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' POST-HEARING BRIEF

The Division of Enforcement ("Division" or "DOE") of the Securities and Exchange Commission ("Commission") files this Response to the Respondents' Post-Hearing Brief, and respectfully shows the following:[1]

INTRODUCTION

Admitting that their alleged violations of Sections 203A and 204of the Advisers Act and Rule 204-2(a)(4) thereunder have been established, Respondents' brief focuses only on the remedies to be imposed against them, arguing that their violations were "minor" and "beyond [Young's] ability to remedy." Because she has suffered enough, they argue, she should face no consequences. They argue that justice would be best served by imposing a "modest fine" against Respondents and, incredulously, "a remonstration to [the Division] on the subject of judicial economy." (Resp. Brief at p. 3.)

To the extent Young has "suffered" from her wrongdoing—and there is no cited evidence

[1] The Division fully incorporates herein its Post Hearing Brief filed on July 3, 2017, and the facts set forth in its Proposed Findings of Fact and Conclusions of Law filed on that day.

that she did—it is the result of her own actions and decisions. The Court should not excuse her complete, repeated, and admitted failure to follow the law and to discharge her fiduciary obligations, nor should the Court allow Young to blame the Division of Enforcement for her non-compliance and obstruction. As the case law makes clear, "[t]he industry cannot tolerate an investment adviser that, holding a fiduciary position, would undermine the regulatory system by deliberately thwarting a Commission examination." *Schield Mgmt. Co. and Marshall L. Schield,* Rel. No. 2477, Admin. Proc. File No. 3-11762, at *10 (Jan. 31, 2006). Her admitted inability to meet basic regulatory requirements and her demonstrated behavior of repeated non-compliance, along with the utter lack of contrition or acceptance of responsibility for her actions demonstrates that Young is wholly unfit to operate as a fiduciary in the securities industry, as the state of California has already found.

For all the reasons stated herein and in the entire record of this case, the Court should find Respondents liable on all counts, and should impose the remedies set forth in the Division's Post-Hearing Brief.

ARGUMENT AND AUTHORITIES

This case began in November 2014 with a simple request to Respondents from SEC compliance examiners to produce basic financial records S2R was required by law to keep and required by law to produce to the SEC upon request. The record of this case establishes that when Young refused to produce documents after several requests, culminating in a Letter of Deficiency which was ignored [Trial Ex. 8, Ex. 9 at 122:8-12], the examination staff was forced to refer the matter to the investigative staff of the SEC's Enforcement Division. Young then refused to cooperate with the Division in its pre-suit investigation, never producing documents or appearing for testimony in response to multiple subpoenas. Finally, the Division filed this administrative proceeding, wherein the Court ordered Young to appear for her deposition after she moved to

quash the Division's subpoena for her testimony. During her deposition testimony, and in the following hearing, Young admitted her violations. However, she continues to dismiss them as "minor," and her behavior as "no-harm, no-foul," and now blames the Division for what she shamelessly calls a waste of judicial resources. Further, she admits that complying with the law was then, and is now, beyond her ability, and is too overwhelming for her to remedy. By her own argument, Young is precisely the type of person that should be barred from operating as a fiduciary in the securities industry, and her punishment should serve as a deterrent to others that such actions cannot be tolerated.

Respondents failed to identify any case law supporting their absurd position that a registered investment adviser's refusal to cooperate in the SEC examination process by producing basic financial records is a "minor" offense warranting no consequences, or that illegally registering as an internet adviser with the SEC even though no internet adviser business exists is a "no-harm, no-foul" violation. To the contrary, as the abundance of case law makes clear, failing to cooperate with a Commission examination is "serious misconduct" warranting severe sanctions. *See, e.g., Schield Mgmt. Co,* Rel. No. 2477, Admin. Proc. File No. 3-11762, at *9 (following the entry of a permanent injunction, revoking registration and imposing industry bar against an adviser who thwarted a Commission examination); *In the Matter of The Barr Financial Group, Inc.*, Admin. Proc. File No. 3-9918, Advisers Act Release No. 2179, at *7 (Oct. 3, 2003) (affirming injunction, imposing an industry bar and a cease and desist order, and revoking the registration of an adviser who failed to cooperate in the SEC examination). Further, the federal registration requirements imposed by the Advisers Act are far from trivial rules that need not be followed or enforced, but are the very foundation of the Advisers Act, and the responsibility for truthful public disclosure is paramount. The Advisers Act was enacted by Congress to "substitute a philosophy of full disclosure for the philosophy of *caveat emptor*" in the investment advisory profession. *SEC v.*

Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963). By keeping a census of advisers, the Commission can better respond to, initiate, and take remedial action on complaints against advisers. *See Goldstein v. SEC*, 451 F.3d 873, 876 (D.D.C. 2006) (citing 15 U.S.C. § 80b-3, which authorizes the Commission to examine the records of registered advisers).

As the Respondents' brief makes clear, they have no appreciation for the importance of their compliance responsibilities or their roles as securities fiduciaries. Young has repeatedly invoked the excuse that she lacked the financial means to comply with the law (citing no evidence in support), which includes the responsibility to keep and produce *basic* financial records relating to her clients and her advisory business and to be subject to examination by the SEC. The public interest will be served by removing Young from the industry and from managing client funds as a fiduciary, which she admits she is in no position to do. (*See* Resp. Brief at p. 1, stating that complying with basic legal requirements "overwhelms" Young.)

Hence, for these reasons and those discussed in detail in the Division's Post-Hearing Brief, the Court should:

(1) order S2R and Young to cease and desist from committing or causing violations of and any future violations of Sections 203A and 204 of the Advisers Act and Rule 204-2(a) thereunder;

(2) revoke S2R's registration under Section 203(e) of the Advisers Act;

(3) pursuant to Section 203(f) of the Advisers Act, impose an industry bar against Young, barring her from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

(4) order Respondents to pay maximum second tier civil penalties in an amount to be determined by the Court.

CONCLUSION

For all the reasons stated above and in the record of this case, the Division requests that the Court find for the Division and impose the relief requested.

Dated: July 17, 2017

Respectfully submitted,

Jennifer D. Brandt
Texas Bar No. 00796242
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Phone: (817) 978-6442
Fax: (817) 978-4927
Brandtj@sec.gov
COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing document was served on the following persons on July 17, 2017, 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

Finis Cowan, Esq.
One Greenway Plaza
Suite 100
Houston, TX 77046
finis@finiscowan.com
[redacted]
Counsel for Respondents

Jennifer D. Brandt