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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

File No. 3-16933

In the Matter of the Application of

DAWSON JAMES SECURITIES, INC.

For Review of Action Taken by FINRA in Matter No. SD-2029

REPLY BRIEF IN SUPPORT OF MOTION FOR STAY OF DECISION PENDING COMMISSION REVIEW OF NATIONAL ADJUDICATORY COUNCIL DECISION

Dawson James Securities, Inc. ("DJSI" or the "Firm"), by and through undersigned counsel, and pursuant to the SEC Rules of Practice, serves its reply brief in further support of its motion for a stay of the decision of FINRA's National Adjudicatory Council (the "NAC") denying the Firm's Membership Continuance Application (the "MC-400") regarding the continued association of Bret M. Shapiro ("Mr. Shapiro"), issued on September 29, 2015 (the "NAC Decision").

FINRA, through its counsel has filed its "Brief in Opposition to Motion for Stay" ("FINRA Brief") in which it seeks to perpetuate its heavy-handed and punitive treatment of Mr. Shapiro and the Firm, in an effort to prohibit Mr. Shapiro from continuing to work as a general securities representative pending the outcome of the Firm's appeal of the NAC Decision. This Reply Brief will focus principally on an issue that is at the core of the Firm's appeal (and this motion for stay): The Firm does have a substantial likelihood of success on the merits, because the NAC Decision -- which effectively bars Mr. Shapiro from engaging in the securities industry for conduct that FINRA already determined warranted a three month suspension and a modest fine -- simply cannot be allowed to stand.

The Firm Does Have A Substantial Likelihood of Success on the Merits

While FINRA continues to try to hide behind the semantic distinction that that NAC Decision does not constitute a "sanction", but rather is just a licensing decision, that supposed distinction is of no meaning or import to Mr. Shapiro or the Firm. As FINRA noted in its Reply Brief, Mr. Shapiro "entered into a settlement with FINRA to put these disclosure failures behind him." FINRA Brief at 1. That statement is entirely accurate and very telling. Mr. Shapiro made a decision to accept certain sanctions as proposed by FINRA in anticipation of being able to move past these issues and continue with his securities career, albeit under a supervision plan. FINRA recognizes, as it must, that *Van Dusen* and its progeny limit the NAC's ability to rely on the underlying misconduct as a basis for denial of an MC-400 Application. Indeed, there are important practical and policy considerations that support and require that rule. Individuals in Mr. Shapiro's position need to know that they can negotiate with FINRA's enforcement division, in good faith, to agree upon sanctions that are decidedly not career-ending, without having to bear the risk that FINRA's member regulation division later will decide that the same underlying conduct should effectively warrant a bar from the securities industry through the denial of an MC-400 application.

The NAC's and FINRA's Reliance on Additional Undisclosed Events is Overstated

In its Reply Brief, FINRA relies most heavily on the issue of additional financial events that were not timely disclosed by Mr. Shapiro, to wit: one "additional" tax lien, and three judgments that were fully paid before Mr. Shapiro entered into his Letter of Acceptance, Waiver and Consent with FINRA. The Firm submits that these events were not sufficient to warrant denial of the MC-400, and should not deprive Mr. Shapiro or the Firm of the requested stay, for several reasons.

First, as Mr. Shapiro testified at the hearing, the IRS paperwork and process in regards to the imposition of liens is very "confusing and convoluted." See Transcript of April 8, 2015 NAC Hearing, submitted as Exhibit B to the Motion to Stay ("Transcript"), at p. 68. Indeed, Mr. Shapiro testified that the amounts reflected in the so-called "additional" tax lien may very well have been a duplication of amounts already included in the earlier tax liens that were fully disclosed to FINRA at the time that he entered into his AWC. (Transcript, at pp. 76-77). That testimony was not disputed or contradicted by FINRA.

Second, of the three judgments relied upon by FINRA in its Reply Brief, two were in relatively small amounts and were satisfied many years before the issue of Mr. Shapiro's undisclosed tax liens ever arose. The third judgment, while closer in time to the relevant events underlying this matter, also was satisfied before Mr. Shapiro made his "peace" with FINRA enforcement and entered into his AWC. This undisputed chronology distinguishes the main case relied upon by FINRA, *Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724, from the instant case and renders it inapposite. Indeed, in *Toland*, the representative failed to disclose his personal bankruptcy in 2005, and subsequently entered into an AWC with FINRA in 2009. The decision denying his firm's MC-400 application notes that **after** his bankruptcy, and even **after** the effective date of his AWC, Toland **again** failed to disclose a substantial number of new, additional liens and judgments that came into existence through 2012.

That time line in *Toland* is materially different than the one in the instant case and, as such, the rationale in *Toland* does not apply here. Unlike in the instant matter, in *Toland*, the representative entered into an AWC with FINRA for failure to disclose a financial event in 2009. After entering into that AWC, a number of additional, **new** financial events arose. [1] Toland then

[1] In *Toland*, the NAC identified two events that arose before Toland signed his AWC with FINRA, and then identified the following additional and new events that arose **after** Toland signed his AWC: (1) a tax warrant in the amount of $10,140 filed by New York in September 2010; (2) a tax warrant in the amount

failed to timely disclose those new events. He later did disclose some of them, but the decision notes that even at the time of his hearing, he still had failed to report certain of the new liens that had been brought to his attention. In reaching its decision, the NAC panel stated as follows:

> Given that Toland's failure to disclose his personal bankruptcy in October 2005 led to a suspension, fine and ultimately these proceedings, we are troubled and perplexed by Toland's repeated and continuing failures to disclose judgments and liens on his Form U-4.

Those facts are in stark contrast to the facts in the instant case. Here, there is no allegation or evidence of any **new** financial events being brought to Mr. Shapiro's attention that were not timely disclosed. Thus, while there was ample evidence of true "intervening misconduct" in *Toland*, there is no such "intervening misconduct" in the instant case. As such, FINRA's reliance on *Toland,* and the NAC's application of the *Van Dusen* factor of "intervening misconduct", in the absence of any such events, are erroneous and inapposite.[2]

In addition, while the Firm recognizes the importance of financial disclosures by its representatives, FINRA's reliance on these events as a basis to conclude that Mr. Shapiro presents a grave risk to the investing public is unsupportable. As FINRA acknowledges, Mr. Shapiro has not been the subject of a customer complaint in *some fifteen years* (FINRA Brief, at 7), including his entire tenure at DJSI. All of the "additional" events relied upon by FINRA related to the very same disclosure issue that was addressed in Mr. Shapiro's AWC. While Mr. Shapiro admittedly had some difficulty meeting his obligation to timely disclose these events in the past, two things are abundantly clear in the record on appeal: (1) Mr. Shapiro learned his

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of $731 filed by New York in November 2010; (3) a judgment in the amount $22,951 obtained by a prep school in February 2011; (4) a judgment in the amount of $614 obtained by Midland Funding LLC in July 2011; (5) four federal tax liens totaling $386,838 filed by the IRS in May 2012; and (6) a federal tax lien in the amount of $25,000 filed by the IRS in June 2012.

[2] There are a number of other facts and "aggravating factors" that were present in the *Toland* case that are not present in the instant case. For example, Toland did not participate in the hearing before the NAC panel in his case (nor did his primary supervisor or counsel), even after FINRA took steps to address his scheduling issues.

lesson, and provided solid assurances to the NAC Panel that he would never again have an issue like this one (Transcript, pp. 105-06); and (2) Mr. Shapiro's difficulty in this one area does not make him a risk to the investing public, such that he should be deprived of ever working again in his chosen profession. Indeed, the record in this case is completely devoid of a single customer complaint or other customer issue advanced by any of Mr. Shapiro's clients -- relating to nondisclosure of financial events or otherwise -- during the last fifteen years.

Conclusion

FINRA's insistence that Mr. Shapiro's career in the securities industry be ended as a result of his difficulty in this one area -- timely disclosure of financial events -- is troubling, on a number of levels. First, Mr. Shapiro already has accepted responsibility for his shortcomings in this area, and FINRA has exacted its required penance, in the form of a suspension and fine. In addition, whether cast in terms of a sanction or, as the NAC would suggest, a licensing decision, FINRA's effort to impose the most severe, career-ending result in this case is punitive and excessive. As such, the Firm remains confident that when the record is fully examined by the Commission, and considered in light of relevant precedent, and the guiding principles of fairness and proportionality, the NAC Decision will be reversed. Accordingly, the Firm requests that the Commission grant its motion for a stay of the NAC Decision pending the Commission's review thereof, and permit the Firm to continue to associate with Mr. Shapiro in his capacity as a general securities representative.

Dated: November 9, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on November 9, I filed and served the foregoing by Federal Express and facsimile, addressed as follows:

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