

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

RECEIVED
FEB 08 2018
OFFICE OF THE SECRETARY

DEPARTMENT OF ENFORCEMENT

Complainant,

-against-

MEYERS ASSOCIATES, L.P.
(N/K/A WINDSOR STREET CAPITAL,
L.P) NEW YORK, NY

and

BRUCE MEYERS
NEW YORK, NY

Respondents / Appellants.

COMPLAINT No.:
2010020954501

NOTICE OF APPEAL
(APPLICATION FOR REVIEW)

3-18359

PLEASE TAKE NOTICE that Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P) (the "Firm") and Bruce Meyers ("BMeyers") by undersigned counsel, pursuant to the Securities Exchange Act of 1934 (the "1934 Exchange Act"), §19(d)(2), 15 U.S.C. §78s(d)(2) and Rule 420 of the Securities and Exchange Commission's ("SEC") Rules of Practice, hereby submit their application for review of a certain decision dated January 4, 2018 (the "Decision") of FINRA's National Adjudicatory Council ("NAC") in the above-captioned matter. The Decision was received by the Firm and BMeyers (collectively "Applicants") on January 8, 2018.

This application is based on numerous errors of fact (including statements contradicted by documentary evidence) and law, improper reliance on hindsight and multiple defects in logic

reflected in the 18- page Decision, succinctly summarized as follows:

I. Procedural History

FINRA’s Department of Enforcement (“DOE”) initiated the captioned disciplinary proceeding on October 6, 2014, alleging, in nine causes of action¹, the purported violation of various FINRA rules and SEC provisions, particularly that the Applicants together or separately violated FINRA Rule 2010 for marketing unregistered securities, an alleged violation of Section 5 of the Securities Act of 1933 (The “1933 Act”). Additional causes of action alleged record keeping rule violations, failure to issue tax forms, inadequate supervisory controls and violations of complaint reporting rules.

A six-day hearing concluded On October 27, 2016. While the Extended Hearing Panel (the “DOE Panel”) dismissed (i) the first cause of action, which alleged the Section 5 violation, and (ii) the fifth cause of action alleging falsified tax returns, both as unproven, it incorrectly and improperly held the Applicants liable on six discrete causes of action, assessing (i) \$700,000.00 (seven hundred thousand dollars) against the Firm and (ii) \$75,000.00 against BMeyers, barring him from acting in any supervisory or principal capacity.²

The Applicants appealed the DOE Panel’s decision on May 23, 2016 to the NAC.

In its January 4, 2018 Decision, received by the Firm on January 8, 2018, the NAC improperly discounted or ignored exculpatory evidence, discounted explanatory testimony which quite plausibly demonstrated no violations of any kind and held variously that the Firm or BMeyers, separately or jointly: (i) emailed “unbalanced” and misleading communications to “the

¹ DOE withdrew its third cause of action, which alleged that Respondent Meyers failed to timely file a PPM with FINRA, prior to hearing, leaving 8 remaining causes of action to be tried.

² All allegations against a second individual Respondent were dismissed by the DOE Panel, and that individual is thus not a party to this Application.

public”, violating NASD Rule 2210 and FINRA Rule 2010, even though the communications were clear and unambiguous and thus not misleading; (ii) kept “inaccurate” books and records, violating the 1934 Exchange Act Section 17 and its Rules 17a-3, 17a-4 and 17a-5, NASD Rule 3110 and FINRA Rules 4511 and 2010, despite evidence to the contrary; (iii) failed to “reasonably” supervise preparation of its books and records, violating NASD Rule 3010 and FINRA Rule 2010, despite properly prepared books; (iv) failed to “reasonably” supervise its electronic correspondence, violating NASD Rules 3010 and 2110 and FINRA Rule 2010, despite having sent no violative emails; (v) failed to timely report customer complaints, violating NASD Rules 3070 and 2110, and FINRA Rule 2010, even though the odd delay was immaterial and no customer was harmed by virtue of any delay and (vi) failed to “maintain” an “adequate” system of supervisory controls, violating NASD Rule 3012 and FINRA Rule 2010, even though a hierarchical supervisory structure was in place.

**II. The NAC Relied on Erroneous or Stretched “Reasoning”
to Justify its Incorrect Decision**

The examples are too numerous to list and remain in compliance with Rule 420’s directive to “set forth *in summary form a brief statement* of alleged errors” (emphasis added), but as an example, the NAC erroneously found that the Firm “inaccurately” recorded reimbursed expenses to two individuals *per contract* as “business expenses” because the expenses of the individuals being reimbursed included some “personal” expenses. Pursuant to GAAP and corresponding IRS rules businesses contractual financial obligations are business expenses.³

³ While acknowledging that the accounting practice it negatively sanctioned did not have any effect on the Firms’ FOCUS report or the financial statement’s “bottom line”, the NAC Decision included this fictitious violation in aggregating a \$500,000.00 fine as a “unitary sanction” (taking care to separate out \$200,000.00 for “advertising violations) against the Firm.

2 The NAC then bootstrapped this defective argument to find that the Firm failed to
4 maintain proper books and records, on the ground that if it had done it properly, it would not
6 have booked its contractual financial obligations as business expenses. And by this technique of
8 unjustified bootstrapping, the NAC gave itself an excuse to impose fines that far exceeded
10 FINRA's published Guidelines range.

12 Similarly, there is no underlying logic to the manner in which NAC redistributed the
14 fines, (a) *quadrupling* the fine against the Firm for advertising violations (which were not in
16 fact violations as no retail or institutional customers were contacted in the emails at issue) and
18 (b) *doubling* the fine for the advertising "issue" against BMeyers to \$50,000.00.

20 And the NAC failed to provide any logical explanation beyond what amounted to "we
22 feel like it" for aggregating the remaining (and duplicative) fines as a "unitary sanction" against
24 the Firm, resulting in a fine that far exceeded FINRA's published Guidelines range. This
26 "Torquemada-esque" ruling cannot stand.
28

30 It should also be noted that the Section 5 violations – the first cause of action, and thus
32 the most serious charge - were dismissed as unproven. Upon information and belief,
34 NAC punched up the other items, (which really were, in the aggregate, *de minimis*, especially
36 when factoring in the false and misleading characterization by both DOE and NAC of the
38 communications at issue) as a retaliatory device for its failure to meet its primary burden on the
40 more serious charges

42 For these and other reasons that will be developed in subsequent filings, the NAC
44 Decision was in error and misguided, and accordingly, should be vacated in whole or in part.
46
48
50

2 **PLEASE TAKE FURTHER NOTICE** that undersigned counsel is authorized to accept
4 service on behalf of Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P) and Bruce

6 Meyers at the following address:

8 Lawrence R. Gelber
Attorney at Law
10 The Vanderbilt Plaza
34 Plaza Street – Suite 1107
12 Brooklyn, New York 11238
T: (718) 638 2383
14 F: (718) 857 9339
E: GelberLaw@aol.com

16 Dated: Brooklyn, New York
18 February 5, 2018

20 Respectfully submitted,

22
24 BY: 

26 Lawrence R. Gelber
Attorney for Appellants
28 The Vanderbilt Plaza
34 Plaza Street – Suite 1107
30 Brooklyn, New York 11238
T: (718) 638 2383
32 F: (718) 857 9339
E: GelberLaw@aol.com

AFFIRMATION AND CERTIFICATE OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF KINGS)

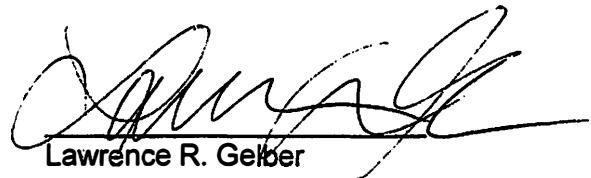
I, Lawrence R. Gelber, an attorney duly admitted to practice in the courts of the State of New York, do hereby certify and affirm, pursuant TO 28 U.S. C. §1748, that I served a copy of the foregoing NOTICE OF APPEAL (APPLICATION FOR REVIEW) of a Decision by the FINRA National Adjudicatory Council in Case No., 2010020954501, on behalf of MEYERS ASSOCIATES, L.P. (N/K/A WINDSOR STREET CAPITAL, L.P) and BRUCE MEYERS. via facsimile and overnight courier to:

Facsimile: (202) 772-9324
The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

Facsimile: (202) 728-8264
Gary Darnelle, Esq.
Office of General Counsel
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
 February 5, 2018



Lawrence R. Gelber
Attorney at Law
The Vanderbilt Plaza
34 Plaza Street – Suite 1107
Brooklyn, New York 11238
T: (718) 638 2383
F: (718) 857 9339