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UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of

ANTHONY A. GREY
[redacted]

c/o Peter J. Aldrich, P.A.
[redacted]

For Review of Disciplinary Action Taken by FINRA

Administrative Proceeding No. 3-16230

FINRA Disciplinary Proceeding
[redacted]

Appeal of National Adjudicatory Council Decision dated October 3, 2014
and the prior FINRA Office of Hearing Officers decision dated June 20, 2013

GREY'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR REVIEW

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February 23, 2015

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Fundamentally, the outcome of this case depends on the valuations of the subject bonds when Grey acquired them, and when he sold them. If FINRA and its expert are right about those valuations, which they assumed to be essentially equal, then Grey marked the bonds up too much. If Grey and his expert are right, Grey bought the bonds far below fair value, and sold them to the customers at fair value. In that case, the markups he charged were not excessive. In deciding the valuation issue, several points are key.

An earthquake was under way in the financial markets at the time Grey acquired the bonds. FINRA's argument that no extreme market action occurred during the few days Grey owned the bonds, completely misses the point. It does not take into account the cataclysm in the market *at the time Grey bought the bonds*. This atmosphere of disaster pervaded the markets and beyond any reasonable dispute, materially affected the value of all securities.

Notwithstanding this, FINRA's expert simply made the assumption that the price at which Grey acquired the bonds represented their fair value. He built on this flawed assumption by stating that since he could find no other contemporaneous trades in the subject bonds, the market values at the time of the sales to customers were equal to Grey's cost basis. Thus, by this two-step assumption process, FINRA's expert equated the value of the bonds at the time of purchase by the customers with the price Grey paid. The excessive nature of the markups followed necessarily and mathematically. We contend these assumptions were erroneous under the facts of this case.

At the point of purchase by Grey, there were obvious pricing dislocations caused by the financial crisis, which were not accounted for by FINRA's expert. Further, there is also FINRA's expert's concession about "crucifixion prices". The expert testified that when a customer sells bonds in odd-lots, "he gets crucified in the market," meaning he sells for less than fair market value. Grey bought all of the subject bonds in odd lots. Therefore, according to FINRA's expert, the prices Grey paid amounted to a "crucifixion" of the sellers. The opinion that odd-lot sellers got "crucified", means these particular sellers from whom Grey bought the bonds, sold for less than market value. Enforcement can parse this testimony endlessly, but in the end, there is no way out of this contradiction: it cannot be simultaneously true that on the one hand, the sellers were "crucified" with below-market sales prices, and on the other hand, Grey's purchases from those sellers were at market value. In reality, FINRA's expert essentially confirmed that Grey bought the subject bonds at discounted prices, beneath fair market value, exactly as Grey testified. In no way did the expert account for the odd-lot discount in his opinion about the market prices of the bonds. Therefore, he clearly omitted a material factor in that calculation.

This leads directly to another key point: the problem posed by the fact that Grey bought the bonds in bid-wanted auctions. The very nature of the bid-wanted process precludes conclusive reliance on the auction pricing as representing market value. As Grey explained in unrebutted testimony, in the context of the fear and chaos of the financial crisis, he bid significantly below the market in each auction and was able to purchase the bonds for below-market valuations. Therefore, the odd-lot discount was magnified by the crisis, such that the bid-wanted auction sales clearly could not have and did not represent the prevailing fair market value of the bonds.

This is the entire reason why there must be a fresh assessment of the prevailing market price at the time of sale to the retail customer, and not an arbitrary equating of that value with the cost basis of the dealer, as FINRA's expert did here. While in normal, stable markets and in the vast majority of all transactions, the cost basis and the prevailing market price at the time of the retail sale are rightly presumed to be the same if they are near in time, it is undeniable that the market conditions at the time of the sales in dispute here were unprecedented in history and rule out such a methodology.

Grey's expert did not make the erroneous assumptions about point of sale valuation made by FINRA's expert. Instead, Grey's expert realized there were other metrics to examine at that time, to determine the fair value, such as the entire trading history of the bonds, contemporaneous trades in other similar bonds, the characteristics of the subject bonds, the financial crisis, and finally and chiefly, the yield curve. Consulting this body of data demonstrated a different and more studied and conscientious valuation than FINRA's simple cost-basis equivalency assumption.

Looking at this a different way, for FINRA to be right about valuation, it must be true that the prices paid by the customers exceeded fair value in an amount roughly equivalent to the excessiveness of the markups. But this is contrary to common sense, considering the evidence. The customers would not have made windfall profits as they did, if they paid upwards of 8%, indeed up to 19%, too much for the bonds. Further, if the market was pervaded by the normalcy claimed by FINRA's expert, there should have been other contemporaneous trades to assess. But he could not find any, an indication that normalcy was absent from the market. Grey's expert avoided the error of unjustified assumption and instead analyzed all of the available data, and concluded that Grey's markups were not excessive.