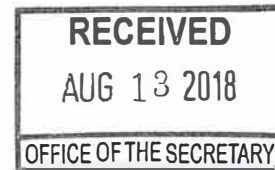


UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of
GREGORY ACOSTA, CRD #816526.

For Review of Action Taken by Self-
Regulatory Organization,



3-18637

GREGORY ACOSTA (“ACOSTA”), by and through his undersigned counsel, and pursuant to 17 CFR 201.420, hereby files this Application for Review of Action taken by the Financial Industry Regulatory Authority (“FINRA”), and in support thereof states as follows:

PRELIMINARY STATEMENT

1. ACOSTA files the instant Application to preserve any and all rights he has to seek review by the Securities and Exchange Commission (“SEC”) of FINRA’s communication to his former associated member-firm that he was subject to as disqualification as defined in Section 3(a)(39) of the Securities and Exchange Act of 1934. To the extent such communication, attached hereto as **Exhibit A**, is deemed a final disciplinary sanction, denial or conditioning of membership or participation, prohibition or limitation in respect to access to services offered by that SRO or a member thereof, or bar from association as to which a notice is required to be filed with the Commissions pursuant to 19(d)(1) of the Exchange Act, 16 U.S.C. 78s(d)(1); to the extent FINRA filed any notice of determination of statutory disqualification of ACOSTA with the SEC; and/or to the extent FINRA challenges jurisdiction, forum or the ripeness of any court proceeding filed by ACOSTA for injunctive or declaratory relief, or challenges his entitlement to relief, ACOSTA files this application for review. By filing this Application, ACOSTA in no way waives any and all rights to seek relief in court.

BACKGROUND

2. By letter dated July 13, 2018, Cathy Williams, Regulatory Review Analyst, Registration and Disclosure, FINRA, sent a communication stating that it deemed Mr. Acosta subject to a disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (herein “FINRA’s July 2018 Letter”), based on an Order filed by the Insurance Commissioner of the State of California, File No. LA 2015 0049-AP/OAH No. 2018 020086 (“CA Order”). See Exhibit A. FINRA’s July 2018 Letter stated that the disqualification arises since the CA Order was “based on a violation of Section 1668(i) of the California Insurance Code, a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.” However, for the reasons set forth below, the CA Order does not trigger disqualification under Section 3(a)(39) of the Securities Exchange Act of 1933.

ARGUMENT

3. Put simply, the CA Order was not based on violation of Section 1668(i) of the California Insurance Code. Attached hereto as **Exhibit B** is a true and correct copy of the CA Order. The CA order does not refer to section 1668(i) of the California Insurance Code. The CA Order incorporates by reference and attaches thereto a Stipulation and Wavier executed by ACOSTA. The Stipulation and Wavier was entered in connection with a settlement relating to an Accusation filed by the Insurance Commissioner of the State of California. Attached hereto as **Exhibit C** is a true and correct copy of the Stipulation and Wavier.

4. Of significance, the Stipulation and Waiver does not refer to Section 1668(i). The only non-procedural statute referenced in the Stipulation and Waiver is Section 1668.1 of the California Insurance Code. A true and correct copy of Section 1668.1 is attached hereto as **Exhibit D**. Section 1668.1 is not a fraud based statute, and is entirely and completely separate and distinct from 1668(i). Moreover, no other documents are attached or incorporated by reference into the CA Order or the Stipulation and Waiver. Accordingly, the CA Order is not based on fraud, and FINRA’s Member Regulation staff determination that ACOSTA is subject to disqualification is in error.

5. ACOSTA attempted to resolve these issues with FINRA's Regulatory Review staff and with FINRA Chief Legal Officer. The only substantive response has been from FINRA's Regulatory Review staff which stood by its erroneous position claiming the CA Order was based on 1668(i) [fraud]. Again, 1668(i) is not referenced in the CA Order, nor is it referenced in the Stipulation and Waiver. Furthermore, there is no attachment or incorporation of any documents to the CA Order or the Stipulation and Waiver which references 1668(i). The only non-procedural statute referenced in the Stipulation and Waiver is Section 1668.1.

6. Under FINRA's interpretation of Section 3(a)(39) of the Securities Exchange Act of 1934, if any state agency files a complaint which includes fraud and non-fraud charges, and the matter is settled with only the non-fraud charges acknowledged and incorporated into the settlement, FINRA would still conclude that the settlement was based on fraud violations and the individual subject to disqualification. This is an obvious over broad, unreasonable, unfair and unjust interpretation and application of Section 3(a)(39) of the Securities Exchange Act, which would not only have severe and adverse impacts on registered individuals, but would essentially preclude any settlements at the state level where there existed accusations of fraud.

7. In FINRA's July 2018 Letter, FINRA instructed ACOSTA's former associated member firm that if the firm declined to pursue the Membership Continuance process, it should immediately terminate its association with the individual. ACOSTA's former associated member-firm declined to submit the MC-400 application and in accordance with FINRA's instruction terminated ACOSTA's association with the firm. The purported MC-400 process does not provide ACOSTA with any due process or review.

8. As noted above, this Application is submitted to preserve any and all rights ACOSTA has to seek review by the SEC of FINRA's communication to his former associated member-firm that he was subject to statutory disqualification as defined in Section 3(a)(39) of the Securities and Exchange Act of 1934.

DATED: August 10, 2018

D'AMURA & Z Aidman, PLLC

A handwritten signature in black ink, consisting of a stylized, cursive 'R' followed by a long horizontal stroke that extends to the right.

By:

RICHARD D'AMURA

EXHIBIT “A”



Financial Industry Regulatory Authority

July 13, 2018

Sent via certified mail and email to mike.pedlow@kestrafinancial.com

Michael Pedlow
Kestra Investment Services, LLC
5707 Southwest Parkway Building 2, Suite 400
Austin, TX 78735

Re: Gregory Acosta, CRD # 816526

Dear Mr. Pedlow,

Financial Industry Regulatory Authority (FINRA) has determined that Gregory Acosta, a person associated with your firm, is subject to a disqualification as defined in Section 3(a) (39) of the Securities Exchange Act of 1934. The disqualification arises from the Order filed by the Insurance Commissioner of the State of California, File No. LA 2015 00490-AP/ OAH No. 2018 020086, dated May 21, 2018, in which Mr. Acosta's insurance licenses and licensing rights were revoked, and in lieu thereof, he was issued restricted licenses for five (5) years, based on a violation of Section 1668(i) of the California Insurance Code, a law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.

Generally, no person who is, or who becomes, subject to a disqualification shall associate, or continue association, with a FINRA member unless the member requests and receives written approval from FINRA. The process for requesting such approval is referred to as the Membership Continuance process.

To initiate the Membership Continuance process, the member must send a completed MC-400 Application (which includes an authorization to deduct the \$5000 application fee) to **Cathy Williams** at SDGroup@finra.org or FINRA, 9509 Key West Avenue, Rockville, MD 20850 no later than **August 1, 2018**.

In connection with the Membership Continuance proceeding, the member will be required to provide proof that the disqualified individual is covered by the firm's fidelity bond. In addition, if the association is approved, FINRA will conduct periodic special examinations for the duration of the individual's statutory disqualification, for which FINRA will assess the member an annual fee in accordance with Schedule A, Section 12(b) of FINRA's By-Laws.

If the firm declines to pursue the Membership Continuance process, it should immediately terminate its association with this individual, and notify FINRA in writing, at the above address, of the termination by August 1, 2018. The firm must submit the Form U5 Termination Notice or an amended NRF, as applicable, to CRD within 30 days after the termination.

PLEASE NOTE: Failure to timely file the written request for relief or MC-400 application, could result in a revocation of the registration of the disqualified person unless the Department of Member Regulation grants an extension *for good cause* (see FINRA Rule 9522). You may direct any questions about this process to Lorraine Lee-Stepney, Manager, FINRA's Statutory Disqualification Program at (202) 728-8442 or SDMailbox@FINRA.org.

For more information about our statutory disqualification and Membership Continuance process or to obtain a copy of the MC-400 application, please visit our web site:
<http://www.FINRA.org/sdprocess>.

We anticipate your firm's response no later than August 1, 2018. If you have any questions regarding the above information, please contact the undersigned at 240-386-4735.

Sincerely,

Cathy Williams

Cathy Williams
Regulatory Review Analyst
Registration and Disclosure
FINRA

cc: Erin C. Vocke, VP & District Director
FINRA, District #6 - Dallas

Lorraine Lee-Stepney, Manager, Statutory Disqualification
FINRA, Member Regulation

Susan Wallace, Regulatory Coordinator
FINRA, Member Regulation

Gregory Acosta

██████████
Anaheim Hills, CA ██████████

EXHIBIT “B”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and Licensing Rights of

Gregory Acosta and Diamond Bar Executive Benefit Programs & Insurance Services, Inc.,

Respondents.

ORDER

File No. LA 2015 00490 - AP

OAH No. 2018 020086

WHEREAS, Respondent, Gregory Acosta (hereafter "Respondent" or "Respondents"), executed a Stipulation and Waiver for himself and Diamond Bar Executive Benefit Programs & Insurance Services, Inc., attached hereto and made a part hereof; and

WHEREAS, the Insurance Commissioner of the State of California ("Commissioner") contends that the facts alleged in the Accusation, if proven to be true and correct, would be grounds for the Commissioner to discipline Respondents' licenses and licensing rights; and

WHEREAS, Respondents, waive their rights to a hearing and stipulates to entry of this Order;

NOW, THEREFORE, IT IS ORDERED that the Commissioner adopts the terms of the Stipulation and Waiver and such Stipulation and Waiver shall be binding on Respondents.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 21st day of May 2018.

This Order shall be effective thirty (30) days from the date of its signing.

DAVE JONES
Insurance Commissioner

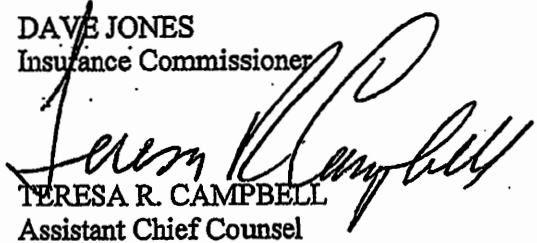

TERESA R. CAMPBELL
Assistant Chief Counsel

EXHIBIT “C”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and Licensing
Rights of

**Gregory Acosta and Diamond Bar
Executive Benefit Programs &
Insurance Services, Inc.,**

Respondents.

File No. LA 2015 00490 - AP

OAH No. 2018 020086

STIPULATION AND WAIVER

TO THE DEPARTMENT OF INSURANCE OF THE STATE OF CALIFORNIA:

Respondents Gregory Richard Acosta and Diamond Bar Executive Benefit Programs &
Insurance Services, Inc. enter this Stipulation and Waiver in the above-entitled matter and
stipulate as follows:

1. Respondents acknowledge receipt of the Accusation, Notice of Defense, and Statement to Respondent in the above-entitled matter;
2. Without admitting or denying the allegations contained in said Accusation, Respondents acknowledge that, if proven to be true and correct, the facts alleged in said Accusation are grounds for the discipline, by the Insurance Commissioner of the State of California, of Respondents' licenses and licensing rights, pursuant to the provisions of the Insurance Code of the State of California referred to in said Accusation;
3. Although Respondents previously requested a hearing, Respondents now desire to resolve this matter between them and the Department and hereby waive any and all rights, including the right to a hearing asserted through the filing of a Notice of Defense, which may be afforded pursuant to Chapter 5, Part 1, Division 3, Title 2 (Sections 11500 – 11529, inclusive) of the Government Code of the State of California (the Administrative Procedure Act), and by the California Insurance Code;
4. Respondents hereby request, stipulate and agree that the Insurance Commissioner,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


by his written Order to be made and filed herein, without further notice to Respondents, shall revoke Respondents' present Accident and Health, Brokering Life Settlement, Life-Only and Variable Contracts licenses and licensing rights, and in lieu thereof, issue to Respondents current Accident and Health, Brokering Life Settlement, Life-Only and Variable Contracts restricted licenses for five (5) years upon the following terms and conditions:

- 5.e Respondents shall comply with the California Insurance Code and its regulations, obey all other laws and regulations of the State of California, the United States of America, and every state and foreign government or regulatory authority having jurisdiction over Respondents;
- 6.e Respondents agree that they will come into compliance with California Insurance Code section 1668.1 within thirty (30) days of execution of the Order adopting this Stipulation and Waiver;
- 7.e Respondents agree that they will not be beneficiaries on any type of insurance for any client, at risk of summary revocation of their licenses and licensing rights;
- 8.e Respondents agree that they will not enter into loans with any of their insurance clients, at risk of summary revocation of their licenses and licensing rights;
- 9.e Respondents agree that said restricted licenses shall remain subject to the conditions and restrictions herein above set forth at time of renewal and until such time as the Insurance Commissioner shall, by written order, remove or modify such conditions and restrictions, and each of said conditions and restrictions shall apply to said licenses;
- 10. Respondents agree that after five (5) years from the date of execution of the Order issuing the above-referenced restricted licenses the Insurance Commissioner, upon petition by the Respondents, may remove the conditions and restrictions from Respondents' licenses if there has not been a justified complaint against Respondents and neither an investigation nor disciplinary action against Respondents is pending;

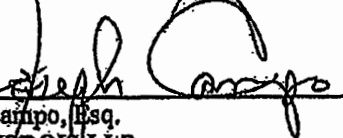
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 11.s Respondents acknowledge that this Stipulation and Waiver is freely and voluntarily executed by Respondents, with full realization of the legal rights and responsibilities set forth herein and in the Statement to Respondents;
- 12.s Respondents acknowledge that Respondents have fully reviewed each and every paragraph of this Stipulation and Waiver, understand the same, and are in agreement with all of its terms and conditions;
- 13: Respondents hereby agree and acknowledge that if Respondents violate any of the terms or conditions of this Stipulation and Waiver, then the Commissioner may revoke Respondents' licenses and licensing rights without further notice or hearing;
- 14.s Respondents acknowledge that this Stipulation and Waiver, in settlement of this matter with the Department, is subject to approval by the Insurance Commissioner pursuant to Section 12921 of the California Insurance Code.

Respondents declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and execute this document at Diamond Bar, California on the 9th day of May, 2018.


 Gregory K. Acosta for himself and Diamond Bar Executive Benefit Programs & Insurance Services, Inc., Respondents

Dated: May 10, 2018


 Joseph C. Campo, Esq.
 LEWIS BRISBOIS LLP
 Attorneys for Respondents

Dated: May 10, 2018


 Brian D. FitzGerald, attorney for the California Department of Insurance

EXHIBIT “D”

THOMSON REUTERS
WESTLAW

All Content Enter terms, citations, databases, anything ... California Advanced

Folders History Favorites Alerts

§ 1668.1. Cause to suspend or revoke permanent license

West's Annotated California Codes | Insurance Code | Effective: January 1, 2004 (Approx. 2 pages)

Document Notes of Decisions (0) History (29) Citing References (9) Context & Analysis (8) Powered by KeyCite

Go To Table of Contents

West's Annotated California Codes
Insurance Code (Refs & Annos)
Division 1. General Rules Governing Insurance (Refs & Annos)
Part 2. The Business of Insurance (Refs & Annos)
Chapter 5. Production Agencies (Refs & Annos)
Article 6. License Qualifications (Refs & Annos)

Effective: January 1, 2004

West's Ann.Cal.Ins.Code § 1668.1

§ 1668.1. Cause to suspend or revoke permanent license

Currentness

In addition to the grounds set forth in Section 1668, the following acts shall constitute cause to suspend or revoke any permanent license issued pursuant to this chapter:

- (a) The licensee has induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, or to any of the persons listed in subdivision (e).
- (b) The licensee has induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision (e) a beneficiary under the terms of any inter vivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy.
- (c) The licensee has induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any inter vivos or testamentary trust. However, if the licensee is also licensed as an attorney in any state, the licensee may be made a trustee under the terms of any inter vivos or testamentary trust, provided that the licensee is not a seller of insurance to the trustor of the trust.
- (d) The licensee, who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.
- (e) Subdivisions (a) and (b) shall also apply if the licensee induces the client to provide the benefits in those subdivisions to the following people:
 - (1) A person who is related to the licensee by birth, marriage, or adoption.
 - (2) A person who is a friend or business acquaintance of the licensee.
 - (3) A person who is registered as a domestic partner of the licensee.
- (f) This section shall not apply to situations in which the client is:

- (1) A person related to the licensee by birth, marriage, or adoption.
- (2) A person who is registered as a domestic partner of the licensee.






Credits

(Added by Stats.2003, c. 546 (S.B.618), § 4.)

West's Ann. Cal. Ins. Code § 1668.1, CA INS § 1668.1
Current with urgency legislation through Ch. 119 of 2018 Reg.Sess

**End of
Document**

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

 Preferences |  My Contacts | Transfer My Data |  Training & Support |  Live Chat |  Sign Off

Westlaw. © 2018 Thomson Reuters | Privacy Statement | Accessibility | Supplier Terms | Contact Us | 1-800-REF-ATTY (1-800-733-2889) | Improve Westlaw



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF TEXAS, COUNTY OF TRAVIS

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Travis, State of Texas. My business address is 609 Josephine Street, Austin, Texas 78704.

On August 10, 2018, I served true copies of the following document(s) described as **NOTICE OF APPEARANCE** and **IN RE: APPLICATION OF GREGORY ACOSTA FOR REVIEW OF ACTION TAKEN BY SRO** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-OVERNIGHT UPS CARRIER

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

Executed on August 10, 2018, at Austin, Texas.



Richard A. D'Amura.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

*In the Matter of the Application
Of Gregory Acosta, CRD# 816526*

Brent J. Fields
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Fax: (202) 772-9324

Secretary

Alan Lawhead
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, D.C. 20006-1506

Vice President and Director – Appellate Group