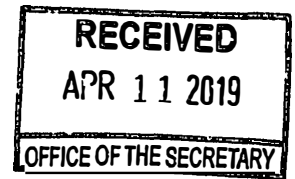


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**UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION**

April 10, 2019

In the Matter of the Application of

DAVID B. TYSK

For Review of Disciplinary Action Taken by

FINRA

Admin. Proc. File No. 3-17294

FINRA Disciplinary Proceeding
No. 2010022977801r

APPLICATION FOR REVIEW

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Under SEC Rule of Practice 420, David B. Tysk submits this application for review of a final determination and disciplinary sanctions imposed on remand by FINRA's National Adjudicatory Council ("NAC") in a decision dated March 11, 2019, for alleged violations of FINRA Rule 2010, NASD Rule 2110, and IM-12000 of FINRA's Code of Arbitration Procedure for Customer Disputes ("Arbitration Code").

In a previous decision dated May 16, 2016, the NAC erroneously found that Mr. Tysk had violated the FINRA Rules and Arbitration Code, first, by accurately supplementing personal notes about his relationship with a client after responding to his firm's inquiries about the client's complaint letter, and second, by producing those notes during discovery in a subsequent arbitration without affirmatively explaining the supplements before the arbitration hearing. The NAC's previous decision was flawed and unsupported by the record, so Mr. Tysk appealed that decision to this Commission—which then remanded the matter for clarification of FINRA's findings. *See* Exchange Act Release No. 80135 (Mar. 1, 2017).

Although the NAC purported to reconsider the matter on remand, it reached the same erroneous conclusions and imposed the same inappropriate sanctions. Contrary to the NAC's findings, Mr. Tysk did not violate FINRA Rule 2010 or NASD Rule 2110 by supplementing his personal notes after responding to his firm's inquiries about the client's complaint letter and being told that the client's concerns had no merit. Mr. Tysk's notes were not official books and records, and FINRA's Department of Enforcement did not prove that supplementing those notes to accurately reflect his relationship with the client was unethical or violated his firm's policies. The NAC's decision on remand thus ignored critical facts and failed to justify the same erroneous findings that the Commission found to be inadequately explained in Mr. Tysk's previous appeal.

Nor did Mr. Tysk violate the Arbitration Code, which does not require parties to give their adversaries an affirmative explanation of each discovery document at the time of production. Parties must exchange documents and information “in good faith,” but “narrative answers” are “not require[d],” and “[s]tandard interrogatories are generally not permitted.” FINRA Rule 12507(b)(2), (a)(1). Parties who have questions about a discovery document are typically expected to ask them no sooner than the arbitration hearing. Mr. Tysk gave truthful answers about supplementing his notes when asked at the hearing, and nothing in the Arbitration Code required him to anticipate and answer those questions beforehand in discovery.

Finally, even if Mr. Tysk could be held liable on the charges here, the sanctions imposed—which exceeded those recommended by FINRA’s Extended Hearing Panel—were excessive and oppressive. For example, the NAC continued to rely on FINRA’s sanction guideline for “Forgery and/or Falsification of Records” despite the lack of any allegation or finding that Mr. Tysk’s supplemented notes were false. FINRA’s Department of Enforcement did not charge (or prove) that Mr. Tysk had made a single false statement in his notes or arbitration testimony, and sanctioning him as if he had falsified records was inappropriate.

Mr. Tysk therefore asks the Commission to review and set aside the sanctions imposed by FINRA, under Section 19(e)(1) of the Exchange Act, 15 U.S.C. § 78s(e)(1), and to reject the NAC Decision’s findings of liability. At a minimum, the sanctions imposed should be canceled, reduced, or remitted under Section 19(e)(2), 15 U.S.C. § 78s(e)(2).

Filed: April 10, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on April 10, 2019, I caused a copy of the foregoing Application for Review and Notice of Appearance to be served upon the other parties to this action as follows:

Original and three copies via overnight delivery and fax to:

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