UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-15916

In the Matter of the Application of DENISE M. OLSON For Review of Disciplinary Action Taken by FINRA	Denise Olson's Reply Brief in Support of her Application for Review

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Denise Olson, by her undersigned counsel, hereby submits her reply brief in support of her application for review of the sanctions imposed in this matter.

I. Summary

In the final sentence of its 29-page brief, FINRA finally concedes the key proposition in this case – that there **are** circumstances where a bar would be inappropriate in a conversion case. FINRA characterizes these circumstances as "the most unique cases," and offers no insight as to how a respondent could have facts and circumstances more deserving of leniency than Ms. Olson. But at least there is no dispute that simply engaging in conduct that constitutes conversion does not necessarily justify a permanent bar.

FINRA's opposing brief repeatedly emphasizes two arguments: (1) that Ms. Olson's admitted misconduct should be characterized as multiple instances of wrongdoing, and (2) that she does not sufficiently accept the seriousness of her actions. Neither of these points is well taken. Ms. Olson did not engage in any pattern of misconduct; in a single foolish moment, on April 30, 2010, she entered a false description of one expense line item on one report. She is profoundly ashamed that she did this, and has said so consistently for more than four years. A permanent bar of Denise Olson is excessive, oppressive, and punitive, is not necessary to protect the securities industry, and should be overturned.

II. Ms. Olson Did Not Engage in Multiple Instances of Misconduct

No matter how many times FINRA chooses to say it, Ms. Olson did not commit "several conscious, measured acts of deception." (FINRA Br., at 16).[1] It is undisputed that she was permitted to use her corporate card for personal expenses, so long as she properly identified her

[1] References to "FINRA Br., at __" are to FINRA's Brief in Opposition to Denise M. Olson's Application for Review filed on August 25, 2014.

personal charges and did not seek reimbursement. It is undisputed that Ms. Olson's use of her corporate card for the iPods purchase on April 2, 2010 did not constitute wrongdoing. Only when Ms. Olson falsely described the purchase on April 30, 2010 as being a reimbursable business expense did she commit a violation. There was no premeditation. There were no repeated violations or acts of deception. Ms. Olson committed a single wrongful act of conversion. Serious as it was, it was not a pattern of wrongdoing.[2] Nor did Ms. Olson do anything to cover up her wrongdoing or mislead any inquiry, as discussed below.

By contrast, most if not all of the cases cited in FINRA's brief involved a clear pattern of multiple fraudulent events, including extensive lying and attempts at deception, up to and including the hearings and post-hearing submissions in those cases. It is true that each case turns on its own facts and circumstances, and numerous cases repeat the mantra that different sanctions in other cases are not dispositive. But these cases provide the best insight into whether Ms. Olson's case is one of the "most unique cases" for which even FINRA concedes a bar would be inappropriate.

The litany of cases relied upon by FINRA amply demonstrates the absence of a pattern of wrongdoing by Ms. Olson. *Richard D. Grafman*, Exchange Act Release No. 21648, 1985 SEC LEXIS 2397, at *2 (Jan. 14, 1985), involved "at least 28" instances of altering medical bills to obtain excessive insurance reimbursements. That was the express reason why the SEC emphasized that a bar was appropriate; the conduct "did not involve a single, isolated act of dishonesty but a pattern of fraudulent activity that continued over an extended period of time

[2] As discussed infra, Ms. Olson's conduct on this one occasion was unquestionably wrongful and a serious violation – a fact that Ms. Olson has admitted again and again for four years.

and, presumably, would have continued even longer had it not been detected by Grafman's employer." 1985 SEC LEXIS 2397, *3.

James A. Goetz, Exchange Act Release No. 39796, 1998 SEC LEXIS 499 (Mar. 25, 1998), involved four separate fraudulent applications over more than a year for "matching" gifts to the private school of the registered representative's daughter. *Id.* at *1-2. Goetz lied in each of these applications that he had made matching contributions, and that he was not receiving anything of value in return. *Id.* at *3-5. In fact, he had made no such contributions and received a tuition offset for getting his employer to contribute. Goetz then lied repeatedly to his firm's investigator, stating first that he had used travelers checks to make his contributions, second that he had used cash left over from a vacation, and third that he used cash that he had around the house. *Id.* at *7. He then continued to lie at his hearing, claiming that he thought he could donate his "services" to the school in lieu of cash and that he did not know he would receive a tuition offset. *Id.* Despite all this protracted wrongdoing and refusal to accept responsibility or show proper contrition, the SEC reduced the sanction from a bar to a right to reapply after one year. [3] *Id.* at *13-14

Janet G. Katz, Exchange Act Release No. 61449, 2010 SEC LEXIS 994 (Feb. 1, 2010), involved extensive misappropriation of funds from multiple clients over an extended period, forgery of client signatures, repeated misrepresentations and other misconduct. This protracted misconduct was part of a scheme to conceal trading losses in client accounts. In addition, as the Commission emphasized, Katz's "failure to take responsibility for her misconduct and her

[3] The SEC emphasized that Goetz had not been charged with fraud. *Id.* at 13. However, there is no reasonable basis for treating the facts and circumstances as justifying greater sanctions simply because the conduct has been labeled "fraud" or "conversion."

attempt to attribute her violations to other Wachovia customers and employees – provides no assurance that she will not repeat her violations." *Id. at* *93.

Daniel D. Manoff, Exchange Act Release No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002), involved four different fraudulent transactions during a two month period in which a registered representative used a clerical employee's credit cards without her authorization, then lied repeatedly to cover up his wrongdoing. His misrepresentations and refusal to accept responsibility continued through the hearing; as the SEC emphasized, "Manoff persists in his refusal to explain or even acknowledge the many discrepancies in his testimony." *Id. at* *11.

Mission Securities Corp., Exchange Act Release No. 63453, 2010 SEC LEXIS 4053 (Dec. 7, 2010), involved the conversion of more than $39,000 of securities (*id. at* *16 n.7), which belonged to 18 customers, by the broker dealer itself and its president. The facts and circumstances included numerous false assertions, including that the respondents did not intend to "permanently deprive any customer [of] the use of their funds," that they had "made every effort to return these shares to these customers," that the customers had abandoned their accounts, and that the securities were "worthless." *Id. at* *20, *28. The respondents even argued at the hearing that they had not committed "honest service fraud" because it was supposedly in the brokerage firm's interest to take the securities. *Id. at* *24.

Mark F. Mizenko, Exchange Act Release No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005), involved the forgery of a corporate resolution that obligated Mizenko's firm to guarantee car loans for potential customers. This exposed the firm to $243,000 in potential losses covering four separate transactions and at least $10,000 in realized losses. When told that the initial attempt at forgery was insufficient, Mizenko, a former notary public, used his notary embosser multiple times to create the illusion of a blurred corporate seal. The SEC specifically rejected

Mizenko's argument that he had not engaged in a pattern of misconduct by emphasizing that he had compounded his forgery by his deliberate misuse of his notary seal. *Id.* *16. Mizenko claimed at the hearing that he thought he had authority to trace the signature of his firm's executive vice president onto the form; the SEC concluded that Mizenko "could not have held that belief in good faith." *Id.* *15.

John E. Mullins, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012), involved husband and wife registered representatives who converted thousands of dollars from a charitable foundation of a 95-year old widow in an assisted living facility. These funds were converted by purchasing numerous gift certificates that J. Mullins falsely claimed were intended to be donated to charity, when in fact he used them to pay for an expensive hotel in London, clothing for himself, and 23 bottles of wine. The misconduct occurred in seven separate occasions over thirteen months, and began while the client was hospitalized. *Id.* at *12-13, *75.

Ernest A. Cipriani, Exchange Act Release No. 33675, 1994 SEC LEXIS 506 (Feb. 24, 1994), involved the theft of an elderly widow's life insurance premiums on at least six occasions over several months. The policy was intended to provide funds to care for the customer's mentally disabled son. The SEC concluded that Cipriani had created a false coupon book, lied about the reason for doing so, lied about the premiums being misplaced or taken by a third party, and lied about being coerced into a written confession. The SEC sustained a permanent bar, specifically emphasizing that there was a pattern of violations over an excessive period. *Id.* *10.

Raymond M.Ramos, Exchange Act Release No. 26007, 1988 SEC LEXIS 1684 (Aug. 18, 1988), involved the misappropriation of $5,000 of customer funds by a "salesman" at the notorious Blinder Robinson boiler-room. Ramos apparently used the funds for his own

purposes, and then gave numerous false excuses for not returning the money after the client realized what had happened. *Id.* at *2-4. Ramos then falsely claimed at his hearing that he had permission to hold the client's money indefinitely for unspecified future investment. *Id.* at *3.

Ms. Olson's admittedly wrongful conduct in converting the value of the iPods transaction is simply not a pattern of wrongdoing. Her conduct pales by comparison to the normal conversion cases that come before FINRA and the SEC, as reflected in the cases summarized above. If the mitigating factor of the absence of a pattern of wrongdoing is to have any meaning, it supports a lesser sanction than a permanent bar for Ms. Olson.

III. Ms. Olson's Attempts to Explain the Mitigating Nature of Her Facts and Circumstances Does Not Diminish Her Remorse and Recognition of the Wrongfulness of Her Conduct

FINRA repeatedly turns any effort by Ms. Olson to discuss mitigating circumstances into an assault on her acceptance of responsibility. For example, FINRA argues "[h]er efforts to recast her misconduct in a more flattering light serve only to highlight her inability to grasp the severity of her misconduct." FINRA Br., at 12; *see also id.*, at 13 (referring to "Olson's half-hearted embrace of her wrongful actions"), *id.* at 19 (claiming Ms. Olson asserted that she would not repeat her misconduct because of stress and jeopardy to her family, not because she knew it was wrong); *id.*, ("Olson craftily argues that her conversion and theft of Wells Fargo's funds is rendered less objectionable because of her personal 'generosity' to her firm and co-workers"). *Id.* Indeed, in its zeal to demonize Ms. Olson, FINRA goes so far as to claim that even mentioning her purchase of $2,000 worth of refrigerators for her firm "shows that she possesses a palpable, unapologetic sense of entitlement . . ." *Id.*, at 19. The record, however, is clear that Ms. Olson fully understands and accepts the wrongfulness of her conduct, and is simply asking that she not be sanctioned as if her facts and circumstances are no different from obviously more

egregious offenders such as the respondents in the cases cited by FINRA. Moreover, it would be completely inappropriate to draw the adverse inferences that FINRA seeks based on Ms. Olson's simple attempts to explain relevant circumstances; as noted in *McCartney*[4], a respondent is "entitled to defend himself, and we do not find that his efforts in this regard discount his whole-hearted admissions of misconduct and acceptance of responsibility." *McCartney,* at *16 n.15.

Ms. Olson confessed her wrongdoing on June 2, 2010, a few weeks after her false entry regarding the iPods transaction and more than four years ago. She made this confession a few seconds after having been asked about this transaction, in the course of going through an 11 page list of 143 transactions. Tr., at 64-65 (Olson), RP 325-326. [5] There is nothing in the record, and no basis for any allegation, that Wells Fargo knew that this transaction was improper before Ms. Olson confessed. Had that been the case, presumably Wells Fargo would have cut to the chase and started its questions with that transaction, or showed Ms. Olson evidence that the transaction was for iPods, not branch equipment for a conference room. But that is not what happened. [6]

Instead, at most – and unbeknownst to Ms. Olson – Wells Fargo was considering terminating her if evidence of wrongdoing emerged from the inquiry. What the record shows is that Wells Fargo asked about every transaction on a long list of transactions, without any actual knowledge of wrongdoing by Ms. Olson. Only when she confessed did Wells Fargo learn of her conversion. Such circumstances are a far cry from the extensive denials and deception that

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[4] *Dep't of Enforcement v. McCartney*, Complaint No. 2010023719601, 2012 FINRA Discip. LEXIS 60 (NAC Dec. 10, 2012).

[5] References to "RP at ___" are corresponding pages of the certified record filed by FINRA on June 23, 2014. Parallel citations to the transcript of the October 2, 2012 hearing and the exhibits introduced at that hearing are provided as "Tr., at ___ (name of witness)" for the transcript and "CX" for FINRA Enforcement's exhibits; these materials are appended to Denise M. Olson's Opening Brief filed on July 25, 2014.

[6] *See* Tr., at 64 (Olson, RP 325) (not confronted with a receipt for the iPods or anything else to indicate advance knowledge by Wells Fargo).

characterized so many of the cases relied upon by FINRA. Under these circumstances, Ms. Olson should certainly receive significant credit for having accepted responsibility prior to detection.

FINRA's assertion in its brief, at 14 n.15, that the "talking points" used to terminate Ms. Olson "establish that Wells Fargo knew well the nature of Olson's misconduct before it questioned her" is refuted by the testimony of FINRA's own principal witness, who testified that only after Ms. Olson admitted her misconduct did the human resources department provide the talking points and make the decision to terminate Ms. Olson. Tr., at 26-27 (Mirabella), RP 287-288. Indeed, even the hearsay evidence offered by FINRA Enforcement was limited to showing a desire by Wells Fargo to talk to Ms. Olson about "some discrepancies" with her corporate card (Tr., at 25 (Mirabella), RP 286), not any conclusion that she had committed any violations. There is no evidence that Wells Fargo knew of the true nature of the transaction in question or that Ms. Olson would have been fired absent her confession. FINRA's repeated argument that Ms. Olson somehow resisted acceptance of responsibility "until her lies were no longer deniable" (FINRA Br., at 15) is simply contrary to the record and untrue.

FINRA attempts to twist Ms. Olson's handwritten statement of June 2, 2010 (CX-2, RP 427) into something less than a whole-hearted confession. FINRA Br., at 15. But as her actual statement makes clear, she confessed that she did not mark the iPods purchase as a personal expense. Then, as now, she tried her best to point out that, while she knew that this was very wrong, she was not a greedy person, had never done anything like this before, and as an example, mentioned the refrigerators purchase. She noted then, as she has consistently testified,

that she had a fleeting, foolish thought that the refrigerators had cost more. In short, she simply tried to express her hope, as she continues to do, for some level of understanding and mercy. [7]

But beyond the fact that Ms. Olson admitted her misconduct prior to detection, there is nothing "half-hearted" about Ms. Olson's genuine and deeply felt remorse. As Ms. Olson testified, she knew her conduct was "definitely not okay" when she confessed. Tr., at 66 (Olson), RP 327. Nor did she believe that the only problem with her conduct was the impact on herself and her family; as Ms. Olson testified, "having intentionally misled my company by marking the expense was very wrong." Tr., at 67 (Olson), RP 328. There is simply no basis for concern that Ms. Olson, who was in tears during much of the hearing and obviously ashamed of her misconduct, somehow did not fully comprehend the wrongfulness of her conduct. By contrast, when a respondent truly does not accept responsibility, it is readily apparent from the record. *See Goetz,* 1998 SEC LEXIS 499, at *8-11 (lying at the hearing); *Katz,* 2010 SEC LEXIS 994, at *93 (falsely blaming other customers and employees); *Manoff*, 2002 SEC LEXIS 2684, at *3-9 , *17 (refused to even admit many discrepancies in his testimony); *Mission Securities*, 2010 SEC LEXIS 4053, at *19-29 , *51-53 (numerous lies at the hearing and in post-hearing submissions); *Mizenko,* 2005 SEC LEXIS 2655, at *15 (testimony not in good faith); *Cipriani,* 1994 SEC LEXIS 506, at *3-7 (numerous lies at hearing); and *Ramos,* 1988 SEC LEXIS 1684, at *2-6 (same).

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[7] Similarly, in her response to FINRA's investigative letter of August 12, 2010, Ms. Olson admitted she "made an error in marking the transaction as a business expense; I would never put my family or myself in a situation like this again." (CX-3, RP 429) Once again, she thus admitted her wrongful conduct, did not claim that her conduct was appropriate, and did not deny that she had violated Rule 2010.

IV. Ms. Olson's Purchases of the Refrigerators Do Not Nullify Her Misconduct, But Are Part of the Facts and Circumstances Which are Critical to Understanding Why a Bar is Excessive, Oppressive and Punitive

FINRA argues that by even mentioning her prior purchases of $2,000 of refrigerators for her branch office, Ms. Olson somehow demonstrates "a palpable, unapologetic sense of entitlement that justifies FINRA's decision to bar her." FINRA Br., at 19. Ms. Olson could hardly have been clearer in her opening brief that she is not claiming her "misconduct was excused or less wrongful simply because she had spent $2,000 on the refrigerators without seeking reimbursement . . ." Olson Br., at 16. She converted $740.10, which was wrongful and a violation of FINRA Rule 2010. But in judging whether she is a greedy person who is at all likely ever again to convert so much as a paper clip, it would be unreasonable to look at her facts and circumstances the same way as if she had engaged in multiple offenses over months or years, with no evidence of ever having done anything altruistic or generous toward her firm and others. Such facts and circumstances are all too apparent in the cases relied upon by FINRA.

V. Conclusion

As FINRA itself has acknowledged, not every instance of conversion justifies a permanent bar. There are facts and circumstances when this "securities industry equivalent of capital punishment" (*PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C.Cir. 2007)) is excessive, oppressive and punitive, even for conversion. Barring Ms. Olson serves no proper remedial purpose. Her facts and circumstances satisfy any reasonable definition of the "most unique cases" that FINRA concedes call for a lesser sanction. If the securities industry needs to crush

Ms. Olson to protect itself, it is hard to imagine any circumstances that would justify leniency.

Respectfully submitted,

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