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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

SAVING2RETIRE, LLC, AND MARIAN P. YOUNG,

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO RESPONDENTS' PETITION FOR REVIEW

The Division of Enforcement ("Division" or "DOE") respectfully opposes the Petition for Review of the August 26, 2019 Initial Decision and Motion for Stay filed by Respondents Saving2Retire, LLC ("S2R") and Marian P. Young ("Young"). The Commission should affirm the Initial Decision, because the underlying record amply supports the findings and the relief imposed. Respondents' petition for review should be denied for the reasons stated herein.

I. PROCEDURAL BACKGROUND

The Commission first instituted this proceeding on July 19, 2016, alleging that investment adviser firm S2R violated, and Young, as its sole owner and managing member, aided and abetted and caused S2R's violations of, Sections 203A and 204 of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 204-2(a) thereunder by improperly registering with the Commission as an internet investment adviser when S2R did not qualify as such, repeatedly failing to produce documents to the Commission's examination staff during the course of an examination, and by failing to make or keep certain required records. [OIP, Investment Advisers Rel. No. 4457.]

On October 19, 2017, following a contested hearing, the ALJ issued the Initial Decision,

finding in the Division's favor on the claims and imposing remedial relief, including a five year industry bar and the imposition of civil penalties against Respondents Young and S2R of $26,000 and $76,000, respectively, for what the Court called "egregious and recurrent" conduct by someone who failed to recognize the wrongful nature of her conduct. [Initial Decision, Initial Decision Rel. No. 1195, at p. 26, 28.] Respondents petitioned the Commission for review, and in light of *Lucia v. SEC,* 138 S. Ct. 2044 (2018), the Commission remanded the proceeding and assigned a new ALJ. The parties agreed that the prior record—including the transcript of the 2017 hearing and all of the admitted exhibits—would remain in evidence. *Saving2Retire,* Admin. Proc. Rulings Rel. No. 6309, 2018 SEC LEXIS 3125, at *1 (ALJ Nov. 7, 2018).

On August 26, 2019, following additional discovery by Young and briefing, Chief ALJ Murray issued an Initial Decision finding that although the violations were "serious," there was no evidence that clients were defrauded (indeed, fraud was never alleged), and thus imposed a two year industry bar against Young, required her to pay a modest civil monetary penalty of $13,000, and ordered Respondents to cease and desist from further violations of the Advisers Act and its rules. *Saving2Retire,* Initial Decision Rel. No 1384. The evidence in the record shows that, at a bare minimum, Chief ALJ Murray's Initial Decision should be affirmed based on Ms. Young's and her investment adviser firm's repeated and flagrant disregard for the Commission's rules and regulations and its examination and enforcement process.

II. ARGUMENT AND AUTHORITIES

Rule 410(b) of the Commission's Rules of Practice requires that a petition for review "shall set forth a statement of the issues presented for review under Rule 411(b)." Under Rule of Practice 411(b)(2), which governs discretionary review,[1] the Commission shall consider whether

[1] This proceeding does not fall into any of the categories outlined in Rule of Practice 411(b)(1), which governs mandatory review by the Commission.

the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition makes no such showing. Instead, Respondents allege—with no support whatsoever—that they are victims of racial and personal bias and that the Commission staff improperly singled them out for examination. They further repeat their refrain that their violations are not serious, and they have "suffered enough." Chief ALJ Murray has already considered and rejected the unsupported bias arguments, and two ALJs have detailed the severity of Respondents' violations, including their flagrant disregard for the Commission's examination process.

Respondents do not take issue with any finding of fact or law, but make the non-sensical argument that the Commission should not, as a policy matter, examine "start up" companies or target individuals, even when it is aware that they have violated the law. Respondents fail to address or reconcile this logic with the fact that Young chose to register with the Commission as an internet adviser (which itself was improper, given the fact that she advised no internet clients), yet failed to comply with even the most basic of the Adviser Act rules and regulations, including that she cooperate in Commission examinations or maintain basic client and financial records. Respondents incorrectly characterize their flagrant securities law violations as "minor violations." However, the record keeping requirements she admits to violating in Rule 204-2(a) are a "keystone of the [Commission's] investment adviser surveillance" system, which Young, as a fiduciary and a securities professional, was required to know about and comply with. *Hammon Capial Mgmt.*

Corp., Advisers Act Rel. No. 744, 1981 WL 36244, at *2 (Jan. 8, 1981). Instead, the record is replete with evidence that Young engaged in a years-long pattern of evading and impeding the Commission's lawful examination of her firm, and she admits that she failed to maintain client records for years and flatly refused to provide requested information to the SEC examiners. Despite these admissions, she continues to argue that she has done nothing to warrant even the minor sanctions imposed by the Initial Decision for her egregious and recurrent behavior. Advisers that are subject to examination should be discouraged from following Young's example. The Commission cannot properly regulate investment advisers and protect the investors they serve if advisers are permitted to evade Commission examinations after failing to maintain client records without consequence.

Thus, the Commission should reject the Petition and grant the Division such further relief as to which it is entitled.

DATED: October 10, 2019

Respectfully submitted,

/s/Jennifer D. Reece

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CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that on October 10, 2019, I served a true and correct copy of the foregoing document on the following persons by the method indicated:

By UPS and email:
Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By UPS and email (*ycgc@comcast.net*):
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/s/Jennifer D. Reece
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