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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

PETITION FOR REVIEW AND MOTION FOR STAY

Pursuant to Rule 410, Respondents SAVING2RETIRE, LLC, and MARIAN P. YOUNG make this Petition for Review of the October 19, 2017 Initial Decision (ID-1195) on the grounds set forth below.

Pursuant to Rule 401, Respondents also seek a stay of these proceedings and the Court's Initial Decision pending Congress' final decision on the Financial Choice Act 2.0[1] and the Supreme Court's decision on the validity under the Constitution's Appointments Clause of the SEC's use of administrative law judges and penalties imposed by such judges.[2]

Specific Findings and Conclusions Of Initial Decision To Which Exception is Taken

Respondents take exception to the following Initial Decision findings and conclusions:

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[1] "On June 8, the U.S. House of Representatives passed the Financial Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs Act (the "Financial Choice Act 2.0' . . . The act would strip the SEC of the power to use administrative proceedings as an enforcement tool. The new law would permit a respondent to remove any administrative proceeding to a federal district court. Moreover, the act would raise the SEC's standard of proof in administrative proceedings from 'preponderance of evidence' to the higher 'clear and convincing' evidence of wrongdoing." https://www.huffingtonpost.com/entry/financial-choice-act-20-has-made-progress_us_59525803e4b0c85b96c65c91

https://www.congress.gov/bill/115th-congress/house-bill/10

[2] *Raymond J. Lucia, et al., Petitioners v. Securities and Exchange Commission* (15-1345)(Petition for a writ of certiorari filed 7/21/17, four amicus briefs filed, response due 11/15/17.

- That a non-willful[3] violation of recordkeeping and registration rules by a "small time" would-be internet adviser justifies $101,000 of penalties;
- Revocation of Saving2Retire's registration;
- Barring Young from the securities industry with the right to reapply within five years;
- "Respondent's misconduct 'raises an inference that' they will repeat it."
- Speculation, absent any evidence or assertion by Petitioner, that Respondents' clients might be harmed by Respondents;
- Sanctioning Respondents will serve an important deterrent function;
- Second-tier penalties are appropriate based on "Respondents' reckless disregard of regulatory requirements."
- That an order by the State of California denying an investor advisor application and barring Young from the profession (issued without proper notice to Respondents in violation of their due process rights and without specific factual findings) "necessarily reflects a finding that both Respondents violated either state or federal securities laws."

Standard of Review

The Commission has discretion to review this Initial Decision because it embodies findings and conclusions that are erroneous and the decision embodies an exercise of decision of law and policy that are of sufficient importance that the Commission should review it.

Summary of Facts:

1. This is a registration and books and records case against a "small-time" would-be internet adviser who never had any internet advising clients or revenue. Respondents' mistakes were unintentional and there was no harm to investors or unjust enrichment.

2. Respondents' priorities were to serve their clients' interests to the best of their ability. They planned to secure the assistance of accountants and lawyers when there was income and means to do so. They never got that far.

3. At trial, Respondent, Marion P. Young admitted that she discovered early in the investigation that the SEC recordkeeping requirements and compliance with Petitioner's

[3] Initial Decision, p. 31, "By contrast (to 203(e) or (f) willful violations), in cease-and-desist proceedings . . . 203(k) . . . simply on the determination that a respondent has violated any provision . . . or rules . . ."

demands were beyond her ability.[4] She was "overwhelmed" by the SEC's voluminous demands, health and financial challenges. She openly admitted her failure to comply with them without making excuses beyond her health difficulties and lack of means.

4. Once this inability became clear to Ms. Young, she 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 meaningful pre-trial resolution communications.

5. Petitioner's communications to the states' investment regulatory agencies resulted in Ms. Young being barred from state investment adviser registration. Petitioner 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. Respondents did not benefit financially from the conduct in question and lost several years of effort and investment in developing Savings2Retire LLC.

6. Savings2Retire LLC is an inactive, single-member owned LLC. It never commenced operation as an internet adviser, raised capital or dispensed advice.

7. The only alleged SEC rule violations were that Respondents did not qualify for the internet advisor registration and for internal financial record-keeping and production. Petitioner's pleading does not request any specific form of punishment.

8. The SEC has not contended or produced evidence of any risk of future violations to support the ASJ's findings.

9. No investors complained of or were harmed by Respondents' violations.

Respondents' Argument Against The $101,000 Penalty and "Death Penalty" Sanctions

[4] E.g., Petitioner's exhibit 14 (11 page questionnaire) and exhibit 16 (26 page subpoena duces tecum package including seven pages of Data Delivery Standards).

This case should have been avoided and the Commission's purpose of protecting investors accomplished at almost no cost to the taxpayers with a $2 "DENIED" or "REVOKED" stamp[5] based on lack of cooperation and an appropriate public interest statement.

This common-sense step would have avoided wasteful investigation and litigation over record-keeping and would accomplish the same ends without wasting tens of thousands of taxpayer dollars. Once the registration issue was resolved, either administratively or through dispositive motion, the extensive records inspection became moot. Had such common sense prevailed, the tens of thousands of dollars of taxpayer money squandered on this case could have been spent on more meaningful enforcement action to protect investors from actual risks.

It is apparent from the record that the Commission investigators were personally offended by Respondents' inability to cooperate with their extensive requests. It is clear from the record that compliance with the investigation requests would cost a substantial amount of professional fees that Respondents could not afford.

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.[6] The Initial Decision cited no authorities justifying such draconian punishment for similar infractions.

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

[5] If necessary, Petitioner could have sought such relief in its original or an amended dispositive pre-trial motion.
[6] 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).

> 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.

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.[7]

An accurate analogy to the case at bar would be heavily fining applicants for failing driving tests or bar exams. No one was harmed by Respondents' failures either, other than Respondents.

Rather than simply dismiss or revoke the registration and impose a reasonable punishment that "fit the crime," the SEC in this case of bureaucratic ego gratification[8] flew and lodged no less than *five* out-of-town SEC personnel to prosecute this case.

Is there so little demand for SEC enforcement that it no longer needs to allocate its limited resources for matters involving genuine risk or harm to investors? What public benefit in excess of the SEC cost has it accomplished? The deterrent effect could have more effectively been implemented by clearer communications to applicants.

This Commission 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.

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[7] 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 . . ."

[8] Young practically "dared" the government to prosecute her according to the Initial Decision.

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 this Court's decision have been served. There is no evidence of any risk that she "will violate the securities laws in the future."[9]

Savings2Retire LLC has no assets or income. The Initial Decision describes it as Young's "alter ego." There is no legitimate or just purpose in imposing an additional material fine against Young's alter ego or allowing Petitioner to pursue a aiding and abetting a business enterprise fine against her individually.

Private lawyers and litigants are forced by economic reality to not waste limited resources chasing uncollectable debts – unfortunately, such economic realities did not constrain the SEC's legal team in this case.

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.[10] The

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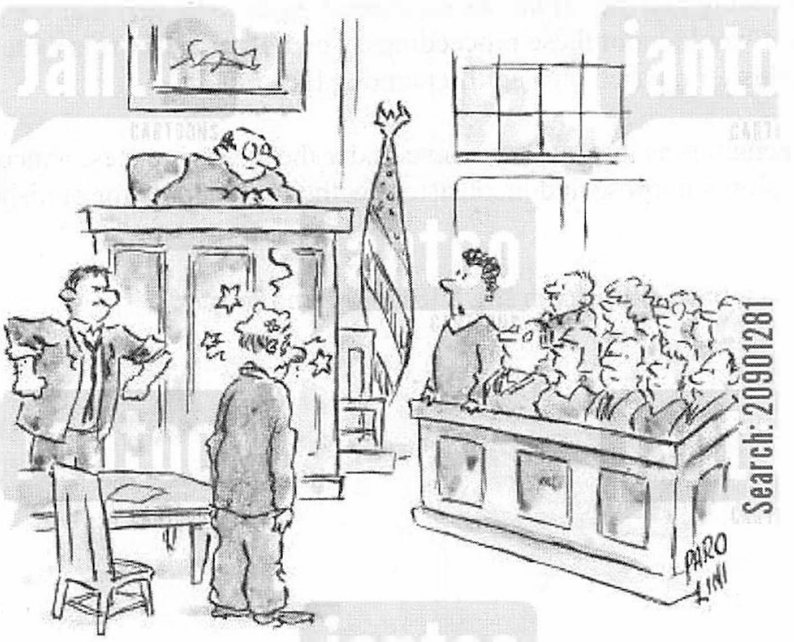
[9] *Seghers v. SEC*, 548 F. 3d 129, 131 - Court of Appeals, DC Circuit (2008), also recognizing a respondent's personal losses in considering sanctions.

[10] 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

cartoon below is not in evidence but is tendered as a demonstrative depiction of Respondents'



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

position.

Constitutional Defenses

Respondents' trial objection on the basis of Respondents' constitutional right to a jury trial was overruled and such ruling should not stand.

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.[11]

WHEREFORE PREMISES CONSIDERED, Respondents pray for the following relief,

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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.*

[11] 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.

singly and alternatively, on review:

1. Stay of these proceeding and the Initial Decision pending decisions by Congress and the Supreme Court that would moot these proceedings. The Supreme Court is expected to render a decision this term based on a conflict among the circuits.

2. Reduction of the penalties as they are excessive under the circumstances, unnecessary to effect the Commission's purpose and inconsistent with the standards for punishment.

3. Such further relief as this Commission shall deem just and proper.

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CERTIFICATE OF SERVICE

On November 8, 2017, I served the original and requisite copies of this document by first class mail to the Commission and to the following via email and fax to (202)772-9324:

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