

**UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of :
 :
 Trevor Michael Saliba : Administrative Proceeding
 : File No. 3-18989
 For Modification of Action Taken by FINRA :
 :
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**OPENING BRIEF OF TREVOR M. SALIBA
IN SUPPORT OF APPLICATION FOR MODIFICATION OR REVERSAL OF
DECISION OF THE FINANCIAL INDUSTRY REGULATORY
AUTHORITY'S NATIONAL ADJUDICATORY COUNCIL**

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Pursuant to Rule 450 of the Rules of Practice of the Securities and Exchange Commission (“Commission”), the Petitioner, Trevor Michael Saliba, submits this opening brief in support of his application for modification or reversal of the decision by FINRA’s National Adjudicatory Council (“NAC”) dated October 6, 2022 (the “NAC Decision”).

I. RELEVANT PROCEDURAL HISTORY

Mr. Saliba appeals the finding of the NAC to sustain certain disciplinary findings made by the Financial Industry Regulatory Authority (“FINRA”) against him. FINRA’s Department of Enforcement (“Enforcement”) instituted a disciplinary proceeding against Mr. Saliba, along with other registered individuals and a formerly-registered entity (“NMS Securities,” “NMS,” or the “Firm”).¹ The DOE contended that Mr. Saliba: (1) had violated certain Interim Restrictions imposed in connection with a Membership Application submitted by NMS; (2) provided purportedly falsified information to FINRA; and (3) failed to produce a computer in response to FINRA’s request for the same.² The FINRA Hearing Panel entered an adverse decision against Mr. Saliba on December 15, 2017, and imposed the unitary sanction of barring him from association with any FINRA member firm in any capacity (“OHO Decision”).

Mr. Saliba appealed the OHO Decision to the NAC, which upheld the violations but increased the sanction – imposing three, separate, lifetime bars on him.³ Mr. Saliba appealed the NAC’s finding to the SEC pursuant to Section 19(d) of the Exchange Act.

¹ The respondents in the FINRA disciplinary action included Mr. Saliba as well as NMS Securities and three of its other registered persons. The findings as to those other respondents are not part of this appeal.

² *Dept. of Enforcement v. Trevor Michael Saliba*, Disciplinary Proceeding No. 2013037522501r, 2022 WL 14519580, at *1 (Oct. 6, 2022).

³ *Saliba*, 2022 WL 14519580 at *1 n. 1.

In an Opinion dated April 9, 2021, the Commission upheld FINRA’s findings and conclusions in part, remanding in part.⁴ On June 3, 2021, Mr. Saliba appealed the findings the NAC had affirmed to the 9th Circuit Court of Appeals, which denied the appeal on August 31, 2022.⁵

The SEC, however, remanded three issues to the NAC, ordering it to determine what, if any, evidence showed (1) that Mr. Saliba was responsible for falsifying the three Miller Memos he provided to FINRA’s Membership Application Program Group (“MAP”); (2) whether Mr. Saliba produced the memos to MAP knowing them to be false; (3) whether Mr. Saliba produced the Miller Memos and a Younger Memo to Enforcement knowing them to be false; (4) whether Mr. Saliba violated Rule 2010 in providing them to MAP; and (5) whether a bar was the appropriate sanction for the alleged conduct.

On October 6, 2022, the NAC released its Final Decision on Remand. The NAC concluded that sufficient evidence existed that Mr. Saliba knew or should have known that the Miller Memos were false and that he knew or should have known they were false when he provided them to both MAP and Enforcement. The NAC found that there was insufficient evidence that Mr. Saliba knew or should have known that the Younger Memos were false and, as a result, dismissed the associated charges relating to those documents. The NAC determined the permanent bar was supported by the record evidence.

This appeal followed.

⁴ *See id.*

⁵ *Saliba v. SEC*, 47 F.4th 961 (9th Cir. 2022).

II. FACTS RELEVANT TO THIS APPEAL

A. The CMA Application Process

The issues relevant to this appeal arose originally from a Continuing Membership Application (“CMA”) NMS filed in July 2012 (the “CMA Application”).⁶ In August 2012, FINRA – specifically, MAP – imposed certain interim restrictions on NMS during the pendency of the CMA that, relevant here, prohibited NMS from permitting Mr. Saliba to act in a principal or supervisory capacity.⁷

In August 2012, Mr. Saliba asked MAP to clarify the parameters of the interim restrictions and, specifically, the parameters of the principal/supervisory restrictions. NASD Rule 1021(b) defines a “principal” to include both owners and officers of a broker-dealer, and Mr. Saliba was both (a fact of which MAP was fully aware when it imposed the interim restrictions). Given that NMS was a very small firm, and that Mr. Saliba, as an indirect owner of the Firm, solely controlled its finances, he requested clarification of the interim restrictions, to determine how “the Staff has determined that this is appropriate or even possible” given his actual role at the Firm,⁸ and the fact that prior to the application, a corporate hierarchy had already been put in place whereby Mr. Saliba was not acting in any direct principal or supervisory capacity.⁹

In a further attempt to understand and, more importantly, ensure that he was adhering to the interim restrictions, Mr. Saliba incurred the expense to travel to New York from Los Angeles, and the expense for the Firm’s compliance consultant, Jervis Hough, to travel from Miami, to attend an in-person meeting with MAP staff (the “September 25 MAP Meeting”) to discuss the

⁶ The Record on Appeal in this case is referred to herein as “ROA.” ROA 000856 — ROA 000857 at 19-20.

⁷ ROA 006417-6456.

⁸ ROA 001642, 005069.

⁹ ROA 001813-1825.

same.¹⁰ While MAP staff advised Mr. Saliba that an in-person meeting was not required, and would be atypical for member firms outside the New York metropolitan area, Mr. Saliba believed that this significant expense, even for a brief meeting, was important for him to demonstrate his desire to engage with MAP in a collaborative, open and transparent manner.¹¹

Following the meeting, on October 17, 2012, MAP amended the interim restrictions to permit certain additional, enumerated activities.¹² Mr. Saliba was also allowed to remain on as the Firm's owner and Chairman (notwithstanding the fact that role is defined to be a "principal" role under NASD Rule 1021).

B. Review and Denial of the CMA

MAP denied the CMA Application in June 2013.¹³ The relevant basis for denial was that Mr. Saliba had acted in a principal capacity when he signed his clients' engagement agreements on behalf of NMs and, therefore, violated the interim restrictions. Mr. Saliba appealed the denial. In connection with that, he attempted to explain why he believed he had not violated the interim restrictions. Relevant here, Mr. Saliba advised MAP that, at all times relevant, he was in frequent contact with the Firm's CEO and, before signing any engagement agreements, he had obtained prior approval to do so from a principal and, therefore, was not acting as a principal himself.¹⁴

At the time the denial was appealed, MAP was aware that Mr. Saliba had specifically hired two seasoned industry professionals to serve as designated principals of the Firm to manage

¹⁰ ROA 006417-6456; ROA 002537-2538.

¹¹ ROA 002537-38.

¹² ROA 003623-3624.

¹³ ROA 006417-6456.

¹⁴ ROA 001957-1959; ROA 001964.

the day to day operations in the roles of Chief Executive Officer and Chief Compliance Officer with Mr. Saliba directly reporting to the CEO.¹⁵

C. The Miller and Younger Memos

In response to Mr. Saliba's explanation, MAP requested that he provide any documents that evidenced this approval from his supervisor.¹⁶ At the time MAP made this request for documents (June 2013), the Firm's CEO was Sperry Younger. Mr. Saliba reached out to Mr. Younger via email, and asked him to send "whatever he had" that would be responsive to MAP's request.¹⁷ Mr. Younger provided Mr. Saliba with the documents he had, which Mr. Younger believed memorialized and documented his approval of Mr. Saliba's activities.¹⁸ Mr. Saliba, in turn, provided those to MAP. The charges against Mr. Saliba as to these documents have been dismissed.

Before Mr. Younger, the Firm's CEO was James Miller (who was also Mr. Saliba's supervisor). By the time MAP requested documents corroborating Mr. Saliba's assertion that he had been authorized by his supervisor to sign the engagement agreements, Mr. Miller had been gone from the Firm for months. Mr. Saliba's search of the Firm's records for any documents that would be responsive to FINRA's request yielded, among other things, three memos – the "Miller Memos" – in the Firm's paper files. Mr. Saliba then provided them to MAP (and, relevant to Cause 5, to Enforcement, as well, later on). As noted above, the Miller memos and the Younger memos were in vastly different formats.¹⁹

¹⁵ ROA 001364, 001368-69, 001452.

¹⁶ ROA 006417-6456.

¹⁷ ROA 006417-6456.

¹⁸ ROA 001754-59, 002113-14.

¹⁹ Compare ROA 005049 and 005051.

D. Subsequent FINRA Exam

In October 2013, FINRA Enforcement opened an examination into the CMA process and served the Firm with an 8210 request.²⁰ Information requested included email correspondence between Mr. Saliba and Mr. Younger/Mr. Miller relating to certain banking deals and “all documents” evidencing approval of the banking deals.²¹ In response to these requests, NMS provided a copy of an earlier email that had been sent to MAP attaching the Miller and Younger Memos.²²

E. Mr. Saliba’s Testimony Relating to the Document Search

The NAC’s findings against Mr. Saliba are based, in large part, on allegedly conflicting testimony relating to his search for documents. As set forth herein, however, Mr. Saliba’s OTR testimony and his hearing testimony were *not* contradictory and, instead, corroborate Mr. Saliba’s good faith belief that the documents he retrieved from the Firm’s records were authentic.

The NAC found this testimony to be incredible because the documents were found by “happenstance” or by some great coincidence. Mr. Saliba, however, testified that his search for documents was prompted by MAP’s request for the same and that, when he began, he was uncertain as to whether or not he would find anything at all. Searching through the files at the newly-created broker-dealer, he simply gathered those he managed to find that were relevant and passed them along. Mr. Saliba had no reason to believe that any documents that would have memorialized or documented the approval of his activities would be false or fraudulent.²³

²⁰ ROA 003001.

²¹ *Id.* Requests 1 and 2.

²² ROA 003015, 003056-3066.

²³ This conclusion was eminently reasonable, given that it was common knowledge that Mr. Saliba was signing the banking agreements on behalf of the Firm, yet none of his supervisors ever gave him any indication that he could not be doing that. ROA 001821-34, 002114-15.

F. Mr. Saliba’s Alleged “Incentive”

The NAC also concluded that Mr. Saliba “knew or should have known” that the documents were false because he had hoped that demonstrating he acted with supervisory approval would “persuade” MAP to reverse its already-made decision to deny the CMA. There are, however, no actual facts – no evidence – to connect Mr. Saliba’s *hope* that the membership application denial would be reversed to his alleged *knowledge* that specific documents found in the Firm’s records were falsified. As a result, the NAC’s conclusion that such knowledge, in fact, existed, must be reversed.

III. STANDARD OF COMMISSION REVIEW

Under Section 19(e) of the Securities Exchange Act of 1934 (“Exchange Act”), in reviewing the decision of a self-regulatory organization (“SRO”) in a disciplinary action, the Commission must conduct an independent, de novo review of the record to determine (1) whether the aggrieved person engaged in the conduct found by the SRO, (2) whether such conduct violated securities laws or SRO rules, and (3) whether the rules were applied consistent with the Exchange Act’s purposes.²⁴ Under Section 19(e)(2) of the Exchange Act, the Commission must not sustain a sanction imposed by an SRO if the sanction is excessive or oppressive, or imposes an unnecessary or inappropriate burden on competition.²⁵ Congress intended the Commission’s ability to review the substantive fairness of FINRA deliberations.²⁶

IV. ISSUES PRESENTED ON APPEAL

This appeal questions whether sufficient evidence existed for NAC to determine that (1) Mr. Saliba knew or should have known that the Miller Memos were false when he supplied them

²⁴ See 15 U.S.C. § 78(e)(1) (2022).

²⁵ See *id.* at § 78(e)(2).

²⁶ See, e.g., Harry Richardson, Exchange Act Rel. No. 34-51236, 2005 WL 424920, at *5 (Feb. 22, 2005).

to MAP and, later Enforcement; and (2) a bar is an appropriate sanction based on the evidence presented. For the reasons stated herein, Mr. Saliba respectfully requests that the Commission answer each question in the negative.

V. ARGUMENT AND AUTHORITY

A. Lack of Evidence Mr. Saliba Knew or Should Have Known that the Miller Memos were False

By its own admission, the NAC's findings are based entirely on circumstantial evidence.²⁷ The NAC expressly acknowledged that there was no direct evidence that Mr. Saliba created or that he directed someone to create the memos. Instead, the NAC rested its conclusion on three circumstantial pieces of evidence, namely: (1) Mr. Saliba's allegedly "conflicting" (but uncontradicted) testimony regarding his search for the documents; (2) Mr. Miller's allegedly credible testimony that he did not sign the documents; and (3) Mr. Saliba's "incentive" to convince MAP that his signature on the engagement agreements was approved.

As stated herein, the NAC's decision errs, lacks evidentiary support and should be reversed.

1. Mr. Saliba's search for documents does not evidence knowledge of falsity.

The NAC decision to ignore Mr. Saliba's testimony as to where he found the Miller Memos is based, in part, on Mr. Saliba's inconsistent testimony at trial compared to his OTR.²⁸ Specifically, the NAC found that Mr. Saliba testified in his OTR that "[t]here were files that we had that were specific to the approval memos for the engagement deals I was working on...I remember looking for [the approval] memos and finding them in some file."²⁹

²⁷ *Saliba*, 2022 WL 14519580 at *7-10.

²⁸ *Id.* at *6, 9.

²⁹ *Id.* at 6.

As a threshold matter, this is a mischaracterization of what Mr. Saliba actually testified to in his OTR.³⁰

Q: When you say you had the file where [the Miller Memos] were submitted, explain that to me.

A: No. When we were producing information for FINRA...[t]here were files that we had that were specific to the approval memos for engagement deals that I was working on. Because we had continued the same type of procedure, I guess I'd call it, for lack of a better term, when Sperry Younger became CEO. And Sperry maintained his own files.

But I remember looking for these and finding them in *some file*. So, again, as I said, I assume Jim signed it because his signature is there, but I did not personally see him sign it.

Q: Are you telling me that there was a separate file for approval memos?

A: No, I'm just telling you that I remembered having these somewhere in the office. And I forgot where I actually found the file. I don't know if they were in the deal files or if they were in one specific file. But, I mean, we found these after we were going through it. Because we were trying to locate them.

The NAC erroneously synthesized this testimony by finding that Mr. Saliba had testified, at his OTR, that he found the document in a specific deal file. In fact, it is undisputed that he testified to the exact opposite. He said he did not know if they were in the deal files or in some other specific file located at the Firm. The best that Mr. Saliba could do under oath at his OTR was to testify that he found the memos in "some file." From the start, therefore, one of predicate findings on which the NAC based its conclusion that Mr. Saliba should have known that the memos were false, i.e., the supposed location of the memos as per his OTR testimony, is erroneous and should be reversed.

Nor did Mr. Saliba's OTR testimony on that subject conflict with his testimony at the hearing. At the hearing, Mr. Saliba similarly testified that he personally found the memos in some

³⁰ ROA 004725-4726.

boxes that had been accumulated in the Firm’s “bullpen.”³¹ The boxes included files received from Coral Springs (where the prior broker-dealer was located) and other files and documents that had been piled on top of the Coral Cables materials over an approximate six-month period.³² Mr. Saliba, who looked everywhere for documentation reflecting the fact that he had obtained principal approval to enter into the engagement agreements, searched the bullpen and found the Miller memos there.³³ Because he found them in a place with other Firm documents, within the Firm, and related to the Firm, he reasonably assumed that someone from the Firm had put them there.³⁴

None of this testimony meaningfully contradicts the OTR testimony relied upon (but mischaracterized) by the NAC in which Mr. Saliba was asked whether the documents were in a deal file or a separate file. Mr. Saliba answered that question during his OTR by stating *he did not know*; he merely knew that he found the documents in the Firm’s information.

The NAC’s reliance, therefore, upon non-existent “conflicting” testimony to both reject Mr. Saliba’s testimony and to determine it had evidence that he “knew” the memos were falsified, is improper and its finding should be overturned for this reason alone.

2. Mr. Miller’s testimony does not evidence Mr. Saliba’s knowledge.

Even assuming that the Miller Memos are falsified (something Mr. Saliba has contested throughout the history of this case), there exists no evidence that Mr. Saliba knew they were false when he found them. The question posed to the NAC on remand was whether there was *evidence* that Mr. Saliba *knew or should have known* that the documents were not genuine. The NAC based its finding that such evidence existed on its opinion that Mr. Miller’s testimony that the documents

³¹ ROA 002560-61; ROA 002554-00255; ROA 002107-8

³² ROA 002562-002563.

³³ ROA 002569-002564.

³⁴ *Id.*

were false was credible.³⁵ Mr. Miller’s testimony that the documents were *not* genuine, however, merely serves as evidence of the fact of their falsity – it does *not* create or evidence any subjective awareness on Mr. Saliba’s part – or even permit a reasonable inference of such – that at the time the documents were found they were (or may be) false.

Because the NAC had conceded that no direct evidence exists that Mr. Saliba created or directed the creation of the documents, it must rely on some evidence he *should* have known them to be false. Repeating the conclusion that the documents are falsified does nothing to evidence Mr. Saliba’s supposed knowledge.

Nor was there anything about the form or format of the allegedly falsified documents sufficient to establish this knowledge. Mr. Saliba testified that he was not responsible for maintaining the firm’s books and records, and such testimony was unrebutted.³⁶ Mr. Saliba testified that the documents he discovered after his diligent search were found among other Firm records.³⁷ Mr. Saliba testified that when he commenced his search he had no idea what documents existed, but he believed he would, in fact, find something, since Mr. Younger had “continued” the Firm’s existing practice of memorializing those deals.

In sum, all Mr. Saliba did was search through the Firm’s record for responsive documents, find some, and then provide them to FINRA. None of those actions suggests knowledge as to these particular documents’ lack of integrity. Furthermore, neither the NAC nor Enforcement points to any authority that individual members of a firm are required to independently verify – through personal contact or otherwise – that documents retrieved from the firm’s records are legitimate. Indeed, imposing such a standard on requests made by FINRA (MAP or Enforcement)

³⁵ *Saliba*, 2022 WL 14519580 at *9.

³⁶ ROA 002397, 004731.

³⁷ ROA 002559, 004725.

would be unworkable and subject the responding individual to personal liability for the alleged misconduct of unidentified colleagues.

3. Hope is not evidence of knowledge.

The final piece of circumstantial evidence upon which the “knew or should have known” charges are based (Counts 2 and 5) is Mr. Saliba’s hope that MAP would reverse its decision to deny the CMA if it saw that his supervisors had approved his business deals.³⁸

This hope – that MAP would reverse its denial of CMA application – is not evidence that Mr. Saliba did or knew anything. While the NAC correctly recites that circumstantial evidence can be sufficient to meet a preponderance of the evidence burden (which Enforcement bears), “the standard incorporates a requirement that the facts meet a minimum of reliability...[f]or Enforcement to satisfy its burden of proof, it must produce evidence, not offer speculation.³⁹ If the totality of the evidence presented by Enforcement still requires the trier of fact to *speculate* as to what may have happened – as opposed to drawing a conclusion from established facts – then Enforcement’s burden is not met.⁴⁰

Here, the factual evidence is only that Mr. Saliba found documents within the Firm’s files and sent them to FINRA. It is now undisputed that there is no evidence he created those documents or caused their creation.⁴¹ His hope that those documents would have some bearing on an already-denied membership application does not evidence his knowledge of falsity, or even permit the reasonable inference of such. Such a conclusion is *pure* speculation by the NAC.

³⁸ *Saliba*, 2022 WL 14519580 at *4.

³⁹ *Department of Enforcement v. Paramveer Singh*, Disciplinary Proceeding No. 2019064313901; 2021 WL 4100641, at *13.

⁴⁰ *Singh*, 2021 WL 4100641 at *13.

⁴¹ *Saliba*, 2022 WL 14519580 at *9.

To be sure, multiple other individuals at the Firm were aware of the membership application process and the specific fact that MAP was requesting documents evidencing approval.⁴² It is no less likely that someone else at the Firm (for example, the Firm’s (then) compliance officer, whom Mr. Saliba had tasked with assisting him in finding any responsive documents)⁴³ created the documents with the hope that their discovery in the bullpen would bolster Mr. Saliba’s credibility with MAP. This inference, an admittedly unlikely one, is no less speculative or unreasonable than the one the NAC drew, and on which it relied.

Because speculation is not circumstantial evidence – and is not sufficient to carry the burden of proof – the NAC’s reliance on such, and its conclusion as to Mr. Saliba’s knowledge, should be reversed.⁴⁴

B. Mr. Saliba did not Violate Rule 2010 or 8210 Because FINRA has Failed to Carry its Burden that he Knew or Should Have Known the Memos were False

The NAC’s finding that Mr. Saliba violated these rules is based on its conclusion that he “knew” the memos to be false. If Enforcement cannot carry its burden on the element of knowledge, the claim fails. Because there is insufficient evidence that Mr. Saliba knew or should have known the Miller Memos were false, the NAC’s conclusion that he “knowingly” provided false memos to MAP and Enforcement in violation of Rules 8210 and 2010 must be reversed.

C. No Sanction is Warranted

For the same reason that the NAC lacks sufficient evidence of Mr. Saliba’s alleged “knowledge” sufficient to succeed on Counts 2 and 5, it lacks sufficient grounds to impose any

⁴² ROA 002558, 004738.

⁴³ *Id.*

⁴⁴ The NAC also held that Mr. Saliba, upon finding the documents, should have confirmed their authenticity with Mr. Miller. For the reasons already set forth above, what is missing from Enforcement’s case is some *reason* that Mr. Saliba, upon finding the documents, would have *presumed* them inauthentic and requiring validation at all.

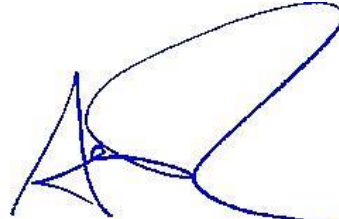
sanction on those counts. As a result, for the same reasons set forth above, the finding that Mr. Saliba should be permanently barred is based on insufficient evidence and should be reversed.

VI. CONCLUSION

For the reasons set forth herein, Mr. Saliba respectfully requests that the Commission reverse the findings of the NAC as to Counts 2 and 5. Mr. Saliba further requests that the sanction imposed by the NAC, based upon the erroneous conclusions identified herein, be vacated as unsupported by the evidence.

Respectfully submitted this 10th day of February, 2023.

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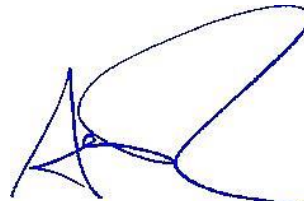
CERTIFICATE OF SERVICE

I hereby certify that this **OPENING BRIEF IN SUPPORT OF APPLICATION OF TREVOR MICHAEL SALIBA FOR MODIFICATION OR REVERSAL OF DECISION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S NATIONAL ADJUDICATORY COUNCIL** has been sent to the following parties entitled to notice in the matter set forth herein:

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