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 RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT

The Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission") files this Response in Opposition to the Motion for Summary Disposition of Respondents Saving2Retire, LLC ("S2R") and Marian P. Young ("Young") and Brief in Support, and respectfully shows the following:

Respondents' Motion does not establish the absence of a genuine issue of material fact on any pending claim.[1] Instead, Respondents argue that, as of the filing of their Motion, the Division had not *proven*: (1) that Respondents provided investment advice to more than 14 clients through means other than an interactive website [which the Division is not required to prove to prevail in the litigation]; and (2) that Respondents "failed to maintain the appropriate and required records and documentation." Resp. Mo. at 1. In addressing the registration

[1] The Division objects to Respondents' Motion because it did not comply with the Rules of Practice or this Court's Orders which, among other things, required a motion for leave. Furthermore, Respondents failed to provide a copy of the filing or correspondence with the Office of the Secretary to the Division. Young mailed an unsigned brief without exhibits or a certificate of service to the Division, which it received on December 12. She separately mailed the exhibits to the Division, which it received on December 20.

violations alleged under Advisers Act Section 203A, Respondents focus only on the de minimus exception to the "all clients" requirement of Advisers Act Rule 203A-2(e), which never comes into play because Respondents never provided investment advice through an interactive website to a single client, let alone all of its clients. *See* Division's Motion for Summary Disposition, at pp. 3-4 and Appendix p. 52 (Young Deposition transcript). The Motion does not even address the Division's aiding and abetting claims against Young, or the Division's claims under Advisers Act 204(a) for failing to produce required advisory records during an examination, and makes a nonsensical argument about the Section 204 and Rule 204-2(a) claims, citing no evidence in support. *See* Resp, Motion.

First, as to the registration violations, Respondents argue the bold position that, although S2R advised NO clients via the internet and fell over $95 million under the assets under management ("AUM") threshold for SEC registration, it was nonetheless properly registered with the Commission (versus the state of incorporation) as an internet adviser because it allegedly had less than 15 other, non-internet clients. This bizarre position is unsupported by the law, and on its face defies common sense. *See Exemption for Certain Investment Advisers Operating Through the Internet,* SEC Rel. No. IA-2091 (Dec. 12, 2002), 2002 WL 31778384, at *1 ("Internet Adviser Exemption Adopting Rel.") (explaining that "the [AUM] threshold was designed to distinguish investment advisers with a national presence from those that are essentially local businesses[,]" requiring the later to register at the state level). Under Respondents' unsupported legal theory, every single investment adviser in the United States with less than 15 clients would be entitled to register with the SEC as an internet adviser, whether or not they even advised a single client via the internet—a result exactly opposite from the stated statutory purpose.

Clearly, Respondents are grasping at straws, knowing they cannot get past the initial threshold requirement to qualify as an internet adviser: they have not ever had a single internet client and thus, did not ever "provide investment advice to all of its clients exclusively through an interactive website" as required by Advisers Act Rule 203A-2(e). In fact, as Respondents' Motion admits, S2R did not even have a *website* until over two years after it first registered with the Commission claiming it was an Internet Investment Adviser.[2] *See* Resp. Mot. at p. 3. There are no facts in dispute. Respondents' frivolous argument that it was properly registered with the SEC demonstrates their gross misunderstanding of the laws that govern their business and establishes the need for remedial relief here. In short, nothing in Respondents' Motion establishes that summary disposition in their favor is warranted. Therefore, their motion must fail.

Second, as to the record keeping violations, Respondents provide no competent evidence in support of what can best be characterized as a mere denial of the Division's record keeping claim, although they do not address the proper rule and do not actually deny the specific violations. Respondents do not address any of the categories of required books and records enumerated in Rule 204-2(a), which Young herself testified she had failed to provide to the SEC's examination staff. Moreover, Respondents ignore the fact that Young admitted—both in a December 11, 2014 phone call with the examination staff and in sworn testimony—that Saving2Retire's books and records were not current. (App. 71 [Young Dep. ¶ 106:3-107:7].) While the point of Respondents' argument is unclear, it certainly does not meet the standard for summary disposition. Therefore, the Court should deny their motion.

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[2] It is immaterial whether the website that was established in 2013 was "interactive," since Respondents admit that they never advised a single client over the internet. (*See* Division's App. at 52 [Young Dep. at 30:22-32:3].)

Finally, Respondents make a series of statements throughout the motion which are wholly unsupported by declaration or any other evidence, which the Court should ignore. Specifically, nearly every sentence on pages 6 and 7 of the motion presents an uncited, immaterial allegation which neither addresses nor supports any pending claim or defense. In short, Respondents' motion fails to set forth specific facts to carry its burden and fails to negate a single element of any of the Division's claims. Therefore, the Court must deny the motion.

CONCLUSION

Therefore, the Division respectfully requests that the Court: (1) deny Respondents' Motion for Summary Disposition; (2) grant the Division's Motion for Summary Disposition; and (3) award the Division such other relief to which it may be entitled.

DATED: December 30, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that on December 30, 2016, I served a true and correct copy of the foregoing document on the following persons by the method indicated:

By UPS and email:

Honorable James Grimes

Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By Mail and email ([redacted]*@comcast.net*):

Saving2Retire, LLC
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Sugar Land, TX [redacted]

Marian P. Young
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