BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Ahmed Gadelkareem

For Review of Disciplinary Action Taken by

FINRA

File No. 3-17934

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Case **Pages**

FINRA Decisions

Federal Rules and Statutes

FINRA Rules and Sanction Guidelines

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I. INTRODUCTION

In April 2014, Ahmed Gadelkareem was terminated by his employer firm for a verbal altercation with a coworker. In the days and weeks that followed his termination, Gadelkareem embarked on a course of abusive, intimidating, threatening, and harassing communications and conduct towards his former firm and coworkers. Gadelkareem's misconduct included repeated harassing telephone calls and emails to coworkers and other parties connected to his former firm, making disparaging claims about the firm to the media, clients, and others, as well as impersonating law enforcement and a FINRA examiner. Gadelkareem's misconduct, which he himself has at various times acknowledged was "unethical," "unseemly," and "outrageous," continued during the disciplinary proceedings below.[1] Gadelkareem issued false subpoenas to

[1] "RP" refers to the page number in the certified record. "Notice of Appeal __" refers to Gadelkareem's April 17, 2017 notice of appeal to the Commission. "Gadelkareem Br. __" refers to Gadelkareem's May 1, 2017 submission in support of his application for review.

[Footnote continued on next page]

witnesses in direct defiance of orders by the Hearing Officer, submitted falsified documents as evidence at the hearing, attempted to intimidate and harass witnesses and counsel for FINRA's Department of Enforcement, and concocted a false story to conceal his misconduct.

The National Adjudicatory Council's ("NAC") finding that Gadelkareem violated FINRA Rule 2010 is well supported by the record, including Gadelkareem's own admissions. Gadelkareem engaged in an extended course of improper, malicious, and abusive conduct that directly reflects on his inability to comport himself in a manner consistent with the high standards of commercial honor required by participants in the securities industry. The record demonstrates, furthermore, that Gadelkareem poses a threat to the industry and that a bar is an appropriately remedial sanction. Accordingly, the Commission should dismiss Gadelkareem's application for review.

II. FACTUAL BACKGROUND

A. Ahmed Gadelkareem

Gadelkareem entered the securities industry in 1997 as a general securities representative. (RP 2013-14.) Over the next 19 years, Gadelkareem was associated with 19 different firms, including Blackbook Capital, LLC, from July 2013 to April 2014. (RP 1999-2014.) Gadelkareem has a history of disputes with management at his employer firms—he was discharged from two member firms prior to joining Blackbook, including being discharged for his failure to follow management instructions. (RP 2006, 2008.) Gadelkareem also voluntarily

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[cont'd]

Gadelkareem referred to his conduct as "outrageous" and "unethical" in Gadelkareem Br. 1 and 10. He referred to it as "unseemly" in Notice of Appeal 2.

left another firm because "he no longer wanted to be employed as a result of a disagreement with management." (RP 2003.)

Several witnesses testified at the hearing below that Gadelkareem often argued or had disputes with coworkers at Blackbook, and that he was a disruptive and aggressive presence in the office. (RP 1240, 1417-20, 1424, 1426, 1531, 1563.) Gadelkareem was described as unpredictable, argumentative, and someone who often lost his temper when he did not get what he wanted. (RP 1240, 1417-20, 1424, 1426, 1531, 1563.)

B. Gadelkareem Is Terminated By Blackbook

On April 2, 2014, Gadelkareem argued with a Blackbook receptionist. (RP 1240, 1420-24.) The receptionist subsequently filed a written complaint with Blackbook against Gadelkareem saying that she "felt attacked and threatened" and that Gadelkareem "verbally abuses" the female employees at Blackbook. (RP 1908.) Gadelkareem was asked to leave the office after this argument and was subsequently terminated effective April 7, 2014. (RP 1878-79.) Blackbook filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), which stated that Gadelkareem "was terminated for repeatedly engaging in unprofessional conduct in the workplace, including without limitation, threatening and abusive interaction with female employees." (RP 1847-52.)

C. Gadelkareem Engages in Harassing and Abusive Conduct Towards Persons Associated With Blackbook

After his termination, Gadelkareem demanded that Blackbook pay his outstanding sales commissions and return to him certain personal effects that remained in the office.[2] (RP 1435.)

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[2] While not relevant to Gadelkareem's misconduct, the record reflects that Blackbook had the authority to withhold his last commission check to offset its claims against him and that

[Footnote continued on next page]

When these demands were not met to his satisfaction, Gadelkareem began his campaign of abusive, harassing, and threatening communications to Blackbook employees, directed primarily against Dennis Herrera, another Blackbook registered representative, and Franklin Ogele, Blackbook's majority owner and president, both of whom Gadelkareem blamed for his termination.

The evidence of Gadelkareem's harassment is voluminous in quantity and outrageous in content and included repeated telephone calls, text messages, and emails. (RP 1253-57, 1276, 1288-89, 1291-99; 1437, 1441, 1442, 1448, 1462-63) On April 9, 2014, a week after his termination, Gadelkareem left a voicemail for Herrera taunting Herrera with obscene comments about his mother. (RP 1853-55.) The next day, Gadelkareem sent several emails to Ray Watts, another Blackbook owner, accusing Herrera of unauthorized trading, "having sex and drugs," and being "involved with a lot of fraudulent deals," (RP 1859-61.) He also sent Watts an email referring to Ogele as "Nigerian (Nigerian Scam) " and accusing Ogele of stealing another registered representative's paycheck. (RP 1863.)

On April 12, Gadelkareem left Herrera several more harassing voicemail messages. Gadelkareem again taunted Herrera with references to his mother and repeatedly asked him to return his calls. (RP 1865-75.) The same day, Gadelkareem sent an email to Ogele, copying one of his former clients, calling other firm representatives criminals.

On April 16, 2014, Gadelkareem sent another flurry of harassing emails. (RP 1889-1907.) In one chain, Gadelkareem forwarded to Herrera emails he had sent complaining to FINRA and threatened "Settlement ... , my money 100 % pay out and my stuff or I will keep

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[cont'd]

Blackbook repeatedly asked Gadelkareem to make arrangements to retrieve his personal belongings. (RP 1435, 1877, 1885-87.)

going !!!! " and "Every small thing , my phone charger , my calculator ..... Every thing ... ." (RP 1891-98.) He sent the same FINRA emails to Ray Watts threatening "Settlement , Or you want me to continue ... ." (RP 1899-1902.) In response, Blackbook's attorney wrote to FINRA staff explaining that Gadelkareem was using the emails he send to FINRA to force Blackbook into a settlement. (RP 1903-07.) Blackbook's attorney also sent Gadelkareem a letter demanding that he cease and desist his harassing conduct. (RP 1915-16.) Rather than be deterred by Blackbook's request, however, Gadelkareem responded by reporting Blackbook's attorney to the New York City Bar Association, accusing him of "insulting me in an aggrieved harassment manner." (RP 1917-20.)

On April 23, 2014, Gadelkareem's harassment further escalated when he forwarded to Herrera an email purportedly from a FINRA "Principal Investigator," "Steve Mc Mellon ." (RP 1929-31.) The forwarded email read, "Mr. Kareem, I have Cc'd Mr. David Gilbert at the FBI on this email. You are 100% right , Dennis Herrera did a lot fraudulent deals , I believe an order of arrest will be issued soon to get him down here . ." (Id.) In his forwarding email to Herrera, Gadelkareem warned him to "Run run run ." (Id.) "Steve Mc Mellon," however, was not a FINRA employee, and the email was fabricated by Gadelkareem. (RP 1644.) Blackbook's attorney forwarded this email to FINRA, advising FINRA of the falsification and the fact that Gadelkareem had sent the falsified email to various personnel and clients of Blackbook. (RP 1935-40.) Gadelkareem caused Blackbook to lose at least one client. (RP 1467.)

In May 2014, Gadelkareem assumed another false identify to contact a Bloomberg reporter. (RP 1636; 2017-19.) In those emails, Gadelkareem accused Ogele of being a "Nigerian scammer," called various Blackbook employees criminals, and accused Blackbook of fraud. (*Id.*) Gadelkareem also continued his harassment of Herrera, including obscene voicemail

messages and texts to Herrera and his brother claiming Herrera would soon go to jail.[3] (RP 1955-68.)

III. PROCEDURAL HISTORY

On April 13, 2015, the Department of Enforcement ("Enforcement") filed a one-cause complaint against Gadelkareem for sending multiple abusive, harassing, and threatening communications to persons associated with his former member firm, Blackbook, in violation of FINRA Rules 5240 and 2010. (RP 6-12.) The complaint alleged that Gadelkareem embarked on this course of conduct in retaliation for his termination by Blackbook and to force Blackbook to settle his claims with respect to commissions the firm had withheld. (*Id.*)

Gadelkareem's harassing conduct continued during the proceedings below. Gadelkareem made a throat-cutting motion to Herrera as he sat down to testify at the hearing. (RP 1233.) He also filed numerous unfounded complaints against Enforcement and continued his accusations against Herrera. (RP 651-54, 2045-52.) Gadelkareem also served fabricated subpoenas on witnesses after being instructed repeatedly by the Hearing Officer that such subpoenas were not permitted in FINRA proceedings. (RP 1694, 2043.) Finally, and most seriously, in order to cover up his fabrication of an email from a fictitious FINRA examiner and support his claim that his email had been hacked by Herrera to frame him, Gadelkareem introduced as evidence falsified emails purporting to be from AOL. (RP 1941-47.) Enforcement introduced evidence that these emails did not come from AOL. (RP 1953-54.)

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[3] Gadelkareem and Blackbook eventually settled the claims between them in a December 2015 settlement agreement. (RP 2023-34.)

After a two-day hearing, the Hearing Panel found that Gadelkareem violated FINRA rules as alleged. (RP 2463-78.) The Hearing Panel rejected Gadelkareem's defenses that his misconduct was caused by a "toxic" work environment and his medical condition. (*Id.*) The Hearing Panel found that his misconduct was egregious and imposed a bar in all capacities. (*Id.*)

Following Gadelkareem's appeal, the NAC found that Gadelkareem engaged in the misconduct as described by the Hearing Panel and that his misconduct violated FINRA's just and equitable principles of trade rule, Rule 2010. (RP 2845-56.) The NAC found, however, that FINRA Rule 5240 did not apply to Gadelkareem's misconduct and reversed this portion of the Hearing Panel's decision. (RP 2850-52.) With respect to sanctions, the NAC affirmed the Hearing Panel's findings that Gadelkareem's misconduct was egregious, considered and rejected Gadelkareem's arguments for mitigation, and found that numerous applicable aggravating factors supported the imposition of a bar. (RP 2853-56.) This appeal followed.[4]

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[4] Gadelkareem attaches several documents to the Notice of Appeal and his Brief and references proposed testimony not in evidence in this case. The documents include: (1) an offer of settlement from FINRA attached as Exhibit B to the Brief; (2) documents concerning a land development project attached as Exhibit E to the Brief and Notice of Appeal; and (3) a biography of Ogele from an unidentified source attached as Exhibit F to the Brief. Gadelkareem also references in his brief supposed testimony to be offered from an individual he claims would corroborate his account of the argument with the receptionist which precipitated his termination by Blackbook. The Commission should strike these exhibits and disregard his proffered evidence.

Commission Rule of Practice 452 allows a party to move to adduce additional evidence on appeal. A moving party must demonstrate "with particularity" that "such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. Gadelkareem has failed to make any motion to adduce, much less meet the required standard for the admission of additional evidence. Moreover, his attempt to introduce an offer of settlement from FINRA is blatantly improper. *See, e.g., Michael Studer*, Exchange Act Release No. 50786, 2004 SEC LEXIS 2840, at *2 (Nov. 30, 2004) (explaining that the Commission will not consider failed settlement negotiations and that evidence of settlement negotiations are generally inadmissible) (citations omitted). Accordingly, the Commission should disregard these improper submissions in considering this appeal.

IV. ARGUMENT

During the course of the proceedings below and the instant appeal, Gadelkareem has largely admitted his underlying misconduct and the crux of his appeal is whether this misconduct violates FINRA Rule 2010 and whether the sanction is appropriate. Commission and FINRA precedent is clear that Gadelkareem violated FINRA Rule 2010, and the Commission should affirm this finding. Moreover, the record thoroughly and convincingly supports the sanction imposed by FINRA.

A. Gadelkareem's Misconduct Violated the Ethical Standards of FINRA Rule 2010

FINRA Rule 2010 is a broad ethical rule that requires members and associated persons to conduct their business in accordance with "high standards of commercial honor and just and equitable principles of trade." The Commission has repeatedly held that FINRA Rule 2010 encompasses all unethical, business-related conduct, even if that conduct is not in connection with a securities transaction. *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015) (finding that falsification of expense reports violated FINRA Rule 2010); *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (explaining that the predecessor to FINRA Rule 2010 applies to all business related conduct even if not related to a security and to "misconduct [which] reflects on the associated person's ability to comply with the regulatory requirements of the securities business," and finding a violation for unauthorized use of credit card numbers); see *also Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (affirming the finding that an associated person violated just and equitable principles of trade by misappropriating funds from a political organization for which he served as the treasurer).

Gadelkareem argues that FINRA Rule 2010 applies only to "market actions, not employment disputes." Gadelkareem Br. 5. This assertion is incorrect and should be rejected by

the Commission. Both the Commission and FINRA have held that misconduct in connection with an associated person's relationship with his employer constitutes business-related conduct to which FINRA Rule 2010 applies. *See, e.g.*, *Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 SEC LEXIS 4908, at *18-19 (Dec. 11, 2014) (finding that, for purposes of Rule 2010's predecessor rule, an associated person's business included his relationship with his employer); *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *23 (June 14, 2013) (same); *Dep't of Enforcement v. Foran*, Complaint No. C8A990017, 2000 NASD Discip. LEXIS 8, at *13 (NASD NAC Sept. 1, 2000) (stating that "[a] registered person's 'business' includes his business relationship with his employer").

It is also well established that harassing and abusive conduct violates the broad ethical principle encompassed in FINRA Rule 2010. *See Stephen B. Carlson*, 53 S.E.C. 1017, 1021 (1998) (finding that an associated person's use of "threatening, coercive, and intimidating tactics" violated ethical standards); *Jay Frederick Keeton*, 50 S.E.C. 1128, 1134-35 (1992) (finding that an associated person's use of "abusive misconduct," including threats, violated high standards of commercial honor and just and equitable principles of trade); *Dep't of Enforcement v. McCrudden*, Complaint No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *25 (FINRA NAC Oct. 15, 2010) (finding that an associated person's use of harassment and intimidation with respect to a Form U5 disclosure violated NASD Rule 2110). Harassing and abusive business-related conduct reflects on an associated person's ability to act ethically and fairly in all aspects of his or her business, including in dealings with customers and other industry members.

In *McCrudden*, a registered representative embarked on an email campaign, which included harassing and intimidating employees of his former firm to coerce his firm into falsely reporting on his Form U5 that he had voluntarily terminated his employment. *Id.* at *18-22.

Like Gadelkareem's conduct here, McCrudden's conduct included threatening negative publicity and legal action and disparaging the firm to third parties, including business partners. *Id.* The NAC found that McCrudden's conduct violated NASD Rule 2110, the predecessor to FINRA Rule 2010. *Id.* at 39.

Gadelkareem argues that FINRA's disciplinary action and sanction imposed is not appropriate because his misconduct was in connection with an employment dispute that was subsequently settled by Gadelkareem and Blackbook. Gadelkareem's argument reflects his persistent misunderstanding of his obligations under FINRA Rules. The fact that Gadelkareem and Blackbook settled their claims is not relevant. FINRA has an independent interest in pursuing a disciplinary action for violation of its rules regardless of whether Gadelkareem and Blackbook settled the claims between them. The record shows that Gadelkareem engaged in an extended course of unethical conduct which violated FINRA Rule 2010. Gadelkareem's misconduct included repeated harassing communications to Herrera, Ogele, Watts and other Blackbook employees, containing vulgar language and threats. (RP 1253-57, 1276, 1288-89, 1291-99; 1437, 1441, 1442, 1448, 1462-63, 1853-55, 1859-61, 1863, 1865-75, 1889-1907, 1929-31.) Gadelkareem also made unfounded allegations of fraud against Blackbook and its employees to Blackbook's customers, the press, and other third parties. (RP 1636, 1935-40, 2017-19, 1955-68.) He filed repeated complaints against Blackbook with the police, filed lawsuits which he admitted were intended to harass, and filed a complaint with the New York City Bar Association against Blackbook's attorney. (RP 1253-54, 1441-42, 1462, 1917-20.) Perhaps most troubling, Gadelkareem fabricated an email from a fictitious FINRA examiner in an attempt to intimidate Blackbook into acquiescing to his settlement demands. (RP 1929-31, 1935-40.)

Gadelkareem's misconduct raises serious concerns about his ability to comply with the regulatory rules applicable to securities industry professionals and the Commission should affirm the NAC's finding that Gadelkareem violated FINRA Rule 2010.

B. The Bar Imposed by the NAC For Gadelkareem's Egregious Violation Is Appropriately Remedial and Neither Excessive Nor Oppressive

The NAC properly applied the FINRA Sanction Guidelines ("Guidelines"), including the Principal Considerations in Determining Sanctions ("Principal Considerations") contained in them.[5] Numerous aggravating factors apply to Gadelkareem's misconduct, including his obscene and harassing communications, brazen lies and impersonations, and submission of falsified documents at the hearing. The NAC properly imposed a bar for Gadelkareem's highly unethical misconduct and the Commission should affirm this sanction.

Exchange Act Section 19(e)(2) directs the Commission to sustain the sanctions imposed by FINRA unless it finds, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[6] See 15 U.S.C. § 78s(e)(2); *Jack H. Stein*, 56 S.E.C. 108, 121 (2003). The Commission considers the principles articulated in FINRA's Sanctions Guidelines persuasive and uses them as a benchmark in conducting its review under Exchange Act Section 19(e)(2). *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *62 (Nov. 9, 2012) (explaining that the Guidelines serve as a benchmark);

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[5] *See* FINRA Sanction Guidelines (2016 ed.). A copy of the Sanction Guidelines can be found at http://www.finra.org/sites/default/files/2016_Sanction_Guidelines.pdf.

[6] Gadelkareem does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

Richard A. Neaton, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *39 (Oct. 20, 2011) (same).

1. Numerous Aggravating Factors Apply to Gadelkareem's Misconduct

While there is no specific guideline applicable to Gadelkareem's violation of FINRA Rule 2010, application of the Principal Considerations supports a bar. The record supports that Gadelkareem's misconduct was egregious and that numerous aggravating factors apply. Gadelkareem's harassing communications were threatening, hostile, and vulgar and aimed at forcing his former form to capitulate to his demands. His misconduct was intentional, included numerous communications over a period of weeks, and caused Blackbook to lose a client. *Guidelines*, at 6-7 (Principal Considerations Nos. 8, 9, 13). Gadelkareem continued his misconduct even after he was warned that it constituted harassment, as well as during the proceedings below. Gadelkareem's conduct was intended to force a Blackbook to settle its claims with him for the full amount of his demand, resulting in personal financial gain to him. *Guidelines*, at 7 (Principal Considerations No. 17). His falsification of emails from a fictitious FINRA examiner and impersonation of a police officer were highly unethical and deceitful.

Moreover, throughout the proceedings, Gadelkareem failed to take responsibility for his misconduct and insistently blamed Blackbook, Ogele, Herrera and others for his misconduct. *Guidelines*, at 6 (Principal Considerations No. 2). Indeed, even in his submissions to the Commission, Gadelkareem continues to blame others for his indefensible conduct. Gadelkareem blames his behavior in the workplace on Blackbook's "toxic work environment" while offering no support for this contention. Gadelkareem Br. 1. He also blames Blackbook for sending him "into a rage" and escalating the conflict, resulting in his misconduct. Gadelkareem Br. 4. As recently as April 2017, Gadelkareem continued to make nonsensical claims, without any

evidence, of harassment by Herrera. (RP 2999-3005.) Gadelkareem also blames FINRA for his misconduct, accusing the Department of Enforcement of "framing" him and subjecting him to "spoofing" phone calls. Gadelkareem Br. 9-10. In short, Gadelkareem's behavior continues to demonstrate that he does not consider his action to be wrongful.

Gadelkareem's conduct during FINRA's investigation and the hearing is further aggravating. Gadelkareem served subpoenas on witnesses even after repeatedly being told, including by the Hearing Officer, that this was not allowed. This conduct is aggravating for purposes of sanctions. *See DBCC v. Connolly*, Complaint No. PHL-731, 1991 NASD Discip. LEXIS 35, at *23 (NASD Bd. of Governors Mar. 12, 1991).

Gadelkareem also attempted to conceal his misconduct in falsifying the "Mc Mellon" email during the proceedings below. At the hearing, FINRA's expert credibly testified that based on his analysis of the email and its related metadata, it was virtually impossible for it to have been sent by anyone other than Gadelkareem. (RP 1969-98.) Rather than admit his earlier deception, however, Gadelkareem attempted to conceal this misconduct with an outlandish story supported by the submission of falsified evidence. Gadelkareem concocted a story at the hearing accusing Herrera of stealing his iPad, hacking into his Wi-Fi, and sending the "Mc Mellon" email to set him up. (RP 1644-56.) To support this claim, Gadelkareem offered into evidence emails purporting to be from AOL claiming that his email had been hacked and not under his control during the relevant time period. (RP 1941-47.) Enforcement, however, submitted a letter from AOL confirming that this email was fraudulent and not from AOL. (RP 1953-54.)

Gadelkareem's attempt to submit false and misleading evidence demonstrates his inability to abide by FINRA rules and strongly supports the imposition of a bar. *See, e.g.*, *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *56 (May 27,

2015) (finding that intentionally submitting false documents to mislead FINRA is an aggravating factor). It is well settled that "[p]roviding false and misleading information . . . subverts FINRA's ability to carry out its regulatory function and protect the public interest." *See Dep't of Enforcement v. Ortiz*, Complaint No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 (FINRA NAC Oct. 10, 2007). Contrary to Gadelkareem claim that his conduct during the hearing is "irrelevant," Gadelkareem's willingness to lie and submit falsified evidence to a FINRA Hearing Panel demonstrates his inability to conduct himself in an ethical manner and renders meaningless his assurances that his misconduct "will never happen again." Gadelkareem Br. 10. Under these circumstances, a bar is the only appropriately remedial sanction and the only way to protect the industry, the investing public, and the integrity of FINRA's disciplinary process.

2. Gadelkareem's Arguments For a Lesser Sanction Have No Merit

In arguing for a sanction less than a bar, Gadelkareem argues that his claimed medical condition, and lack customer harm and prior disciplinary history are mitigating factors. He also argues that he should be given that same sanction as the respondent in the *McCrudden* matter. All of these arguments are without merit and do not undermine the appropriateness of a bar for Gadelkareem's misconduct.[7]

a. Gadelkareem's Claimed Medical Condition Is Not Mitigating

In his brief, Gadelkareem states, without explanation, that his medical condition is mitigating. This argument was made to the Hearing Panel and the NAC, and rejected by both.

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[7] To the extent Gadelkareem's termination by Blackbook is mitigating, this factor is outweighed by the myriad of applicable aggravating factors. *See Denise Olsen*, 2015 SEC LEXIS 3629 at * 18-19 (finding that while termination by an employment is a potentially mitigating factor, it did not outweigh the reasons for concern about the respondent posing a continuing danger to customers and the industry.)

At the hearing, Gadelkareem called his doctor to testify and presented evidence of his claimed mental health medical condition. (RP 1372-84, 2073-2216.) He argued that his misconduct was caused by his medical condition and that seeking treatment was a mitigating factor. Gadelkareem has failed, however, to meet the standard for establishing a mitigating medical condition and the Commission should reject this argument.

A medical condition can mitigate a sanction where the respondent has presented evidence that the condition interfered with his ability to comply with FINRA rules. *See Paul David Pack*, 51 S.E.C. 1279, 1283 (1994) (allowing mitigation where the respondent introduced uncontroverted medical evidence that respondent's misconduct was the result of his medical condition, including clinical [redacted]); *DBCC v. Nelson*, Complaint No. C9A920030, 1996 NASD Discip. LEXIS 17, at *9, 15 (NASD NBCC Mar. 8, 1996) (finding mitigating circumstances where the respondent failed to respond to FINRA's information requests, and respondent was hospitalized or bedridden with [redacted]). In general, however, medical problems do not mitigate violations of FINRA rules and proving mitigation based on a medical condition is a difficult burden to overcome. *See Dep't of Enforcement v. Saad*, Complaint No. 2006006705601R, 2015 FINRA Discip. LEXIS 49, at *9-11 (FINRA NAC Mar. 16, 2015), *aff'd*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *1 (Oct. 8, 2015). Gadelkareem has not met this burden here.

Gadelkareem presented no evidence of his medical condition at the time of his misconduct. Gadelkareem's doctor testified that he was not treating Gadelkareem during the relevant period and could not attest to his condition at the time. (RP 1372.) Accordingly, there is no evidence of Gadelkareem's inability to comply with FINRA rules at the time of his misconduct due to medical reasons and Gadelkareem has failed to establish that his medical

condition prevented him from complying with the ethical standards expected of securities industry professionals.

b. Lack of Customer Harm Is Not Mitigating

Gadelkareem maintains that it is mitigating that his misconduct did not result in any investor or market harm. On the contrary, it is well established that the lack of customer harm is not mitigating. *See William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *40 (Mar. 31, 2016), *appeal docketed*, No. 16-1739 (2d Cir. May 31, 2016); *Dep't of Enforcement v. Harari*, Complaint No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *38 (FINRA NAC Mar. 9, 2015). In any case, customer harm is not relevant factor here where Gadelkareem's violation involved harassment of his former firm and coworkers. As discussed above, *supra* IV.A, FINRA Rule 2010 is a broad ethical rule which encompasses all business conduct, including conduct that does not involve securities transactions with customers. Accordingly, the lack of customer harm neither negates the violation of FINRA Rule 2010 nor mitigates Gadelkareem's sanction in this case.

c. A Lack of Disciplinary History Is Not Mitigating

Gadelkareem also contends that his lack of disciplinary history should somehow militate against the NAC's liability findings and sanctions. He is incorrect. The Commission has long held that the absence of prior disciplinary history is not a mitigating factor. *See John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *64 n.77 (Nov. 12, 2010), *aff'd*, 449 F. App'x 886 (11th Cir. 2011); *see also Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (stating that the absence of disciplinary history is not mitigating because "an associated person should not be rewarded for acting in accordance with his duties as a securities professional"). Regardless, even assuming

that Gadelkareem previously complied with FINRA rules, this does excuse or mitigate his serious misconduct here.

d. Sanctions In Other Cases Are Irrelevant to Determining the Appropriately Remedial Sanction for Gadelkareem's Misconduct

Gadelkareem argues that since the NAC cited the *McCrudden* case in support of its discussion of liability under FINRA Rule 2010, he should receive the same sanction as the respondent in that case. The Commission, however, has repeatedly rejected attempts by respondents to compare the sanctions imposed against them to the sanctions imposed against others. *See e.g.*, *Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *37-38 (Mar. 28, 2017) (stating that FINRA has broad discretion in responding to rule violations and that sanctions cannot be precisely determined by comparisons to other cases), *appeal docketed*, No. 17-9522 (10th Cir. May 24, 2017); *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *115-16 (July 2, 2013) (same), *aff'd sub nom*, 751 F.3d 472 (7th Cir. 2014). The Commission has stated that "the appropriate sanction . . . depends on the facts and circumstances of each particular case." *Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 SEC LEXIS 2572, at *44 (Nov. 8, 2006), *aff'd*, 304 F. App'x 883 (D.C. Cir. 2008). The Commission should similarly reject Gadelkareem's argument that his sanction be determined by reference to *McCrudden*.

V. CONCLUSION

The record in this case paints a vivid picture of a registered representative with an utter lack of appreciation for the ethical responsibilities expected of him and a complete inability to take responsibility for his own actions. However convinced Gadelkareem may have been about the soundness of his claims against his former firm, there is no question that his method of

pursuing those claims—harassment, threats, and deceit—was highly unethical and in violation of FINRA Rule 2010. His conduct towards Blackbook and his former coworkers and his continuous willingness to lie, falsify evidence, and blame others during the proceedings in this disciplinary matter demonstrates the danger Gadelkareem poses and demands nothing short of a complete bar from the industry. Accordingly, the Commission should affirm the NAC's decision in all respects.

Respectfully submitted,

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July 14, 2017

CERTIFICATE OF COMPLIANCE

I, Alan Lawhead, certify that the foregoing FINRA's Brief in Opposition to Application for Review (File No. 3-17934) complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,904 words.

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Dated: July 14, 2017

CERTIFICATE OF SERVICE

I, Alan Lawhead, certify that on this 14th day of July 2017, I caused a copy of the foregoing FINRA's Brief in Opposition to the Application for Review, In the Matter of Ahmed Gadelkareem, Administrative Proceeding File No. 3-17934 to be served by messenger and facsimile on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

and via FedEx on:

Ahmed Gadelkareem
8523 Fort Hamilton Parkway #4A
Brooklyn, NY 11209

Service was made on the Commission by messenger and on the Applicant by overnight delivery service due to the distance between FINRA's offices and the Applicant.

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