BEFORE THE SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

NORTH WOODWARD FINANCIAL CORP. and DOUGLAS A. TROSZAK

for Review of Disciplinary Action Taken by FINRA

Admin Proc. File No. 3-15990

APPLICANTS' REPLY BRIEF

Douglas A. Troszak, pro se
[redacted]

December 1, 2014

I. INTRODUCTION

The National Adjudicatory Counsel ("NAC") found that the Applicants, Douglas A. Troszak ("Troszak") and North Woodward Financial Corporation ("NWFC") violated FINRA Rule 8210 by failing to provide certain requested documents to FINRA. The NAC expelled NWFC and imposed a bar upon Troszak based upon their violation of Rule 8210.

Troszak is also a CPA and he operates a CPA business, Troszak CPA Group, out of the same location as NWFC. In order to become a client of NWFC, an individual must first be a Troszak CPA Group client. In November 2009, Troszak obtained loans from his personal friends. Those friends were also clients of Troszak CPA Group and NWFC. The loans were made in order to help Troszak redeem a condominium unit that he owned from foreclosure. Troszak knew the approximate cost of redeeming the property, but did not know the exact amount that would be required because interest, costs and fees continued to accrue daily. As a result, Troszak obtained loans totaling $200,000, approximately $14,000 of which was contributed by Troszak CPA Group, although the final redemption amount was only $188,689.52. The process of redeeming the property and distributing funds in connection with the redemption was handled by a local title company, Bay View Title. Aside from arranging for the loans and re-paying the lenders, Troszak was not involved in the redemption process at all, Bay View Title handled the entire transaction, and continues to do so. First Southwest, NWFC's clearing firm, sent money directly from the IRAs of certain lenders to Bay View Title. That money never passed through Troszak or any of his associated entities and consequently, Troszak never had control over that money.

In exchange for the loans, Troszak Capital Corporation, an entity that Troszak had created for tax purposes, issued promissory notes directing payment at an annual interest rate of

10% along with principal and interest payments on the first day of each quarter for six quarters with the remaining balance due at the end of the sixth quarter. Several lenders later agreed to written modifications of the repayment plan. Troszak also granted a $200,000 mortgage on the unit in favor of the note holders as security.

FINRA, acting upon a regulatory tip, decided to investigate the loan transactions and issued several Rule 8210 requests during the course of its investigation. The NAC found that the Applicants did not respond fully to those requests and thereby violated Rule 8210 by failing to provide an accounting of the $11,310.48 difference between the borrowed amount and the redemption amount, evidence of interest and principal payments to the note-holders, and 2009 and 2010 securities account statements for Troszak Capital Corporation.

II. ARGUMENT

The requirements of Rule 8210 are not unequivocal as FINRA claims. FINRA's Brief in Opposition to Application for Review ("Brief") at 12. The Commission has recognized that while the scope of Rule 8210 is broad, there are limits. *Jay Alan Ochanpaugh*, Release No. 34-54363, 2006 WL 2482466 (2006). One such limitation applies to documents not in the possession, custody, or control of the request's recipient. *Id.* Another limitation on Rule 8210 is based upon the fact that FINRA's regulatory authority is limited. FINRA's regulatory authority extends to securities, as well as conduct not involving securities if that conduct is inconsistent with just and equitable principles of trade and involves business-related conduct. See e.g. *Vail v. S.E.C.*, 101 F.3d 37 (5th Cir. 1996); *Ernest A. Cipriani, Jr.*, Release No. 34-33675, 51 S.E.C. 1004 (1994). Consequently, FINRA could not request documents that are unrelated to securities and do not involve business-related conduct. The critical issue is whether this case presents another limitation on FINRA's regulatory authority under Rule 8210. Specifically, whether

FINRA may request and require the production of documents the disclosure of which is otherwise prohibited by law, or whether such requests exceed the limits of Rule 8210 and FINRA's regulatory authority.

A. THE APPLICANTS ARE PROHIBITED FROM PROVIDING THE REQUESTED DOCUMENTS

The Applicants have argued that 26 U.S.C. 6713, 26 U.S.C. 7216, and 17 CFR 248.10 prevent them from disclosing evidence of interest and principal payments to lenders. 26 U.S.C. 6713 and 26 U.S.C. 7216 state that the Applicants cannot provide information given to them in connection with, or to assist them in preparing tax returns. Violators of those statutes subject themselves to possible fines and imprisonment. *Id.* The basis of the Applicants' argument is that interest payments are taxable and would therefore be included on and used in preparing tax returns. Because payments of principal were sometimes included in the same check as interest payments, it was not possible for the Applicants to provide FINRA with evidence of those payments without also providing FINRA with evidence of the interest payments. In addition, the applicants cannot disclose non-public personal information. See 17 CFR 248.10. Non-public personal information includes any information "about a consumer resulting from any transaction involving a financial product or service between you and a consumer." See 17 CFR 248.3(t)(1); 17 CFR 248.3(u)(1)(ii).

FINRA does not meet the exceptions to those statutes and regulations, nor does it claim to meet any such exception. Congress. and the SEC in enacting Regulation S-P, seem to have decided that FINRA rules do not supersede those statutes and regulations when they decided not to include exceptions for FINRA investigations. See 26 CFR 301.7216-2; 17 CFR 248.15. As a result, the Applicants cannot provide information or documentation falling under those

categories simply because FINRA asked them to do so. Nevertheless, FINRA seems to place itself above the written language of the relevant federal statutes and regulations. Brief at 16, n. 13 (stating that the fact that Troszak uses the requested documents to prepare tax returns "is of no moment and does not thereby shield the information from FINRA's purview."); see also Brief at 22 (arguing that federal law does not prevent the Applicants from providing the requested documents regardless of whether or not Troszak used those documents to prepare client tax returns because they are "of" a FINRA member.) However, these arguments are contrary to the clear language of the statutes which prevents the production of documents used in preparing tax returns and includes certain exceptions, none of which encompasses FINRA's investigation. FINRA as a non-governmental entity has no authority to alter or amend those federal statutes or regulations, under which it is relevant that the requested documents are used by Troszak in preparing tax returns.

Rather than claiming that it fits an exception to the relevant statutes and regulations, FINRA relies upon the contractual relationship existing between itself and the Applicants in arguing that the Applicants must provide the requested documents. Brief at 16. Absent such a relationship, federal law would prevent the Applicants from providing the requested documents. See 26 U.S.C. 6713, 26 U.S.C. 7216, 17 CFR 248.10. The existence of a contractual relationship between the Applicants and FINRA does not materially change the situation. The existence of a contractual relationship is not an exception that would allow disclosure of the requested documents under any of the cited federal laws. See 26 CFR 301.7216-2; 17 CFR 248.15. In addition, due to the fact that contractual obligations to do something that is expressly forbidden by statute are generally not enforced, such contracts do not grant authority to ignore the statutory prohibition. See 17A C.J.S. Contracts §254 (2014) (stating that such contracts are generally not

enforced); See also *Meek v. Wilson*, 283 Mich. 679, 278 N.W. 731 (1938); *Beyers v. Roberts*, 199 S.W.3d 354 (Tex. App. Houston 1st Dist. 2006). A contract is illegal if it requires an act that is a civil wrong or is contrary to statutory provisions or public policy. See 17A C.J.S. Contracts §254 (2014); *L'Orange v. Medical Protective Co.*, 394 F.2d 57, (6th Cir. 1968); *Measday v. Sweazea*, 78 N.M. 781, 438 P.2d 525 (Ct. App. 1968); *Hazard v. Hazard*, 46 N.C. App. 280, 264 S.E.2d 908 (1980). FINRA has requested evidence of principal and interest payments. The Applicants cannot provide those documents without violating federal regulations and criminal statutes. FINRA insists that regardless of whether federal law prevents the Applicants from disclosing the requested information, the contractual relationship with FINRA requires them to provide the requested information. Brief at 16, n. 13. If the contractual relationship between the Respondents and FINRA compels the Respondents to provide evidence of those payments, then that contractual relationship requires an act that is contrary to the statutes listed above. In so doing, the contract between the Respondents and FINRA is illegal, and as such, should not be enforced.

FINRA also contends that the Applicants' concerns about providing evidence of interest and principal payments to lenders are abstract. Brief at 22 n. 16; *Id.* at 34. In support of this contention, FINRA cites a case in which a FINRA member refused to provide documents on the basis that by providing requested documents to FINRA, those documents might be subpoenaed by interested third parties. *Id.* (citing *Gregory Evan Goldstein*, Release No. 34-68904, 2013 SEC LEXIS 552 (Feb. 11, 2013)(order denying stay); *Goldstein*, Release No. 34-71970, 2014 SEC LEXIS 1350, (Apr. 17, 2014)). In that case, the Commission stated that abstract worries about privacy do not justify failing to fully respond to an 8210 request. *Goldstein*, Release No. 68904, at 17. In contrast, this case involves privacy concerns that are not abstract or held solely

by the FINRA member that is subject to the request. Instead, concerns about disclosing the types of information and documentation requested by FINRA in this case are shared by Congress and the Commission, both of whom have chosen to limit the authority to disclose those types of documents. See 26 U.S.C. 6713; 26 U.S.C. 7216; 17 CFR 248.10. There are explicit statutory and regulatory provisions specifically preventing the disclosure of the types of documents and information requested by FINRA. Concerns about disclosing such documents are far from abstract. Those concerns are magnified by the fact that FINRA investigations are not confidential as it now claims. See Brief at 22 n. 16, (citing FINRA Regulatory Notice 09-17, 2009 FINRA LEXIS 45, at *4 (Mar. 2009)). Instead, FINRA explicitly stated in their communications with the Applicants that documents disclosed as part of an investigation were not treated confidentially and that FINRA may disclose those documents to other parties without notifying the Applicants. The Applicants' clients expressed the same concerns about disclosing the requested documents when they refused to grant the Applicants written permission to provide evidence of the principal and interest payments that they received from Troszak to FINRA. The statutory prohibitions against providing the requested documents make the Applicants' concerns about giving those documents to FINRA much more than an abstract worry about privacy.

B. TROSZAK'S ROLE AS A TAX RETURN PREPARER PLACES LIMITATIONS ON THE TYPES OF INFORMATION THAT HE CAN PROVIDE TO FINRA THAT ARE NOT PRESENT FOR MOST FINRA MEMBERS

Troszak is a certified public accountant. In order to become a client of NWFC, an individual must first be a client of Troszak's accounting firm, Troszak CPA Group. Consequently, all of the lenders involved in this matter are clients of Troszak CPA Group in

addition to being NWFC clients. At all times relevant to this matter, Troszak prepared the tax returns for each of the lenders. These facts make this case materially different from other FINRA cases involving alleged violations of Rule 8210. As a tax return preparer, Troszak fulfills a role not typically performed by FINRA registered representatives. Based upon his role as a tax return preparer, Troszak is subject to certain laws and regulations that do not apply to other FINRA members that do not prepare tax returns. Specifically, 26 U.S.C. 6713 prevents tax preparers from disclosing information given to them to assist them in preparing a tax return by imposing fines on tax preparers who disclose such information. Similarly, 26 U.S.C. 7216 prohibits tax preparers from knowingly or recklessly disclosing information given to them in connection with the preparation of a tax return. If a tax preparer discloses documents covered by those statutes, he subjects himself to criminal punishment, including up to one year in prison, in addition to possible fines. 26 U.S.C. 6713 and 7216.

In arguing that the Applicants violated Rule 8210, FINRA cites cases in which it was determined that FINRA members must fully comply with all FINRA 8210 requests. See e.g. Brief at 13 (citing *CMG Institutional Trading, LLC,* Exchange Act Release No. 59325, 2009 SEC LEXIS 215 (2009)); see also *John Joseph Plunkett*, Release No. 69766, 2013 SEC LEXIS 1699, at *35-36 (2013); *Howard Brett Berger*, Release No. 58950, 2008 SEC LEXIS 3141, at *13 (2008). These cases cited by FINRA are fundamentally different from this case, in that none of the FINRA members in those cases were required to comply with 26 U.S.C. 6713 or 26 U.S.C. 7216 because none of those FINRA members were also tax return preparers. The statutory restrictions on the documents that tax return preparers may disclose make it unfair to impose the same requirements upon the Applicants as those applicable to FINRA members that do not prepare tax returns, who are not subject to the above-referenced statutes. The Applicants

have statutory and regulatory obligations aside from their obligations to FINRA that they must consider in responding to an 8210 request. Upon information and belief, this case is unique in that federal statutes and regulations prohibit disclosure of the documents requested by FINRA under Rule 8210. As a result, the precedent cited by FINRA is not as persuasive as it might ordinarily be. Instead, the unique facts of this case justify careful consideration of the role of Rule 8210 when in order to comply with it, FINRA members are required to violate federal law. In such a case the requirements of Rule 8210 should yield to the relevant federal law.

C. FINRA REQUESTED DOCUMENTS THAT WERE OUTSIDE OF THE APPLICANTS' POSSESSION, CUSTODY OR CONTROL OR THAT DID NOT EXIST

Under FINRA Rule 8210 (a)(2), FINRA has the right to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation...that is in such member's or person's possession, custody or control." FINRA members are not required to provide documents that are not in their possession, custody or control in response to 8210 requests by FINRA. See *Id.*

FINRA requested an accounting of the difference between the loan amount and the redemption amount, along with supporting documentation. They also requested 2009 and 2010 securities account statements for Troszak Capital Corporation. As the Applicants argued in their Brief in Support of their Application for Review, neither of those sets of documents are in their possession, custody, or control. FINRA misunderstands the Applicants' argument. The Applicants do not argue that those requested documents were "of" NWFC's clients who are also the lenders in this case, as FINRA asserts on page 20 of its Brief. Instead, the Applicants contend that those documents were not in their possession, custody or control. Bay View Title,

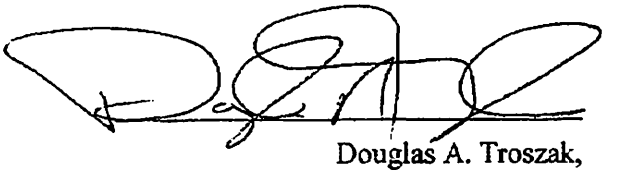
the company that handled everything relating to the redemption is completely independent of Troszak. Troszak promised the lenders that he would remain current with any taxes on the condo unit. Consequently, Bay View was instructed to keep any amount remaining after the redemption and to use those remaining funds to pay any existing or future taxes. As a result, neither Troszak, nor any entity that he had an ownership interest in or control over, have ever received any of the approximately $11,500 that was left over after redemption of the property. That amount has remained with Bay View Title. Because all of the documents necessary to perform an accounting of the remaining $11,500 remained with Bay View Title, it was not possible for Troszak to provide those documents or to undertake that accounting. Troszak did however, provide FINRA with documents relating to the re-financing that he did possess, such as promissory notes. Nevertheless, those documents are insufficient to complete a full accounting of the $11,500 difference. Troszak was therefore unable to complete an accounting of the $11,500 difference, as he did not have possession, custody or control over all of the documents necessary to complete such an accounting.

In addition, FINRA requested 2009 and 2010 securities account statements for Troszak Capital Corporation. Any such statements would have been created by First Southwest, another company that Troszak does not control or have any ownership interest in. Furthermore, Troszak Capital Corporation's securities account rarely, if ever, contained much more than $1,000 and often would have months with no activity. Upon information and belief, First Southwest does not generate account statements when there is no activity in such a small account. As a result, it is likely that no such documents exist. The Applicants did not have possession, custody or control over 2009 and 2010 securities account statements for Troszak Capital Corporation because upon information and belief, no such statements were ever sent to the Applicants or to

Troszak Capital Corporation by First Southwest. This meant that the requested account statements could not be provided to FINRA.

III. CONCLUSION

For the reasons set forth above and in their Brief in Support of Application for Review, the Applicants respectfully request that the Commission reverse the NAC's conclusions that the Applicants violated NASD or FINRA rules and by-laws and did so without justification. The Applicants also respectfully request that the Commission reverse the NAC's decision to impose sanctions against the Applicants and its choice of sanctions.



Douglas A. Troszak,
Personally and on behalf of North Woodward Financial Corporation

[redacted]

Date: December 1, 2014

[redacted]

Certificate of Service

The undersigned certifies that a copy of the foregoing Motion for Consolidation and Brief in Support were served by first-class mail sent on the 1st day of December, 2014 to Jennifer C. Brooks of FINRA at 1735 K Street NW, 7th Floor, Washington, DC 20006, and by facsimile to (202) 728-8264.

I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

Douglas A. Troszak

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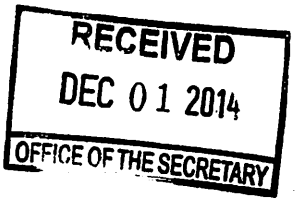

To: **SEC a US Exec Branch Agency affiliated w/ FINRA (a Bernard Madoff Organization) Atten: Brent J. Fields**

From: Douglas A. Troszak (248) 961-2375 (cell)

Fax: (202) 772-9324 **Pages:** 13

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Douglas A. Troszak CPA