SECURITIES & EXCHANGE COMMISSION

x

In the matter of the Appeal of

KIMBERLY SPRINGSTEEN-ABBOTT,

Appellant.

x

APPEAL
OF N.A.C. Decision in
Complaint No. 2011025675501
Kimberly Springsteen-Abbott

ADMIN PROe3-17560r

ORAL ARGUMENT REOUESTED

APPELLANT'S MEMORANDUM OF LAW IN SUPPORT OF HER APPEAL

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PRELIMINARY STATEMENT

Appellant Kimberly Springsteen-Abbott ("Appellant"), who had an unblemished 26-plus year career as a registered representative in the securities industry before the matters underlying this proceeding and a related settlement with the U.S. Securities and Exchange Commission[1] ("SEC"), respectfully submits this Memorandum of Law in support of her appeal from a July 20, 2017, decision (the "NAC Remand Decision") (R.008213[2]) of the National Adjudicatory Council ("NAC") rendered after the SEC remanded the NAC's previous decision dated August 23, 2016 (the "Original NAC Decision") (R.007881) to the NAC because it was so flawed that it could not be properly reviewed by the SEC (the "SEC Opinion and Order") (R.008095 and 008105).

In the Original NAC Decision affirming a FINRA Extended Hearing Panel decision dated March 30, 2015 (the "Panel Decision") (R.007253), the NAC found that Appellant "was living off of the Funds' monies instead of her own" by improperly misallocating 1,840 expense items totaling $208,953.75 to certain Funds of which she is a control person; ordered her to disgorge the $208,953.75; permanently barred her from the securities industry; fined her $100,000; and ordered her to pay costs of $11,037.14. Recognizing the flaws pointed out by the SEC in the SEC Opinion and Order, in the NAC Remand Decision the NAC **reduced the number of supposedly improper expense items from 1,840 to 84, reduced the amount subject to disgorgement from $208,953.75 to $36,225.85**, reduced the fine from $100,000 to $50,000, but left in place the permanent bar from the securities industry.

The NAC (in both the Original NAC Decision and the NAC Remand Decision, although the latter is more measured in tone) and the Hearing Panel made very negative findings with respect to Appellant's credibility and honesty. In fact, these decisions reflect rather

[1] *Commonwealth Income & Growth Fund Inc.*, SEC Release No. 9459, 2013 WL 5405360 (Sept. 27, 2013).
[2] Citations to the record on appeal will be "R.___".

extraordinary hostility. As set forth below, these findings were unfounded and erroneous. The decisions accepted the DOE's aggressive and unfounded argument that Appellant was a liar without giving any consideration to all of the compelling evidence that controverted that allegation. In doing so, the decisions below violated the norms for evaluating credibility that governed the proceeding. Having concluded that Appellant was a liar, the Hearing Panel and then the NAC unfairly resolved every issue of fact and law against her. After the SEC pointed out the flaws in the Original NAC Decision, the NAC toned down the language in the NAC Remand Decision, but it is clear that the NAC did not re-evaluate its unreasonably harsh attitude towards Appellant.

Once the error in the credibility findings is taken into account, the other findings miss the mark. There was not one document introduced or one witness presented that showed that Appellant ever knowingly or intentionally misallocated any expense to the Funds or acted in bad faith or unethically. Nor was there any evidence that she ever knowingly directed anyone to make such misallocations, or that she ever knowingly approved such misallocations. Further, Appellant never argued that her voluntary contributions of over $2.4 million to the Funds made any improper allocations proper – she readily acknowledged that when an improper allocation occurred, the Funds were entitled to a refund. Similarly, Appellant did not argue that any particular misallocated expense was exactly offset by a voluntary contribution to the same Fund in the same amount. Rather, Appellant argued that **the fact that she voluntarily contributed over $2.4 million to the Funds conclusively demonstrates that she did not act unethically or in bad faith, or seek to "live off" of the Funds**.

Underlying the decisions below is the inference that Appellant wanted to unjustly enrich herself by improperly misallocating expenses to the Funds. This is illogical – if Appellant had

desired to avail herself of the additional $36,225.85 at issue here, she simply would have reduced her much larger voluntary contributions to the Funds by that amount. The bottom line is that the Appellant always tried to place the interests of the Funds first. Unfortunately, due to human error and a flawed and antiquated method for handling the expense reimbursement process, as well as the lack of detection of mistakes by the auditors and other professionals representing the Funds, mistakes that Appellant was not aware of did occur. Once these issues came to Appellant's attention, she voluntarily put in place new procedures that corrected the problem; these new procedures have been reviewed by FINRA in subsequent examinations without any issue. Appellant also recognizes that, as the CEO, she bore ultimate responsibility for what occurred. Her 2013 voluntary SEC settlement, which has been satisfied, reflects her cooperation with regulators and does not support FINRA's "lack of remorse" argument. Under these circumstances, for the NAC to have found that errors in allocations made by the staff of CCC were done or directed by Appellant in bad faith or unethically is clearly erroneous. In light of the above, the finding of unethical or bad faith or dishonest conduct, or conduct inconsistent with just and equitable principles of trade, is wholly illogical and irrational.

As discussed below in Point I, 58 of the 84 expense items at issue in the NAC Remand Decision, totaling $30,102.99 of the $36,225.85 disgorgement amount, involved expenses identified by the NAC as "Broker-Dealer Expenses." With respect to these so-called Broker-Dealer Expenses, in direct contravention to well-established law the NAC improperly imposed its own business judgment rather than deferring to Appellant's business judgment that these expenses were properly charged to the Funds. Indeed, the NAC's analysis of these expenses is summarily set forth in two short paragraphs and does not cite any factual support for its unwarranted conclusions, other than a patently false statement that Appellant herself somehow

admitted that these were broker-dealer expenses. In fact, it was made clear at the hearing that Appellant required her employees to attend continuing education, even those who serviced the Funds, because she believed that the education benefitted the Funds.

As discussed below in Point II, equally troubling is the fact that the NAC found that Appellant acted in bad faith and unethically, even though uncontroverted evidence was presented establishing that Appellant voluntarily contributed over $2.4 million to the Funds during the same time period that she was found to have misallocated the $36,225 in expenses. The Extended Hearing Panel found that "such voluntary contributions to the Funds . . . would not make her improper allocations of personal expenses to the Funds proper." (Panel Decision at 57.) Agreeing with the Panel and missing the point of this uncontroverted evidence, the NAC simply engaged in an accounting analysis as to whether the $2.4 million lined up with the alleged improper expense charges. (NAC Remand Decision at 22.) The NAC missed the point that Appellant's voluntary contribution negated any inference of bad faith or unethical conduct.

Finally, as discussed below in Point III, the sanctions imposed by the NAC, especially its decision to leave in place the permanent bar from the securities industry, are unfair and inappropriate, not supported by the evidence, and clearly erroneous.

Thus, the NAC Remand Decision should be reversed in its entirety because it misapplies the applicable law, makes numerous factual findings that have no support in the record, is arbitrary and capricious, and is clearly erroneous.

STATEMENT OF FACTS

A. Appellant Took Over Her Deceased Husband's Business, Including Its Flawed Accounting Systems

Mr. George Springsteen founded Commonwealth Capital Corp. ("CCC") and its affiliates, including the broker-dealer Commonwealth Capital Securities Corp. ("CCSC") and

Commonwealth Income & Growth Fund, Inc. ("CIGF"), and created the funds they sponsored (the "Funds"). Appellant joined CCC in 1997 and later married Mr. Springsteen in 2000. (R. 02060, 5/12/14 Transcript.) Mr. Springsteen had built a successful business involving the marketing and sale of various funds investing in equipment leases and then leased the equipment, often computer-related equipment, to many creditworthy companies.

When Mr. Springsteen passed away in 2006, Appellant took over this family business and met with the national selling group of firms to assure business continuity. CCC, an equipment leasing company and fund sponsor, offered investment programs for accredited and non-accredited investors, through a selling group of FINRA member broker-dealers nationally, and has acquired more than $650 million in operating leases in 49 states and US territories. During its 38 year history, it has sold over $300 million in limited partnership interests in the equipment leases and has grown into one of the leading woman-owned, equipment leasing companies in the United States.

When he started the companies, Mr. Springsteen used a business American Express Card (the "Amex Card") to pay for some of the administrative expenses of the Funds, and allocated those charges on the Amex Card to the Funds, to himself for personal expenses, and to CCC and CCSC where applicable. After Mr. Springsteen passed away, Appellant continued this practice, including the accounting systems that her late-husband had put into place.

The evidence established that, after 2006, when the monthly American Express bills arrived, the Principal Financial Officer ("PFO"), Lynn Franceschina, allocated expenses, based on her knowledge of regulatory guidelines, guidance from the firm's then general counsel and periodic input from Appellant and Hank Abbott, who later became the President of CCC, and who Appellant subsequently married. The PFO was also one of the American Express

cardholders on the same account with Appellant and her new husband, as she handled and coordinated the general purchasing of supplies for the firm. In addition, the Amex Card was used to charge travel and related expenses for other CCC employees.

Under the documents governing the relevant companies, as the controlling person, none of Appellant's expenses were supposed to be allocated to the Funds. However, the PFO failed to back out many of Appellant's expenses, such as Appellant's portion of meal expenses from group meals, and some other charges. The PFO would review all the information she gathered and make allocations to the Funds, CCC or CCSC.[3] The PFO then gave the accounting department the marked up Amex bill with her allocations. The accounting department provided Appellant with an allocation totals sheet for the purpose of obtaining authority for payment of the bill. (R.01401-04; R.01430-34; R.01621.)

B. Appellant Reasonably Relied on Her PFO and Accounting Staff

During that period, Appellant relied upon the general allocations made by the PFO, through her accounting staff, and typically just initialed the summary sheet to approve payments. Because there were controls in place to prevent employees from approving high dollar purchases and invoices, Appellant did not study and analyze how each one of the hundreds of items was being allocated. She relied upon the mistaken belief that what she was given to review was in accordance with the appropriate rules and procedures. Thus, she was unaware before FINRA's Department of Enforcement (the "DOE") complaint that the PFO admittedly forgot that all meals or expenses for Appellant, as a "Control Person," including her portion of working business meals she had with her husband, had to be backed out from the allocation of expenses from the Funds. (R.01661.) As Appellant testified at the disciplinary hearing "Lynn [the PFO] realized

[3] A "large portion" of the allegedly improper expenses were actually charged on Hank Abbott's AMEX business credit card.

that she had not backed out my portion of the meals . . . and that's why she made those adjustments." (R.00921.)

Yet, without any factual basis, the DOE argued that the mistaken expense submissions were due to Appellant's intentional wrongdoing and deliberate misallocation even though Appellant testified that she had understood that "none of my charges as a control person would be allocated to the funds" (R.01662) and that "[t]he American Express voucher allocation sheet I approved and signed. That's what I approved." (R.1648.) Appellant did not knowingly or recklessly engage in "allocating personal expenses" to the Funds or "live off" of the Funds. (D. 56.) Indeed, the evidence established that Appellant used her personal bank and credit cards for personal expenses of $220,000 (R.005869 (RX-13) and R.005871 (RX-14)) during this time period.

C. Appellant Reasonably Relied on Outside Professionals

In addition to relying on the PFO and other internal accounting personnel, Appellant engaged legal and accounting advisors, even though the expense of this effort was more than most small family businesses would wish to incur. Appellant employed law firms such as Blank Rome, Reed Smith and Greenberg Traurig as counsel to the Funds, CCC, CIGF, and CCSC. The accountants retained were Ernst & Young and later Asher & Co., a major Philadelphia auditing firm that was acquired by BDO in 2012. Notably, no audit letter ever cited any misallocation or any control issues relating to the allocation of expenses. Additionally, neither her accountants nor her lawyers addressed any issues relating to allocable expenses until 2011, when the SEC looked at the control person issue. (R. 01498-99.)

D. FINRA Withdraws One Respondent, Two Claims and Hundreds of Expenses In Its Amended Claim

After conducting an investigation, the DOE filed an original complaint that included some 2,282 Amex charges that FINRA contended were improperly allocated from the Amex card to the Funds. (R.00001-90.) The original complaint also named CCSC, the FINRA-member broker-dealer that had no role in the handling of these expenses, as a respondent, and included charges other than the Rule 2010 claim now at issue. Despite a formal request from Appellant's counsel prior to the complaint being filed seeking the items list, the DOE had refused to provide any information to Appellant or counsel regarding the basis upon which charges were selected or why they were being challenged by FINRA. The allocations in the DOE allegations primarily involved expenses charged on the Amex card by Mr. Abbott and the PFO. The 2,282 charges aggregated approximately $340,000.

The DOE admitted its first error when it later amended its complaint in 2013 to remove CCSC, the broker-dealer, from the case – the withdrawal of claims against CCSC was a clear concession that no broker-dealer activity is involved in this case. The DOE admitted its second and third errors when it dropped two counts against the Appellant for misrepresentation and falsification of a document, based on proof provided to them, recognizing that the allegations were false. The DOE admitted its fourth error when the amended charge filed also reduced the complaint item list of disputed charges with the total allocated expenses complained of from $340,000 to $208,000 (R.00235). The DOE apparently recognized that the original complaint contained approximately 400 errors and inflated the challenged charges by over 70%.

E. During the Hearing, the DOE Recognized Thate
Another $40,000 in Expenses Were Not Impropere

The DOE admitted its fifth error during the hearing, when it further reduced its claims by another $40,000, eventually seeking restitution of $174,320 (R.002499, CX-61), further reducing the previous adjustments made by FINRA. (See R.06914.) The DOE admitted that 33 of the charges it twice had claimed to be misallocated were, in fact, never allocated to the Funds. (R.01205.) In its closing argument, the DOE admitted to the Panel there was a possible set-off to the $208,000 of $63,622, as they themselves could not reconcile the evidence with the schedule. (R02178-79.) All of the above errors by the DOE apparently led the Extended Hearing Panel to commit yet another error – despite the DOE asking for $174,340, and conceding a lower figure might apply, the Extended Hearing Panel imposed restitution totaling $208,953.75, an amount not supported by the evidence in the record.

It is interesting to note that the DOE and FINRA applied a double standard with respect to errors. The numerous errors that the DOE and FINRA were forced to correct in the prosecution of Appellant apparently were mere errors, but, according to the DOE, FINRA and the NAC, errors made by Appellant and her accounting staff somehow were evidence of a "purposeful pattern and practice of improperly allocating expenses."

F. Appellant Contributed $2.4 Million to the Funds,e
Which Was Ignored by the NAC and the Hearing Panele

Uncontroverted evidence was presented at the hearing that Appellant voluntarilye contributed $2.4 million to the Funds. Thus, over the years, Appellant often waived fees owed to CCC by the Funds that would have been properly allocable to the Funds. In addition, up to 10% of all charges that were properly allocable to the Funds were never allocated to the Funds but were, instead, absorbed by CCC, the parent company, in order to lower operating expenses.

This contribution of $2.4 million included the absorption of Fund expenses by CCC of a percentage of all indisputably allocable Amex charges and a portion of the salaries of employees performing Fund business, both of which could have been properly allocated to the Funds. (R.006805, RX-55.) Appellant did this, as a general business practice, to provide a "cushion" for the Funds (R.00864-65, R.01983; R.01986-88; R.02018) to contribute in yet another way to their success. Appellant also made some capital contributions to certain Funds to assist them in dealing with lease and lessee-related legal problems or with purchasing new leases to enhance the economics of that lease transaction. In short, she conducted herself in an exemplary fashion, voluntarily contributing some $2.4 million to the Funds in the same time period. (See R.006805, RX-55.)

At the hearing, even the DOE admitted that Appellant waived or absorbed $2,046,000 in costs and fees that were fully allocable to the Funds. (R.01099.) However, the DOE incorrectly contended that Appellant's voluntary support of the Funds and financial contributions to the Funds were not relevant to her intent or motivation and were not a mitigating factor at all.

That Appellant would donate or waive collectible payments, or allocate a total of $2.4 million to the Funds – by voluntarily reducing fees, allocating expenses to CCC, making capital grants to the Funds, and additionally paying $344,000 of the Funds' dedicated employees' salaries that were fully allocable to the Funds (R.01975-76; R.006805 (RX-55)) – and then intentionally misallocate $208,000 or $36,255 or less in order to enrich herself by "living off" of the Funds is completely inconsistent with the record. Yet the Extended Hearing Panel and the NAC ignored this and found that Appellant acted in bad faith and unethically.

G.e The Hearing Panel Found That 1,840 Expense Items Were Improperly Allocatede

At the hearing, the DOE presented receipts and documents identifying the existence of e some charges. However, *the DOE only presented evidence supporting its objections to the allocation of approximately 2% of these alleged improper charges.* For the remaining 98% the DOE simply presented a series of spreadsheets setting forth all expenses of the same category. DOE then argued that its "proof" regarding one item established the impropriety of every item on each list. Based on this failure of evidence, the Extended Hearing Panel found that Appellant had acted wrongly with respect to 1,840 expense items and ordered $208,953.75 in disgorgement.

The reliance on the DOE's method of submitting evidence was particularly troubling given that, as stated above, in its closing argument, the DOE admitted to the Panel there was a possible set-off to the $208,000 of $63,622, as they themselves could not reconcile the evidence with the schedule.

H. The NAC Affirmed the Hearing Panel in the Original NAC Decisione

In the Original NAC Decision, the NAC affirmed the Hearing Panel's decision, findinge that Appellant had improperly misallocated 1,840 expense items, totaling $208,953.75, to certain Funds of which she is a control person and ordered Appellant to disgorge the $208,953.75; permanently barred her from the securities industry; fined her $100,000; and ordered her to pay costs of $11,037.14. In support of the Original NAC Decision, the NAC stated:

> Enforcement has the burden of proving a prima facie case based on a preponderance of the evidence that Springsteen-Abbott committed the alleged violation.... *The entire itemized list of the 1,840 charges at issue was presented and accepted into evidence....* We find that, based on the evidence presented, *Enforcement established its prima facie case of her alleged violation. An explanation detailing each of the 1,840 itemized charges was not required. Upon establishing a prima facie case,*

> *the burden shifted to Springsteen-Abbott to either discredit or rebut the evidence presented*, which she failed to successfully do.

Original NAC Decision (R.007881) at 10 (emphasis added; citations omitted).

I.e The SEC Determines that the Original NAC Decision Is Flawede

After an appeal filed by Appellant, the SEC reviewed the Original NAC Decision and, ine the SEC Opinion and Order, stated that it was:

> unable to discharge our review function because the NAC's decision is unclear regarding what conduct it found to violate FINRA Rule 2010. Although the NAC stated that it was affirming the Hearing Panel's findings of violation, it misstated thosee findings. The NAC stated that ... it was affirming the Hearinge Panel's "findings of violation against Springsteen-Abbott toe include all of the 1,840 improperly allocated charges identified in the *Expense Schedule*." The Hearing Panel . . . did not find that all 1,840 charges identified in the Expense Schedule were improperly allocated....

See SEC Opinion and Order (R.008095) at 7 (emphasis in original).

Accordingly, the SEC remanded the matter back to the NAC so that the NAC could identify whether any rule violations actually occurred and, if so, to determine an appropriate remedy.

J.e The NAC Remand Decision Involves Only 84 Items, Down From 1,840 Itemse

In the NAC Remand Decision, the NAC did not repeat its earlier finding that 1,840e expense items had been improperly allocated. Presumably mindful of the SEC Opinion and Order, the NAC now found that only 84 expense allocations were improper. In the NAC Remand Decision, the NAC did not repeat its order that $208,953.75 be disgorged; now it ordered that only $36,225.85 pertaining to the 84 items be disgorged. Although the NAC also

reduced the fine imposed from $100,000 to $50,000, the NAC nevertheless reiterated its finding that Appellant be permanently barred from the securities industry.[4]

The NAC listed the 84 supposedly improper expense items in a schedule attached at the end of the NAC Remand Decision (R.008213). Attached hereto is an annotated version of that schedule, which (i) adds a column that references the page of the NAC Remand Decision that relates to the item, and (ii) divides the 84 listed items into two categories – 58 items highlighted in orange involving $30,102.99 pertaining to so-called "Broker-Dealer Expenses" (discussed in a summary manner in two short paragraphs at page 16 of the NAC Remand Decision) and 26 non-highlighted items involving $6,122.86 pertaining to so-called "Personal Expenses" (discussed in more detail at pages 5-16 of the NAC Remand Decision).

(1) The 58 So-Called Broker-Dealer Expenses

The 58 so-called Broker-Dealer Expense items were only discussed in a very cursory manner in the NAC Remand Decision. Indeed, 57 of the 58 (totaling $24,478.97 of the $30,102.99) were not even individually discussed; apparently they were taken wholesale from CX-95 (R.002629).[5] In the NAC Remand Decision, without any citation to anything in the record, the NAC states that "[b]ased on Springsteen-Abbott's own identification of expenses that she attributed as continuing education to maintain securities registrations at the Firm [the broker-dealer], the Hearing Panel found that certain charges it characterized as "broker-dealer expenses" were improperly allocated to the Funds." The NAC then reached the same incorrect conclusion as the Hearing Panel, based on the false premise that Appellant somehow identified these expenses as broker-dealer related.

[4] As of the time of the filing of this brief, the permanent bar against Appellant has already been in place for thirteen months, since the time of the Original NAC Decision.

[5] The NAC Remand Decision fails to note that CX-95 was prepared by Kelly Edwards, a FINRA Principal Examiner (May 6, 2014 Tr. (R.001107) at 307), and not by Appellant, and that Ms. Edwards based CX-95 on another longer list of expenses set forth in CX-6 (R.002249-002294).

The NAC's finding that the continuing education expenses were for the benefit of the broker-dealer and not for the Funds is not supported by the record. Appellant, of course, agrees that the expenses related to continuing education. However, contrary to the NAC's assertion, *nowhere in the record (or elsewhere) does Appellant state that that the continuing education expenses referenced in these two exhibits relate to continuing education* ***to maintain securities registrations at the broker-dealer.*** Rather, Appellant made it clear to FINRA that the continuing education expenses related to continuing education for ***personnel who serviced the Funds*** and were therefore Fund expenses.

The simple fact is that Appellant exercised her business judgment to conclude that the curriculum from some courses often taken by registered representatives as part of their FINRA continuing education requirements was also relevant and useful to the personnel who serviced the Funds. Without any basis in fact, the Hearing Panel and the NAC ignored Appellant's business judgment and substituted their own judgment to conclude – without any evidence – that the continuing education must have been broker-dealer expenses and therefore must have been improper.

K. Appellant's Strong Credibility and Unblemished Career Prior to 2011

Prior to 2011, Appellant had an unblemished 26 year career in the securities industry, as a registered associate, and 19+ of those years as a Chief Compliance Officer at Commonwealth. Appellant became the sole owner and Chief Executive Officer of CCC, a holding company, after her husband passed away in 2006. CCC in turn owned Commonwealth of Delaware, Inc. ("CDI") which in turn owned CIGF, the general partner in several public and private equipment leasing funds and the broker-dealer, CCSC. The Funds were subject to SEC jurisdiction and filed quarterly and annual reports with the SEC for the public Funds and Form D for the private Funds.

In 2011, the SEC began investigating the Funds in response to a complaint about Appellant brought by a disgruntled former employee who was laid off from the firm as part of a reduction of a larger number of support staff. (R.1-52, 990-912.) This led the SEC to question whether certain individuals employed by CCC, in addition to Appellant, also were "control persons" of the Funds, based on the specific, but atypical definition of "control person" in the offering documents. Based upon a contract between CCC and the Funds, expenses and salaries of "control persons" were not to be passed onto the Funds. The SEC accepted the process, but felt investors would not have understood the intent. The SEC inquiry led to a September 2013 settlement pursuant to which some expenses allocated to the Funds were reallocated to CCC.

Appellant did not admit to any violations in the settlement agreement. *Commonwealth Income & Growth Fund, Inc.*, SEC Release No. 9459, 2013 WL 5405360 (Sept. 27, 2013). The SEC inquiry included a review of certain American Express expenses that had been allocated to the Funds. In 2013, the issues presented here were reviewed by the SEC. Appellant cooperated with the SEC's investigation as she cooperated with FINRA. She and the SEC reached a settlement in 2013 that reflects her cooperation with regulators and does not support the DOE's lack of remorse arguments. The SEC was careful not to refer to her registered status or to any broker-dealer. Appellant satisfied the terms of the settlement within the time specified in the agreement.

As discussed above, Appellant was not aware of the disclosure and expense issues until the SEC investigation and the FINRA investigation which followed shortly thereafter. Upon learning of the errors, she corrected all discovered misallocations of her meals. In fact, many of these corrections occurred prior to FINRA filing charges. (R.005659 (CX 222); R.006805 (RX-55).) Moreover, Appellant admitted that her meal allocations had been improper in light of the

Fund prohibitions on allocating control person expenses to the Funds. (R.0921; R.1661-62.) The DOE attempted to introduce Appellant's SEC settlement as proof that she was a recidivist, even though the DOE had to know it was acting improperly. Appellant's settlement with the SEC in September, 2013 was used to tarnish her credibility even though she neither admitted nor denied the SEC conclusions and therefore the SEC settlement could not properly be used against her. See SEC Release.

Additionally, Appellant reallocated away from the Funds certain lost luggage related expenses of her PFO. (R.007253, Panel Decision at 42 fn.226).) These corrections also occurred before the DOE filed charges. (R.005659 (CX 222); R.006805 (RX-55), RX 50.) In fact, she even reallocated a number of properly allocated items that FINRA did not like (R.001633, Tr. 820), due to lack of proper expense documentation, because she believed this additional effort would demonstrate her good faith.

At the hearing, Appellant conceded the errors in the accounting that resulted in the misallocation to the Funds. However, there was no evidence that she was aware of the accounting errors earlier. In fact, there is evidence contradicting the allegation that Appellant intended the Funds any harm.

Just as Appellant conceded that there were allocations to the Funds which should have been reversed, there were other expenses cited by the DOE that Appellant believed were properly allocated to the Funds. For instance, Appellant believed that some of the meals allocated to the Funds were correctly allocated. These were working meals at modest restaurants. Yet the simple act of not rolling over and admitting that the DOE was correct in every respect – especially when the DOE itself conceded numerous errors – was taken by the Panel and the NAC to be evidence that Appellant was not credible.

L. Appellant Acknowledges on This Appeal, as She Did Below, That Some of the Allocations Made to the Funds Were Made Due to Errors or oversights and Were Thus Improper

There is no contention on this appeal that Appellant, as the CEO of CCC, had no responsibility for the errors that were made. Rather, it is her contention that the errors that were made – which the NAC has now concluded involve just $6,122.86 in so-called personal expenses – do not remotely rise to the level of unethical or bad faith behavior required to satisfy the charges brought against her and the draconian sanctions imposed.

The system employed to allocate the Amex charges pre-dated Appellant and was outdated and inefficient. Although the Panel repeatedly states that *Appellant* "misallocated," in fact, most of the errors and oversights were made by PFO Lynn Franceschina and included charges made by Appellant, Appellant's new husband, Hank Abbott, the PFO and other employees.[6] Further, the fact that during the time that Appellant was putting together documents to submit to FINRA (and at the hearing itself) Appellant continued to exhibit some uncertainty about some of the expense items should not be taken as proof of evasiveness or dishonesty, as the Hearing Panel and the NAC apparently did. To the contrary, during the time that Appellant was putting together the various submissions to FINRA, Appellant was dealing with the severe illness and death of her father (*see, e.g.*, R.001339, Tr. at 678) and painful custody issues involving her daughter's children.

Thus, as shown above, the facts do not support the findings and sanctions made by the NAC in the NAC Remand Decision. As shown below, the law also does not support these findings.

[6] Appellant admitted that she failed to detect some errors from her oversight of the PFO, but her possible failure to supervise a CCC function was not charged by FINRA and is beyond the scope of FINRAs authority in light of the fact that CCC is not a FINRA member.

LEGAL ARGUMENT

At the hearing, the DOE asserted that any misallocation of Fund assets by Appellant, *even if accidental*, would suffice to find an ethical violation (R.001889, Tr. 1095:9-16; 1097:6-11). That view failed to account for the critical distinction between (a) conduct within a member firm impacting the firm's customers or clients that is governed by FINRA Rule 2150, and (b) conduct outside a member firm in connection with an unregulated business. Where, as here, the conduct at issue was outside the regulated broker-dealer entity so that no violation of a FINRA conduct rule (other than Rule 2010) was or could have been alleged, and the rights and obligations of the parties are defined by contract, a finding of bad faith is required to find a violation of Rule 2010. *Buchman v, SEC*, 553 F.2d 816, 821 (2d Cir. 1977) (holding that bad faith must be proven to support a finding that a breach of contract is an ethical violation); *Market Regulation v. John Patrick Leighton*, 2010 WL 781457 (NAC Mar. 3, 2010) ("If no other rule has been violated, a violation of Rule 2110 [the precursor rule] requires evidence that the respondent acted in bad faith or unethically.").

In the NAC Remand Decision, the NAC properly rejected the DOE's overly broad view of the requirements for finding a Rule 2010 violation, concluding that, in order to find a Rule 2010 violation, Appellant's actions would have to have been purposefully undertaken in bad faith. The NAC agreed with Appellant that this is a contract case, but then erroneously made a determination that none of the expenses at issue "were related and 'necessary to the prudent operation of the [Funds],' as required by the terms' of the Funds' operating agreement." (NAC Remand Decision (R.008213) at 18.) The NAC then held that "Springsteen-Abbott 'engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds' in violation of FINRA Rule 2010." *Id.*

As shown below, the NAC erred in (i) finding that none of the expenses related to the prudent operation of the Funds, (ii) finding that Appellant engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds, and (iii) imposing wholly unfair and inappropriate sanctions that are not supported by the evidence.

Point I

THE NAC IMPROPERLY IMPOSED ITS OWN BUSINESS JUDGMENT, RATHER THAN DEFERRING TO APPELLANT'S BUSINESS JUDGMENT, WITH RESPECT TO THE 58 SO-CALLED BROKER-DEALER EXPENSE ITEMS, WHICH ACTION WAS CLEARLY ERRONEOUS

As discussed above in the Statement of Facts, 58 of the 84 supposedly improper expense items identified by the NAC in the NAC Remand Decision, involving $30,102.99 of the total of $36,225.85 in expenses found to be improper, pertain to what the NAC identified as "Broker-Dealer Expenses." The 58 so-called Broker-Dealer Expense items were only discussed in a very cursory manner in the NAC Remand Decision. Indeed, 57 of the 58 (totaling $24,478.97 of the $30,102.99) were not even individually discussed; apparently they were taken wholesale from CX-95, which was prepared by FINRA Principal Examiner Kelly Edwards, and not by Appellant. (R.001107, May 6, 2014 Tr. at 307; R.002629, CX-95.) In the NAC Remand Decision, the NAC states that "[b]ased on Springsteen-Abbott's own identification of expenses that she attributed as continuing education *to maintain securities registrations at the Firm [the broker-dealer]*, the Hearing Panel found that certain charges it characterized as "broker-dealer expenses" were improperly allocated to the Funds." (Emphasis added.) The NAC reached the same incorrect conclusion. The NAC based this incorrect conclusion on the false premise that Appellant somehow identified these expenses as broker-dealer expenses made in order to maintain securities registrations at the broker-dealer.

The NAC's finding that the continuing education expenses were for the benefit of the broker-dealer and not for the Funds is not supported by the record. Appellant, of course, agrees that the expenses related to continuing education. However, contrary to the NAC's assertion, *nowhere in the record (or elsewhere) does Appellant state that that the continuing education expenses referenced in these two exhibits relate to continuing education* ***to maintain securities registrations at the broker-dealer.*** Rather, Appellant has always made it clear to FINRA that the continuing education expenses at issue related to continuing education for ***personnel who serviced the Funds*** and were therefore Fund expenses. Indeed, as counsel noted during closing arguments:

> Kim [Appellant] testified she requires all her employees to attend CE [Continuing Education] and CRD, whether registered or not, because she believes the education benefits the funds. (R.002151, Tr. at 1356-1357.)

The simple fact is that Appellant exercised her business judgment to conclude that the curriculum from these educational courses usually taken by registered representatives as part of their FINRA continuing education requirements was also relevant and useful to the personnel who serviced the Funds. Without any basis in fact, the NAC, following the lead of the Hearing Panel, ignored Appellant's business judgment and substituted its own judgment to conclude – without any evidence – that the continuing education must have been broker-dealer expenses and therefore must have been improper. The NAC Remand Decision is therefore clearly erroneous.

The Funds at issue are organized under the law of Pennsylvania. As explained by the Pennsylvania Supreme Court, Pennsylvania law is clear that, under the "business judgment rule," a decision by an officer or director of a Pennsylvania corporation must be respected if "he [or she] reasonably believes [the decision] to be appropriate under the circumstances, and rationally believes that the business judgment is in the best interests of the corporation." *Cuker v.*

Miukalauskas, 547 Pa. 600, 606, 692 A.2d 1042, 1045 (1997); *Anderson v. Colonial Country Club*, 739 A.2d 1118, 1123 (Pa. Commw. Ct. 1999) ("Courts should not substitute their judgment for that of the directors of a corporation unless the acts complained of constitute bad faith, gross mismanagement or ultra vires."); *see also Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 64 (Del. 1989) (The business judgment rule creates a presumption that directors of a corporation, in making business decisions, act with due care, in good faith, and believing the action taken is in the best interest of the company.).

As the *Cukor* court explained:

> The business judgment rule should insulate officers and directors from judicial intervention in the absence of fraud or self-dealing, if challenged decisions were within the scope of the directors [or officers'] authority, if they exercised reasonable diligence, and if they honestly and rationally believed their decisions were in the best interests of the company.... [I]f the conditions warrant application of the business judgment rule . . . the court will never proceed to an examination of the merits of the challenged decisions, for that is precisely what the business judgment rule prohibits.

Cuker, 547 Pa. at 612, 692 A.2d at 1048.

Here, all the requirements of the business judgment rule are met. Appellant's decision that it was appropriate for the personnel who serviced the Funds to take the same type of continuing education as registered personnel at the broker-dealer was well within the scope of Appellant's authority. There is no evidence that she did not exercise reasonable diligence in making this decision and there is no evidence that she did not honestly and rationally believe that this decision was in the best interests of the Funds.

Accordingly, the NAC's finding that the 58 so-called broker-dealer expenses (involving over 83% of the expenses found to have been improperly allocated) were improperly charged to the Funds is clearly erroneous and must be reversed.

Point II

THE FINDINGS BY THE NAC THAT APPELLANT ACTED IN BAD FAITH AND UNETHICALLY ARE UNSUPPORTED BY THE EVIDENCE AND CLEARLY ERRONEOUS

In the proceeding against Appellant, the DOE charged her with violating Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Appellant was not charged with violating any other FINRA rule. It is well established that "[i]f no other rule has been violated, a violation of Rule 2110 [the precursor rule] requires evidence that the respondent *acted in bad faith or unethically.*" *Market Regulation v. John Patrick Leighton*, 2010 WL 781457 at *42 (NAC Mar. 3, 2010) (emphasis added; citing *Chris Dinh Hartley*, SEC Release No. 50031, 2004 WL 1593848, *5, n.13 (July 16, 2004)); *see also Kirlin Securities, Inc.*, SEC Release No. 61135, 2009 WL 4731652 (Dec. 10, 2009) ("in the absence of a violation of another securities rule or law, conduct may violate Rule 2010 if it is 'unethical' or committed in 'bad faith.'").

As already demonstrated above in Point I, 58 of the 84 expense items, involving $30,102.99 of the $36,225.85 at issue, related to expenses for continuing education (i) that Appellant reasonably believed were for the benefit of the Funds and not the broker-dealer, and (ii) for which NAC cited no evidence that the expenses were actually for the benefit of the broker-dealer. This leaves just 26 so-called personal expense items totaling $6,122.86.[7] These

[7] After the SEC remanded this matter, Appellant offered to present additional, clearer evidence to FINRA and the NAC with respect to the expense items at issue (R. 008111) because, as explained above, Appellant had not been able to devote her full attention during FINRA's investigation and even during the hearing, due to very significant personal issues she was facing. FINRA and the NAC chose to ignore Appellant's offer and not review clearer evidence that would have demonstrated the lack of merit of the charges against Appellant. Their failure to consider this evidence is contrary to the SEC's Opinion and Order, which requires that the NAC's findings be established by the evidence. As the SEC's Opinion and Order (at 8) states, "[o]f course, the NAC may also determine that the evidence does not support any finding of liability."

few items do not support the NAC's finding that Appellant "'engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds' in violation of FINRA Rule 2010."

This is especially so because both the NAC and the Extended Hearing Panel found that Appellant purposefully acted in bad faith and unethically, even though uncontroverted evidence was presented establishing that Appellant voluntarily contributed over $2.4 million (and the DOE *conceded* that Appellant contributed over $2 million) to the Funds during the time that she was found to have misallocated the $6,122 in expenses (or $36,225, if the 58 so-called broker dealer expenses are added back in). As set forth above, Appellant caused CCC, which she owns, to absorb a percentage of all Amex charges allocable to the Funds and a portion of the salaries of employees performing Fund business, both of which could have been properly allocated to the Funds (R.006805, RX-55) as a general business practice, to provide a cushion for the Funds (R.00864-65;R.01983; R.01986-88; R.02018) so as to contribute to their success. Appellant also made some capital contributions to certain Funds to assist them in dealing with lease and lessee-related legal problems or with purchasing new leases to enhance the economics of that lease transaction. *Even the DOE admitted that Appellant waived or absorbed $2,046,000 in costs and fees that were fully allocable to the Funds.* (R.01099.)

Ignoring these facts, the Extended Hearing Panel found that "such voluntary contributions to the Funds . . . would not make her improper allocations of personal expenses to the Funds proper." (Panel Decision at 57.) Agreeing with the Panel and missing the point of this uncontroverted evidence, the NAC simply engaged in an accounting analysis as to whether the $2.4 million lined up with the alleged improper expense charges. (NAC Remand Decision at 22.)

The NAC Remand Decision entirely misses the point. Appellant never argued that her voluntary contributions made any improper allocations proper – she readily acknowledged that when an improper allocation occurred, the Funds were entitled to a refund. Similarly, Appellant did not argue that any particular misallocated expense was exactly offset by a voluntary contribution to the same Fund in the same amount. Rather, Appellant argued that **the fact that she voluntarily contributed over $2.4 million to the Funds conclusively demonstrates that *she did not act unethically or in bad faith***. Underlying the decisions below is the inference that Appellant wanted to unjustly enrich herself by improperly misallocating expenses to the Funds. This is illogical – if Appellant had desired to avail herself of the additional $6,122 (or $36,225) at issue here, she simply would have reduced her voluntary contributions to the Funds by that amount. The bottom line is that the Appellant always tried to place the interests of the Funds first but, unfortunately, utilized a flawed method for handling the expense reimbursement process and occasionally made errors. Once these issues came to Appellant's attention, she voluntarily put in place new procedures that corrected the problem and which have been reviewed by FINRA in subsequent examinations without any issue. Appellant also recognizes that, as the CEO, she bore ultimate responsibility for what occurred.

Under these circumstances, for the NAC to have found that Appellant acted in bad faith and unethically is clearly erroneous and not supported by the evidence. Accordingly, the NAC Remand Decision should be reversed.

Point III

THE SANCTIONS IMPOSED BY THE NAC, ESPECIALLY A PERMANENT BAR, ARE UNFAIR AND INAPPROPRIATE, NOT SUPPORTED BY THE EVIDENCE, AND CLEARLY ERRONEOUS

As previously stated, on remand after the SEC's review of the Original NAC Decision, the NAC has now reduced (a) the number of expense items it found to have been misallocated from 1,840 to 84, and (b) the dollar amount involved from $208,953.75 to $36,225.85. As further discussed above, 58 of the remaining 84 items, involving $30,102.99 of the $36,225.85 at issue, relate to expenses that the NAC erroneously found should have been allocated to the broker-dealer – these items do ***not*** involve personal expenses improperly allocated to the Funds. Thus, only 26 items totaling $6,122.86 actually involved so-called personal expenses, which, as explained above, were inadvertently charged to the Funds. Despite these facts, by leaving in place the permanent bar the NAC continues to treat Appellant the way it treated her in the Original NAC Decision, where the NAC stated that Appellant was "living off of the Funds' monies instead of her own" (Original NAC Decision at 11).

In essence, as it did in the Original NAC Decision, the NAC has continued to adopt the Hearing Panel's bias against Appellant. It appears as if the NAC Remand Decision was constructed in an effort to technically address the problems the SEC found in the flawed Original NAC Decision but still leave in place the permanent bar first imposed by the Hearing Panel and affirmed by the NAC in the Original NAC Decision. As discussed below, the sanctions imposed in the NAC Remand Decision, especially the permanent bar, are unfair and inappropriate, not supported by the evidence, and clearly erroneous.

Rule 2010, which provides that a member and an associated person abide by Standards of Commercial Honor and Principles of Trade, specifically states that it is "in the conduct of its

business" that the member is required to "observe high standards of commercial honor and just and equitable principles of trade." The purpose of Rule 2010 is to regulate broker-dealer conduct and to provide for the discipline of broker-dealer misconduct. It is unreasonable to conclude that business activity of virtually any sort, even if done away from the broker-dealer firm and not securities-related, or even outside the ambit of any SRO or federal regulatory body, may provide a basis for FINRA sanction if the activity is deemed unethical or inequitable. The only affiliation between CIGF and the broker-dealer is that both are held by the same holding company and owned by the parent CCC.[8]

Here, there were no misallocations, deliberate or otherwise, involving the broker-dealer (there were no deliberate misallocations at all). Therefore, Rule 2010 sanctions were improper. While there are Rule 2010 decisions involving associated persons' misconduct in the insurance business area, the victims are broker-dealer clients and the intertwined nature of the violation makes those cases, if they are not wrong, statutorily reconcilable. None of Appellant's conduct as CEO of CIGF required any registration, involved any client of the broker-dealer (CCSC), any funds ever deposited with CCSC, or any investment sold by CCSC to clients. This was not broker-dealer business.

Even assuming, *arguendo*, that Rule 2010 could be applicable, the NAC misapplied sanction guidelines and considerations in an unfair manner. The cases that are cited in the NAC Remand Decision in support of the NAC's sanctions are easily distinguishable from the facts present here. All of the cases cited by the NAC in the Remand Decision involve conversions

[8] Typically, Rule 2010 violation cases involve customer or firm funds or transactions and specific rule violations. For example, in *DOE v. Grivas*, 2015 WL 4386172 (NAC July 16 2015), a case often cited by the NAC, the respondent used client funds held at the broker-dealer to "save a struggling broker-dealer" and concealed his movement of funds. The case has *no* similarities to this one. In *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996), the court found that the appellant's misappropriation of funds was securities related because he represented that the funds were in an account at Cigna, where the appellant was a securities salesman. Again, this is unlike the instant case.

(*i.e.*, findings of intentional wrongdoing by respondents), additional rule violations and significant aggregating factors.[9] Indeed, even in matters where associated persons committed intentional acts that resulted in misallocations of funds, the NAC has determined that a bar from the industry is too harsh a sanction. *DOE v. McCartney,* Complaint No. 2010023719601, NAC Decision (December 10, 2012) (reducing a bar to a $5,000 fine and six month suspension where an associated person submitted false meeting expenses to a member firm); *DOE v. Leopold*, 2012 FINRA Discip LEXIS 2, at 17 (reducing a bar imposed by a hearing panel to a $25,000 fine and one year suspension where associated person fabricated more than 20 hotel receipts and letters and submitted them to a member firm). Although cited in Appellant's briefs, the NAC Remand Decision does not address any of this precedent.

Not only is there no evidence of an intentional act on the part of Appellant, none of the aggravating factors present in the cases cited by the NAC in the NAC Remand Decision are present. In *Akindemowo*, in justifying a bar from the industry, the SEC found that respondent Akindemowo had acted with scienter, exploited the trust of persons with whom he had personal relationships, evaded requests for documentation, continued his deceit during the investigations, gave a false account of the facts, attempted to shift blame to investors and failed to recognize the seriousness of his misconduct and the harm it caused. Appellant could not be more different from Akindemowo. Appellant has made no intentional bad acts, has not exploited anyone, has not been evasive with FINRA, has complied with all of FINRA's requests, and has attempted to determine what occurred in order to set it right.

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[9] *See, e.g., Kenny Akindemowo,* Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *39 (Sept. 20, 2016) (barring a registered representative for misrepresentations, conversions, engaging in private securities transactions, and failing to report outside business activities); *Dist. Bus. Conduct Comm. v. Westberry,* Complaint No. C07940021, 1995 NASD Discip. LEXIS 225, at *24 (NASD NBCC Aug. 11, 1995) (barring a registered representative who convinced a client to purchase a life insurance policy that the client did not intend to keep in order to increase the representative's production and commissions and then intentionally misdirected the refund check and "went to extensive lengths to conceal the transfer").

In addition to being free of any aggregating factors, Appellant's matter presents significant mitigating factors which were not taken into account by the NAC. The original Hearing Panel decision (at 57) acknowledges that "[w]here the misuse results from a respondent's misunderstanding, rather than intentional misuse, or where there is other mitigation, adjudicators may consider a suspension in any or all capacities for six months to two years . . ." The evidence of the alleged "misuse" in this matter amounts to, at most, a few dozen inadvertent misallocations. These errors were not intentional. In addition, as set forth above, Appellant's $2.4 million in contributions to the Funds is clearly a mitigating factor. Appellant made large capital contributions to certain Funds to assist them in dealing with lease and lessee-related legal problems or with purchasing new leases to enhance the economics of that lease transaction. In short, she conducted herself in an exemplary fashion, voluntarily "contributing" approximately $2.4 million to the Funds in the same time period. (See R.006805, RX-55.) However, the DOE incorrectly contended, and the NAC agreed, that Appellant's voluntary support of the Funds and financial contributions to the Funds were not relevant to her intent or motivation and were not a mitigating factor at all.

The NAC Remand Decision acknowledges that "[a] lesser sanction [than a bar] may be imposed where the improper use resulted from respondent's misunderstanding of the customer's intended use of the funds or if some other mitigation exists." NAC Remand Decision at 26. There can be no doubt that the lifetime permanent bar imposed by the NAC in the NAC Remand Decision is unfair and unjust. This sanction, which is not supported by the evidence, is clearly erroneous. Likewise, the NAC Remand Decision's order of disgorgement in the amount of $36,225.85[10] and a fine in the amount of $50,000 is not supported by the evidence in the record.

[10] Further, and solely to demonstrate the flawed calculations of the NAC, the disgorgement could be at most the $6,122.86 that is alleged to be personal expenses (assuming *arguendo* that there was a purposeful misallocation), as

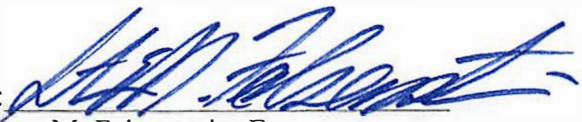
CONCLUSION

Accordingly, for the reasons set forth above, Appellant respectfully submits that the NAC Remand Decision should be reversed in its entirety. In particular, the permanent bar against Appellant is unfair, not supported by the evidence, and clearly erroneous.

October 10, 2017

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

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TO:

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Appellant did not personally benefit from the $30,102.99 in so-called broker-dealer expenses that actually benefitted the Funds (and under the business judgment rule were properly allocable to the Funds).

Office of the General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006

Revised Expense Schedule

Original No.	Amended Complaint No.	Purchases	Date	Amount	Vendor	Location	Fund Y/N	Expense Type	NAC Page
64	57	KS	Thursday, January 29, 2009	$86.34	Cody's Original Roadhouse	Tarpon Springs, FL	Yes	Restaurant	6
198	171	HA	Tuesday, March 03, 2009	$25.49	Hess	Palm Harbor, FL	Yes	Gas Station/Store	16*
378	322	HA	Tuesday, May 26, 2009	$73.67	Paradies	Philadelphia, PA	Yes	Merchandise	5
379	323	HA	Tuesday, May 26, 2009	$16.63	Quiznos	Phoenix, AZ	Yes	Fast Food	5
495	406	LF	Friday, August 07, 2009	$500.00	Bon Appetit	Dunedin, FL	Yes	Restaurant	16*
496	407	LF	Friday, August 07, 2009	$1,000.00	Bon Appetit	Dunedin, FL	Yes	Restaurant	16*
507	418	LF	Wednesday, August 12, 2009	$50.00	FINRA Education & Training	online	Yes	Other	16*
548	446	LF	Tuesday, August 25, 2009	$69.13	Rockhurst University	online	Yes	Other	16*
551	449	KS	Wednesday, August 26, 2009	$197.95	Angelo's Pizza	Holiday, FL	Yes	Restaurant	16*
553	451	LF	Wednesday, August 26, 2009	$25.00	FINRA Education & Training	online	Yes	Other	16*
585	477	LF	Thursday, September 03, 2009	$45.00	FINRA Education & Training	online	Yes	Other	16*
666	540	HA	Thursday, October 15, 2009	$566.97	Avis Rent A Car	Tampa, FL	Yes	Rental Cars	15
717	573	LF	Monday, November 09, 2009	$150.00	Dilworthtown Inn	West Chester, PA	Yes	Restaurant	16*
726	579	KS	Thursday, November 12, 2009	$1,977.36	Bayshore Trophies	Clearwater, FL	Yes	Merchandise	16*
728	581	KS	Thursday, November 12, 2009	$99.46	Chili's	New Port Ritchie, FL	Yes	Restaurant	16*
732	585	HA	Friday, November 13, 2009	$29.95	Airside F Gifts	Tampa, FL	Yes	Merchandise	15 to 16
769	607	KS	Wednesday, December 02, 2009	$561.09	Pescatores Italian	Glen Mills, PA	Yes	Restaurant	16*
773	610	LF	Friday, December 04, 2009	$9.17	McDonald's	Concordville, PA	Yes	Fast Food	16*
779	614	LF	Monday, December 07, 2009	$2,054.63	Bon Appetit	Dunedin, FL	Yes	Restaurant	16*
786	620	LF	Tuesday, December 08, 2009	$116.64	Pickles Plus Too	Clearwater, FL	Yes	Restaurant	16*
787	621	LF	Tuesday, December 08, 2009	$69.08	Walgreens	Clearwater, FL	Yes	Pharmacy	16*
789	623	LF	Wednesday, December 09, 2009	$108.60	Island Way Grill	Clearwater, FL	Yes	Restaurant	16*
790	624	HA	Thursday, December 10, 2009	$5,624.02	Alfanos Restaurant	Clearwater, FL	Yes	Restaurant	16
792	625	LF	Thursday, December 10, 2009	$250.41	Pickles Plus Too	Clearwater, FL	Yes	Restaurant	16*
795	627	LF	Friday, December 11, 2009	$21.57	Sam Sneads A	Tampa, FL	Yes	Restaurant	16*
796	628	LF	Friday, December 11, 2009	$31.93	Tilted Kilt	Clearwater, FL	Yes	Restaurant	16*
834	662	HA	Monday, December 28, 2009	$826.08	Broadway Joes	New York, NY	Yes	Restaurant	13 to 14
839	666	HA	Wednesday, December 30, 2009	$116.41	Blue Pear Bistro	West Chester, PA	Yes	Restaurant	14
949	750	HA	Tuesday, February 02, 2010	$137.79	Avis Rent A Car	Newark, NJ	Yes	Rental Cars	8 to 9
954	755	HA	Wednesday, February 03, 2010	$1,766.58	Avis Rent A Car	Tampa, FL	Yes	Rental Cars	9
1147	916	HA	Saturday, April 03, 2010	$432.06	Porto Leggero	Jersey City, NJ	Yes	Restaurant	9
1182	939	HA	Saturday, April 24, 2010	$174.96	Cody's Original Roadhouse	Tarpon Springs, FL	Yes	Restaurant	6 to 7
1222	973	HA	Sunday, May 09, 2010	$241.93	RA@Longwood Garden	Kennett Square, PA	Yes	Recreation	12
1251	1001	KS	Tuesday, May 25, 2010	$224.57	Ruth's Chris Steakhouse	Baltimore, MD	Yes	Restaurant	16*
1252	1002	LF	Tuesday, May 25, 2010	$33.45	Sunoco	Odessa, DE	Yes	Gas Station/Store	16*
1254	1004	KS	Wednesday, May 26, 2010	$440.00	Aldo's Restorante	Baltimore, MD	Yes	Restaurant	16*
1277	1027	HA	Sunday, June 06, 2010	$653.52	Avis Rent A Car	Tampa, FL	Yes	Rental Cars	12 to 13
1278	1028	HA	Sunday, June 06, 2010	$16.57	Exxon Mobil	Orlando, FL	Yes	Gas Station/Store	12 to 13
1279	1029	HA	Sunday, June 06, 2010	$20.91	Hudson News	Orlando, FL	Yes	Merchandise	12 to 13
1280	1030	KS	Sunday, June 06, 2010	$11.37	Qdoba	Orlando, FL	Yes	Fast Food	12 to 13
1340	1082	HA	Thursday, July 08, 2010	$69.03	McKenzie Brew House	Glen Mills, PA	Yes	Restaurant	16*
1351	1091	HA	Sunday, July 11, 2010	$55.04	Shell Oil	Jersey City, NJ	Yes	Gas Station/Store	16*
1419	1151	LF	Tuesday, August 03, 2010	$8.62	Hudson News	Philadelphia, PA	Yes	Merchandise	16*
1420	1152	LF	Tuesday, August 03, 2010	$76.25	Island Way Grill	Clearwater Beach, FL	Yes	Restaurant	16*
1425	1155	LF	Friday, August 06, 2010	$30.00	Blue Martini	Tampa, FL	Yes	Restaurant	16*
1426	1156	HA	Friday, August 06, 2010	$105.78	Maggiano's	Tampa, FL	Yes	Restaurant	16*
1427	1157	HA	Friday, August 06, 2010	$2,920.96	Maggiano's	Tampa, FL	Yes	Restaurant	16*
1428	1158	HA	Saturday, August 07, 2010	$879.64	Palm Restaurant	Tampa, FL	Yes	Restaurant	16*
1429	1159	HA	Sunday, August 08, 2010	$2,363.02	Avis Rent A Car	Tampa, FL	Yes	Rental Cars	16*
1430	1160	LF	Sunday, August 08, 2010	$4.59	Kennedy BP	Tampa, FL	Yes	Gas Station/Store	16*
1434	1164	LF	Sunday, August 08, 2010	$6.96	Starbucks	Tampa, FL	Yes	Fast Food	16*
1438	1168	KS	Wednesday, August 11, 2010	$104.23	Cody's Original Roadhouse	Tarpon Springs, FL	Yes	Restaurant	7
1501	1227	LF	Tuesday, September 07, 2010	$36.03	Tony's Pizzeria	Clearwater, FL	Yes	Restaurant	16*
1525	1251	LF	Tuesday, September 14, 2010	$16.96	Tony's Pizzeria	Clearwater, FL	Yes	Restaurant	16*
1526	1252	LF	Tuesday, September 14, 2010	$16.96	Tony's Pizzeria	Clearwater, FL	Yes	Restaurant	16*
1532	1257	LF	Wednesday, September 15, 2010	$42.48	Tony's Pizzeria	Clearwater, FL	Yes	Restaurant	16*
1569	1284	HA	Saturday, September 25, 2010	$43.86	Best Buy	Paramus, NJ	Yes	Merchandise	10
1570	1285	HA	Saturday, September 25, 2010	$24.58	Century Twenty One	Paramus, NJ	Yes	Other	10
1573	1288	HA	Saturday, September 25, 2010	$41.82	Sunoco	Cranbury, NJ	Yes	Gas Station/Store	10
1611	1319	HA	Sunday, October 10, 2010	$89.67	Cody's Original Roadhouse	Tarpon Springs, FL	Yes	Restaurant	8
1750	1392	LF	Monday, November 29, 2010	$7.72	Hudson News	Philadelphia, PA	Yes	Merchandise	16*
1752	1394	LF	Monday, November 29, 2010	$5.07	Maki of Japan	Philadelphia, PA	Yes	Restaurant	16*
1757	1396	LF	Tuesday, November 30, 2010	$185.60	Crabby's Beachwalk	Clearwater, FL	Yes	Restaurant	16*
1763	1401	LF	Tuesday, November 30, 2010	$42.82	Walgreens	Clearwater, FL	Yes	Pharmacy	16*
1766	1403	LF	Wednesday, December 01, 2010	$138.00	Clear Sky Beachside	Clearwater, FL	Yes	Restaurant	16*
1771	1406	LF	Wednesday, December 01, 2010	$47.09	Smokey Bones	Clearwater, FL	Yes	Restaurant	16*
1772	1407	LF	Wednesday, December 01, 2010	$189.89	The Brown Boxer Pub	Clearwater, FL	Yes	Restaurant	16*
1777	1411	LF	Thursday, December 02, 2010	$13.59	Starbucks	Clearwater, FL	Yes	Fast Food	16*
1783	1416	KS	Monday, December 06, 2010	$1,017.50	Enterprise Rentacar	Tarpon Springs, FL	Yes	Rental Cars	16*
1784	1417	KS	Monday, December 06, 2010	$1,108.80	Enterprise Rentacar	Tarpon Springs, FL	Yes	Rental Cars	16*
1785	1418	LF	Monday, December 06, 2010	$26.38	Kennedy BP	Tampa, FL	Yes	Gas Station/Store	16*
1786	1419	LF	Monday, December 06, 2010	$6.53	Starbucks	Tampa, FL	Yes	Fast Food	16*
1811	1439	HA	Tuesday, November 23, 2010	$449.27	Casaludovico	Palm Harbor, FL	Yes	Restaurant	16*
1817	1444	HA	Friday, December 31, 2010	$247.78	Bistecca Florentina	New York, NY	Yes	Restaurant	14
1821	1447	HA	Friday, January 07, 2011	$47.59	Asian Kitchen	Ridgefield, CT	Yes	Restaurant	10 to 11
1822	1448	HA	Friday, January 07, 2011	$44.04	Bernards	Ridgefield, CT	Yes	Restaurant	10 to 11
1876	1496	HA	Friday, February 04, 2011	$103.50	Johnson Lipman	Coconut Creek, FL	Yes	Other	16*
2030	1624	HA	Saturday, April 16, 2011	$86.72	OAK ROOM (food)	New York, NY	Yes	Restaurant	11 to 12
2037	1630	HA	Tuesday, April 19, 2011	$220.83	Villa Gallace Italian	Indian Rocks Beach, FL	Yes	Restaurant	12
2232	1802	HA	Friday, November 12, 2010	$253.55	Casaludovico	Palm Harbor, FL	Yes	Restaurant	16*
2248	1816	HA	Monday, November 23, 2009	$27.00	Blue Pear Bistro	West Chester, PA	Yes	Restaurant	16*
2249	1817	HA	Monday, November 23, 2009	$221.69	Dilworthtown Inn	West Chester, PA	Yes	Restaurant	16*
2268	1836	HA	Friday, December 04, 2009	$53.80	Dilworthtown Inn	West Chester, PA	Yes	Restaurant	16*
2269	1837	HA	Friday, December 04, 2009	$5,888.22	Dilworthtown Inn	West Chester, PA	Yes	Restaurant	16*
			Total	$36,225.85					
No Highlights are identified as personal expenses in the NAC Remand Decision			Total		$6,122.86				
**Orange Highlights are identified as broker dealer expenses in the NAC Remand Decision at page 16.*			Total		$30,102.99				

CERTIFICATE OF SERVICE

I, Steven M. Felsenstein, certify that on this 6th day of October, 2017, I caused a copy of the foregoing Notice of Appeal to be submitted to the Office of the Secretary of the U.S. Securities and Exchange Commission by overnight express delivery:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549

I further certify that on this 11th day of August, 2017, I caused a copy of the foregoing Appellant's Brief to be sent via overnight express delivery to:

Attention: Lisa Jones Toms, Esq.
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006

Attention: Leo F. Orenstein, Esq.
FINRA Department of Enforcement
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October 6, 2017