BEFORE THE NATIONAL ADJUDICATORY COUNCIL

SECURITIES AND EXCHANGE COMMISSION

Department of Enforcement, Complainant, v. Rani T. Jarkas (CRD No. 264904), and William H. Carson (CRD No. 722967), Respondents.	SEC Administrative Proceeding File No. 3-16948 Disciplinary Proceeding No. 2009017899801

REPLY BRIEF ON BEHALF OF RESPONDENT AND APPELLANT RANI T. JARKAS

and

REQUEST FOR ORAL ARGUMENT

ROBERT J. STUMPF, JR.
Sheppard Mullin Richter & Hampton LLP
Attorneys for Respondent Rani T. Jarkas
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
PH (415) 774-3288, FAX (415) 434-3947
rstumpf@sheppardmullin.com
ATTORNEYS FOR RESPONDENT AND APPELLANT RANI T. JARKAS

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 3

A. The Non-Rule 8210 Claims Do Not Justify A Bar 3

B. Nor Does The Rule 8210 Claim Justify A Bar 4

III. CONCLUSION 8

TABLE OF AUTHORITIES

Page

CASES

David Kristian Evansen
2015 SEC LEXIS 3080 (July 27, 2015) 6

Gregory Evan Goldstein
2014 SEC LEXIS 1350 (April 17, 2014) 7

Howard Brett Berger
2008 SEC LEXIS 3141 (Nov. 14, 2008) 7

North Woodward Financial Corp.
2015 SEC LEXIS 1867 (May 8, 2015) 6

FINRA RULES

Rule 1017(a) 3

Rule 8210 ..... 2, 3, 4, 6

I. INTRODUCTION

We will be brief. Both sides have had their say. And both sides present very different portrayals of the same basic facts. Not surprisingly, they also reach strikingly different conclusions. The Securities and Exchange Commission (Commission) must now make the call. As he did in his opening brief, respondent Rani T. Jarkas suggests the watchwords that should guide the Commission's consideration of this appeal are context, proportion, and fundamental fairness. As to context, the FINRA's brief attempts to downplay to insignificance two critically important facets of respondent Jarkas' supposed refusal to appear for examination in November 2009:

- His [redacted], including testimony from [redacted] be told there is a concerning finding on their imaging and not be worried about it. That entity simply doesn't exist." (Reporters Transcript (RT) at 1071.) In Dr. Abdalla's view, "it's ridiculous to even have to say what I'm saying to be honest." (RT at 1071.) Yet FINRA's brief suggests Mr. Jarkas' [redacted] was really no big deal.
- The devastating impact on Global Crown Capital that resulted from FINRA staff limiting the firm to liquidating transactions for three and one-half weeks in mid-2009, right in the middle of the collapsing world financial crisis. ((RT at 616.) According to respondent William Carson, "I couldn't believe it. All my years I never heard anything like that where FINRA blows the firm out of the water saying you can't go back into business after you proved your net capital." (RT at

812.) Even former SEC Commissioner Isaac Hunt could not break the logjam. (RT at 811.) Here, too, FINRA's brief gives this hammer-blow short shrift.

In addition, FINRA's brief distorts the context by insinuating that Global Crown Capital was not a reputable brokerage firm and that Jarkas was somehow misusing the firm assets for his own purposes. Nothing could be farther from the truth. Until some point in 2008, Global Crown had a positive relationship with FINRA, an advisory board with three former commissioners of the Securities and Exchange Commission, and a client base including such institutional clients as Fidelity, T. Rowe Price, Alliance Bernstein, and TIAA-CREF. (RT at 1204-1206.) Although Global Crown did lose money as it attempted to take on additional staff and expand operations, over the years Jarkas contributed more than $4 million in capital to the firm. (RT at 1206.) In 2008 alone, he made capital contributions totaling $658,000. (RX-46.) During 2008 and 2009, Jarkas received no salary for his work as the firm's managing director. (RT at 1212.) Again, the DOE's brief glosses over all these things.

Second, as to proportion and fundamental fairness, FINRA's brief asks the Commission to affirm a remedy – a lifetime bar – that is emphatically neither. At the time the Rule 8210 interview was scheduled, (1) Jarkas was no longer affiliated with FINRA and Global Crown was no longer in existence; (2) Jarkas was suffering the profound [redacted]; and (3) his attorney advised Jarkas he had contacted FINRA staff, explained that Jarkas [redacted] did not make it possible for him to appear at that time, and that staff's reaction was a noncommittal "okay" (which Jarkas interpreted as tacit acquiescence in a postponement). Lending strong credence to Jarkas' interpretation is the fact that FINRA did not contact Jarkas again for almost 14 months.

Particularly against this backdrop, this matter cried out for a reasonable resolution. Jarkas tried repeatedly to reach such a result and even requested the hearing officer to require the parties to talk settlement before an impartial third party. FINRA's Department of Enforcement (DOE) adamantly refused to consider any remedy besides a bar. It then went to extraordinary lengths – including six days of testimony in San Francisco and Washington DC – to pursue claims against Jarkas (who had withdrawn from FINRA more than three years earlier) and respondent Carson (a 65-year old individual with 30 years' experience in the securities industry). Something very wrong happened in this case. We urge the Commission to set the matter right.

II. ARGUMENT

A. The Non-Rule 8210 Claims Do Not Justify A Bar

The great majority of the six-day hearing dealt with claims other than the alleged Rule 8210 (failure to appear) violation, i.e., the Second Cause Of Action for alleged net capital violations and the Fifth Cause Of Action For Alleged Violation Of NASD Membership And Registration Rule 1017(a) (material change in business operation). At times, the testimony bordered on the absurd, as the DOE's counsel laboriously walked the Panel through hours of accounting adjustments as trivial as a few dollars or in one case two cents. (See, e.g., Reporters Transcript (RT) at 309-311.)[1]

Regardless, Jarkas has already set forth his position on these relatively technical issues in detail at pages 19-23 of his opening brief. By characterizing these issues as "relatively technical," we do not mean to suggest they are unimportant. By the same token, even if such violations occurred, they do not remotely justify the ultimate sanction of a bar. Indeed, in its prehearing briefing, the DOE did not seek a bar, instead suggesting a suspension of two years

[1] Even the Hearing Officer diplomatically expressed frustration with such testimony. (See RT at 602.)

and a fine of $30,000. (DOE Pre-Hearing Brief at 43.) Nor did the Panel find it appropriate to impose a bar for these alleged violations, instead assessing (but not imposing) a two-year suspension and a $50,000 fine.

B. Nor Does The Rule 8210 Claim Justify A Bar

This brings us to the crux of the matter: Mr. Jarkas' supposed refusal to appear for a second Rule 8210 interview in November 2009. Citing FINRA's Sanction Guidelines, FINRA argues the "standard" sanction where an individual "d[oes] not respond in any manner" to a Rule 8210 request is a bar. (FINRA Br. at 29.) This Guideline does not apply because Jarkas did respond. At Jarkas's instruction, his attorney contacted FINRA's David Lee and explained Jarkas was ill and was "not available right now, and I don't know when he will be available." Lee's response was a noncommittal "okay." (RT at 827-828.) Although Lee denied this conversion took place (RT at 620), his testimony is not credible. As both respondents observed in their briefs to the Panel, Lee was not a forthright witness, avoiding eye contact and pausing at length before answering difficult questions. His denial also makes no sense. Lee recalls speaking with Mr. Jarkas' attorney, Melvin Patterson, by telephone. (RT at 620-621.) Because he knew that Patterson represented Jarkas, it is not credible that Lee would not also have discussed whether and when Jarkas would appear. Even more unlikely is that Patterson, an attorney, would (1) not have contacted FINRA about Jarkas's situation — a task Jarkas specifically entrusted to him — and (2) then falsely tell Jarkas he had done so.

As he confirmed at the hearing, Jarkas did not "refuse" to appear for a second examination. (Six months earlier, he had appeared for an on the record examination and responded fully to FINRA's questions.) (RT at 822-823.) "I never implied that I would never come. I just wanted to see how we could work it out, if I could send something in writing, if I could be on the phone, could we postpone it, delay it or what have you." (RT at 1219.) When

Patterson reported this conversation, Jarkas understood Lee's "okay" response as meaning that it was acceptable, at least for now, for him not appear. (RT at 1219.) The fact that FINRA did not contact Mr. Jarkas again for 14 months lends support to this interpretation.

In his opening statement, the DOE's lead attorney suggested Mr. Jarkas did not appear for a second examination in November 2009 because "perhaps he concluded that he would never return to the securities business in the U.S. and didn't care what sanctions might be imposed for his failure to testify." (RT at 31.) When the interview was scheduled, Jarkas had discontinued his registration two months earlier. By contrast, when the hearing ended, it had been more than *four years* since Jarkas had terminated his registration. If Mr. Jarkas "didn't care" any longer, why did he incur the substantial legal costs and stress in participating in six days of hearings? And in pursuing this appeal and requesting oral argument more than six years after he voluntarily terminated his registration?

At a minimum, there are numerous mitigating factors that, particularly when taken together, make it appropriate for the Commission to reduce the award of sanctions to a level that does not include a lifetime bar: (1) Mr. Jarkas' serious and potentially [redacted] 2) his relocation to the East Coast, (3) the fact he was no longer registered, (4) advice from his counsel that he was not technically required to appear, (5) his prior disciplinary history, (6) his voluntary appearance at an on-the-record examination seven months earlier, (7) his previously good relations with FINRA staff, and (8) his reasonable assumption that FINRA had tabled its request for his examination.

In weighing the equities and understanding the events as they were unfolding at the time, Mr. Jarkas urges the Commission to consider the unprecedented actions by FINRA's San Francisco office in effectively shutting down Global Crown Capital for three and one-half weeks

in the midst of the collapsing economy even after it confirmed Global Crown's receipt of new capital. In light of FINRA's intransigence, it is perhaps not surprising that Mr. Jarkas was frustrated and disappointed by FINRA's apparently never-ending requests for documents and information.

None of the authorities FINRA cites at pages 32-33 as "case precedent" justifies a bar in the present case. None has mitigating factors as compelling or numerous as those described above. In *David Kristian Evansen,* 2015 SEC LEXIS 3080 (July 27, 2015), the respondent's primary argument was that the responses he eventually made to FINRA's information request rendered FINRA's later on-the-record request unimportant or moot. In addition, the respondent did not make *any* response to FINRA's discovery request until after the automatic effective date of the bar FINRA initially imposed but later withdrew.

In *North Woodward Financial Corp.,* 2015 SEC LEXIS 1867 (May 8, 2015), the respondent offered only one mitigating factor for his incomplete responses to FINRA's Rule 8210 request: that he had relied in good faith on his attorney's advice that his conduct was legal. In addition, the Commission noted the respondent's own testimony showed that his counsel encouraged him to cooperate fully by explaining why he was required to respond notwithstanding his concerns the requested information was irrelevant and confidential.

Likewise, in *Howard Brett Berger,* 2008 SEC LEXIS 3141 (Nov. 14, 2008), the only mitigating factor the respondent asserted was advice of counsel. The Commission found this claim was deficient because (1) respondent and his counsel "made only the barest of references to advice of counsel" that did not disclose what advice was given and (2) the respondent's affidavit contained no description of what disclosure he made to his lawyer. (*Id.* at *40 -*47.) In

the present case, Mr. Jarkas clearly did assert advice of counsel, but only as one of numerous mitigating factors.

Finally, in *Gregory Evan Goldstein,* 2014 SEC LEXIS 1350 (April 17, 2014), the Commission noted the respondent "has not asserted, and the record does not reflect, *any* mitigating factors." (*Id.* at *42, italics added.) It also noted there was at least one aggravating factor, namely, that the hearing panel found the broker "was not credible" in claiming he could not remember certain information. (*Id.* at *42-*43.)) The facts in the present case are not remotely similar.

In closing, we invite the Panel to review Mr. Jarkas' concluding comments in his opening brief:

"I don't believe anyone who doesn't have first-hand experience can truly appreciate the enormity having to deal with the [redacted] *I was managing while doing the best I could to make sure the lives of my employees were not impacted. Those employees were like family and at the worst moment of my life, I had to defend myself from repeated attacks from a regulator that seemed determined not to let Global Crown reopen despite all my good faith efforts. As I look back, although I did not succeed, I take some comfort from the fact that I did everything I could to save Global Crown and abide by FINRA's rules and regulations.*

"In retrospect, I'm sure that despite all my efforts, I made some mistakes and could have done a better job. Obviously, I believe that FINRA staff made mistakes as well. As I testified, I believe lines were crossed. Regardless, the point I'd like to make is that I tried to do the best I could under very difficult circumstances. And I hope the National Adjudicatory Council, unlike the Hearing Panel, will have the perspective and distance to understand that I never intentionally did not cooperate with FINRA. I believe the fact I participated in six days of

hearings, against medical advice and even though I haven't been registered for four years, shows my sincere desire to rebuild my relationship with FINRA and my commitment to protecting my reputation.

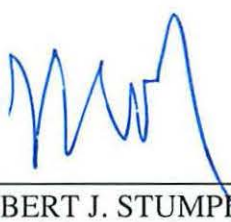
"I think sometimes it's easy to look back on decisions and actions in the past, particularly those made under stressful circumstances, and be unduly critical. I urge the Council not to look at things after so much time has passed with the benefit of hindsight but from the perspective of somebody that was fighting for his life, family, and employees."

III. CONCLUSION

For all these reasons, respondent Jarkas respectfully urges the Commission to set aside and modify the Panel's Decision in a way that, at a minimum, does not include a bar.

In accordance with Rule 451 of the Commission's Rules of Practice, Mr. Jarkas also respectfully reiterates his request for oral argument to take place in San Francisco, California, where the undersigned counsel has his office, or at such other location as the Commission may direct.

Dated: February 16, 2016



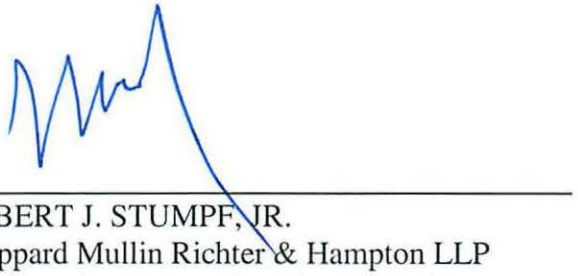
ROBERT J. STUMPF, JR.
Sheppard Mullin Richter & Hampton LLP
Attorneys for Respondent Rani T. Jarkas
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
(415) 774-3288, FAX (415) 434-3947
rstumpf@sheppardmullin.com

Attorneys for Respondent Rani T. Jarkas

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 450 of the Commission's Rules of Practice, I certify that the foregoing Opening Brief on Appeal by Appellant Rani T. Jarkas is proportionately spaced, has a typeface of 12 points, and contains 2,347 words, including footnotes, according to the word count of the word processing program with which it was prepared.

Dated: February 16, 2016



ROBERT J. STUMPF, JR.
Sheppard Mullin Richter & Hampton LLP
Attorneys for Respondent Rani T. Jarkas
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
(415) 774-3288, FAX (415) 434-3947
rstumpf@sheppardmullin.com

Attorneys for Respondent Rani T. Jarkas

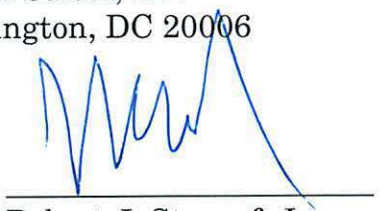
CERTIFICATE OF SERVICE

Pursuant to Rule 151 of the Commission's Rules of Practice, I hereby certify that on February 16, 2016, I served the foregoing Reply Brief on Behalf of Respondent and Appellant Rani T. Jarkas via first-class mail addressed to:

Alan Lawhead, Esq.
Financial Industry Regulatory Authority (FINRA)
Office of Hearing Officers
1735 K Street, NW
Washington, DC 20036-1506

and

FINRA
Office of General Counsel
Attn: Lisa Jones Toms
1735 K Street, NW
Washington, DC 20006



Robert J. Stumpf, Jr.