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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Alfred P. Reeves, III

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-16264

BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN OPPOSITION TO APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Jennifer C. Brooks
Associate General Counsel

Colleen E. Durbin
Assistant General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8816 – Telephone
202-728-8264 – Facsimile

March 31, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Court Decision **Pages**

SEC Decisions

Federal Statutes and Codes

FINRA Rules and Guidelines

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I. INTRODUCTION

Alfred Reeves received $59,704.93 to which he was not entitled and spent nearly half of these funds for his personal expenses. To date, Reeves has yet to repay $28,000 even after acknowledging that these funds were not his to spend. The National Adjudicatory Council correctly found that Reeves converted funds that did not belong to him.

In October 2011, soon after Reeves was terminated by member firm HWJ Capital Partners II, LLC ("HWJ Partners") from employment as the firm's Financial and Operations Principal ("FINOP"), Reeves received an e-mail from HWJ Partners' clearing firm. The clearing firm sought payment instructions for funds it owed HWJ Partners and a response to an account questionnaire. Reeves was no longer associated with HWJ Partners and he knew that the clearing firm did not owe him any money. Reeves nonetheless completed the questionnaire and supplied his consulting company and its banking information as payment instructions. A few

days after receiving Reeves's response, the clearing firm wired nearly $60,000 to the bank account that Reeves provided. Reeves, who was in grim financial straits, began spending the money before HWJ Partners became aware that its funds had been mistakenly wired to Reeves's account. As the NAC found, this is a textbook case of conversion and violates FINRA Rule 2010.

On appeal, Reeves attempts to divert attention from his misconduct by celebrating his years of service in the securities industry and deriding FINRA's disciplinary action as targeting him for prosecution born out of a vendetta against Reeves and slanderous accusations by his former employer, Joseph Harch. These assertions are merely an unsuccessful attempt to distract the Commission from the facts. The facts show that Reeves's egregious misconduct is profoundly incompatible with his regulatory duties and that he is not fit to remain in the securities industry. The Commission should affirm FINRA's finding that Reeves converted HWJ Partners' funds and its imposition of a bar.

II. FACTUAL BACKGROUND

A. Reeves's Background

Reeves entered the securities industry in the late 1960's. (RP 1122).[1] In the years that followed, he worked for numerous broker-dealers where he was registered in multiple principal capacities. (RP 1103-22). In addition to his employment with various broker-dealers, Reeves owned and operated a consulting company known as Access Capital Financial Group ("Access Consulting") that was not registered with FINRA. (RP 514).

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[1] References to "RP ____" are to the record of this proceeding.

B. Reeves's Employment with HWJ Partners

In December 2010, Access Consulting entered into a contract with HWJ Partners. (RP 634). At the time, HWJ Partners was net capital deficient, and its president, Joseph Harch, asked Reeves to provide reorganization consulting services and to obtain FINRA's approval for HWJ Partners to resume operations as a broker-dealer. (RP 815-16). The contract, dated December 13, 2010, had a 90-day term and paid Reeves $25,000. (RP 816). Once that contract expired, Harch contracted with Reeves on a monthly basis to serve as HWJ Partner's registered FINOP for $3,500 a month. (RP 817). HWJ Partners always paid Reeves by check for his FINOP services. (RP 662, 817). HWJ Partners did not process securities transactions for members of the public while Reeves was associated with the firm; rather, Harch used HWJ Partners exclusively to trade for his personal account. (RP 511, 819-21).

C. HWJ Partners' Relationship with Legent Clearing

In May 2011, HWJ Partners retained Legent Clearing ("Legent") to provide clearing services. (RP 1131-1159). Harch asked Reeves to complete the necessary paperwork with Legent. (RP 635). Reeves listed himself as HWJ Partners' "Authorized Billing Contact" and provided his personal cell phone number and e-mail address on Legent's account information form. (RP 1131). Reeves testified that he used his personal contact information because Harch wanted Legent to direct all billing questions to Reeves. (RP 635, 637). Harch signed the agreement and returned it to Legent. Legent began providing clearing services to HWJ Partners in June 2011. (RP 636).

D. HWJ Partners Terminates Reeves

Reeves worked for HWJ Partners until August 30, 2011, at which time Harch terminated Reeves. (RP 635). Reeves's association with HWJ Partners spanned a total of nine months. On

or about September 10, 2011, Reeves sent HWJ Partners an invoice in the amount of $2,000 for his services rendered in August 2011. (RP 1226). In an e-mail accompanying the invoice, Reeves states that the HWJ Partners' decision not to renew his contract left him in a "financial bind" and that his "bookkeeping services, financial statement services and any other services for August or in the future are no longer free. Hence, the attached bill." (RP 1225). The e-mail also states: "Thank you in advance for sending a check as soon as possible." (*Id.*). At the time Reeves's contract with HWJ Partners was terminated, he was associated briefly with two other FINRA member firms. Reeves has not been associated with a FINRA member firm since December 2011. (RP 1103).

E. Legent Wires Funds to Reeves's Account

In or about September 2011, HWJ Partners executed several trades in Harch's IRA account. Legent withheld a total of $59,704.93 in commissions on these trades, which it reported as commission income on HWJ Partners' October 2011 statement of clearing charges. (RP 937-38). Because HWJ Partners only executed trades on behalf of Harch and did not charge him commissions, it was not typical for Legent to deduct commissions from Harch's accounts. (RP 622). FINRA's examiner testified at the hearing that commission charges might have arisen from a glitch in Legent's system or an HWJ Partners employee forgetting to check "no commission" when the trades were processed. (RP 621). Legent did not have payment instructions on file for HWJ Partners because the relationship was relatively new and there had not previously been a need to forward funds to HWJ Partners, so Legent moved the commissions due to HWJ Partners into a suspense account. (RP 621-22). Because Legent had not been notified that Reeves was no longer HWJ Partners' FINOP and should have been removed as its billing contact, Legent proceeded to ask Reeves for payment instructions. (RP 1162).

On October 7, 2011, Legent's billing department sent Reeves an e-mail asking that he complete and return the attached "Accounting Questionnaire." (*Id.*). The subject line of the e-mail read: "150 September billing invoice." The number "150" referred to HWJ Partners' firm number at Legent. (RP 552). The e-mail stated:

> Alfred,
>
> Your September billing invoice is complete and Legent owes you money. We do not have payment instructions on file for you. Please fill out the following Accounting Questionnaire and send back to Correspondent Billing@legentclearing.com. We will then be able to get your payment to you.

(RP 1162).

The Accounting Questionnaire also asked for information pertaining to clearing services that were directed to a correspondent firm. (RP 1164). For example, Legent asked: (1) "Do you trade in Inventory Accounts?"; (2) "Do you plan to hold inventory positions overnight?"; (3) "What is your Firm's Fiscal Year End?"; and (4) "Do you need limited access to the Billing Folder on your FTP Site?" (*Id.*). Legent also asked Reeves to fill out the desired payment method for month-end settlements. Reeves completed the Accounting Questionnaire using Access Consulting's bank account information and supplied his personal e-mail address and cell phone number. (*Id.*).

After receipt of the completed Accounting Questionnaire, Legent wired $59,704.93 to Access Consulting's bank account on or about October 12, 2011. (RP 1169). Reeves learned of the deposit on October 21 or 22, 2011, when he called the bank's automated information system to check the balance in the account. (RP 666-67). Prior to this wire transfer, Access Capital had less than $200 in its bank account. (RP 1167). Reeves immediately began withdrawing money from the Access Consulting account. He transferred $50,000 to an account controlled by his ex-wife. (RP 674, 1169). Reeves also made electronic check payments on his mortgage, two credit

cards, and to AT&T. (RP 1169). All told, by the end of October 2011, Reeves spent or transferred $58,572.05 of the $59,704.93 transfer from Legent. (*Id.*). Notably, before he started spending the money, Reeves did absolutely nothing to determine where the transferred funds came from.

F. Reeves's Financial Pressures

As noted in his September 2011 e-mail to Harch, Reeves was experiencing significant financial strain during this time period. The wiring of HWJ Partners' funds to Reeves came at a fortuitous time. Reeves's monthly expenses exceeded his income; he had lost his highest paying job when Harch terminated him; his investments had been wiped out by the stock market; he was being sued by credit card issuers in collection actions; the balances on his credit cards were close to the credit limits; and he had mortgages on two condominiums that were under water. (RP 690-98, 734-51). Reeves himself noted that, when he retained counsel in connection with the investigation of this matter, he had to pay counsel's retainer with silver coins. (RP 955-56).

G. HWJ Partners and Legent Learn of the Wire Transfer to Reeves

In November 2011, HWJ Partners discovered that Legent withheld commissions on Harch's trades and paid those commissions to Reeves. (RP 796). On November 19, 2011, Harch sent Reeves an e-mail accusing Reeves of stealing money from the firm and demanding its return. (RP 57, 795). Reeves denied any wrongdoing and refused to return the money. (RP 796). He replied that he did not have access to HWJ Partners' funds and therefore he could not have taken the money. (*Id.*).

On November 20, 2011, Harch lodged a complaint against Reeves with the FINRA examiner who was at HWJ Partners conducting a routine cycle examination. (RP 508, 561). Harch told the examiner that Reeves had hacked into HWJ Partners' computer system, added

commissions to his IRA trades, and then directed Legent to pay the commissions to his consulting company. (RP 509).[2]

Both HWJ Partners and Legent demanded that Reeves repay the money that Legent had transferred to him. Reeves offered to make a deal to resolve the situation in which he would repay $5,000 a month to Legent on two conditions. (RP 793). First, Reeves stated that he would not make any payments until he resolved all issues with FINRA. (RP 800). Second, Reeves demanded that Legent admit that Legent had "misappropriated" HWJ Partners' funds and paid them to Reeves in error. (RP 800-02). Legent refused to admit that it had misappropriated the funds. (RP 803). Reeves eventually repaid $31,000 to Legent. (RP 538). Reeves has admitted that he has not repaid the outstanding balance of $28,704.93 and that he no longer has access to those funds because he has already spent the money. (RP 690, 803).

III. PROCEDURAL BACKGROUND

On May 29, 2012, Enforcement filed a complaint alleging that Reeves violated FINRA Rule 2010 by converting funds belonging to HWJ Partners. (RP 6-10). Reeves denied the allegation and contended that he had mistakenly believed that the funds referenced in Legent's e-mail were due to him for consulting work he had performed for HWJ Partners or for other deals in progress with other firms. (RP 49-61). In a decision dated April 15, 2013, the Hearing Panel found that the evidence refuted Reeves's argument that this series of events was merely a misunderstanding, and it concluded that Reeves violated FINRA Rule 2010 by converting funds belonging to HWJ PARTNERS. (RP 1267-81). The Hearing Panel barred Reeves from associating with any member firm in any capacity and ordered him to pay $28,704.93 in

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[2] While it was Harch's complaint that initiated the investigation that led to the instant disciplinary action against Reeves, FINRA staff found no evidence to support Harch's allegations of hacking. (RP 524-25).

restitution to HWJ Partners. (*Id.*). On May 8, 2013, Reeves appealed the Hearing Panel's decision to the NAC. (RP 1283-1284). Reeves did not request oral argument, and the matter was considered on the record.

On October 8, 2014, the NAC issued its decision in which it affirmed the Hearing Panel's finding that Reeves converted HJW Partners' funds, the sanction imposed, and the order of restitution. (RP 1548-59). The NAC found several aggravating factors, including Reeves's continued refusal to take responsibility for his misconduct, blaming Harch, Legent, and FINRA for Reeves's current disciplinary troubles, and Reeves's monetary gain of $59,704.93 and the deprivation of HWJ Partners' access to its funds, rendering Reeves's misconduct egregious. This appeal followed.

IV. ARGUMENT

The Commission should uphold the NAC's findings that Reeves converted HWJ Partners' funds and affirm the sanction of a bar in all capacities and the order of restitution. Reeves continues to argue on appeal, as he did below, that he did not convert HWJ Partners' funds and accuses FINRA of skewing the facts to support its findings. However, viewing the facts through even the most advantageous of lenses – Reeves's own testimony – the only conclusion that can be drawn is that Reeves converted his former employer's funds, and that a bar is the only appropriate sanction.

A. Reeves Violated FINRA Rule 2010 by Converting HWJ Partners' Funds

Reeves violated FINRA Rule 2010 when he took and spent money that did not belong to him. FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA's authority to pursue disciplinary actions for violations of these rules encompasses all unethical

business-related conduct, irrespective of whether that misconduct involves a security. *See Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996). FINRA Rule 2010 "applies when the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money." *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002). "With respect to a charge that conduct was inconsistent with just and equitable principles of trade, [the Commission has] held that a self-regulatory organization need not find that the respondent acted with scienter, but must find that the respondent acted in bad faith or unethically." *Calvin David Fox*, 56 S.E.C. 1371, 1376 (2003). Conversion, which is defined as an "intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it," violates the fundamental ethical requirements of FINRA Rule 2010. *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33, 42 (Feb. 10, 2012) (holding that conversion is "extremely serious and patently antithetical to the high standards of commercial honor and just and equitable principles of trade that [FINRA] seeks to promote"). Reeves's conduct unquestionably meets the definition of conversion and thus violates FINRA Rule 2010.

It is undisputed that Reeves directed Legent to wire HWJ Partners' funds to his consulting company, which he then spent or disbursed for his own personal benefit. Reeves concedes that he filled out the Legent Account Questionnaire after his employment with HWJ Partners ended even though he had not had any independent business relationship with Legent. (RP 645, 647). Reeves had only dealt with Legent on HWJ Partners' behalf. Reeves further concedes that by November 2011 he knew the funds Legent wired did not belong to him, yet he refused – and continues to refuse – to repay HWJ Partners in full.

Reeves argues, nevertheless, that he did not intend to steal any money. Br. at 4. He continues to view the entire matter as a misunderstanding. Reeves argues that he filled out the Account Questionnaire as he did because he thought HWJ Partners had instructed Legent to pay an outstanding invoice for consulting services he rendered in August 2011 before he was terminated. Br. at 6. Reeves also claims that he did not question the source of the deposit because over the years he had often received large wire deposits for deals in which he was involved. Br. at 4. The record does not support Reeves's self-serving assertions.

Reeves's defense that he acted in good faith when he responded to Legent's October 7 e-mail is without merit. Reeves argues that he reasonably concluded that Legent's e-mail referred to the consulting services invoice he had sent HWJ Partners because he received the communication from Legent regarding the payment of an invoice approximately a month after he submitted his bill to his former employer. Br. at 6. Reeves therefore provided his consulting firm's bank account number to facilitate the wire transfer from Legent. But the text of Legent's e-mail, and all of the circumstantial evidence, contradict Reeves's defense.

The text of the e-mail addressed to Reeves reads, "Your September billing invoice is complete and *Legent* owes you money." (emphasis added). (RP 1162). The e-mail does not state HWJ Partners owed him money. It is therefore unreasonable to construe this unequivocal declarative sentence to mean that Legent was holding money that HWJ Partners owed Reeves. Reeves acknowledged that Legent had no business relationship with Reeves or his consulting company, and Legent did not owe either of them any money. (RP 645, 647). Thus, Reeves reasonably could not have believed that Legent was holding money belonging to him.

In addition, Reeves had no reason for concluding that HWJ Partners would pay him at all, let alone in this manner. First, neither Harch nor anyone else at HWJ Partners had told Reeves

that HWJ Partners would pay the invoice. (RP 662). This factor is particularly significant given the distrust and hostility that surrounded Harch's termination of Reeves, and evidenced during Harch's vitriolic testimony at the hearing. (*See, e.g.*, RP 812-13, 824, 838). In fact, Reeves acknowledges that Harch would probably not pay Reeves, only that Reeves "hoped" Harch would. (RP 680). Second, HWJ Partners had never used Legent or a wire transfer/direct deposit as a method to pay Reeves. HWJ Partners always paid Reeves by check for his FINOP and consulting services. (RP 662). Third, Reeves did not produce any evidence of circumstances when a broker-dealer for whom he worked had its bills paid via its clearing firm. Finally, the Accounting Questionnaire asked for information that an experienced securities professional such as Reeves should recognize readily as relating to the provision of clearing services. (RP 1162). The form asked Reeves whether HWJ Partners traded in inventory accounts and whether it intended to hold inventory positions overnight. As Reeves well knew, Legent had no need for this information to forward payment of his consulting invoice to HWJ Partners and he was not due any month-end settlement. Reeves made no effort to reconcile these inconsistencies. He simply asserted that it was a reasonable mistake for him to have concluded that the information request related to the payment of his $2,000 September 2011 invoice. But given his acrimonious termination from Harch, the history of payment by check, the amount of money transferred, and other factors, Reeves's claim that he mistakenly believed the money was his has not credible.

Reeves's other excuses also ring hollow. Reeves claims that he had no reason to question the size of the deposit because over the years he had often received large wire deposits in connection with other deals. Br. at 4. Yet Reeves had every reason to question the deposit. Reeves presented testimony from several witnesses who had done such deals with him in the past. Their testimony only highlights the infirmity of Reeves's position. Each witness

confirmed that he did not have any open deals with Reeves that were ready to close near October 2011. Reeves's story that he thought that the funds might have come to him from one of three individuals with whom he had previously worked on deals was undermined by the testimony given by two of the three individuals and Reeves's own testimony. For example, one deal that Reeves identified as a possible source of the money involved an entity called Gulf South and a friend of Reeves's named John Calabria. (RP 781). But as Calabria's testimony made clear, there was nothing more than the mere possibility of a Gulf South deal at the time of the events in issue. There was no letter of intent, no confidentiality agreement, no due diligence conducted, no money in escrow, and no scheduled closing date. (RP 1031-35).

Another deal identified by Reeves – a pooling of assets for investment in life settlements – involved a business acquaintance named William Mountain. But as Mountain's testimony illustrated, the proposed private placement was at the most incipient stage during the relevant time period. There was nothing in writing, no selling agreement, no legal opinion, no private placement memorandum. (RP 704-08). The deal was nowhere near closing; indeed, when Mountain testified in January 2013, it still had not closed and, even then, was not close to closing. Nor did Mountain ever tell Reeves it was close to closing. (*Id.*). As of October 2011, there had been no progress made toward consummating such a deal beyond informal discussions between Mountain and Reeve. (*Id.*).

Reeves's own testimony regarding the third individual, Giovanni Vasquez, belied his contention that Vasquez may have been the source of the nearly $60,000 that Legent wired to Access Capital's account. (RP 790-791). Reeves testified that he advised Vasquez on structuring a $20 million private asset funding deal. Reeves's fee, if and when the deal closed,

was to be 1 percent of $20 million, or $200,000 – not $60,000. Moreover, Reeves had no documents reflecting either the purported deal or the compensation arrangement. (*Id.*).

Reeves cannot point to any deal that could possibly have been the source of the $59,704.93 wire deposit to his consulting company's bank account. Thus, the substance of the witnesses' testimony upon which Reeves relies contradicts his argument that it would not have been unusual for him to have received unknown wires of large sums into his consulting firm's checking account. The Commission should reject Reeves's argument.

Reeves also argues that because he willingly returned to HWJ Partners a portion of the ill-gotten funds he could not have engaged in conversion. Br. at 4. This narrative conveniently ignores several salient facts. To this date, Reeves has not repaid nearly half of the money owed to HWJ Partners. In addition, after Harch discovered that the commissions had been wired to Reeves, Reeves contacted Legent and offered to "make a deal" to repay the money to Legent on two conditions. (RP 793-95, 798). First, Reeves demanded that Legent admit that it had misappropriated the funds and paid them to Reeves in error. (RP 800-03). Second, Reeves would not make any payments until he resolved all issues with FINRA. (RP 800-02). Reeves made these demands despite the fact that by this time he knew he had no right to retain the money. Reeves offered to settle with Legent by paying it $5,000 per month. (RP 793). But Legent refused to admit that it had misappropriated HWJ Partners' funds. (RP 803). Instead of repaying money that he knew was not his, Reeves held the funds hostage to pressure Legent into admitting wrongdoing. Although Reeves has repaid a portion of the funds, he cannot repay the remaining amount because he has spent it all.

Finally, Reeves attempts to fall back on his self-professed unblemished 45 years of industry experience in support of his argument that he would never engage in the misconduct

alleged in this case. But Reeves's lengthy securities industry tenure undermines his argument. It is implausible that a person with Reeves's substantial industry experience, particularly as a FINOP, would not have inquired as to the amount and purpose of the transfer from Legent under the circumstances before directing Legent to make a payment to his personal firm. A person with Reeves's experience and familiarity with compliance practices should have questioned HWJ Partners or Legent as to the amount and purpose of the transfer before treating it as his own money. *See, e.g.*, *Harry Friedman*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *30 (May 13, 2011) ("We agree with FINRA that Friedman's industry experience and compliance responsibility at the Firm are aggravating factors here."); *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *28 (Apr. 11, 2008) (holding that a bar was an appropriate sanction, in part, because applicants' "cavalier" attitude "poses a clear risk of future misconduct"), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009). Therefore, Reeves's vast experience serves only to aggravate his misconduct.

Based on the facts contained in the record, the only conclusion the Commission can draw is that Reeves violated FINRA Rule 2010 by converting HWJ Partners' funds. There is no legitimate scenario upon which Reeves can rely that supports his argument that he reasonably believed he was the intended recipient of the nearly $60,000 wire transfer from his former employer's clearing firm. Moreover, even after acknowledging that he in fact was not entitled to the funds, he refused to pay the outstanding balance. The Commission should therefore affirm FINRA's findings of liability.

B. FINRA's Sanction for Reeves's Conversion Is Consistent with FINRA's Guidelines, the Public Interest, and Is Neither Excessive Nor Oppressive

The Commission should affirm the NAC's sanctions, as they are neither excessive nor oppressive. *See* 15 U.S.C. § 78s(e)(2). Moreover, the sanctions here are consistent with FINRA's Sanction Guidelines and the protection of the investing public. Although the Commission is not bound by the Guidelines, it uses them as a benchmark when conducting its review of FINRA imposed sanctions under Section 19(e)(2) of the Securities Exchange Act of 1934 ("Exchange Act"). *Mullins*, 2012 SEC LEXIS 464, at *73 n.79. The Commission considers the principles articulated in the Guidelines and has regularly affirmed sanctions that are within the recommended ranges. *See Robert Tretiak*, 56 S.E.C. 209, 233 (2003); *Manoff*, 55 S.E.C. at 1166.

The NAC barred Reeves from associating with any member in any capacity for his conversion of HWJ Partners' funds. The Commission should readily affirm this sanction. The Guidelines for conversion are expressed in decidedly uncompromising terms: a bar is the standard sanction regardless of the amount converted. *FINRA Sanction Guidelines* 36 (2013) (Conversion or Improper Use of Funds or Securities), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf (hereinafter "*Guidelines*").

As the Commission has emphatically stated, conversion "is generally among the most grave violations committed by a registered representative . . . [and] is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets." *Mullins*, 2012 SEC LEXIS 464, at *73 (internal citations omitted). The severity of the sanction also "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from

the securities industry." *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 3134, at *31 (Aug. 22, 2008); *accord Mullins*, 2012 SEC LEXIS 464, at *74 (quoting *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *22 n.27 (Nov. 8, 2007)). The Commission has thus frequently and unfailingly affirmed the remedial necessity of barring individuals who, like Reeves, have engaged in the conversion, or misappropriation of funds or assets belonging to others.[3]

The NAC found several aggravating factors associated with Reeves's conversion, and no mitigating factors that could have rendered a sanction less than a bar appropriate. The NAC

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[3] Commission precedent in this regard is plentiful. *See, e.g., Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *53-54 (Dec. 7, 2010) ("A bar and expulsion are severe sanctions. Applicants' demonstrated lack of fitness to be in the securities industry, however, supports the remedial purpose to be served by such sanctions."); *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *88 (Feb. 1, 2010) ("Misappropriating client funds and making misstatements are serious misconduct, and we have sustained bars as appropriate sanctions in the past for such conduct."); *Manoff*, 55 S.E.C. at 1166 ("We conclude that a bar is within the allowable sanction range under the NASD's Guidelines, and is not excessive, oppressive, or unduly burdensome on competition."); *Eliezer Gurfel*, 54 S.E.C. 56, 63-64 (1999) ("We conclude that, given the nature of Gurfel's misconduct, the NASD's sanctions are neither excessive nor oppressive . . . ."), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000); *Henry E. Vail*, 52 S.E.C. 339, 342 (1995) ("His actions make us doubt his commitment to the high fiduciary standards demanded by the securities industry. Under these circumstances, we agree with the NASD that his continued presence in the industry threatens the public interest."), *aff'd*, 101 F.3d 37 (5th Cir. 1996); *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226-27 (1994) ("Shaw's conduct could hardly be more serious. Thus we, [sic] do not find the sanctions imposed excessive or oppressive."); *Joseph H. O'Brien II*, 51 S.E.C. 1112, 1117 (1994) ("It is clear that his continued presence in the securities industry threatens the public interest."); *Ernest A. Cipriani,Jr.*, 51 S.E.C. 1004, 1008 (1994) (holding that Cipriani misappropriated money from a customer and supplied false paperwork to conceal it, "an extremely serious violation," and finding that a bar is neither excessive nor oppressive); *Richard J. Daniello*, 50 S.E.C. 42, 46 (1989) (affirming a bar for misappropriating employer's funds and stating that "[p]rotection of the securities industry and public investors requires that a severe sanction be imposed to prevent any recurrence of such misconduct"); *Richard D. Earl*, 48 S.E.C. 334, 336 (1985) ("The hardship visited on Earl is outweighed by the necessity of ensuring that the NASD community and public investors are protected against a recurrence of the dishonest actions in which Earl engaged."), *aff'd*, 798 F.2d 472 (9th Cir. 1986); *see also James A. Goetz*, 53 S.E.C. 472, 478-79 (1998) ("We agree with the NASD that a significant sanction is appropriate here.").

found it aggravating that Reeves continued to refuse to take responsibility for his misconduct, blaming Harch, Legent, and FINRA for his current disciplinary troubles, and continuing to refuse to repay HWJ PARTNERS's funds knowing that the funds do not belong to him. It is also aggravating that Reeves's conversion harmed HWJ Partners by depriving the firm of $59,704.93, while resulting in Reeves's monetary gain. Imposing a bar for Reeves's egregious misconduct furthers the well-reasoned tenet, reflected in the Guidelines for conversion and endorsed in long-standing Commission precedent, that stealing by associated persons of FINRA members is so profoundly incompatible with one's regulatory duties and injurious to the public interest that it will not be tolerated, absent extraordinary circumstances. *See, e.g.*, *Mullins*, 2012 SEC LEXIS 464, at *80 (affirming a bar and holding that "[w]e support the NAC's conclusion that J. Mullins's misconduct 'reveals a troubling disregard for fundamental principles of the securities industry'") ("collected cases."). Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73. At its core, the conversion of funds or assets is "patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that [FINRA] seeks to promote." *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976).

Moreover, "[t]he public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable." *Ortiz*, 2008 SEC LEXIS 3134, at *29; *accord Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *23 (Feb. 13, 2009) ("[T]he importance of honesty for a securities professional is so paramount . . . ."), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010). Reeves's decision to accept a transfer of funds that he had no reasonable basis to believe was his, spend that money and refuse to pay it back display a level of dishonesty that renders him unsuited for continued association with a FINRA member and his

exclusion from the securities industry is an appropriately remedial sanction that serves the public interest. *See Mission Sec. Corp.*, 2010 SEC LEXIS 4053, at *54 ("Applicants represent a clear danger to the investing public if they remain in the securities industry, and, as FINRA accurately observed in its decision, 'expelling Mission and barring Biddick in all capacities are the only effective remedial sanctions.'"); *Manoff*, 55 S.E.C. at 1166 ("We agree with the NASD that Manoff's continued presence in the securities industry threatens the public interest."); *see also James C. Dawson*, Advisers Act Release No. 3057, 2010 SEC LEXIS 2561, at *24 (July 23, 2010), (affirming bar by noting, in part, the Commission's concern "about the possibilities any participation by Dawson in the investment advisory industry would present for future violations, and our concern that Dawson's lack of appreciation for the wrongful nature of his conduct increases the likelihood of recurrence").

The Commission should also affirm FINRA's award of restitution. The Guidelines recommend that FINRA consider ordering restitution where appropriate to remediate misconduct. Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss. *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5). "Adjudicators may order restitution when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent's misconduct." *Id.* Reeves never repaid HWJ Partners $28,704.93 of the converted funds, and as such an award of restitution is appropriate.

C. Reeves's Attempts to Shift Blame Fail

In his brief, Reeves blames everyone but himself for the investigation into his misconduct, the subsequent disciplinary action, and his current inability to earn a living. He paints himself as a victim of circumstance whose misconduct should be excused. Each

occurrence of finger-pointing, however, simply evinces Reeves's cavalier attitude and his lack of regard for the severity of his misconduct.

Reeves's first target of denunciation is Joseph Harch. He blames Harch for complaining to FINRA about the missing funds and accusing Reeves of intentionally causing the funds to be wired to Reeves's account. Br. at 1. As an initial matter, Harch was well within his rights to lodge a complaint with FINRA when he learned that nearly $60,000 of his money had found its way into a former employee's bank account. Furthermore, while Harch's complaint triggered the investigation that ultimately led to this disciplinary action, FINRA did not rely on Harch's testimony at the hearing in its determination that Reeves converted HWJ Partners' funds. It is telling that Reeves himself called Harch as a witness during the hearing, and FINRA did not even cross-examine Harch. (RP 887).

Reeves also takes aim at FINRA. Reeves complains that FINRA credited the "baseless allegations" of Harch as the basis for its complaint against Reeves.[4] Br. at 1. As previously stated, FINRA did not rely on Harch's testimony to support its finding of liability or its sanctions. FINRA conducted its own investigation. Reeves also maintains that FINRA's prosecution of the case was premised upon a vendetta against Reeves for a FINRA examination and investigation Reeves was involved in and that FINRA has endeavored to end Reeves's career through this disciplinary proceeding. Br. at 8-9. As an initial matter, Reeves's assertion that a number of years ago, a FINRA examiner (which he calls a "Special Investigator") displayed

[4] Reeves argues that he should be absolved of wrongdoing because he was never criminally prosecuted for the theft of HWJ Partners' funds. This argument is irrelevant. A state attorney's prosecutorial discretion to proceed with a criminal matter is separate and independent from FINRA's Department of Enforcement's discretion to pursue a disciplinary action pursuant to FINRA rules. FINRA Rule 2010 is a broad ethical rule and encompasses all unethical business-related conduct, irrespective of whether such conduct is a crime.

arrogance with Reeves and created a "bogus" Wells notice is completely without support in the record. Br. at 8. Reeves did not present any evidence or testify about this alleged encounter, and Enforcement did not have an opportunity to refute it. The Commission should give no weight to these inflammatory statements. Second, the record does not support Reeves's claim of improper selective prosecution. "To establish such a claim, *a petitioner must demonstrate that he was unfairly* singled out for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right." *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *53 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010). No such showing was made here.[5]

Furthermore, FINRA provided Reeves with a fair disciplinary process. *See* 15 U.S.C. § 78o-3(b)(8); *see also Epstein*, 2009 SEC LEXIS 217, at *51 (holding that FINRA must provide fair procedures for its disciplinary actions). Section 15A(h)(1) of the Exchange Act requires that FINRA, in a disciplinary proceeding, "bring specific charges, notify such member or person of and give him an opportunity to defend against, such charges, and keep a record." The record in this case demonstrates that the proceedings were fair and conducted in accordance with FINRA rules. Enforcement commenced its investigation of Reeves, took his investigative testimony, and filed a complaint against him. (RP 508-10, 515-16). At the Hearing Panel hearing and on appeal to the NAC, Reeves defended himself and FINRA kept a full record of these proceedings. Therefore, FINRA's disciplinary proceeding against Reeves was thoroughly fair. Regardless of any acrimony that may exist between the Harch and Reeves, there is no evidence in the record

[5] Indeed, even if there were, the NAC's de novo review, in which it carefully considered all of the evidence in the case and the transcripts of the proceedings below, "dissipates even the possibility of unfairness." *Tretiak*, 56 S.E.C. at 232; *see also Robert E. Gibbs*, 51 S.E.C. 482, 484-85 (1993) (discussing how de novo review by the NASD Board during NASD disciplinary proceedings insulates against bias), *aff'd*, 25 F.3d 1056 (10th Cir. 1994) (table).

that support Reeves's claim that FINRA's prosecution stemmed from any crusade to end his career.

In an additional attempt to blame FINRA, Reeves argues that it is FINRA's fault that he cannot repay the money he converted because the bar has prevented him from gaining employment in the industry, leaving him destitute. Br. at 4-5. Reeves's argument is wholly misguided. Reeves has only himself to blame for spending money that was not his. The Commission has roundly rejected the argument that lesser sanctions should be imposed on respondents who claim they have suffered hardship as a result of their own misconduct. *See, e.g.*, *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages Craig alleges he suffered because they are a result of his misconduct."). Reeves's current financial situation "do not outweigh the need to protect the investing public." *See id.* at *26 (rejecting a claim that sanctions should be reduced because the respondent cared for his ill mother); *accord Richard Dale Grafman*, 48 S.E.C. 83, 85 (1985) ("The hardship visited on Grafman is outweighed by the necessity of ensuring the exchange community and public investors are protected against a recurrence of the dishonest actions in which Grafman engaged.").

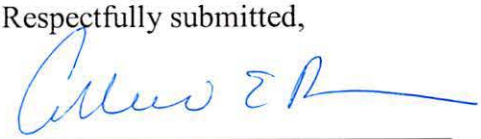
Reeves had no plausible reason to believe that he was due any money from Legent, yet chose to direct those funds to his bank account for his personal use. Instead of taking responsibility for his misconduct, Reeves places the blame on FINRA and Harch. Even if the Commission were to credit Reeves statement that in his 45 years in the securities industry he never lied or took a dime from anyone, his willingness in this case to deceitfully place his pecuniary interests before those of his former employer reinforces the conclusion that a bar is the correct sanction in this case. *See Katz*, 2010 SEC LEXIS 994, at *92 ("Katz's assertion that she

was a nice person who did a good job for her clients similarly do not warrant a lesser sanction . . . ."). "The securities business presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants." *Grafman*, 48 S.E.C. at 84-85. Reeves's misconduct, and the excuses he now offers to defend it, demonstrates that he is fundamentally unconcerned with his regulatory obligations. *See Mission Sec. Corp.*, 2010 SEC LEXIS 4053, at *51; *see also Hal S. Herman*, 55 S.E.C. 395, 405 (2001) ("Herman's disdain or ignorance of the required minimum level of conduct is reflected in his explanation . . . ."). Reeves's conversion of HWJ Partners' money is, in isolation, troubling enough to warrant a bar; his continued insistence that others are to blame for his misconduct makes "clear that his continued presence in the securities industry threatens the public interest." *See O'Brien*, 51 S.E.C. at 1117.

V. CONCLUSION

Reeves received a large wire transfer of funds that he promptly spent even though he had no reasonable basis to conclude he was entitled to it. Even after acknowledging the funds were not his, he refused to pay the money back without conditions. The bar that FINRA imposed for Reeves's egregious misconduct is fully supported by the record and FINRA's Guidelines. The Commission should affirm the NAC's decision in its entirety and dismiss Reeves's application for review.

Respectfully submitted,



Colleen E. Durbin
Assistant General Counsel
FINRA
1735 K Street, N.W.
Washington, DC 20006

Dated: March 31, 2015