UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4565/January 30, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

SAVING2RETIRE, LLC, and
MARIAN P. YOUNG

RESPONDENTS' INITIAL BRIEF AND SUPPLEMENTAL ANSWER

Now come Respondents and make this their initial brief and supplemental answer asserting additional constitutional defenses:

Summary of Facts:

1. Respondent, Marion P. Young admitted that the SEC recordkeeping requirements and compliance with Petitioner's demands were beyond her ability. She was "overwhelmed." She openly admitted her failure to comply with them without making excuses beyond her health difficulties and lack of means.
2. Once this inability was clear to her, Ms. Young repeatedly and unsuccessfully communicated to the SEC her desire to terminate the internet adviser application and to resolve this dispute before trial. Petitioner refused to engage in any pre-trial resolution communications.
3. Petitioner's communications to the states' investment regulatory agencies resulted in Ms. Young being barred from state investment adviser registration.
4. Petitioner has thereby terminated Ms. Young's (a) decades-long profession as an investment adviser, (b) long relationships with valued clients and (c) source of her

livelihood. She did not benefit financially from her conduct in question and she lost several years of effort and investment in developing Savings2Retire LLC.

5. Savings2Retire LLC is an inactive, single-member owned LLC. It never commenced operation as an internet adviser, raised capital or dispensed advice.
6. The only alleged SEC rule violations were for internal financial record-keeping and production. Petitioner's pleading does not request any specific form of punishment.
7. The SEC has not contended or produced evidence of any risk of future violations.
8. No investors complained of or were harmed by Respondents' alleged violations.

Respondent's Brief:

Respondents' counsel has not found any published cases concerning SEC enforcement action against an internet financial adviser with such minor offenses. All others we have located have egregious facts and deliberate misconduct that provide little guidance in the case at bar.[1]

The *Disraeli* case sets forth the punishment criteria:

> We consider the egregiousness of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations. 84/ citing *Conrad P. Seghers*, Advisers Act Rel. NO. 2656 (2007).

It is not surprising that there is so little case law on the SEC's pursuit of charges against small-time would-be internet advisers. Trial and punishment of a pre-startup applicant who no longer desires to be an internet investment advisor is unnecessary to protect the public interest.

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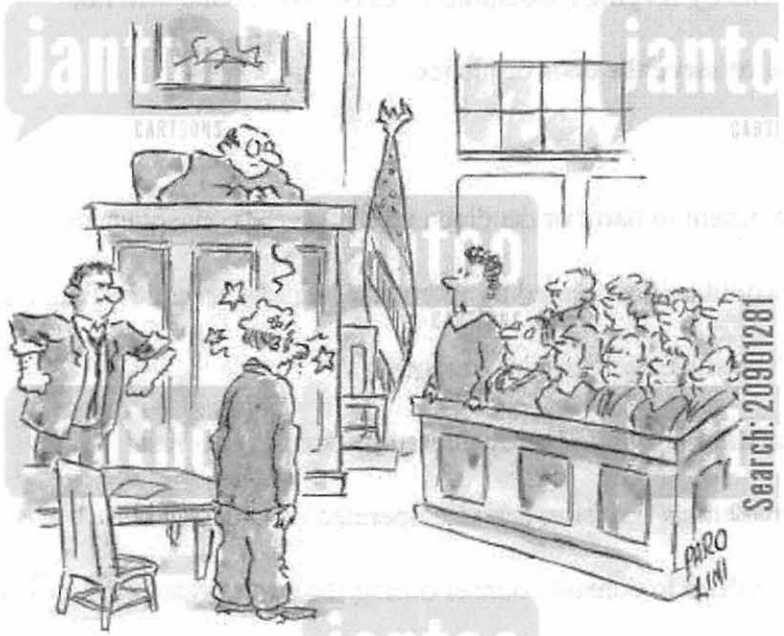
[1]E.g., *In the Matter of David Henry Disraeli and Lifeplan Assocs. Inc.,* Release No. 57027, 2007 WL 4481515 (Dec. 21, 2007), *petition denied,* 334 F. App'x 334 (D.C. Cir. 2009) (per curiam) (embezzlement) https://www.sec.gov/litigation/opinions/2007/33-8880.pdf; *In the Matter of RETIREHUB, INC. and SUNIL K. BHATIA,* Release No. IA - 3337 (2011)(misrepresentation); *In the Matter of David R. Wulf,* Admin. Proc. File No. 3-16374 (2016) https://www.sec.gov/litigation/opinions/2016/34-77411.pdf (fraud).

this Court's decision have been served. There is no risk that she "will violate the securities laws in the future."[3]

Savings2Retire LLC has no assets or income. There is no legitimate or just purpose in imposing an additional material fine against Young's alter ego or allowing Petitioner to pursue a business enterprise fine against her individually.

The history of administration of justice has long recognized the principle that should apply when the one being judged "*quod passum est satis*," i.e. has suffered enough.[4] The cartoon below is not in evidence but is tendered as a demonstrative depiction of Respondents' position.



"Your Honor, we feel that the prosecutor has done a 'bang up job', and the defendant has suffered enough."

[3] *Seghers v. SEC*, 548 F. 3d 129, 131 - Court of Appeals, DC Circuit (2008), also recognizing a respondent's personal losses in considering sanctions.

[4] In Homer's *The Odyssey* the gods finally decide Ulysses' fate by concluding that he has suffered enough and allow him to return to his home and family. This principle, justice tempered by mercy and torturous reality, has also been commemorated in the Coen brothers' film, *O Brother, Where Art Thou*, Steely Dan's rock tune "*Home at Last*," James Joyce's novel *Ulysses* and Monteverdi's opera *Il ritorno d'Ulisse in Patria.*

A reasonable inference from this paucity of legal precedent is that in other "no-harm, no-foul" instances, Petitioner properly exercises its discretion to simply deny or revoke such internet investor adviser applications and when justified, to impose a reasonable fine.[2]

Is there so little demand for SEC enforcement that it no longer needs to conserve its limited resources for matters involving genuine risk or harm to investors? Why did the SEC need to send five employees from out of town for this trial? What public benefit in excess of the cost has it accomplished?

This Court need not answer such questions (the answers are clear) but its "rewarding" the SEC personnel responsible for this trial by levying substantial fines on Ms. Young will not further the SEC's legitimate purpose or serve the ends of justice.

Argument:

In light of the lack of malice, intent to harm or deceive and the severe consequences already suffered by Young, justice would be best served by imposing, at most, a modest fine, and a remonstration to the Petitioner on the subject of judicial economy.

Ms. Young's personal circumstances should be considered in arriving at a just punishment. She testified that her investment advising practice operated on such modest operating margins that she could not afford to consult counsel during the investigative, discovery or dispositive motion phases of this case. At age 60, she has been forced out of her profession and forced to find another way to support herself.

Ms. Young has already suffered her profession's "death sentence" for arguably minor rule violations that were beyond her ability to remedy so the punitive and deterrent purposes of

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[2] https://www.sec.gov/about/offices/oia/oia_enforce/overviewenfor.pdf The SEC "can impose civil penalties against broker-dealers, investment advisers, and other regulated entities . . ."

Constitutional Defenses: Respondents' trial objection on the basis of Respondents' constitutional right to a jury trial was overruled.

Respondents hereby assert their objection to this proceeding on the additional grounds that the administrative law judge was not appointed in accordance with the Appointments Clause and because ALJs are impermissibly insulated from presidential removal.[5]

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 3, 2017, I served copy of this notice to the following via email:

alj@sec.gov, brandtj@sec.gov, justicet@sec.gov, woodworthc@sec.gov, neitermanj@sec.gov, shieldsk@sec.gov.

Finis Cowan

Finis Cowan

[5] U.S. Constitution Art. II, Sec. 2, cl. 2; *Bandimere v. SEC,* 844 F.3d 1168, 1188 (10th Cir. 2016); *Cf. Raymond J. Lucia Co. v. SEC,* 832 F.3d 277 (D.C. Cir. 2016), vacated for rehearing en banc, and *Kon v. SEC,* Fed. Sec. L. Rep. P 99,667, Case No. 17-CV-2105-JAR-GLR, D.Ct. Kansas | 03/28/2017.