the dissenter states, “I do not think Enforcement presented a prima facie case.”

## X. The Lesser Allegations

- A. DGI willfully failed to update customer information.
- Each December, as Dratel showed in his testimony, the customer statements included an opportunity to update their financial information
- B. DGI did not get Photo ID for new accounts
- This requirement was put in by Dratel and not FINRA
  - Upon being informed, DGI immediately remedied this problem
- C. AML Procedures
- DGI had extensive AML procedures in place that adequately fulfilled its requirements
  - Dratel generally -in the years at issue- received at most, one check per month from clients
- D. Dratel's lack of supervision of himself
- This is preposterous on its face, and DGI was never told how to satisfy FINRA in this regard, despite requesting guidance on numerous occasions.

These allegations, even if true, should have been no more than exceptions on an Exit Report, and not rolled up into a frivolous cherry-picking allegation.

## XII. DGI and Dratel Disciplinary History

At the time of the hearing DGI and Dratel had been in business for over thirty one years. FINRA mentions two customer complaints that were settled over that extended time period. They fail to mention that *in neither case did the settlement represent more than 10% of the complainant's damage request*. Obviously, these were suits brought for their nuisance value and nothing more.

The two AWCs had nothing to do with customers whatsoever. They were technical in nature

We find it laughable that FINRA should characterize Dratel and DGI as such terrible representations of the brokerage industry, when after all this, his customers all continue to stand by him loyally. Who exactly does FINRA hold up as a beacon of light in our industry? Perhaps Goldman Sachs? Bank of America? Citi Bank? J.P Morgan? Maybe Lehman Brothers or Bear Stearns? All of these companies (with the exception of Bear Stearns and Lehman) are all still free to do business with customers after having ***admitted to cheating their customers out of hundreds and hundreds of billions of dollars.***

Dratel and DGI stand by their integrity with respect to their business practices and customers.

### Conclusion

At the very best, after years and years of investigation and cutting through their morass of statistical manipulation/factual distortion, all that remains of DOE's shattered cherry-picking case is rank and unsupported speculation about between 12-20 order ticket mistakes and irrelevant fax hashings. As described in The Dissent's rebuke of DOE and the majority, DOE's "unreliable", "arbitrary", and "manipulated" statistics, that fail to even present a "prima facie case of cherry-picking."

FINRA's criteria for their allegations of DGI and Dratel's cherry picking, as noted above, consist of either trading and allocation systems that had been in place for as many as twenty-six years at DGI and are not in and of themselves violations; or allegations based on statistics that have been proven to be patently false. This case was brought by a DOE that decided they did not like Dratel -or the way he did business- and would disregard the facts that were right in front of their nose. If not for the brief nine month period out of more than eight years that Dratel made money day trading (while his customers lost) this would not have been the colossal waste of time and resources that it has proven to be for the last eight years.

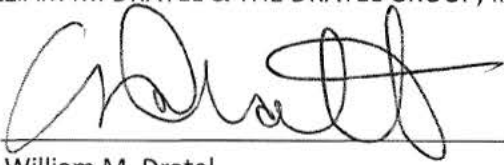
We respectfully request that the SEC reverse FINRA's decision with prejudice.

Dated: Southold, New York

August 22, 2014

Respectfully submitted,

WILLIAM M. DRATEL & THE DRATEL GROUP, INC.

By:   
William M. Dratel

Southold, New York

August 22, 2014



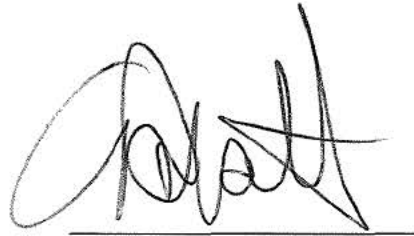
For Respondents  
The Dratel Group, Inc. and  
William M. Dratel

Southold, New York

August 22, 2014

Certificate of Compliance

I, William M Dratel, certify that this Brief in Opposition to Application for Review (File NO. 3-15869) complies with the length limitation set forth in SEC Rule of Practice 450 (c). I have relied on the word count feature of Microsoft Word in verifying that the brief contains 6,301 words.



William M. Dratel  
The Dratel Group Inc.

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

## DISSENT

Panelist, dissenting, in part:

I respectfully dissent with respect to the finding of liability on the First Cause of Action, the alleged fraudulent allocation scheme (cherry-picking). I find DGI and Dratel liable for the record keeping violations described in the Second and Third Causes of Action; however, my finding of liability does not relate to the fraudulent day-trading allocation scheme in the First Cause of Action. I also dissent as to the sanctions for the Second, Third, Fifth, and Seventh Causes of Action.

Dratel has been day trading for himself and customers since at least 1999, and has always used the Firm Account as a price average account; there was no change in the way he conducted his business during the Relevant Period, and no change in the mechanics of his record keeping or order transmission. Enforcement's investigation was triggered by an increase in As-Of Trades, which were unconnected to cherry-picking, as were the multitude of problems with order tickets and altered or incorrect time-stamps. Since there was no direct evidence of cherry-picking, Enforcement's entire case was circumstantial and built exclusively on the statistical unlikelihood of Dratel's day trading success being attributable to anything other than cherry-picking. However, I believe that Enforcement did not establish a credible statistical case. It is axiomatic that the accuracy of statistics is dependent on the adequacy of the sample size. Here, Enforcement's expert appeared to "cherry-pick" data to obtain the desired results, leading me to find that the circumstantial evidence (i.e., the statistical difference between Dratel's success rate and his customers' losses) was unreliable.



To begin, the Relevant Period of October 2005 through December 2006, as well as the previous nine months used for comparison purposes, was arbitrary. The start date was determined by an increase in As-Of Trades that appeared to be unrelated to the alleged cherry-picking. Further, Dratel had engaged in day trading for his own accounts and DGI's discretionary customer accounts for at least seven years, and there was no testimony that either the 15-month Relevant Period or the prior nine months used for comparison was a representative sample size. My review of other "cherry-picking" cases reveals that the relevant period began either with (1) the opening of an account at issue<sup>286</sup> or (2) the hiring of a problem employee.<sup>287</sup> Further, when a case did not provide information about a triggering event, sample periods of four or seven years were used.<sup>288</sup> A different time-frame could produce very different results. For example, Dratel maintains that from 1999 through 2006, his clients made \$1.7 million overall and he made \$860,000 from day trading.

Second, there was further arbitrary manipulation of the sample size: Enforcement's expert reduced the number of accounts he included in his statistical analysis of day trading from 40 to 25 (eight of which were profitable), because 15 accounts engaged in only one or two day trades during the Relevant Period. No other explanation was given to justify the exclusion of these accounts. It is easy to see that reducing an already small sample size arbitrarily can result in wildly distorted results. For

---

<sup>286</sup> *James C. Dawson*, Admin. Proc. File No. 3-13579, 2010 SEC LEXIS 2561 (July 23, 2010) (review period of April 2003 through December 2005, when the clearing broker discovered suspicious trading); *Stephen Jay Mermelstien*, Admin. Proc. File No. 3-13713, 2009 SEC LEXIS 4164 (Dec. 14, 2009) (review period of August 2000 through December 2003, beginning with the launching the hedge fund).

<sup>287</sup> *Keith Springer*, 2002 SEC LEXIS 364 (review period of September 1995 through March 2006); *SEC v. K.W. Brown*, 555 F. Supp. 2d 1275, 1304 (review period of September 2002 through June 2006).

<sup>288</sup> *See Melhado, Flynn & Assoc.*, Admin. Proc. File No. 3-12574, 2011 SEC LEXIS 1662 (May 11, 2011) (utilizing a review period of January 2001 through April 2005); *SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144 (D.R.I. 2004) (review period was 1996-2000).

AX - 1

example, a selection of ten accounts (25% of the total) that happened to include the eight profitable accounts could have led to a finding that 80% of Respondents' clients made money on day trades. Conversely, if a broker decided to allocate all losing trades to the customers who only day traded once or twice, the results could have similarly skewed the statistics because these accounts would have been overlooked. The elimination of accounts that engaged in only one or two day trades seems particularly problematic because Enforcement's theory was that Respondent Dratel sprinkled losing day trades around to different accounts in order to help conceal his cherry-picking. It should also be noted that Enforcement's expert, while eliminating 15 accounts because of the small number of day trades, did not eliminate the single instance in which Dratel obtained a better day-trading price than his customer.

Third, Enforcement's methodology in counting trades was not explained or defended. When Respondents questioned the use of trades rather than stocks to compute gains and losses, the expert was unable to defend his methodology, and repeatedly conceded that there were many ways to compute the statistics without explaining why the method he chose was appropriate. The "cherry-picking" cases I reviewed all seem to discuss "trades," although the methodology does not seem to have been disputed; however, the expert's inability to defend his methodology undermined the reliability and objectivity of his calculations.

Fourth, there were additional errors in the expert report that further undermined the expert's credibility. For example, at least one trade was not a day trade.

In *SEC v. Slocum, Gordon & Co.*, the court stated that the “mere opportunity for possible fraud does not translate into actual wrongdoing.”<sup>289</sup> The court did not find cherry-picking despite a witness who testified directly about the cherry-picking, the firm’s 98% success rate versus a 49% unrealized customer loss rate, the existence of allocation forms that were only partially completed at the time of the transactions, the commingling of client and firm funds, and reallocation of transactions. In *Slocum*, the court stated that two clerical employees would have to have known about the cherry-picking scheme, and those employees denied any knowledge of the cherry-picking. Here, Perez, Lopez, and Duncan similarly testified that they had no knowledge of Dratel’s alleged cherry-picking. Perez, Lopez, and Duncan also testified that they had never seen Dratel do anything improper or direct them to do anything improper. Because none of them is currently employed by DGI (and, in fact, Duncan and Lopez had been recently laid off), they have no motivation to lie. Any hesitancy in testifying can be explained by a general discomfort with the situation.

The *Slocum* Court also considered the overall profitability of the client accounts. Dratel’s customer accounts were profitable, and day trading represented an extremely small percentage of the customers’ trades. The 40 accounts at issue here had an undisputed 26.5% overall gain during the Relevant Period.

Lastly, Dratel’s clients were family, friends, and long-term family friends. Dratel has been a broker for many years, and there was no evidence of his intent to harm his clients. While there were other irregularities in Dratel’s business practices, such as his customer cross-trades at above market prices and payments to his customers, they were

---

<sup>289</sup> *SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144, 171.

AX-1

not charged in the Complaint and they demonstrate a concern for his customers rather than intent to harm them.

Because I do not think Enforcement presented a prima facie case, I do not find it necessary to review the adequacy of Respondents' exhibits or his testimony. However, I do not interpret the inclusion of the losses Dratel incurred as a result of customer crosses at above-market prices in RX-56 as a deliberate attempt to deceive the Panel. Respondent Dratel brought these crosses to the Panel's attention in an attempt to demonstrate his "fairness" to customers. Their inclusion in RX-56, along with other errors in the exhibit, seems another example of carelessness, sloppiness, and inattention to detail, not fraud. I would dismiss the First Cause of Action with respect to both Respondents.

NOT  
included

I also dissent with regard to the two record keeping violations described in the Second and Third Causes of Action. For the Second Cause of Action, which pertains to manually altered order tickets, I find that there is no evidence that Dratel personally altered the tickets or directed anyone to alter them. However, Dratel was DGI's sole proprietor, sole broker, and CCO; I would therefore find a record keeping violation for both Respondents, but not a violation tied to a scheme to defraud.

The Third Cause of Action relates to Dratel's failure to maintain contemporaneous records of allocations. Dratel's records for aggregated or multiple-customer trades consisted of time-stamped tickets and allocation sheets with fax hashings after the close of the market or the completion of the buy and sell for the particular trade. While Dratel's staff did not confirm his account of intra-day transmissions or discarded faxes, all three witnesses (Lopez, Duncan, and Perez) stated that they had never seen Dratel do anything improper and that he never directed them to do anything improper.

Dratel's record keeping may be sloppy and ambiguous; however, without evidence of cherry-picking it is not clear that allocations were made (as opposed to transmitted) after the fact. I would find a record keeping violation unrelated to cherry-picking.

Because I did not find that the Second and Third Causes of Action related to fraud or cherry-picking, or were otherwise egregious, I recommend the following sanctions:

- For Dratel, a fine of \$10,000 and a 30-day suspension in all capacities for each cause of action, for a total of \$20,000 in fines and a 60-day suspension in all capacities for both counts;
- For DGI, a fine of \$10,000 for each cause of action, for a total of \$20,000 in fines.

For the Fifth Cause of Action, I recommend that Dratel be fined \$10,000 and suspended in all capacities for 21 days, and that DGI be fined \$10,000. For the Seventh Cause of Action, I recommend a \$5,000 fine for DGI.

Copies to: The Dratel Group, Inc. (*by overnight courier and first-class mail*)  
William M. Dratel (*by overnight courier and first-class mail*)  
Irwin Wertz, Esq. (*via electronic and first-class mail*)  
Samuel Barkin, Esq. (*via electronic and first-class mail*)  
Andrew T. Beirne, Esq. (*via electronic mail*)  
Mark P. Dauer, Esq. (*via electronic mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)



April 15, 2014

To Whom It May Concern,

Re: William Dratel

Dear Sir/Madam,

My wife and I have known Billy Dratel personally since 1999, in my capacity as a rabbi at The Jewish Center of the Hamptons, where Billy served as a board member. Since 2001 Billy has been managing my personal investments and portfolio.

In the years that I have worked with Billy on Jewish Center related matters, I have gotten to know him as a compassionate, dedicated and highly ethical individual. Billy gave countless hours of his time to the Jewish Center, leading the Religious School Board, dealing with finances of the organization and participating in the shaping of the spiritual life of the local community.

As a board member Billy had to make very difficult decisions and he always knew to separate his personal feelings from the interest of the organization. He never hesitated doing what was right, even when his own personal interests and life were influenced. He has always been a moral compass to the board and through which to the local Jewish community.

In the years that Billy Dratel has been managing my personal finances I have seen him exhibit the same care and dedication that he exhibited in his volunteer work. My wife and I have always trusted his judgment and guidance and continue to do so today. As such, I can only recommend that he is allowed to continue doing his work and trade for his clients.

It is an honor and a privilege to call Billy Dratel my friend. Please do not hesitate to contact me should you have any questions about him.

Sincerely,

[Redacted signature]

AX-2

March 13, 2014

Securities and Exchange Commission

Re: William M. Dratel and The Dratel Group, Inc.

Gentlemen:

I am one of the customers named in the FINRA Complaint as an injured party because of the actions of William (Billy) M. Dratel and The Dratel Group, Inc. in 2006.

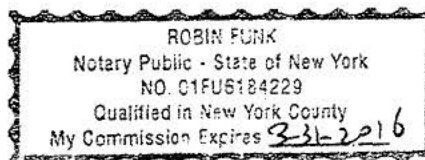
I, and my extended family have been clients of Billy and The Dratel Group and for 37 years. Billy and I have been best friends since elementary school. To allege that I have somehow been injured by anything that Billy or The Dratel Group did to me or anyone in my family is baseless and categorically incorrect. In fact nothing could be further from the truth.

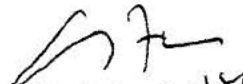
Billy Dratel is the most honest person I know or have ever met. His tireless work ethic and personal involvement with every aspect of his business separates him from his peers. It is particularly comforting, because I know he always has his customer's best interests in mind. His integrity as a broker, money manager, consultant and friend is beyond reproach.

Billy's hard work, loyalty and dedication to his customers and their continued success should be applauded instead of attacked. It would be a gross miscarriage of justice, especially with today's uncertain economy, to prevent Billy from continuing to serve those who need his care and expertise more than ever.

The irony is that this industry needs more people like Billy, not less.

Sincerely,



  
3-14-2014  
W1 W7

Security and Exchange Commission

March 10, 2014

Dear Sir:

I just learned that Mr. William Dratel is being investigated concerning some professional practices as an investment advisor and broker. I have known Mr. Dratel for over 20 years and have invested with him for many of those years. Both personally and professionally, I have no doubts about his professionalism and integrity. He has complete discretion when trading stocks in my account and I completely trust that his trading is done for my benefit.

If the SEC has any question about Mr. Dratel's professional ethics, I hope that he is allowed to appear before the SEC to answer questions about his case.

Respectfully,

*Nancy Renee*

██████████ ██████████



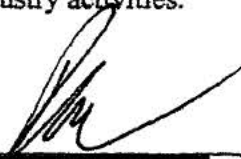
State of New York )  
 )ss.:  
County of New York )

██████████, being duly sworn, deposes and says:

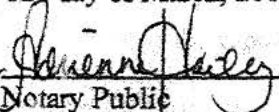
1. I am one of The Dratel Group, Inc.'s discretionary customers allegedly affected by the subject matter of FINRA's decision against The Dratel Group and William Dratel ("Billy").

2. I have known Billy for nearly 40 years, and I have been a customer of The Dratel Group for over 35 years. Both personally and professionally, Billy has always been fair-minded, attentive, fiscally knowledgeable and responsible. He has also always demonstrated honesty, integrity and thoughtfulness in his dealings with me. In short, I hold Billy in the highest regard.

3. On a personal note, in all the years that I have known Billy, he has proved to be a consistently supportive, thoughtful and dependable friend. In my view, justice would be ill-served should Billy be barred in any way from engaging in securities industry activities.

  
████████████████████

Sworn to before me this  
12<sup>th</sup> day of March, 2014

  
Notary Public

ADRIENNE HAILEY  
Notary Public, State of New York  
No. 01HA6202571  
Qualified in Queens County  
Commission Expires March 16, 2017

March 11, 2014

To: The Security and Exchange Commission

Re: Mr. William Dratel

I have known Mr. William Dratel all his life. I knew his father and mother since I was a teenager, and have known his entire family since his parents got married. My husband and I decided to trust Mr. Dratel's father, Josh Dratel, to invest some of our hard earned savings, starting in about 1982 and continued with him till his death. We then kept our investment money with Mr. William Dratel because we were very pleased with the results his father earned for us and knew that his son had worked with him and learned from him. We had complete confidence in Mr. Josh Dratel's ethics and integrity and have never had any reason to doubt that Mr. William Dratel was also of the highest ethics and integrity. He has always shown respect for our financial needs and wishes and we always appreciated the attention and service he provided.

I was very surprised to learn that there was any question about Mr. Dratel's ethics or business practices. As one of the so called aggrieved clients, I think it would be unfair if Mr. Dratel were not given the opportunity to present his case to the SEC.

Sincerely,

Nancy Renee POA  
[REDACTED]

18 March 2014

Securities & Exchange Commission  
Subject: William Dratel / Dratel Group  
Gentlemen:

Being one of the customers named in the FINRA  
Complaint against the Dratel Group / William Dratel  
in 2006.

I (and my late wife), have never been injured  
in any way, in my dealings (since 1980 to the present  
date) with Billy Dratel / Dratel Group.

Honesty, integrity, were the reason for our giv-  
ing the Dratel Group & Billy our monies & savings.  
He has always been up front & had our best  
interest in mind.

I have known this young man (Billy) since he  
was a teen ager & have been impressed with  
his attitude & work habits were outstanding.  
He has kept these traits in life & business.

In retirement I have always felt safe know-  
ing Billy was taking care of my life savings.

In conclusion I feel all charges against him  
& my account are false.

Sincerely,



ALSENY SOW  
Notary Public, State of New York  
Qualified in Bronx County  
No. 01SO6223115  
My Commission Expires 06-07-2014

A handwritten signature in black ink, likely belonging to the notary, Alseny Sow.

3/18/14

March 26, 2014

To Whom It May Concern.

I am one of the Dratel Group's discretionary customers affected by FINRA's decision against The Dratel Group and William Dratel ("Billy").

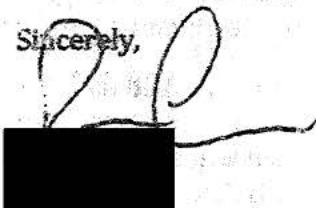
I have known Billy Dratel for over 25 years, and have had him manage various accounts of mine for the last 20 years.

In both my personal and professional dealings with Billy over that time, he has always been direct, honest, knowledgeable and responsible. His counsel on both fiscal and personal matters has always been well-informed and well thought-out, and delivered with the utmost integrity.

I consider Billy to be not only a trusted advisor, but also a trusted friend, one on whom I depend to this day for advice both personal and financial.

I see no reason for Billy to be limited in any way in his dealings in the Securities Trade, and look forward to many more years enjoying his thoughtful and helpful advice.

Sincerely,



March 27, 2014

To Whom This May Concern,

I am one of The Dratel Group Inc.'s discretionary customers allegedly affected by FINRA's decision against The Dratel Group and William Dratel.

I first met Billy, (William Dratel), in 1995. Instantly I could tell that he was very intelligent and very conscientious of details. With that came a sincerity and respect for accuracy and truth, willingness to hear both sides of a discussion in order to achieve the most rewarding result.

Never one to shy away from learning and embracing others' experiences, Billy is patient and genuinely interested in my ideas and perspectives.

I trust Billy as my financial advisor. He has always been honest and forthright and again took the time to explain his intentions or direction regarding a possible investment opportunity. It would be very upsetting if I did not have the ability to continue to do business with Billy and The Dratel Group.

Best Regards,

A handwritten signature in dark ink is written over a large black rectangular redaction box. The signature appears to be a stylized name, possibly starting with 'S'.

TO WHOM IT MAY CONCERN


I am one of the Clients of the Dratel Group. It is my pleasure to write about Billy Dratel and the Dratel Group.

My deceased husband, [REDACTED], invested with the Dratel Group for over 30 years. He knew Billy Dratel, who was one of the member of Dratel Group, to be respected and honest man. Originally his father was the president of the company and when he died Billy Dratel easily fit into the presidency.

We remained confident in Billy Dratel and we trusted his advice, honesty and capability. His interest in us made us feel like he was a trusted friend.

Dated in Boynton Florida, May 7, 2014.

Respectfully

  
[REDACTED] mutter  
[REDACTED]  
[REDACTED]

May 8, 2014

To Whom it May Concern:

My wife and I have been a customers of the Dratel Group and William Dratel ("Billy") for over 20 years. He has also administered the account of my mother for over 15 years.

Billy has been my best friend for almost 40 years. Over those years I have come to know him very well and believe I am in a good position to comment on his traits as a human being. I have always known him to be fair, ethical, compassionate and to have a good heart. He has gone out of his way to be very good to my entire family. He has also been an excellent father and husband and has raised a wonderful family.

I do not believe that justice would be advanced by barring him from the securities industry.

Sincerely,

A black rectangular redaction box covers the signature, with a small handwritten flourish extending from the right side.

[Redacted]

May 8, 2014

**To Whom It May Concern:**

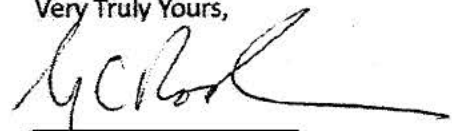
I am a principal of 88 International, a clothing manufacturer and importer, and I have been in the garment business since 1982.

I am writing this letter on behalf of William Dratel of The Dratel Group, who has been my stockbroker for more than 20 years. Throughout that period of time – through both up markets and down markets – Billy (as he is known to me) has never been anything but available, courteous, professional and candid in all of his dealings with me. Billy's commitment to his job is obvious; he is always available to take my calls and answer my questions in an honest and forthright manner, and his boundless enthusiasm for his career is infectious.

Personally, I know Billy to be extremely dedicated to his family and friends alike, always lending his support to those in need.

If you have any specific questions or require any further information, please do not hesitate to contact me.

Very Truly Yours,

  
[Redacted]





**KIRSCHENBAUM  
& PHILLIPS, P.C.**  
ATTORNEYS AT LAW

40 Daniel Street, Suite 7, P.O. Box 9000  
Farmingdale, NY 11735-9000

TEL: 516.746.1144  
FAX: 516.742.2735

May 9, 2014

To whom it may concern:

Re: Dratel Group and William Dratel

I have known (Billy) William Dratel for more than forty years and with my father was well acquainted with Billy's father Joshua Dratel. We have always enjoyed an open and frank relationship with Billy who has always acted in a responsive and responsible manner.

In my opinion Billy has always been honest and straight forward in his dealings and because of him I have always understood the nature of our transactions. We have always relied upon his dependability and integrity. I would regard it as a significant loss if he were prohibited from serving in the securities industry.

Very truly yours,



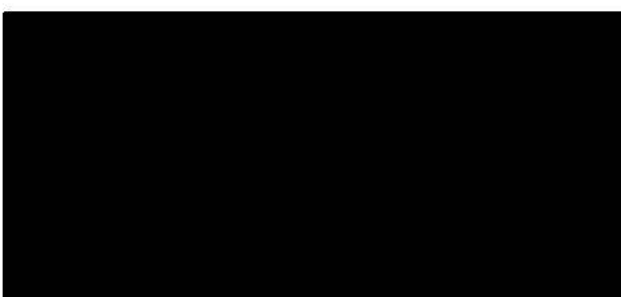
AFFIDAVIT OF [REDACTED]

[REDACTED], being duly sworn, deposes and says, that:

I am a practicing attorney in East Hampton, New York. Although my practice focuses on land use and real estate law generally, I am familiar with the issues that arose in the Dratel matter before the FINRA. I was a customer of Dratel Group for many years under the leadership of the Dratel family. Our dealings were always honest and transparent. I am writing this Affidavit in support of the application for a stay of the suspension order recently issued. I believe based upon the dissenting opinion in the initial determination, Billy Dratel's suspension should be reviewed de novo.

Thank you for the opportunity to comment on this matter.

Dated: May 9, 2014  
East Hampton, New York



Sworn to this <sup>9<sup>th</sup></sup> day of May, 2014

KAREN L. SCHMITT  
NOTARY PUBLIC, STATE OF NEW YORK  
01SC6149438  
QUALIFIED IN SUFFOLK COUNTY  
Term Expires July 10, 2014

Mr. Dratel is a self-described short-term day trader who looks for volatile stocks. "I want a stock that moves. Day trading, you have to try to pick stocks that are going to be active that day either on the upside or downside. You're looking for percentage moves" (Dratel transcript, November 23, 2009, page 12, lines 16-25).

***Day Trading for the Financial Advisor's Personal Account***

Classic cherry picking is collecting a riskless realized profit while the stock is up. With conventional buy and hold strategies, a stock could move in the opposite direction. Therefore, the incentive is for a cherry picker to grab the profit immediately, rather than hold the position.

As mentioned in the discussion of the previous element, Mr. Dratel is a self-described day trader, and he states that he uses the Firm's OTC account or average price account to do day trades for his own account (Dratel transcript, December 2, 2008, page 135, lines 9-12.) Mr. Dratel apparently engages in day trading because he believes day trading is "the safest thing you can do" (Dratel transcript, December 2, 2008, page 137, lines 13-14), and "My account is purely day trading. So there is no market risk." (Dratel transcript, December 2, 2008, page 158, lines 24-25).

***Day Trades Where the Financial Advisor's Account Received a Better Price than the Customer***

In order to avoid conflicts of interest, financial advisors generally do not trade a security in their own account on the same day as they trade that security for a customer unless the customer receives a better price. I have found one instance where this occurred. As previously shown in **Exhibit 8**, this day trade involves Mr. Dratel purchasing 1,000 shares of Childrens Place Retail Stores, Inc. stock on April 10, 2006 at \$59.35 per share (which he keeps for himself), and purchasing 1,500 additional shares at \$60.02 per share for Bernard Haber and Juani

AX-4