

**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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**REPLY IN SUPPORT OF 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 Securities and Exchange Commission’s (“Commission”) Rules of practice, the Applicant, Trevor Michael Saliba (“Saliba”), submits this Reply Brief in further 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. INTRODUCTION

Enforcement’s Brief in Opposition does not respond to the issues raised in Applicant’s Opening Brief.¹ Instead, Enforcement simply repeats the same evidence articulated in the NAC Decision in support of the finding that the Miller Memos were not genuine. The question, however, is not the authenticity of those documents, but, rather, whether or not sufficient evidence exists to show that Mr. Saliba *knew* the documents were falsified. At this juncture, the SEC and the NAC have agreed that there is no evidence showing that Mr. Saliba created the falsified documents or that he directed someone to do so. Enforcement’s burden, therefore, was to show the existence of some evidence that, notwithstanding these undisputed facts, dictated the conclusion that he nonetheless should have determined them to be anything but genuine. Enforcement failed to carry that burden.

Enforcement, like the NAC, rests on two bases for Mr. Saliba’s supposed knowledge: (1) Mr. Miller’s testimony as to his lack of awareness, as CEO, as to the broker-dealer’s business dealings, and (2) Mr. Saliba’s allegedly “contradictory” statements as to how and where he found the documents at issue.

For the reasons already set forth in the Opening Brief, the evidence that the NAC relied upon, and which Enforcement repeats here in its brief, does not support a finding that Mr. Saliba

¹ Opening Brief of Trevor M. Saliba In Support of Application for Modification or Reversal of Decision of the Financial Authority Regulatory Authority’s National Adjudicatory Council, filed February 10, 2023.

knew, in 2013, when he found the documents, that they were anything but genuine. Applicant has already laid out in his opening brief why Mr. Saliba had no reason to know (or even suspect) in June or October 2013, when the documents were found and produced, that, as Mr. Miller testified later, at the hearing, for the entire time period he acted as CEO he supposedly somehow remained entirely unaware of the Firm's business activities and was deliberately ignoring his responsibilities as both the top ranking designated securities principal and supervisor at the Firm.

Additionally, Applicant's Opening Brief addressed Mr. Saliba's allegedly "contradictory" testimony regarding the documents, which has become a red herring in this case. Mr. Saliba found the memos along with other Firm documents in the Firm's "bullpen." Mr. Saliba testified – and such testimony was unrebutted – that he was not the one responsible for placing those files in the "bullpen," maintaining the Firm's files or organizing the Firm's files. He merely was the one tasked with searching that room – along with all other rooms – for anything relating to the Firm's business deals signed during the interim restriction period. Mr. Saliba was very clear that he was not looking for any document in particular, and did not know if he would find any.

Thus, for the reasons already set forth in the Opening Brief, as well as herein, the NAC's finding that Mr. Saliba had knowledge at the time he provided the documents to Enforcement that they were falsified lacks evidentiary support and should be reversed.

II. ARGUMENT IN RESPONSE

A. Mr. Miller's testimony that, despite being CEO, he was unaware of the Firm's business, does not show Mr. Saliba's knowledge of the same.

Again, Enforcement points to Mr. Miller's testimony as the only evidence that he was not aware of Mr. Saliba's business deals and did not sign the documents. Enforcement argues that if Mr. Miller's testimony is credited (as it was by the NAC), then Mr. Saliba *must* have known the documents were false. Enforcement's logical leap, however, misses an important evidentiary step.

To establish knowledge under such a theory, Enforcement must show not only that Mr. Miller abdicated entirely all duties he held as a consequence of being the CEO at the Firm, but that Mr. Saliba was aware, in 2013, that Miller had done so. On this point, there is no evidence. To the contrary, there is evidence that contradicts Miller's claims in that he was the top ranking designated principal and supervisor, did engage in and carry out such supervisory and oversight duties to both Mr. Saliba and all other Firm representatives. Given Miller's role as CEO,² his responsibility for supervising the Firm,³ reviewing emails,⁴ the fact he was copied on contemporaneous emails,⁵ and the almost daily interactions between Mr. Saliba and Miller (including on occasion where Miller would reprimand and scold Mr. Saliba), Mr. Saliba had every reason to believe in 2013 that Mr. Miller was engaged in and took seriously his role as CEO. Mr. Miller's denial of the same, four years later, does not place any knowledge in Mr. Saliba's mind of Miller's supposed utter abdication of his duties, as of 2013, when the documents were found. Given the lack of any evidence in support of such a theory against Mr. Saliba, reversal of the finding of knowledge is proper.

B. Mr. Saliba's testimony about the location of where the files were found is not contradictory.

As already set forth in the Opening Brief, Mr. Saliba's testimony regarding his search for and production of the documents is not contradictory. Indeed, Enforcement's Response fails to respond to testimony citations in the Opening Brief setting forth the entirety of Mr. Saliba's relevant testimony and instead, retreating on the position, now simply argues his trial testimony and OTR testimony conflicted and, therefore, he must have known the documents were false.

² Record on Appeal ("ROA") at 1606.

³ ROA at 3205, 3584, 3593.

⁴ ROA at 3205.

⁵ ROA at 1641, 1646, 1650, 4959-4965, 5067-5091.

As Applicant has already pointed out, however, the testimony is not contradictory at all. Enforcement erroneously argued – which the NAC erroneously adopted – that Mr. Saliba had testified in his OTR that he found the documents “in a specific deal file” only later to testify to a different location. In fact, it is undisputed that Mr. Saliba never gave that testimony (Opening Br. p. 9). This undercuts the existence of any meaningful “contradiction,” let alone a contradiction specific or great enough to give rise to a reasonable inference that he must have believed the documents found in that search had been manufactured.

Because the NAC’s conclusion that Mr. Saliba provided conflicting testimony and, therefore, knew documents were falsified is based on no evidence,⁶ it should be reversed.

C. Reversal is Proper; Sanctions are Not.

Because the NAC’s finding that Mr. Saliba violated these rules is based on its conclusion that he “knew” the Miller Memos to be false, and because Enforcement introduced insufficient evidence establishing that Mr. Saliba knew or should have known that the 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. Because there is no violation, there should also be no sanction.

III. CONCLUSION

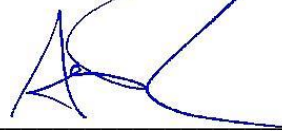
For the reasons set forth herein, and in the Opening Brief previously submitted, Mr. Saliba respectfully requests that the Commission reverse the findings of the NAC as to Counts 2 and 5.

⁶ Enforcement devotes an entire section of its Response to knocking down a strawman argument, wherein it defends the NAC’s ability to rely upon circumstantial evidence. Applicant expressly acknowledged that circumstantial evidence can be sufficient to meet a preponderance of the evidence standard. What Applicant argued in his Opening Brief, and what Enforcement did not respond to, was that the circumstantial evidence set forth by Enforcement is insufficient to show requisite knowledge.

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 27th day of March, 2023.

ULMER & BERNE LLP

A handwritten signature in blue ink, appearing to be 'Alan M. Wolper', is written over a horizontal line.

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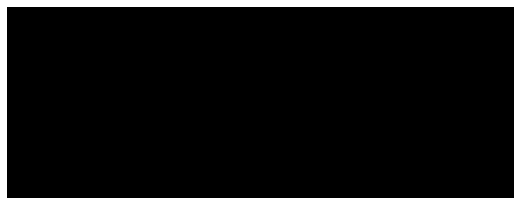
CERTIFICATE OF SERVICE

I hereby certify that this **REPLY IN SUPPORT OF 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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DATED: March 27, 2023

A large black rectangular redaction box covering the signature area of Alan Wolper.

Alan Wolper