

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 FINRA,

Admin. Proc. File No. 3-18637

ACOSTA'S RESPONSE TO ORDER
REQUESTING ADDITIONAL BRIEFING

FACTUAL BACKGROUND

In late 2017 or early 2018, the California Department of Insurance (the "Department") interviewed one of Mr. Acosta's clients, and long-time friend of the family,¹ Robert Fawcett. The Department interviewed Mr. Fawcett based on an allegation made by a former disgruntled employee. *See* Declaration of Gregory Acosta ("Acosta Decl.") at ¶ 10 (annexed hereto as **Exhibit 1**). On or about January 25, 2018, the Department filed an "Accusation" against Mr. Acosta alleging certain violations of the California Insurance Code based on their interview with Mr. Fawcett wherein he allegedly indicated that he could not recall whether he agreed to Executive Benefits Partners, Inc. (Mr. Acosta's company, hereinafter "EBP") being the beneficiary on a life insurance policy in Mr. Fawcett's name (the "Policy"). *See id.* at ¶ 11; *see also* Acosta Decl. Exhibit A. Further, the Accusation noted that Mr. Fawcett had made loans to Mr. Acosta, but could not recall the details of the loans. *See id.* at ¶ 12, *see also* Acosta Decl. Exhibit A. The Accusation also acknowledged that Mr. Fawcett was 87 years old and [REDACTED] [REDACTED] *See* Acosta Decl., *see also* Exhibit A at pg. 3. The Accusation asserted violations of California Insurance Code, Sections 1168(i) and (j), in addition to 1668.1(a) and (b).

¹ The Accusation itself noted that Mr. Acosta has known Mr. Fawcett for over twenty years. *See* Acosta Decl. at ¶ n. 1; *see also* Acosta Decl., Exhibit A.

In reality, Mr. Fawcett and his family were long-time friends and associates of Mr. Acosta's family. Mr. Fawcett engaged in private lending, which Mr. Acosta and his wife had utilized over the years. *See* Acosta Decl. at ¶ 13. EBP did in fact borrow monies to fund the purchase of EBP's building. *See id.* The loan was secured by the building. *See id.* As Mr. Fawcett got older, a decision was made to take out an insurance policy (with EBP as the beneficiary *and* the payor) so that any unpaid debts could be funded by the Policy proceeds upon death. *See id.* To date, EBP has paid \$375,461.88 in premiums on the Policy. Mr. Fawcett was always aware of the Policy and consented to the arrangement. *See id.* Unfortunately, in late 2017, Mr. Fawcett began to [REDACTED] from [REDACTED]. *See id.* at ¶ 14. As a result, Mr. Fawcett was likely confused by the presence of investigators in his home. *See id.* As his daughter attested in support of Mr. Acosta to the Department:

I cannot believe an investigator showed up unannounced at my Father's residence to ask personal and financial questions without prior notice or a consenting adult present. [REDACTED] . . . due to [REDACTED]." My Father was very uncomfortable and [REDACTED] at what the investigator was trying to achieve. I am extremely upset that this has happened, especially since my Father states that he knew about the [P]olicy but he felt so uncomfortable in the situation that he answered most of the questions with "I don't know." He also specifically stated that his [REDACTED].

See id.; *see also* Acosta Decl., Exhibit C.

In addition to Mr. Fawcett's daughter and attorney, Mr. Fawcett's CPA also put in a declaration in support of Mr. Acosta. *See id.* at ¶ 15; *see also* Acosta Decl. Exhibit D. All three declarations indicated that Mr. Fawcett was aware of (and consented to) both the loan and the Policy. *See id.*; *see also* Acosta Decl. Exhibits B, C & D. As a result of these submissions, Mr. Acosta negotiated and agreed to a Stipulation and Waiver, which formed the basis for a Stipulated Order by the Department ("CA Order"). *See id.* at ¶ 16; *see also* Decl, Exhibit E.

The CA Order specifically (and solely) references Section 1668.1 (non-fraud provision) and provides that “Respondents agree that they will come into compliance with California Insurance Code Section 1668.1 within thirty (30) days.” *See id.* at ¶ 17; *see also* Acosta Decl. Exhibit E. Sections 1668.1 provides that a licensee “induced a client . . . [to] make a loan,” and induced a client to make it “the owner or beneficiary of a life insurance policy.” *See* Section 1668.1(a) & (b). The CA Order does not include any references to fraud or Section 1668(i), as the CA Order represented a compromise by Mr. Acosta and the Department.

BRIEFING

- I. **QUESTION 1:** Exchange Act Section 19(d) includes among matters subject to Commission review any action by FINRA “bar[ring] any person from becoming associated with a member” or “prohibit[ing] or limit[ing] any person in respect to access to services offered by [FINRA] or [a] member thereof.” Did FINRA’s notice to Kestra constitute an action barring Acosta from becoming associated with a member? Did FINRA’s notice prohibit or limit him in respect to access to services offered by FINRA or by a member?

On July 13, 2018, FINRA notified Michael, Pedlow, Chief Compliance Officer at Mr. Acosta’s former broker dealer, Kestra Investment Services, LLC that:

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(1) 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.

If the firm declines to pursue the Membership Continuance process, it should immediately terminate its association with this individual. . . .

(emphasis added). *See* Acosta Decl., Exhibit F & G.

Based on FINRA's direct instruction, Kestra terminated Mr. Acosta's registration. Mr. Acosta cannot "associate, or continue association, with a FINRA member unless the member requests and receives written approval from FINRA." Mr. Acosta cannot request the approval. Only a member firm may do so. As a result, FINRA's decision is an effective bar for Mr. Acosta, which must be reviewable. *See e.g. In re: Jon G. Symon*, Exchange Act Release No. 41285, 1999 WL 212709, at *3 (Apr. 14, 1999) (finding that a bar against a representative was reviewable where individual was required to re-satisfy exam requirements before he could serve as a supervisor, even where representative could still serve as a registered representative).

The individualized harm to Mr. Acosta is very different than those cases where a denial is conditioned on compliance with FINRA Rules. *See e.g., In Re Joseph Dillon & Co.*, Exchange Act Release No. 43523, 2000 WL 1664016, at *3 (Nov. 6, 2000) (denying review where complaint related to denial of an exemption and distinguishing with "barring an individual from association with all NASD Members," a reviewable action). Further, Mr. Acosta's situation is very different than those where there has been no negative action taken. *See e.g., In re Sky Capital LLC*, Exchange Act Release No. 55828, 2007 WL 1559228, at *4 (May 30, 2007) (finding that a hearing would be available if there was "disciplinary action" taken by the NASD). Here, Mr. Acosta has lost his career and has *zero* avenue to appeal, as the MC-400 Application must be filed by a member firm. *See* Acosta Decl., Exhibit G. As a result, Mr. Acosta has been subjected to the ultimate prohibition of access to services, which is, for all intents and purposes, final.

- II. **QUESTION 2:** Given that the membership continuance application process requires the participation of a sponsoring firm, and Kestra apparently declined such participation, are there any other administrative remedies available to Acosta through FINRA to appeal the determination that he is subject to a statutory disqualification.

No. Moreover, FINRA has conceded this in its briefing to the SEC, and in the California, District Court action.

- III. **QUESTION 3:** In determining whether the California Order is "based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct" under Exchange Act Section 15(b)(4)(H)(ii) and thus subjects Acosta to statutory disqualification under Exchange Act Section 3(a)(39), what is the relevance, if any, of Acosta's assertions that he neither admitted nor denied the allegations at issue; that the California Order "does not refer to Section 1668(i) of the California Insurance Code"; and that the California Order "is not based on fraud" because [t]he only non-procedural statute referenced ... is Section 1668.1 [which] is not a fraud based statute, and is entirely and completely separate and distinct from 1668(i)"?

The CA Order is the "settlement" of the allegations in the Accusation. Here, FINRA has taken the position that Mr. Acosta was subject to a final order based on a violations of a "law[] or regulation[] that prohibit fraudulent, manipulative or deceptive conduct." Exchange Act, Section 15(b)(4)(H), 15 U.S.C. § 80b-3 (emphasis added). However, this is flatly incorrect. While the initial Accusation did include Section 1668(i) and 1668.1, the CA Order only references Section 1668.1. The Accusation was not made a part of the final CA Order. See Decl, Exhibit E.

Section 1668.1 (fraud based statute) and Section 1168(i) (non-fraud based statute) are entirely separate and distinct statutes. See Cal. Ins. Code § 1668.1 (prohibiting inducement of a client to make a loan and prohibiting the licensee to make himself a beneficiary to an insurance policy) cf. Cal. Ins. Code § 1668(i) (allowing the insurance commissioner to deny application to a licensee if "the applicant has previously engaged in a *fraudulent* practice or act." (emphasis

added)). This is important, as FINRA's interpretation of the CA Order seeks to incorporate parole evidence into the CA Order, which constitutes a settlement agreement. The fact that the Accusation initially asserted violations of Sections 1168(i) and (j), *in addition* to 1668.1, is completely irrelevant. *Wapato Heritage, LLC. V. Evans*, 2009 WL 10670539, at *1 (E.D. Wash. 2009) (outside evidence of the parties' intent is inadmissible where the plain language of a settlement agreement is unambiguous). It seems clear that the Department initially asserted claims of fraud, as well as non-fraud violations, in connection with the loan and policy, but backed-off the assertion that fraud was involved once Mr. Fawcett's daughter, CPA and attorney put in declarations stating otherwise. *See* Acosta Decl. ¶¶ 14, 15; *see also* Acosta Decl. Exhibits B, C & D.

Further, to date, FINRA has *never* argued that 1668(i) constitutes "fraudulent, manipulative or deceptive conduct" within the meaning of Section 3(a)(39)(F) of the Exchange Act. This is because FINRA *knows* Section 1668(i) does not subject an individual to statutory disqualification pursuant to 15 U.S.C. § 78o(b)(4)(H). In fact, counsel for Mr. Acosta reached out to FINRA shortly after Mr. Acosta was terminated in an effort to get FINRA to acknowledge its mistaken position regarding disqualification. *See* D'Amura Decl., Exhibit A, ¶ 3 ("D'Amura Decl.") annexed hereto as **Exhibit 2**. In response, Christopher Dragos, Associate Director, Regulatory Review for FINRA, continued to maintain that Mr. Acosta was statutorily disqualified, essentially taking the position that 1668(i) was somehow part of the CA Order, despite its conspicuous absence. However, it is of *critical* importance to note that, in the course of those discussions, FINRA did firmly acknowledge that a violation of Section 1668(1) does not constitute "fraudulent, manipulative or deceptive conduct." While considering Mr. Acosta's position, Mr. Dragos informed Mr. D'Amura that:

In the meantime, I can tell you that *you're correct about 1668.1, that statute does not involve FMD* [fraudulent, manipulative, deceptive]. The statute referenced in the letter, 1668(i), is from the Accusation. In any case, I appreciate your patience while I continue to review this and will contact as soon as I can with a resolution.

(emphasis added). See D'Amura Decl., Exhibit A (E-mail from Christopher Dragos to Richard A. D'Amura, dated July 23, 2018).

Finally, FINRA's position is entirely unworkable and leads to illogical results. The result of concluding that a settlement (or any other compromise) is an admission of *all* initial allegations, even when only part of the allegations are admitted,² is untenable. In this case, the result would be that if a state agency files a complaint, which includes fraud and non-fraud charges, and the matter is settled with only the non-fraud charges acknowledged, admitted to, and/or incorporated therein, FINRA would conclude that the settlement was still based on fraud, subjecting an individual to statutory disqualification. This effectively renders the settlement's terms null, and holds the individual liable for *all* initial allegations. This is clearly an overly broad, unreasonable, unfair, and unjust interpretation and application of Section 3(a)(39) of the Exchange Act. Here, Mr. Acosta never would have consented to the CA Order had it in any way been based on a fraud statute, as he had several witnesses, including Mr. Fawcett's own daughter and attorney, who were prepared to testify that no fraudulent activity was involved. See Acosta Decl. ¶ 20. Accordingly, as the CA Order is not based on fraud, FINRA's conclusion that Mr. Acosta is subject to disqualification is in error.

² Common sense would tell you that FINRA's position is incorrect. Would a criminal defendant, who is charged with violations of two statutes, but pleads guilty to only one, have a record of being guilty of both charges? This argument is severely flawed.

IV. **QUESTION 4:** What is the relevance, if any, of the California Order's acknowledgment that "if proven to be true and correct, the facts alleged in [the] Accusation are grounds for the discipline, ... pursuant to the provisions ... referred to in [the] Accusation"?

The above-quoted language is found on page 1 of the CA Order. It merely refers to the fact that, had the matter proceeded to a hearing on all of the charges presented in the Accusation, where a finding of guilt was determined, the Insurance Commission of the State of California could have disciplined him. The CA Order, which solely addressed Mr. Acosta's insurance licenses, had absolutely no implications or effect on these licenses. *See id.* at ¶ 18; *see also* Acosta Decl. Exhibit E. This boilerplate settlement language has no substantive effect on Mr. Acosta.

CONCLUSION

As stated in prior briefing, fundamental fairness dictates that Mr. Acosta must have a path to review FINRA's erroneous declaration of him as statutorily disqualified. If the SEC believes FINRA's decision is not reviewable here, Mr. Acosta requests that it make clear expeditiously that it will not be reviewing this matter so that Mr. Acosta can proceed in Federal Court.

DATED: March 22, 2019

D'AMURA & ZAIDMAN, PLLC

By: _____


RICHARD D'AMURA

EXHIBIT 1

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREGORY ACOSTA,
Plaintiff,

vs.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.,

Defendant.

Case No.

**DECLARATION IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

COUNTY OF LOS ANGELES

ss:

STATE OF CALIFORNIA

I, **GREGORY ACOSTA**, under penalty of perjury, state as follows:

1. I am over 18 years of age and have knowledge of the facts stated herein.
2. I am 66 years old and have been in the financial services industry for over 40 years.

Practicing in the financial services industry has been my livelihood for all of my professional career.

A. My Business and Employment Background.

3. I originally received a Life and Health Insurance License in 1975. From that time on, I sold life insurance, annuities, individual health insurance, group medical, and individual/group disability insurance.
4. In 1981, I founded Executive Benefits Programs, Inc. ("EBP"). EBP has achieved a strong and respected standing in the financial services industry in the 37 years since it was founded. EBP was founded with the intent of providing a variety of products and services, including

1 life insurance, tax-deferred retirement portfolios, business continuation programs, estate
2 creation and conservation, financial advising and strategies, buy-sell funding, survivorship
3 programs, deferred compensation plans, investment analysis, disability insurance and long
4 term care.

5
6 5. I have been in the securities industry since September of 1993. I obtained my securities
7 license so that I could offer my clients securities products.

8 6. I earned my Series 63 license on September 20, 1993. The Series 63 is a license entitling
9 me to solicit orders for any type of security in California. Brokers must acquire the Series
10 63 license in conjunction with the Series 6 or Series 7. I acquired my Series 6 on September
11 20, 1993. Finally, on February 11, 2000, I received my series 26. The series 26 provided
12 me with the qualifications necessary to become a limited principal and to supervise and
13 manage sales activities for investment companies and annuities.

14
15 7. In order to buy and sell securities for my clients, it is necessary that I “associate” as a
16 “registered representative” with a broker-dealer. Although I have associated with several
17 broker-dealers during the course of my career in the securities industry, my most recent
18 broker-dealer (for the period of March 25, 2011 to July 16, 2018), was Kestra Investment
19 Services, LLC (“KIS”).

20
21 8. KIS is a Financial Industry Regulatory Authority (“FINRA”) member broker-dealer. KIS
22 is an industry leader in portfolio management, consolidated brokerage services and financial
23 planning services. KIS provided me with back office compliance, as well as support for my
24 securities customers.

25
26 9. FINRA is a private corporation that acts as a self-regulatory organization over broker-
27 dealers, such as KIS, and registered individuals licensed to sell securities. FINRA is the
28 successor to the National Association of Securities Dealers, Inc. and the member regulation,

1 enforcement, and arbitration operations of the New York Stock Exchange. In order for me
2 to engage in any securities business in the United States whatsoever, I am required to be
3 registered with a FINRA member-firm (most recently KIS), and I am required to maintain
4 my securities licenses.

5 **B. The California Department of Insurance Matter**

6
7 10. In late 2017 or early 2018, the California Department of Insurance (the "Department")
8 interviewed one of my clients, and long-time friend of the family,¹ Robert Fawcett. The
9 Department interviewed Mr. Fawcett based on an allegation made by a former disgruntled
10 employee.

11 11. On or about January 25, 2018, the Department filed an "Accusation" against me alleging
12 certain violations of the California Insurance Code based on their interview with Mr. Fawcett
13 wherein he allegedly indicated that he could not recall whether he agreed to EPB being the
14 beneficiary on a life insurance policy in Mr. Fawcett's name (the "Policy"). *See* Accusation
15 (attached hereto is a true and correct copy of the Accusation at Exhibit "A"). Further, the
16 Accusation noted that Mr. Fawcett had made loans to myself, but could not recall the details
17 of the loans. The Accusation noted specifically that Mr. Fawcett was 87 years old and that
18 he stated to the Department that "his [REDACTED] *See id.* at p. 3.

19
20 12. The Accusation asserted violations of California Insurance Code, Sections 1168(i) and (j),
21 in addition to 1668.1(a) and (b). Only Section 1668(i) is a fraud based allegation.

22
23 13. In reality, Mr. Fawcett and his family were long-time friends and associates of my family.
24 Mr. Fawcett engaged in private lending, which I had utilized over the years. My company,
25 EBP, did in fact borrow monies from Mr. Fawcett to fund the purchase of EBP's building.
26

27
28 ¹ The Accusation itself noted that I have known Mr. Fawcett for over twenty years. *See* Accusation, Exhibit "A".

1 The loan was secured by the building. As Mr. Fawcett got older, a decision was made to
2 take out an insurance policy (with EBP as the beneficiary *and* the payor) so that any unpaid
3 debts could be funded by the Policy proceeds upon death. At the time of the Accusation,
4 EBP had paid \$334,761.88 in premiums. To date, EBP has paid \$375,461.88 in premiums
5 on the Policy. Mr. Fawcett was always aware of the Policy and consented to the
6 arrangement.
7

8 14. Unfortunately, in late 2017, Mr. Fawcett began to suffer from [REDACTED]. *See*
9 Declaration of Leonard M. Tavera, Esq., Attorney for Robert and JoAnn Fawcett (submitted
10 in support of Gregory Acosta to the Department) (attached hereto is a true and correct copy
11 of the Tavera Declaration at Exhibit "B"). He was also 87 years old when Department
12 investigators knocked on his door. As a result, Mr. Fawcett was likely confused by the
13 presence of investigators in his home. As his daughter attested in support of me to the
14 Department:
15

16 I cannot believe an investigator showed up unannounced at my Father's residence to
17 ask personal and financial questions without prior notice or a consenting adult
18 present. My Father is on Long Term Care . . . due to [REDACTED]." My
19 Father was very uncomfortable and [REDACTED] at what the investigator was trying to
20 achieve. I am extremely upset that this has happened, especially since my Father
states that he knew about the [P]olicy but he felt so uncomfortable in the situation
that he answered most of the questions with "I don't know." He also specifically
stated that his [REDACTED]

21 *See* Declaration of Karen Fawcett Adams, Daughter of Robert and JoAnn Fawcett (submitted
22 in support of Gregory Acosta to the Department) (attached hereto is a true and correct copy of
23 the Adams Declaration at Exhibit "C").
24

25 15. In addition to Mr. Fawcett's daughter and attorney, Mr. Fawcett's CPA also put in a
26 declaration in support of me. *See* Declaration of Stephen Getzoff, CPA to Robert and JoAnn
27 Fawcett (submitted in support of Gregory Acosta to the Department) (attached hereto is a
28 true and correct copy of the Getzoff Declaration at Exhibit "D"). All three declarations

1 indicated that Mr. Fawcett was aware of (and consented to) both the loan and the Policy. It
2 is significant to note that the Policy could not have been obtained without a full physical
3 exam of Mr. Fawcett.

4 16. As a result of these submissions, I negotiated and agreed to a Stipulation and Waiver, which
5 was incorporated into the Stipulated Order by the Department. *See* Order, File No. LA 2015
6 00490-AP (the "Order") (attached hereto is a true and correct copy of the Order at Exhibit
7 "E").
8

9 17. The Order specifically (and solely) references Section 1668.1 (non-fraud provision) and
10 provides that "Respondents agree that they will come into compliance with California
11 Insurance Code Section 1668.1 within thirty (30) days." *See id.* at p. 2 of Stipulation and
12 Waiver.
13

14 18. In accordance with the Order, within thirty (30) days' of its issuance, I transferred the Policy
15 to Mr. Fawcett, and updated the beneficiary to Mr. Fawcett's wife, JoAnn Fawcett. The new
16 contingent beneficiary is the Fawcett Family Trust. I also paid off the loan balance of
17 \$380,040.64 in full. This is in addition to the \$375,461.88 paid by EBP toward premiums
18 on the Policy.

19 19. Sections 1668.1, provides that I had "induced a client . . . [to] make a loan," *see* Section
20 118.1(a), and had induced a client to make EBP "the owner or beneficiary of a life insurance
21 policy." *See* Section 1668.1(b). As a practical matter, the Order, which solely addressed
22 my insurance licenses, had absolutely no implications or effect on these licenses.
23

24 20. I would never have consented to the Order had it in any way been based on a fraud statute,
25 as I had several witnesses, including Mr. Fawcett's own daughter and attorney, who were
26 prepared to testify that no nefarious activity was involved.
27
28

- 1 21. In an effort to move on from the Accusation, and because the Order had no effect on my
2 insurance business (as my California insurance licenses remained intact), I agreed to the
3 Order, which (again) only references a non-fraud based statute. The Order had nothing to
4 do with my securities licenses nor does the Department have jurisdiction over those licenses.
5
6 22. On July 17, 2018, Michael Pedlow, the Chief Compliance Officer for KIS, received a letter
7 from FINRA, asserting that:

8 FINRA has determined that Gregory Acosta . . . is subject to a disqualification
9 as defined in Section 3(a)(39) of the Securities Exchange Act of 1934. The
10 disqualification arises from the Order filed by the Insurance Commissioner
11 of the State of California . . . based on a violation of *Section 1168(i)* of the
California Code, *a law or regulation that prohibits fraudulent, manipulative,
or deceptive conduct.*

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

17 To initiate the membership Continuation process, the member must send a
18 completed MC-400 Application . . .

19 In connection with the Membership Continuance proceeding, the member
20 will be required to provide proof that the disqualified individual is covered
21 by the firm's fidelity bond. In addition, if the association is approved, FINRA
22 will conduct periodic special examinations for the duration of the individual's
23 statutory disqualification, for which FINRA will assess the member an annual
24 fee....

25 *If the firm declines to pursue the Membership Continuance process, it should
26 immediately terminate its association with this individual . . .*

27 (See Letter to Michael Pedlow July 13, 2018) (attached hereto is a true and correct copy of
28 the Pedlow Letter at Exhibit "F") (emphasis added).

- 23 23. KIS declined to initiate the Membership Continuation process, and in accordance with
24 FINRA's directive, terminated my association on July 16, 2018. The MC-400 requests
25 information about terms and conditions of the proposed association, with special emphasis
26
27
28

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

on the proposed supervision to be provided by the broker-dealer over the disqualified person. See FINRA's Membership Continuance Application ("MC-400" or "Application") (attached hereto is a true and correct copy of the Application as Exhibit "G").

24. Because the Membership Continuation process was available *solely* to my broker-dealer, and FINRA has stood on its position that I am statutorily disqualified based on a violation of 1168(i) (the fraud statute that was *not* in the final Order), I am effectively barred from working as a securities broker.

25. As a result of FINRA's designation, and Kestra's termination of my registration at FINRA's directive, my errors and omissions professional liability insurance coverage ("E&O") for my securities and insurance business was also terminated.

26. Additionally, I have attempted to obtain E&O coverage for my securities business (for purposes of coverage of prior acts), but have been unable to do so. I have been able to obtain two "stacked" policies covering my life insurance business; however, these policies exclude "prior acts" coverage. See Policy Excerpts (attached hereto is a true and correct copy of the Policy Excerpts as Exhibit "H").

27. Since my E&O policy through Kestra has an end reporting date for prior acts of April 1, 2019, I will have *zero* coverage for my actions prior to the inception date of the new policies after April 1, 2019. Because claims can often take years to be filed, this puts me at tremendous risk for uncovered claims.

28. For the 40 plus years that I have been in the financial services industry, I have *always* had prior acts coverage. To operate without it puts myself and my clients at significant risk.

29. Further, under the KIS policy, I had the option to purchase "tail coverage." Tail coverage allows an individual who has retired from the securities or life insurance business to extend coverage to include prior acts. However, the KIS policy had a specific exclusion, which

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

does not allow for tail coverage, if you were “terminated for cause.” As a result, I am not able to cover myself through tail coverage.

30. Moreover, up until my termination, I had received approximately \$250,000 annually in securities trails² renewals. This has dropped to zero. I will never be able to recover the funds lost during this time period, even if the court finds that I am not subject to statutory disqualification, as I am not currently licensed and therefore cannot receive securities commissions.

31. My customers are also being harmed, as I cannot service their accounts or advise them on how to manage their securities accounts. I cannot assist them with securities trades whatsoever or provide them with any securities recommendations. Additionally, I cannot even provide my insurance customers assistance with their accounts. Instead, my staff has to refer them directly to carriers. This is because many of my insurance and securities customers overlap, and my business is intertwined. As a result, Kestra has taken the position that I may not be in my office at all, or I will jeopardize the licenses of my other staff members.

32. My reputation for servicing clients has suffered irreparable harm, and the untold harm to myself, my business and customers continues to mount.

33. In sum, FINRA’s belief that I am subject to statutory disqualification has irreparably harmed me by (1) ending my ability to work in the securities’ industry, (2) irreparably negatively effecting my life insurance business, as there will now be gaps in my E&O coverage, exposing myself and my customers to undue harm, and (3) irreparably negatively effecting my business and my reputation by preventing me from servicing my customers.

² A trailing commission is an annual fee paid over the lifetime of investment products. These commissions are paid annually to the financial planner or advisor who recommended the investment.

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

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

Executed on August 23, 2018


GREGORY ACOSTA

On the __ day of August, 2018, GREGORY ACOSTA before me personally appeared and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this written instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on this instrument, executed the instrument. WITNESS my hand and official seal.

Notary Signature

(Print Name)

My Commission Expires: _____

See attached
(seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

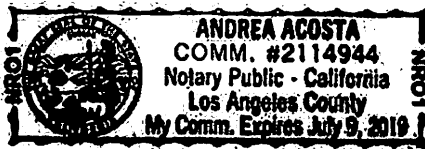
On August 23, 2018 before me, Andrea Acosta - Notary
Date Here Insert Name and Title of the Officer

personally appeared Gregory Acosta
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Andrea Acosta
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Declaration in support of Preliminary Injunctive Relief Document Date: August 23, 2018
Number of Pages: 10 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)
Signer's Name: Gregory Acosta
 Corporate Officer - Title(s): _____
 Partner - Limited Generale
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: Self

Signer's Name: _____
 Corporate Officer - Title(s): _____
 Partner - Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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

EXHIBIT A

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
2 Enforcement Bureau
BRIAN D. FITZGERALD, Bar No. 118255
3 Attorney IV
45 Fremont Street, 21st Floor
4 San Francisco, CA 94105
Telephone: 415-538-4104
5 Facsimile: 415-904-5490

6 Attorney for The California Department of Insurance
7

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

10
11 In the Matter of the Licenses and Licensing
Rights of

12
13 Gregory Acosta and Diamond Bar
Executive Benefit Programs &
Insurance Services, Inc.,

14 Respondents.
15

File No. LA 2015 00490 - AP

ACCUSATION

16 The California Department of Insurance (Department) in its official capacity alleges that:

17 I

18 Respondent Gregory Acosta (Respondent) formerly held licenses as a Casualty Broker-
19 Agent and Property Broker Agent. Respondent Acosta presently holds licenses for Accident and
20 Health, Brokering Life Settlement, Life-Only, and Variable Contracts. Respondent Diamond Bar
21 Executive Benefit Program, Inc. (EBP), presently holds licenses Accident and Health, Life-Only,
22 and Variable Contracts.

23 II

24 On July 28, 2015, the Department received a Request for Assistance (RFA). The
25 complainant alleged that Respondent Gregory R. Acosta (Respondent), doing business as
26 Diamond Bar Executive Benefit Program, Inc. (EBP), took out a life insurance policy with Pacific
27 Life (PL), # [REDACTED] in the name of an elderly customer named Robert Fawcett (Fawcett),
28 unknown to the client, with himself the beneficiary. The RFA/complainant also alleged Acosta

1 had a substantial loan with Fawcett and told the complainant he would pay the loan off with the
2 death benefit proceeds.

3 III

4 On September 30, 2015, the Investigation Division (ID) sent correspondence to PL,
5 requesting policy information on Fawcett. On October 22, 2015, ID received correspondence
6 from PL. The correspondence verified that policy # [REDACTED] for Fawcett was in force.

7 IV

8 It was learned that on February 22, 2008, Respondent had sent correspondence to PL
9 along with a life insurance application for Fawcett. In his letter, Acosta stated the owner,
10 premium payer, and beneficiary for the policy being applied for would be EBP and that he,
11 respondent Acosta, was the president of EBP and was applying for \$750,000.00 of life insurance.
12 In the letter, he further indicated he was purchasing a building and Fawcett, a client for numerous
13 years, wanted to loan the capital to EPB. The loan provided a lower interest rate compared to any
14 lender and a better rate of return for Fawcett. Respondent Acosta and Fawcett entered into a
15 binding agreement for the commercial loan to purchase the property. The loan secured from
16 Fawcett was approximately \$750,000.00.

17 V

18 On January 26, 2017, a Department investigators interviewed Fawcett. It was learned that
19 Fawcett has known broker/agent Acosta for approximately 20 years. Fawcett referred to Acosta
20 as a business associate. Acosta has assisted Fawcett with personal and life insurance policies.

21 VI

22 Fawcett was informed that the investigators wanted to discuss with him a life insurance
23 policy with PL and a loan between Acosta and Fawcett. Fawcett stated he has made a couple of
24 loans to Acosta yet could not recall how many, but Acosta paid him back. Fawcett could not
25 recall what were the reasons for the loans.

26 VII

27 Fawcett stated Acosta currently has an outstanding loan and owes Fawcett approximately
28 \$400,000.00. The loan was originally for \$500,000.00. Fawcett could not recall details on the

1 loan, but stated that Acosta was in the process of purchasing a building at the time when Acosta
2 borrowed the money from Fawcett. Fawcett could not recall when he gave Acosta the loan, but
3 Acosta was making monthly payments of \$6000.00. Fawcett also stated that he recently made
4 another loan to Acosta in the amount of \$100,000.00 sometime the month prior (December 2016).
5 Fawcett could not remember the reason for the loan, but stated he should be receiving a payment
6 soon on that loan.

7 VIII

8 Fawcett was informed the investigators had information that in February 2008, a PL
9 insurance policy was issued for the face amount of [REDACTED] and listed Fawcett as the insured.
10 The policy owner and beneficiary was EBP. Fawcett was shown a PL insurance application dated
11 February 22, 2008. Fawcett reviewed the policy application and confirmed his signature on the
12 documents. Fawcett stated the policy was issued 10 years ago and he was now 87 years old and
13 his [REDACTED] Fawcett stated he did not recall whether he agreed to EBP being
14 the beneficiary on the policy. Fawcett was shown a PL Annual Statement dated March 5, 2014 to
15 March 4, 2015, for a Universal Life insurance policy for the face [REDACTED] The
16 investigator observed that it listed Fawcett as the insured and EBP as the policy owner and
17 beneficiary. Fawcett stated he had never seen the statement. Fawcett was informed that,
18 according to the paperwork from PL, the policy was taken out to secure a loan between Fawcett
19 and Acosta; a loan in the amount of \$750,000.00, the same amount as [REDACTED]. Fawcett could
20 not recall details of the loan. Asked whether he was making any premium payments on the
21 policy, Fawcett stated that he only makes his premium payment once a year in January, a
22 payment of \$120,000.00 and \$98,000.00. Fawcett stated he had no knowledge of EBP being the
23 beneficiary on a life insurance policy on himself. Fawcett stated the beneficiaries on his life
24 insurance policies are his wife, son and daughter. Fawcett stated he would not agree to EBP as a
25 beneficiary on a life insurance policy on himself. Fawcett stated he has loaned money to Acosta,
26 but had no knowledge of policies being taken out on himself to secure any loans and for EBP to
27 be listed as the beneficiary.

28

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

IX.

The matters alleged in paragraphs II through VIII above show that Respondents are subject to discipline pursuant to California Insurance Code sections 785, 1738, 1738.5, 1739, 1742 for violations of Sections 1668(i) and (j).

X.

The matters alleged in paragraphs II through VIII above show that Respondents' actions are violations of California Insurance Code sections 1668.1(a) and (b).

Dated: January 10, 2018

CALIFORNIA DEPARTMENT OF INSURANCE

By Brian D. Fitzgerald
Brian D. FitzGerald
Attorney for the Department

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

In the Matter of the Licenses and Licensing)
Rights of)
)
GREGORY ACOSTA)
and DIAMOND BAR EXECUTIVE)
BENEFIT PROGRAMS & INSURANCE)
SERVICES, INC.,)
)
Respondents.)

NOTICE OF DEFENSE

File No. LA 2015 00490-AP

To: Department of Insurance
State of California
45 Fremont Street, 21st Floor
San Francisco, CA 94105

I, the undersigned and the Respondent named in the above-entitled proceeding, acknowledge receipt of a copy of the Accusation and of the Statement to Respondent.

I request a hearing in this proceeding to permit me to present my defense to the charges contained in the Accusation.

Date: _____

(Signature of Respondent)

Present Mailing Address:

Telephone No: _____

If this is not your address of record with the Department of Insurance, you must report your current address pursuant to California Insurance Code §1729. Instructions for reporting an address change can be found at www.insurance.ca.gov.

Please list any dates you may be unavailable for a hearing in the next six months.

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

STATEMENT TO RESPONDENT

Attached hereto is a copy of an Accusation which is on file with the Department of Insurance, State of California, 45 Fremont Street, 21st Floor, San Francisco, California, which is hereby served upon you. Affirmative proof of any or all parts thereof may subject your license(s) to suspension or revocation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Department of Insurance within fifteen (15) days after the Accusation was personally served upon you or mailed to you, you will be deemed to have waived your right to a hearing in the matter and the Department of Insurance may proceed upon the Accusation without a hearing and take action thereon as provided by law.

The request for a hearing may be made by signing and delivering or mailing the enclosed form entitled "Notice of Defense" or by delivering or mailing a notice of defense within fifteen (15) days, as provided by Government Code Section 11506, to the Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, California 94105.

The enclosed "Notice of Defense" if signed and filed with the Department of Insurance shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objections to the form of the Accusation unless you file another separate notice of defense thereon, as provided by Section 11506(a) (3) of the said code within the said fifteen (15) days.

Copies of Sections 11507.5, 11507.6 and 11507.7 of the Government Code as enacted by Chapter 808 of the Statutes of 1968 (as amended), are set forth on the back of this page and the attached page. If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the Department of Insurance, you may contact the counsel signing the Accusation at 45 Fremont Street, 21st Floor, San Francisco, California 94105.

If you return the enclosed or any Notice of Defense to this Department you will be notified of the date, time and place of hearing. Be sure to keep your address of record with this Department current, as notification will be by mail only.

You may and are encouraged to be represented by an attorney in this proceeding, but such representation is not mandatory.

Procedure for Postponement

If you file a Notice of Defense, this matter may be set for hearing and you will receive a Notice of Hearing setting the time and place of hearing. The hearing may be postponed for a good cause. If you have a good cause, you are obliged to notify the agency within ten (10) of the receipt of the hearing notice after you discover the good cause. Failure to notify the agency within ten (10) days will deprive you of a postponement.

CALIFORNIA GOVERNMENT CODE SECTION
11507.5, 11507.6 and 11507.7

11507.5 The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

11507.6 After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

11507.7

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel

discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as know to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.


(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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

EXHIBIT B

1e 6. It is my understanding that in order to ensure the loan payment, Greg Acosta
2 purchased a life insurance policy which would fund the loan payoff if Mr. Fawcett passed away
3 prior to the expiration of the loan term. In speaking with Mr. Fawcett over the years, it was clear to e
4 me that Mr. Fawcett both knew about the policy and consented to it. I am informed by both Mr.e
5 Fawcett and Gregory Acosta that the premiums on the policy have always been paid exclusively
6 by Executive Benefit Programs, Inc. I am unaware of any occasion when Mr. or Mrs. Fawcett
7 made premium payments on the policy. I am also unaware of any lapse in coverage for the policy
8 taken by Gregory Acosta on Mr. Fawcett and I am unaware of any delinquencies on the loan
9 payments to Mr. Fawcett.

10 I declare under penalty of perjury under the laws of the State of California that thee
11 foregoing is true and correct and that this declaration was executed on January 19, 2018, at
12 Glendale, California.

13
14 
15 Leonard M. Tavera

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

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

DECLARATION OF KAREN FAWCETT ADAMS

I, Karen Fawcett Adams, declare as follows:

1. I am the daughter of Robert Fawcett as well as his attorney-in-fact for financial and health care purposes, as evidenced by Exhibits "A" and "B" attached hereto, which are true and correct copies of the Powers of Attorney. I have personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could competently and truthfully do so.

2. I have known both Greg Acosta and his wife, Susan Acosta, for over 20 years. They are personal friends to both me and my husband, my parents-Robert and JoAnn Fawcett, and other family members. They visit my parents on a regular basis at their home in Diamond Bar, California.

3. I am aware of the loan which was given to Susan Acosta and I personally have overseen many of the monthly payments that she makes which are either mailed or personally delivered. They are always on time. I am aware of my parents' financial situation and that he has a policy whose purpose is to pay off the balance of his loan to Susan Acosta in the event of his death. Our family attorney, Leonard Tavera, and our CPA, Stephen Getzoff, are both aware of the policy and the loan payments.

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

EXHIBIT D

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

DECLARATION OF STEPHEN GETZOFF

I, Stephen Getzoff, declare as follows:

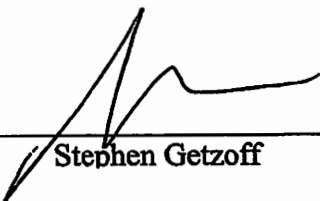
1. I am a Certified Public Accountant, tax preparer and have advised for Mr. and Mrs. Fawcett regarding their personal and business tax matters for 8 years. I have personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could competently and truthfully do so.

2. Mr. and Mrs. Fawcett and I have had numerous conversations regarding their finances while I was preparing their taxes. I know they were aware of, and in agreement with, the financial transactions regarding the policy owned by Executive Benefit Programs, Inc. and the loan to Susan Acosta.

3. In the past, I have discussed with Mr. Fawcett his \$ [REDACTED] life insurance policy which is owned by Executive Benefit Programs, Inc. The purpose of the contract was to pay off the balance of any loan proceeds in the event of his death. I am also aware of the fact that Executive Benefit Programs, Inc. has made all the premium payments on this contract.

When I started working with Mr. and Mrs. Fawcett, it was evident to me during those conversations that Mr. and Mrs. Fawcett were knowledgeable and comfortable with the life insurance policy and loan transaction. They have never expressed to me any complaints or concerns regarding Greg or Susan Acosta.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 19, 2018, at ENUNO, California.



Stephen Getzoff

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

EXHIBIT E

1
2
3
4
5
6
7
8

**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

9
10
11
12

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

13
14
15

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 e

16
17

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

18
19

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.

20
21

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

22

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

23
24

DAVE JONES
Insurance Commissioner

25
26



TERESA R. CAMPBELL
Assistant Chief Counsel

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

EXHIBIT F



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 ██████████

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

EXHIBIT G



FINRA

MEMBERSHIP CONTINUANCE APPLICATION ("MC-400" or "Application")

Please Typewrite, Print or Fill Electronically

This Application should be completed by the Member Firm ("Applicant" or "Firm") and filed on behalf of the individual subject to disqualification. Please indicate which of the following applies to the individual:

- Currently associated with the Firm but not registered with FINRA;
- Currently associated with the Firm and registered with FINRA;
- A prospective employee that intends to register with FINRA through the member firm (a Form U4 must be filed electronically with FINRA before the MC-400 Application is submitted and the individual must qualify for the registration prior to the submission of the MC-400 Application); or
- A prospective employee that intends to associate with the Firm but not register with FINRA.

For ease of reference, an individual in any of the aforementioned categories will be identified as "prospective employee" throughout this application.

Application must be made by the member to the FINRA, 9509 Key West Avenue, Rockville, MD 20850, Attn: SD Group.

(Full Member Firm Name & CRD No.)

(Firm Contact and Phone Number)

(Address)

(Full Name & CRD No. (if applicable) of Prospective Employee)

Section One: Nature of the Disqualifying Event

1. Describe the event that is the basis for the statutory disqualification.

2. Furnish a copy of any final determination, rendered by any disciplinary body or court that is the basis for the statutory disqualification. (See Article III, Section 4, NASD By-Laws.)
3. Does the firm or prospective employee have any reason to believe that the event does not constitute a statutory disqualification under Article III, Section 4 of NASD's By-Laws? Yes No

If yes, explain briefly below.

4. If the statutory disqualification is based upon a criminal conviction:

- (a) is the prospective employee currently on probation? Yes No
- (b) was any form of post-conviction relief granted? Yes No

Please furnish a copy of any documentation related to the post-conviction relief.

5. Submit a signed statement, from the prospective employee that addresses (i.e., describes the circumstances surrounding or provides context for) the event underlying the statutory disqualification.
6. Outline the prospective employee's experience in the investment banking or securities business and include a statement from the prospective employee as to why he/she should be approved to associate in the capacity(s) requested.

Section Two: Information About the Prospective Employee and the Proposed Association with the Firm

1. Is the prospective employee currently, or is it contemplated that he/she will become, a partner, executive officer, or direct or indirect owner of the Applicant? Yes No

If yes, describe the prospective employee's current and contemplated relationship(s) to the Applicant.

2. Will the prospective employee have any supervisory duties? Yes No

If yes, describe in detail.

3. Specify the capacity, registered or non-registered, in which the prospective employee will function.

4. Fully describe the duties contemplated for the prospective employee as well as any limitations and restrictions that will be placed upon him/her.

5. Describe the proposed compensation method for the prospective employee.

6. Provide the address of the office in which the prospective employee is/will be employed.

- a. Is this a home office branch office?

- b. Is this an Office of Supervisory Jurisdiction ("OSJ")? (See NASD Rule 3010)

Yes No If "yes" state name of person designated to carry out supervisory procedures for the OSJ.

- c. If the prospective employee is not to be employed in an OSJ, what OSJ of the Firm has/would have ultimate jurisdiction over him/her? Provide the name and title of the individual in that office designated to carry out supervisory procedures over the prospective employee.

Section Three: Proposed Supervision of the Prospective Employee

Please answer the following questions regarding the proposed supervision of the prospective employee.

- 1. a. Provide the name, title and CRD number of the individual who will provide direct supervision over the prospective employee.

- b. Is there any familial relationship between the prospective employee and the proposed supervisor (e.g., are they related by blood or marriage?) Yes No

If yes, describe the nature of the relationship.

- c. Is the proposed supervisor a partner, executive officer, direct or indirect owner of the Applicant? Yes No

If yes, describe the supervisor's relationship to the Applicant.

- d. Provide a schedule below, showing the days and hours that the proposed supervisor and the prospective employee will work in the same office location.

- e. Does the prospective employee have any business or financial relationship with the proposed supervisor that is distinct from the proposed employment? Yes No

If yes, please describe the relationship. _____

- f. Describe the business experience of, and the principal registrations held by, the proposed supervisor. Also list his/her other duties.

2. Does the proposed supervisor currently supervise any other employees of the Firm? Yes No

If so, how many individuals does the proposed supervisor currently supervise? _____

What are the job functions of the supervised individuals?

3. Describe in specific detail, on a blank page, the proposed plan of supervision for the prospective employee. Attached is a link which describes a checklist of items to consider when submitting a plan of heightened supervision. **(An example of a plan of heightened supervision.)**

Submit a current copy of the Applicant's written supervisory procedures.

Section Four: Background Information About the Firm (General)

- 1. a. Number of years the Applicant has been in securities business. _____
- b. Effective date of membership in FINRA. _____
- c. Number of Offices of Supervisory Jurisdiction. _____
- d. Number of branch offices. _____
- e. Number of employees. _____
- f. Number of registered principals. _____
- g. Number of registered representatives. _____
- h. Type(s) of business [es] in which the Applicant is engaged.

2. Please indicate whether the Applicant is a member of any Self-Regulatory Organization, and for each please provide the effective dates of memberships:

- | | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> AMEX _____ | <input type="checkbox"/> BSE _____ | <input type="checkbox"/> CBOE _____ | <input type="checkbox"/> CHX _____ |
| <input type="checkbox"/> ISE _____ | <input type="checkbox"/> NSX _____ | <input type="checkbox"/> NYSE _____ | <input type="checkbox"/> NYSE Arca _____ |
| <input type="checkbox"/> PHLX _____ | <input type="checkbox"/> MSRB _____ | <input type="checkbox"/> NOX _____ | <input type="checkbox"/> OTHER _____ |

3. Does the Applicant currently employ any other individuals who are subject to a statutory disqualification?

Yes No

If yes, please identify those individuals, and for each, identify the supervisor and provide the address of the office at which they are located. _____

4. Will the prospective employee be permitted to participate, directly or indirectly, in the ownership of the Applicant through stock purchases, capital contributions or otherwise? Yes No

If yes, supply complete facts.

5. Does the Applicant, or any officer, partner, direct or indirect owner of the Applicant, have or contemplate loans to the prospective employee either directly or indirectly? Loans contemplated would include, but are not limited to those of fixed assets, cash, securities, advances, promissory notes and subordinated loans.

Yes No

If yes, supply complete facts. The response should take into account any oral or written agreements. If the arrangement is based on a written agreement, please supply copies of the relevant documentation.

6. Does the prospective employee have or contemplate loans to the Applicant, or any officer, partner, direct or indirect owner of the Applicant, either directly or indirectly? Loans would include, but are not limited to those of fixed assets, cash, securities, advances, promissory notes and subordinated loans. Yes No

If yes, provide a detailed description of each such loan. The response should take into account any oral or written agreements. If the arrangement is based on a written agreement, please supply copies of the relevant documentation.

7. Are there any personal relations between the prospective employee and any officer, partner, or direct or indirect owner of the Applicant? (This statement should include any marriage or blood relations.)

Yes No

If yes, please describe the relationship.

8. Are there any business or financial relations between the prospective employee and any officer, partner, direct or indirect owner of the Applicant? Yes No

If yes, please describe the relationship.

9. a. Within the past 5 years, has the Applicant, its registered principals (in the employing office), or the proposed supervisor, ever been the subject of any proceeding which has resulted in the imposition of disciplinary sanctions by FINRA, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, any federal or regulatory agency, foreign financial regulatory authority, any self-regulatory organization or commodities exchange, or any court or state agency? Yes No

If yes, describe the proceeding and include in the description the following: nature of such proceeding; by whom it was initiated; the date it became final; and the penalties or remedial actions imposed, including any provision for restitution, rescission or disgorgement or any undertaking (i.e. to review a supervisory system or hire an independent consultant). Attach a copy of any order, decisions or document issued by the court or agency involved, if available.

- b. Are any such proceedings presently pending against the Applicant? Yes No

If yes, describe fully.

10. Has the Applicant or proposed supervisor ever been found to have failed to supervise conduct which was similar in nature to the disqualifying conduct of the prospective employee?
11. Has the Applicant, at anytime within the past 5 years, been involved in any litigation where it was alleged that any person associated with the Applicant engaged in conduct similar in nature to the disqualifying conduct in which the prospective employee was engaged? Yes No

If yes, state details.

12. Furnish duplicate copies of Applicant's balance sheet or trial balance as of a date within thirty days of the date on which this application is filed.

13. Explain the Firm's basis for sponsoring the prospective employee. Specifically speak to the fitness and character of the individual as it relates to the investing public and why he/she should be permitted to become or remain associated in the capacity requested. Briefly present reasons on an attached sheet.

Complete and accurate answers to all questions listed will eliminate delay and assist in prompt handling of the application. If there is not sufficient space to answer any question, please attach a separate sheet noting the number of the question being answered.

APPLICANT'S CERTIFICATION

I hereby certify, on behalf of the above-named Firm, that I have read and understand the questions and statements contained in this Application and that each of the responses hereto is true and complete. I have taken the appropriate steps to verify the accuracy and completeness of the information contained in and with this Application, including information in the Form U4 submitted on behalf of the prospective employee.

I hereby certify, on behalf of the above-named Firm, that the Firm's Form BD is current in all respects as provided in Article IV, section 1(c) of NASD's By-Laws.

I swear or affirm that I have read and understand the items and instructions on this application and that the answers (including attachments) are true and complete to the best of my knowledge.

I understand that the Firm and I are subject to the imposition of sanctions under NASD rules or Section 32 of the Securities Exchange Act of 1934, as amended, in the event false information is provided on this application or there are omissions of material facts. I further certify that I will at all times keep the information called for herein accurate and up-to-date by supplementary written notices to the Secretary of the Corporation or his/her designee.

I agree that at all times if there are any material and relevant changes which may affect the outcome of this Application, that information will be submitted immediately to FINRA.

I hereby authorize, on behalf of the above-named Firm, for FINRA to deduct the non-refundable MC-400 processing fee of \$5,000, and if required, the eligibility hearing fee of \$2,500 from the Firm's CRD Flex-Funding Account.

[Date]

[Signature of Executive Representative or Registered Principal of Applicant as Authorized Signatory]

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

EXHIBIT H



Professional Liability

One Penn Plaza
32nd Floor
New York, NY 10119
(212) 613-4390
www.navg.com

August 7, 2018

David C. Wash
Zodiac Insurance Services Inc. (Shamong, NJ).
62 Tuckerton Road
Shamong, NJ 08088

Via Email: davidwash@zodiacinsurance.com

Re: Diamond Bar Executive Benefit Programs & Insurance Services
Navigators Policy Number: [REDACTED]
Errors & Omissions Insurance
Binder Expiration: September 6, 2018

Binder

Dear David:

Please be advised that the above referenced account, subject to the terms and conditions below, is bound effective **August 7, 2018**. This binder shall remain in force until **September 6, 2018**.

Named Insured(s): Diamond Bar Executive Benefit Programs & Insurance Services
Executive Benefit Program Inc
Company Paper: Navigators Specialty Insurance Company (Rated "A" by A.M. Best)
Policy Form: Navigators Errors & Omissions Insurance Policy Form (09/09)
Policy Period: August 7, 2018 to August 7, 2019

Limits of Liability

All limits inclusive of Defense Costs, Charges & Expenses

Deductible

Each Claim - Applicable Claim Expenses

Annual Premium

\$500,000 Each Claim

\$10,000

\$6,360

\$500,000 Policy Period Aggregate

Professional Services: Solely in the performance of services as a life insurance agent and broker, including the sale of mutual funds and fixed annuities; but not including the sale of variable annuities or securities (other than mutual funds.)

Notices, Forms and Endorsements:

NSIC CA NOTICE (09/16) CALIFORNIA COMPLAINT NOTICE

1. NAV-ML-002 (11/12) OFAC ENDORSEMENT
2. MPL 006 (01/09) Amendatory Endorsement -- Minimum Earned Premium
3. MPL 006 (01/09) Amendatory Endorsement -- Insurance Agent and Broker
4. MPL 006 (01/09) Amendatory Endorsement -- Class Action Sub-Limit
5. NAV-MPL-119 (01/17) Pending & Prior Litigation and Prior Notice Exclusions
6. NAV-MPL-113 (05/14) Removal of Early Claims Resolution Endorsement
7. NSIC-CP-012 (07/16) NETWORK SECURITY AND PRIVACY EXCLUSION ENDORSEMENT
8. NAV-MPL-112 (12/15) DISSEMINATION OF UNSOLICITED MATERIAL EXCLUSION

Retroactive Date: August 7, 2018

THIS BINDER IS BEING ISSUED BY A CARRIER NOT LICENSED TO DO BUSINESS IN THE STATE WHERE THE INSURED IS DOMICILED. YOUR OFFICE MUST HAVE A VALID E&S LICENSE AND WILL BE RESPONSIBLE FOR THE COLLECTION AND REMITTANCE OF ANY APPLICABLE TAXES AND FEES AS WELL AS THE FILING OF ALL REQUIRED AFFIDAVITS.

This Binder is strictly conditioned upon no material change in the risk (including but not limited to claims or potential claims), between the date of this letter and the inception date of the proposed policy. The Insured is required to advise the potential Insurer of any changes immediately and prior to binding coverage. In the event of such change in risk, the Insurer may in its sole discretion, whether or not this Binder has been already accepted by the Insured, modify and/or withdraw this Binder.

Thank you for thinking of **Navigators** for your professional liability needs. We look forward to working with you on other opportunities in the near future. If you have any questions, please give me a call at (212) 613-4390.

Sincerely,



Stuart Kohn
Tel: (212) 613-4390
skohn@navg.com

PENDING & PRIOR LITIGATION AND PRIOR NOTICE EXCLUSIONS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

ERRORS AND OMISSIONS POLICY

In consideration of the premium paid, it is understood and agreed that **Section IV., EXCLUSIONS** is amended to include the following:

Based on or arising out of any fact, circumstance, demand, act, error, omission, situation, **Claim**, or any **related claim** which has been the subject of any notice given under any prior insurance policy;

Based on or arising out of any litigation, arbitration, subpoena, civil proceeding, criminal proceeding, regulatory proceeding, administrative proceeding, investigative proceeding or any other similar type of matter involving any **Insured** instituted prior to and/or pending as of the inception date of the first policy issued by the **Company** which was continuously renewed to the inception date of this Policy, and/or based on or arising out of any fact, circumstance, demand, act, error, omission, situation, **Claim**, or **related claim** underlying or alleged in such prior or pending proceeding or matter.

It is understood and agreed that nothing herein alters or amends any of the provisions or requirements of this Policy, including but not limited to the notice provisions as set forth in policy section **V. Conditions, A. Reporting of Claims and Potential Claims** parts 1. and 2.

All other provisions of this policy remain unchanged.

Zodiac Insurance Services, Inc.

62 Tuckerton Road
Shamong, NJ 08088
856-396-6500

Policy Number: [REDACTED]

UMR: [REDACTED]

Issuance Date: 8/9/2018

Binder of Insurance

Named Insured: Diamond Bar Executive Benefit Programs & Insurance Services & Greg Acosta, Inc.
712 N. Diamond Bar Blvd
Diamond Bar, CA91765

Errors & Omission Insurance (Excess)

Binder Issue Date: 08/08/2018

Binder Expiration Date: 09/08/2019

Please be advised that the above referenced account, subject to the terms and conditions below, is bound and shall remain in force for a period not to exceed thirty (30) days from the effective date of this binder.

Underwriters: certain Underwriters at Lloyd's, London

Policy Form: Miscellaneous Errors & Omissions Policy Form - Excess

Effective Date: 08/07/2018 – 08/07/2019

Limit of Liability:

Limit of Liability – Per Claim (Inclusive of Defense Costs, Charges & Expenses)	Limit of Liability – Aggregate (Inclusive of Defense Costs, Charges & Expenses)	Deductible (Each Claim – Inclusive of Claim Expenses)
\$500,000	\$500,000	N/A

Premium, Taxes, Fees:

Premium: \$3,000
Surplus Lines Tax: \$90
Filing Cost: \$6

25% Earned Minimum Premium, Subject to Short Rate Cancellation

Professional Services: To Follow Primary

Retroactive Date: 08/07/2018

Surplus Lines Tax Filing Information:

| Producer: Zodiac Insurance | License: 0H93955 | State of Filing: CA |

Underlying - Navigators (Binder) \$500,000 each claim and in the aggregate, \$10,000 deductible.

Endorsements:

1. RETROACTIVE EXCLUSION (FULL) (NMA 2840), as attached.
2. PREMIUM PAYMENT CLAUSE (LSW 3001), as attached.
3. SEVERAL LIABILITY NOTICE (LSW 1001), as attached.
4. SANCTION LIMITATION AND EXCLUSION CLAUSE (LMA 3100), as attached.
5. NUCLEAR INCIDENT EXCLUSION CLAUSE – LIABILITY – DIRECT (BROAD) (U.S.A.) (NMA 1256), as attached.
6. RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES EXCLUSION CLAUSE (NMA 1622), as attached.
7. WAR AND TERRORISM EXCLUSION ENDORSEMENT (NMA 2918), as attached

Issuance of this policy of insurance to which this binder applies is contingent upon the Company's receipt and approval of the following additional information:

N/A

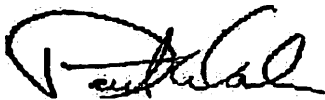
Premiums must be remitted at the time of binding.

Additional information must be received within (30) thirty days of the date of this binder at which time, the company, in reliance upon such information will make a determination as to policy issuance. Failure to remit all requested information within (30) thirty days of the date of this binder will result in the immediate termination of this binder.

**Please be advised that this Policy will be issued through a surplus lines insurer. Compliance with applicable laws and payment of taxes is the responsibility of the insured, the insurance agent or insurance broker.*

If you have any questions, please contact me at 856.396.6500 or davidwash@zodiacinsurance.com. Thank you for thinking of **Zodiac** for your general liability needs.

Sincerely,



David C. Wash
Correspondent for certain Underwriters at Lloyd's, London
(856) 396-6500
davidwash@zodiacinsurance.com



VIII. RETROACTIVE LIMITATION

The coverage under this Policy does not apply to any claim arising out of or resulting from any negligent act, error or omission (or arising out of conduct covered in the **Primary Policy**) committed prior to the inception date of this Policy:

- A. if any **Assured** on or before the inception date knew or could have reasonably foreseen that such negligent act, error or omission (or conduct covered in the **Primary Policy**) might be expected to be the basis of a claim; or
- B. in respect of which any **Assured** has given notice of a circumstance which might lead to a claim to the insurer of any other policy in force prior to the inception date of this Policy.

IX. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

All claims and circumstances that might lead to a claim reported under the **Primary Policy** must be reported to the Underwriters in writing via the entity named in Item 7 of the Declarations before the end of the **Period of Insurance** or any additional claims reporting period granted by the **Primary Policy** provided such additional claims reporting period is no greater than 90 days. However, the **Assured** must provide immediate written notice to the Underwriters via the entity named in Item 7 of the Declarations of any claim made against the **Assured** where the **Assured** or the **Assured's** defense counsel evaluates the potential liability of all claims plus costs and expenses incurred in the defense or settlement of such claims at an amount equal to or greater than the amount set forth in Item 8 of the Declarations.

X. CONDITIONS

- A. In the event of a claim arising to which the Underwriters hereon may be liable to contribute, no costs or expenses shall be incurred on their behalf without their written consent being first obtained (such consent not to be unreasonably withheld). No settlement of a claim shall be effected by the **Assured** for such a sum as will involve this Policy without the written consent of the Underwriters hereon.
- B. All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied first to subrogation expenses, second to claims or costs and expenses incurred in the defense or settlement of such claims by the Underwriters hereon, third to claims or costs and expenses incurred in the defense or settlement of such claims by the insurers of the **Underlying Policies**, and fourth to the applicable retention or deductible under the **Primary Policy**. Provided always that nothing in this Policy shall be construed to mean that loss settlements under this Policy are not payable until the **Assured's** ultimate net loss has been finally ascertained.
- C. If the **Assured** shall profer any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.
- D. By acceptance of this Policy, the **Assured** agrees the Underwriters may at their own discretion and expense retain counsel to associate in the defense or settlement of any claim and to cooperate with such counsel.

EXHIBIT 2

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREGORY ACOSTA,

Plaintiff,

vs.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.,

Defendant.

Case No. 2:18-cv-07432

**DECLARATION IN SUPPORT OF
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

I, **RICHARD D'AMURA**, declare and state as follows:

1. I am a member of the law firm of D'Amura & Zaidman PLLC. I submit this Declaration in support of GREGORY ACOSTA's Supplemental Brief in support of his Motion for Preliminary Injunctive Relief.
2. I represent GREGORY ACOSTA in connection with the referenced matter.
3. On or about July 19, 2018, I attempted to speak to, Cathy Williams, FINRA, Regulatory Review Analyst, Registration and Disclosure. I initially reached out to her by telephone in an effort to discuss FINRA's July 13, 2018 letter to Kestra Investment Services, LLC wherein FINRA stated that Mr. Acosta was subject to statutory disqualification. At that time, I was a partner at the law firm of Freeman, Freeman & Smiley ("FFS").
4. Ms. Williams was unavailable to speak with me and I was referred to Christopher Dragos, FINRA, Associate Director, Regulatory Review, Regulatory Review and Disclosure. Mr. Dragos and I discussed the matter via e-mail.
5. Significantly, included in these e-mail communications was an e-mail dated July 23, 2018, wherein Mr. Dragos acknowledged that I was correct in my assertion that Section 1668.1 of

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

the California Insurance Code is not a statute based on fraudulent, manipulative or deceptive conduct. A true and correct copy of this e-mail, as well as the prior e-mails in the chain, are attached hereto as **Exhibit A**.

- 6. In the email, Mr. Dragos refers to “FMD” as short-form for “Fraudulent, Manipulative or Deceptive.”
- 7. At the time of my communication with Mr. Dragos, I was still a partner at FFS, and therefore using my FFS’s e-mail address, richard.damura@ffs.com. Upon transferring Mr. Acosta’s files from FFS to D’Amura & Zaidman PLLC, I maintained copies of my e-mail communications with Mr. Dragos.

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

Executed on October 26, 2018

Richard A. D'Amura

RICHARD 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

EXHIBIT A

From: Dragos, Christopher [<mailto:Christopher.Dragos@finra.org>]
Sent: Monday, July 23, 2018 4:21 PM
To: Richard A. D'Amura <Richard.Damura@ffslaw.com>
Subject: RE: Gregory Acosta, CRD # 816526

Hi Rich,

Thank you for sending me the additional documentation. I have everything I need at this point. Acosta's action is only slightly different from several I've seen from CA's DOI, but I still want to pursue a couple of questions further before getting back to you with a definitive answer. In the meantime, I can tell you that you're correct about 1668.1, that statute does not involve FMD. The statute referenced in the letter, 1668(i), is from the Accusation. In any case, I appreciate your patience while I continue to review this and will contact as soon as I can with a resolution.

Thanks,

Chris

From: Dragos, Christopher
Sent: Monday, July 23, 2018 3:41 PM
To: 'Richard A. D'Amura' <Richard.Damura@ffslaw.com>
Subject: RE: [EXTERNAL] RE: Gregory Acosta, CRD # 816526

Hi Rich, I'm literally reviewing it right now. I'll circle back with you once I'm finished.

From: Richard A. D'Amura <Richard.Damura@ffslaw.com>
Sent: Monday, July 23, 2018 3:39 PM
To: Dragos, Christopher <Christopher.Dragos@finra.org>
Subject: [EXTERNAL] RE: Gregory Acosta, CRD # 816526

Hi Chris:

Just checking if there is any update on your review of the matter.

Thank you.

Rich

Richard A. D'Amura / Attorney At Law
FREEMAN FREEMAN & SMILEY, LLP

Tel: 310.255.6166 | Fax: 310.255.6266

From: Richard A. D'Amura
Sent: Thursday, July 19, 2018 5:42 PM
To: 'Dragos, Christopher'
Subject: RE: Gregory Acosta, CRD # 816526

Chris:

Attached is the Notice of Defense. Also, I want to point out that Cathy's letter references that CA DOI's order was based on violations of 1668(i). However, 1668(i) is not referred to in the order or the attached Stipulation and Waiver. The Stipulation and Waiver does refer to 1668.1, a copy of which is attached hereto for ease of reference. 1668.1 does not relate to fraudulent conduct.

Thank you for your time in this matter.

Rich

Richard A. D'Amura / Attorney At Law
FREEMAN FREEMAN & SMILEY, LLP

Tel: 310.255.6166 | Fax: 310.255.6266

From: Dragos, Christopher [<mailto:Christopher.Dragos@finra.org>]
Sent: Thursday, July 19, 2018 5:13 PM
To: Richard A. D'Amura
Subject: RE: Gregory Acosta, CRD # 816526

Thanks Rich, I know you got my out of office message but I'm checking my emails. I'll take a look at what you sent me, and yes, please send me the Notice of Defense once you have it from Mr. Acosta. I'll let you know if I need anything else. Thanks,

Christopher Dragos
Associate Director, Regulatory Review
Regulatory Review and Disclosure
FINRA
(p) 240-386-5440

From: Richard A. D'Amura <Richard.Damura@ffslaw.com>
Sent: Thursday, July 19, 2018 8:07 PM
To: Dragos, Christopher <Christopher.Dragos@finra.org>
Subject: [EXTERNAL] Gregory Acosta, CRD # 816526

Chris:

I received your voice message. Attached is the Notice of Defense and Statement to Respondent which was attached to the Accusation. I am seeking the Notice of Defense filed by Mr. Acosta. Once I have a copy, I will forward it to you. With regard to the "Statement to Respondent," let me know if the attached is what you are referring to, or if something different, let me know.

Thank you.

Rich

Richard A. D'Amura / *Attorney At Law*



1888 Century Park East | Suite 1900 | Los Angeles | CA 90067

Tel: 310.255.6166 | Fax: 310.255.6266

[website \[ffslaw.com\]](#) | [bio \[ffslaw.com\]](#) | [map \[ffslaw.com\]](#) | [email](#) | [in \[linkedin.com\]](#)



Confidentiality Note: This message is intended for the use of only the individual or entity to whom it is addressed. It may contain information that is confidential and/or protected from disclosure under the attorney-client privilege, joint defense privilege, the attorney work product doctrine or other applicable law. If the reader of this message is not the intended recipient (or an authorized employee or agent of the intended recipient), you are hereby notified that any distribution, copying, use or retention of this message is prohibited. If you have received this message in error, please notify the sender by return e-mail and delete all copies from your inbox and your computer system. Thank you.

Confidentiality Notice:: This email, including attachments, may include non-public, proprietary, confidential or legally privileged information. If you are not an intended recipient or an authorized agent of an intended recipient, you are hereby notified that any dissemination, distribution or copying of the information contained in or transmitted with this e-mail is unauthorized and strictly prohibited. If you have received this email in error, please notify the sender by replying to this message and permanently delete this e-mail, its attachments, and any copies of it immediately. You should not retain, copy or use this e-mail or any attachment for any purpose, nor disclose all or any part of the contents to any other person. Thank you.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 Los Angeles, State of California. My business address is 750 N. San Vicente Boulevard, Suite RW800, West Hollywood, California, 90069.

On March 22, 2019, I served true copies of the following document(s) described as **ACOSTA'S RESPONSE TO ORDER REQUESTING ADDITIONAL BRIEFING** on the interested parties in this action as follows:

SERVICE LIST

Michael M. Smith, Esq.
Assistant General Counsel
FINRA Office of General
Counsel 1735 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 728-8177
E-mail: Michael.smith@finra.org

Counsel for FINRA

VIA ELECTRONIC MAIL

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

Executed on March 22, 2019, at Los Angeles, California.


Jeffrey S. Edwards