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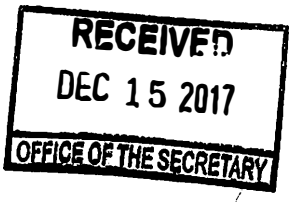

Re: Robert G. Nash, Administrative Proceeding No. 3-18045
REPLY BRIEF

The original brief I filed was only four pages, however, FINRA's reply is forty pages much of which appears to be things they have claimed in briefs previously filed by them. I also take exception to their continued use of "Merrimac and Nash "claim, because I can't speak of Merrimac responses, however,many of these claims made by FINRA I'm hearing for the first time. For example, I never suggested that the hearing officer should be removed.or that anything she did was serious misconduct on her part as they state on pages B27-29. I will state for the record that when I went to the NAC website to file my appeal I was surprised to find that she worked for the DOE for about five years prior to becoming a hearing officer for the NAC Although to me it appears it could appear to a conflict of interest I didn't mean to imply she couldn't do her job in a fair manner,or the SEC would never allow former DOE attorneys to serve as hearing officers. I would never ask to have anyone removed because I had hoped that the truth would come out during the hearing. I will apologize now if I gave anyone that impression, however,I will mention things I felt were unfair and if the SEC believes the facts I mention make no sense that's fine, maybe I'm just overreacting. Let's discuss one of my discovery requests that was disallowed which I felt made no sense. I asked for copies of all the 8210 requests to Merrimac from FINRA for the period covered in the complaint. Several FINRA examiners told me this information was kept in a data base and easily accessible..These were requests sent only to Merrimac. and not any proprietary information of FINRA in this instance. The reason I requested the information because the volume of 8210 requests would show the vast amount of time Merrimac had to spend responding to FINRA. In retrospect it would show that almost every request was sent to either Mark Thomes FINOP or myself CCO.According to what FINRA is expecting the SEC to believe is if the request id sent to you, you're responsible for answering it and all the content I it. However, in this age where regulators want this information sent electronically from a firm data base, this is not normally handled by the CCO. I'm glad I'm not the CCO of Morgan Stanley or a similar firm. In any event the request was denied. At the beginning of the hearing we requested both Pizzuti and Thomes be allowed to be admitted as corporate representatives and were told only one of them could be in the hearing . I wanted Thomes to be there because in addition to being the FINOP, he was or IT person and would be able to bring up any information we may need to bring up based on certain testimony. However, Pizzuti felt he needed to be at the hearing and as it turned out since could no longer afford an attorney after the hearing he was probably right. In any event the HO requested Thomes to leave. I was fine with this because I'm not familiar with all the rules and just assumed this was proper. However, despite the fact the DOE had three attorneys representing them they were allowed to have a person in the hearing to bring up documents and a fourth attorney supervisor sitting in on the hearing and able to confer with the other attorneys. Again, I had no objection to this because I assumed it was proper. However, then the DOE requested to admit Joshua Wong their main witness as the FINRA corporate representative. I objected to this as did the Merrimac attorney Forkey. However, our objections were overruled and Wong was present for the entire hearing. Again, I assume this is perfectly legal, however, in my opinion a witness should only be allowed in the hearing room when he or she is testifying. The day Mark Thomes was scheduled to testify he was required to wait in the lobby. Although, there were other instances of discovery requests and DOE objections to witnesses they are all in the Record. I will finish this part with the exhibits mentioned on page B31, exhibits 66, 66A, and 66B which I previously mentioned in my brief. Our instructions relating to exhibits from the HO were if we were to use a part of an exhibit we were required to submit the first and last page in the exhibit. For example, in my exhibits of OTR testimony of Ferreria and Dubrule rather than submit hundreds of pages of unrelated testimony I submitted the parts that were specifics to the charges with the first and last page as instructed. In the instance of the exhibits in question, these documents that were not only not in discovery but they were emails taken completely out of context to give a false impression.In addition,the brokers gave OTR testimony to Wong for an entire day and the subject of the emails never came up. The forms they claimed were signed in blank were never processed and couldn't ever be processed as the information necessary could only be gathered and completed by the customer. The forms were sent as part of a package from operations which included customers agreements, Penson new account forms and other materials required to open an account, yet,Wong only included the information he needed to give the wrong impression. Remember, the HO decision specifically references this untrue testimony in the decision. His behavior and FINRA's behavior is as far from honest as it gets. They objected to my comment of "regulation out of control" but this is a prime example of

this and no better than what goes on almost daily on political cable channels. Before I end this topic they state on pages B27-28 complaints of selected prosecution, I take offense to this because not only have I never said this I never even suggested this.

Before, I go into the charges I want to state that continuing to work at home on an old computer is difficult doing all these briefs that began after the hearing and continuing to now. However, not once have I ever asked for an extension. The HO requested before getting an extension the individuals and attorneys in the case get permission from everyone in the case. When Merrimac has asked for an extension they have come to me and the DOE. When the DOE requested any extension they asked my permission and Merrimac's. I have never objected. What I don't understand is after missing the deadline by a significant number of days they are allowed an extension from the SEC yet they are not required to provide me with the same information as the SEC. The entire brief I'm responding to continually cites items I have no access to like [R1617-1868] in there are dozens of other cites similar to these numbers.I don't understand this at all. It appears even prose you need money you don't have in order to defend yourself. I realize it's too late in my case but I hope for future individuals in my predicament something can be done to level the playing field. Isn't the truth the most important fact in obtaining a fair decision.

On page 3 of their brief under section entitled Robert G. Nash they state that Nash was responsible for supervising and reviewing [1] OSJ principals, [2] securities transactions, [3] customer complaints, [4] customer accounts,[5] commissions and mark-ups, [6] branch office reviews and examinations, [7] private placements and [8] outside business activities. It I agree with this, although at times I was assisted with some of these functions.FINRA did extensive examinations of Merrimac at a minimum of once a year and the SEC did an extensive examination as I mentioned in my brief. All the 8 items were extensively reviewed and there was never a charge against me of anything improper in any of these areas. The sale of private placements and Real estate investment trusts was a major part of the firms business and trading execution and review was my major function. What you don't see in these responsibilities is my being responsible for is the implementation of Written Supervisory Policies and Procedures which was always.the responsibility of Merrimac's President as any examiner that conducted an examination of Merrimac or even Blake Synder could attest to. However, not a single witness of the DOE ever spent even one minute at any Merrimac office. You also don't see my being responsible for advertising which was the function of David Matthews and later Richard Barrett, yet they want to charge me for failing to review a website which clearly falls under advertising and a website that was never available to the public.When FINRA examiners and the SEC examiner commence an examination they met with Richard Barrett to get everything they need with 2 exceptions. Should they need financial information they went to Mark Thomes, and for trading information they went to me. In fact the New York office examiners or investigators working on this specific case dealt exclusively with Richard Barrett and contacted me only once when they felt Barrett was not proving them with something they needed.I find it dishonest and irresponsible that they continue to spin this story about sending a letter addressed to me makes everything my responsibility. Mark Thomas testified that my computer and my computer knowledge would make this impossible for me. Also, the only time I ever spoke to Wong prior to my 2 OTR's was when he called to inform me they wanted to set up OTR's from a number of Merrimac representatives and the scheduling of the OTR's was handled by someone else at Merrimac and he never contacted me about the December request for information he sent to Forkey in Fort Lauderdale addressed, Robert Nash c/o Forkey with no mention of Merrimac. This was not the proper format for a request. On page 29 at the bottom of the page discusses Merrimac claims about 2 witness. What I don't understand is why all of a sudden it's not Merrimac and Nash, now it's just Merrimac.. I didn't have time to even bother with Merrimac response but it appears they didn't to want comment on my brief regarding the fact that they lied about the availability of a witness " Blake Synder" and the fact that this lie should result in the dismissal of their entire case. I have no idea what they're talking about as Blake Synder being called as a rebuttal witness. Blake Synder was on my witness list as well as the DOE's. I intended to question him about almost all of the charges in the complaint and I believe his testimony would have been extensive. In fact I was Questioned for hours about the Dubrule and Tuttle hedge fund to give the impression that I was some how responsible for that even though no charges were ever brought against me. In fact this was also brought up in the HO decision. What you don't know is that Blake Synder scheduled a long OTR with me and the actual OTR lasted only about 45 minutes because he determined that my only involvement in the hedge fund was reviewing broker statements of trading activity at an outside brokerage account which I

reviewed monthly and received confirms daily for every Merrimac broker holding any investment account not at our clearing firm. It seems my OTR was the only OTR the DOE failed to include in the Dubrule and Tuttle matters. I'm sure you can understand why? Had they included my OTR they wouldn't have been able to convince anyone that I was responsible for some nefarious conduct. Again completely dishonest and "regulation out of control". As far as Mr. Kenney goes he was head of the department reviewing the DSR's as Penson and carried that responsibility to APEX. I only mention this because the panel asked Wong about if he ever contacted anyone from Penson about the DSR's and he said he couldn't because once APEX took over their was no one he could contact. I don't believe this was a lie on Wong's part, he probably just didn't bother because it couldn't advanced their agenda. Again I reiterate this contact of lying about a witness is so egregious the entire decision should be thrown out and the case law I cited in my brief supports this. There is no place for this type of conduct. They also tried to charge me with being responsible for AML violations and red flag violations claiming I was the individual responsible because I was the AML officer' They knew this was not true because FINRA records showed that David Matthew was the AML officer and they had already settled with him on this count as as well other counts which they were charging me with. Of course the NAC agreed to the Mathews settlement but felt it had no bearing of charging someone else with the same charges. Again [regulation out of control]

On page 23 of section D of their brief section D they state the record establishes that Merrimac and Nash failed to supervise adequately four areas: [1] certain private securities transaction, [2], penny stock deposits, [3] investment related web sites, [4]foreign finders. I've already addressed the web site and the foreign finders. As to certain private securities transaction ie believe I explained that I wasn't even charged with that in the complaint because they know from numerous days of OTR's my name never even came up and don't forget Blake Synder had me OTR for 45 minutes which is not in the DOE exhibits, so I don't feel I need to address this again. However, they spent hours questioning me without a charge against in an effort to make the panel believe I was guilty which appears to me to be an abuse of power. I believe Blake Synder would have given testimony that the DOE attempting to poison the panel which they did as evidence by the words in HO decision. That leaves page 24. First of all Merrimac was a $5000 broker-dealer and as such could not receive or deposit securities and all deposits were submitted to Penson by the customer. Second John DEBRULE was the branch manager of the Orlando office not me. Third, they claim we took no steps to investigate the matter. The testimony at the hearing and my OTR clearly explains when we learned about 2 DSR's in May 2011 we had the customers produce all the documents to source the stock including a letter from the attorneys attesting to the exemption claimed. The SEC should note that Schiffer the person responsible was never charged or questioned regarding any of these facts. They simply sent her an OTR request after interviewing other individuals. Since never received any form of commission there was no need for her to be registered, so after admitting to Dubrule, according to his February 2013 OTR, he had recently told her she may have copied 5 or 7 he thinks she may have copied 5. In any event she was paid by Debrule supervised by Dubrule and only did administrative work.

Failure to Monitor and or review a Web Site The Web site in question was a test site and not ever available to the public. The only reason FINRA was able to access it was Richard Barrett gave the password to examiner Dudley Blevins during the on site FINRA examination which once again shows that Barrett was the person dealing with FINRA examiners. So their claim is that although I was never informed of the site which was never approved for public use I failed to review it. Again,I was not responsible for advertising, not informed of the site and the testimony of Pizzuti confirmed this. Once again FINRA did not produce Dudley Blevins or any member of his examination team to get testimony, yet they bring unfounded charges against me and the HO affirms this without a witness. Again "regulation out of control". All of these instances reminds what I was told before weeks before the hearing " everything is subjective", the truest statement the DOE ever made.

Foreign Finders

I'll address this most outrageous claim. You should note they can't show any testimony to support the charges because they can't produce a witness to support their claims. How can the HO allow a finding without a witness. Let me go through this for the final time. In November David Matthews signs an agreement with the foreign finders. Over the next few months a small group of customers begin to open accounts while providing the necessary paperwork and in additions each signing additional paperwork acknowledging that the foreign finders are being paid a fee. A foreign finder file is opened which includes the FINRA RULE detailing every step taken which complies with the RULE. The signed acknowledgment of the customers is maintained in the as well as all the steps taken, the copy of the contract and the procedures and all notes. This file exceeds well over 100 pages. In late February the first trade is initiated and prior to the policy the foreign finders account for less than 1% of Merrimac business. The foreign finder accounts trade as any other Merrimac customer with one exception. The exception is all trade receive a commission charge of 1.5%. In fact, on small trades the firm loses money after Penson applies a ticket charge. There is absolutely no requirement as to when a firm must implement a policy and certainly less than 1% of their business wouldn't trigger that, however, in spite of this all the required documents and information were contained in the file. In addition, the testimony clearly shows that the president of Merrimac was the only person responsible for the implementation of WSP's. FINRA never produced any witness would or could have contradicted this fact. Again "regulation out of control".

Section 3 of the original complaint states Nash knowingly provided forged documents to FINRA

This is in the original in the complaint. This is the basis for their exhibit CX-75 which is entitled "SCHEDULE OF FORGED DSRQ FORMS'. Once again this is FINRA charging something that wasn't true and providing a document that Wong testified to the accuracy of the document with statements that were untrue. Now I can't say if Wong actually knows what constitutes a forgery, however, at least 1 of the 3 DOE attorneys has to have known and it's highly likely they went over the exhibit with Wong. Not only did he testify under oath that I personally told him they were forged documents, he also testified that documents which I clearly stated were original signaturesę he claimed I told him they were forged. He stated that I provided the documents to FINRA. However on cross examination when confronted with the word index at the back of my OTR he was at a loss for words when it showed I never used the word forgery. Also on cross he had to admit the first FINRA request which FINRA is still claiming was a forged documens sent by me to FINRA was without a doubt an original since it was the first DSR processed by the Orlando office. He also admitted on cross that he couldn't tell who sent the DSR's to FINRA in the January request because it came from a thumb drive and the password had expired. Since, the request was due January 20 and operations was only waiting on Schiffer's DSR's it's possible Schiffer could have even sent the thumb drive to FINRA. The FINRA examiners that requested the information may have been able to tell him who sent the thumb drive but it appears he didn't ask them.He also claimed Pizzuti told him there was a meeting in September 2010 with Schiffer and Dubrule, yet Pizzuti's testimony at the hearing was that the meeting took place in April or May of 2011. However, remember how the OTR's of Pizzuti and myself were not submitted as exhibits. Had they been admitted Wong's testimony would have been easily refuted. Wong's exhibit CX-75 contains original signatures, numerous duplicates and at least 10 DSR's that were never even deposited, which makes the entire document which he testified about completely flawed. In fact, the only evidence to support their position of forged DSR's is John Dubrule's OTR in February 2013 when he stated Schiffer recently admitted to him that she may have copied either 5 or 7 DSR's. Which proves no one at Merrimac other than Schiffer knew of this until the OTR's were conducted in early 2013. I have already explained in my recent brief that of the 4 submissions they continually stated Merrimac knowingly sent forged documents, I responded to the first and third since they dealt with traading requests. In both instances the DSR's contained original signatues and my testimony has always supported this. The January 2011 is mentioned above and was not sent by me and the last one in December 2012 was handled by Forkey and addressed to him. There is no reason anyone at Merrimac would try to deceive FINRA and according to FINRA's theory Schiffer only did it to speed up the process. Of course, she never testified, so again it's all subjective and interpreted any way one wants to.

I believe this covers the charges against me and I believe the SEC has no choice to exonerate me of the unfounded charges against me. I also hope the SEC will do something regarding FINRA lying about the availability of a witness that was on the same floor as the hearing. There is no place in business or regulation that can excuse this type of activity.

Although the charges of unregistered securities doesn't specifically apply to me, I hope you'll review my first brief which clearly lays out the facts that the customer had a clear exemption from registration. In fact a number of filings with the SEC clearly state this fact. Even the certificate itself had the legend removed which could only be done by a valid transfer agent. I was a regulator for over 20 years and this is the only instance where anyone with no experience could testify in a case of unregistered securities. He had no knowledge of forms, he didn't know of the Patriot Act, he claimed the bank secrecy act had nothing to do with AML, he claimed sending a $1000 to a customer checking account was a red flag, however, sending funds to a third party [which Merrimac didn't allow] was not a red flag. Seriously, you can't make this stuff up.Which brings me to page 32 of their brief under Section D, they state "Wong's testimony was honest, accurate and credible. I hope you'll take the time to read his testimony and his cross examination. I believe you'll find it excellent reading.

Respectfully submitted,

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