BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of Applications of

EDWARD BEYN

For Review of Disciplinary Action Taken by

FINRA

File No. 3-19007

REPLY BRIEF OF PRO SE LITIGANT EDWARD BEYN

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REPLY BRIEF OF PRO SE LITIGANT: EDWARD BEYN

I. INTRODUCTION

I am a pro se litigant and I am filing this reply brief based upon FINRA'S Brief In Opposition to my Application for the United States Securities and Exchange Commission ("SEC") to review the decision of the FINRA NAC Committee ("NAC") in regard to the decision reached by the FINRA Department of Enforcement (DOE") in the Disciplinary Proceeding and Action taken.

This brief is being submitted as additional argument as to subsequent, direct and egregious abuse of the Rule of Law for which the findings of the NAC should be vacated, dismissed or remanded by to the FINRA DOE for a new hearing.

Even though I was not granted no access to the discovery in this case, which according to FINRA amounted to at least 5,000,000 or more pages of documents; I still did my best to represent myself at the hearing(s) in this case after I was forced to do as I lacked the funds available to hire counsel. In over a dozen instances via email and phone I attempted to get these documents to no avail. I further, made motion to FINRA in regard to said disclosure of relevant information that could be used in my defense and is afforded to me by law. FINRA's staff and more specifically the hearing officer decided not to adjourn the hearing(s) and give me access to said discovery. Instead, I was forced to defend myself without vital information that would have assisted me when cross examining witnesses, more specifically the clients FINRA claims were damaged in this case. Moreover, I was not afforded the ability to review the documents which could have led to me being able to call other witnesses who would testify in my defense or offer a different perspective than the one FINRA has portrayed. Therefore, I was not afforded the ability to defend myself properly based on FINRA's willful violation of my rights.

During my tenure at Craig Scott Capital ("CSC") there were several compliance officers who were directly in charge of the firm's compliance, as well as the principals of the firm. It is to the best of my knowledge that each compliance officer, Mr. Crockett, Mr. Karvecky and Mr. Gentile, all held similar positions at large brokerage / investment Banking firms. As well Mr. Karvecky is a former Compliance Examiner of FINRA. None of those individuals have been charged with any violation of FINRA Regulations or securities infraction even though they were the ones in charge of the actual compliance and trading of CSC. CSC had its first 'cycle exam' as a firm within the six to twelve months of operation. It is important to note

that the CSC did not receive any disciplinary action out of that exam nor did CSC have any enforcement proceeding or regulatory deficiency letter.

FINRA repeatedly reviewed the trading of the largest accounts at CSC at the first 'cycle exam' and forward. Some of those clients are directly involved in the subsequent case as well as witnesses brought by FINRA in my case. Those client's accounts were repeatedly checked, monitored and reviewed. CSC's compliance policies were such that if an account was actively traded, meaning it was part of COR Clearing's Active Account Exception Report, such accounts would routinely receive activity letters and affidavits for the clients to execute. If these affidavits were not signed properly such accounts were restricted. All client accounts at issue, were the same accounts looked at during cycle exams, and are the same accounts where each individual client executed an affidavit and received multiple activity letters. All of the compliance officers of the firm, not only sent requisite documents to clients, but testified under oath that they reached out to clients who's accounts met these parameters.

CSC also changed its commission structure as it hired more experienced compliance personnel. Therefore, FINRA's theory that all CSC cared about was trading accounts to make commissions is quite unfounded. If that was the case, why would the firm get more stringent compliance wise and fee wise? This among other mitigating factors that could have been used if I was allowed to have discovery in this, would have shown that the compliance officers implement additional restrictions and additional policies in order to protect client's interests. It should be noted, that during the hearing(s) in this case, FINRA did not allow these concepts and ideas, backed by testimony and actual documents to be entered into the record.

As well, during the hearing(s) FINRA did not allow the Cycle Exam Exit Letters into evidence. All of the Cycle Exams held during my tenure at CSC, looked at the aspects of compliance and client transactions. Each Cycle Exam Exit Letter states specifically that FINRA reviewed "Customer Specific Suitability",

"Quantitative Suitability" and "Firm Supervisory Systems & Controls" as well as many other areas of operation. Again, the accounts reviewed during each and every Cycle Exam were the same accounts brought up at the Hearing and mentioned in the proceedings here. There is not one mention in the Exit Letters from any of the Cycle Exams that these accounts were suspected of or had, 'Churning', 'Excessive Trading' or 'Customer Suitability' issues. Surely such evidence is relevant to show the compliance history of a firm. The fact that it was not allowed to be entered into as evidence is further violation of law.

II. BACKGROUND

FINRA is reportedly a private, non-profit Delaware Corporation and is the only registered "Self Regulatory Organization" ("SRO") that is approved by and answers to The United States Securities and Exchange Commission ("SEC"). FINRA oversees and regulates securities firms, licenses individuals, and any all securities dealers. Anyone wishing to join a FINRA affiliated firm must pass FINRA administered tests, overseen by FINRA and the SEC. FINRA is responsible to all member firms to impose rules and regulations promulgated by its Code of Procedure, as approved by the SEC. FINRA was born out of the prior SRO, the National Association of Securities Dealers ("NASD") which since the late nineteen thirties (1930s) has been the only registered national securities association in The United States.

FINRA's disciplinary process is utilized by FINRA through its Code of Procedure, which consists of a series of rules set forth by FINRA and approved by the SEC. *Fiero v. Fin. Inds. Regulatory Auth., Inc. 660 F. 3d 569, 571-72 (2d Cir. 2011).* Such rules are based on a multi-layered hearing and appeals process that governs disciplinary actions against FINRA licensed individuals and firms, which formulates how cases are handled and what regulations are violated as well as what sanctions are levied. According to FINRA's own rules, specifically FINRA Rule 9200, which sets forth FINRA's disciplinary procedures, FINRA is supposed to give the individual a fair hearing and the ability to appeal said findings. Such rules are subject to approval by the SEC and designed to conform with the Exchange Act's requirement for disciplinary procedures and

sanctions. Extending to the fair procedure for members, to the barring of members and the prohibition or limitation by the association of any person with respect to the access of services offered by the association or a member thereof. 15 U.S.C. § 780-3(b)(8)

Since, the rules and regulations promulgated under the Exchange Act as overseen and enforced by the SEC are in virtue the backbone of FINRA's Code of Procedure, FINRA operates as a pseudo 'State Actor'. Such actions, according to FINRA are of a private entity that is outside the scope of the State Actor definition, which would subject it to laws of Due Process in all proceedings, but FINRA's actions are anything but those of a regulator with the same authority if not some broader authority than the SEC itself.

III. THE BEYN CASE

On October 19, 2015 I was sent what is commonly referred to as a ***'Wells Notice'***, by the DOE of FINRA. According to the Notice it stated that, I had willfully violated FINRA rules along with rules of the Securities Act of 1934. The FINRA investigatory process came from an SEC look at the former firm CSC. Due to such occurrence it is clear, that the SEC and FINRA were involved in the look at CSC together. As such, as many courts have determined, since the SEC is a state actor by definition of its position; any involvement with the SEC and FINRA together in a case, no matter what the determination of each ones role or position clearly determines that the proceedings are governed under the Constitution of The United States. This is in regard to all facets, but most specifically the topic of Due Process, which is the subject of my whole appeal to the NAC Decision.

In the beginning of this investigation and the subsequent On the Record Interviews ("OTR") in this matter, I was able to have counsel. Once FINRA decided to move forward with its Disciplinary Proceeding No.:

2015044823502 in March of 2016, after more than six (6) months of investigatory process I was not making money and capable of continually paying counsel. As I was being hit with a disciplinary action, it was difficult to spend capital on counsel and I was saddled with other debts I had taken on in regard to the Office of Supervisory Jurisdiction I had opened. My then counsel, the McMenamin Law Group, was involved in the hearings that took place after the initial disciplinary action was filed. It was that counsel that agreed to the Scheduling Order on or about June 1, 2016. It was also at that hearing, that the Chief Hearing Officer, consolidated the two proceedings, one against Craig Scott Taddonio and the one against myself, Edward Beyn. Such scheduling order was only achievable if one was represented by counsel who knew securities law, FINRA rules and regulations (FINRA Code of Procedures) as well as the Securities Act of 1934. Additionally, such rules were foreign to me as I neither a licensed lawyer, nor am I schooled as one.

As I was unable to pay counsel, my counsel, the McMenamin Law Group, withdrew on or about October 26, 2016, with FINRA granting their motion to withdraw on October 31, 2016. Unfortunately, I was not granted more time to put together a defense of my own and FINRA's own decision on the McMenamin Law Group's motion to withdraw sets forth a pre-hearing conference for November 3, 2016. Just several days after my counsel was allowed to withdraw. There was no way for me to get up to speed on matters that would need to be discussed at a pre-hearing conference. Further to that, I had no idea what the procedures were for a pre-hearing conference and what I needed to think about or do to prepare. Since I was no longer represented by counsel and could not afford to hire anyone else, I was forced to represent myself Pro Se. Additional time was not afforded me due to this occurrence nor is there any office of assistance or any guidance offered to FINRA members who are faced with this predicament. The entire proceeding schedule and the Scheduling Order should have been altered as I was no longer represented by Counsel. Since I did not have access to legal expertise as well as anything provided by FINRA to my former Counsel I was left without any way to assist myself. The issues surrounding that are directly related

to violations of my rights to Due Process, which FINRA is subject to even if they would like to create the façade that they are not. As the SEC is well aware, had this been a Federal Court Proceeding I would have been afforded the time to either find new counsel and get up to speed on what was required to represent myself, Pro Se. I was not given a chance to do so and my rights have been violated by these actions.

IV. MOTION APPLICATIONS

After the Pre-hearing Conference I was forced to have to try to figure out how to respond to each proceeding as well as how to file motions in regard to issues that arose throughout the proceeding. I specifically filed a motion to sever the consolidation of the cases against CSC, Craig Taddonio and myself. I did not and still do not feel I, as a registered representative should have been put under the same scrutiny as the principals of the firm and its compliance officers. I was not an owner and was not responsible for any of the firm's overall compliance. I was responsible to my clients and responsible for my own actions, following the compliance rules set forth by FINRA and the firm. I adhered to everything the firm's compliance officer(s) told me to do, as well as got each and every document signed the firm and its compliance officer(s) told me to get signed so that my clients could do what they needed done. Due to the fact, that all parties were consolidated together, there was no way to differentiate between my actions and those of the principals or management. My actions should have been looked at solely as my actions not being part of a group. I am and was not a principal of the firm, partner or owner. I was not management either and therefore should not have been subjected to wrongful prosecution of the issues at hand that management and the principals were responsible for. Said motion was denied by FINRA.

Multiple times I filed additional motions in order to defend myself against the highly weighted actions of seasoned lawyers working for FINRA and I was continually rejected. Each and every time I tried to get to a level playing field, the larger more experienced Plaintiff continued to exercise its power by denying me any ability to even be able to have a fair hearing and procedures.

V. DISCOVERY

As previously stated here in this brief I was no longer represented by counsel as of October 31, 2016. Since the pre-hearing conference occurred right after and the main hearing was coming in January of 2017, I was in need of being able to defend myself as best as I could. One of the quintessential parts of that defense was the Discovery afforded under the Constitution of the United States to any adversary in any proceeding in any forum. On multiple occasions I communicated to the FINRA Enforcement Staff that I did not have the documents given to my former counsel. Additionally, on multiple occasions I informed the FINRA Enforcement Staff that I could not open emails they had sent me as there were passwords and software I did not have to be able to open same. Even after working with the DOE's Tech Department I still could not open the more than 5,000,000 pages of documents that made up the discovery in this case. Due to that, I was not able to utilize the documents to build the proper defense for myself as well as utilize the documents for cross examination of any and all witnesses brought forth to testify by FINRA.

On December 4, 2016, I send a letter to FINRA Hearing Officer Lucinda McConathy, asking for complete production of all relevant documents in this case. On numerous occasions I tried to explain my position to the experienced lawyers at FINRA that had all of the documents and other parts of discovery at their fingertips. I made multiple motions to attempt to compel FINRA DOE to adhere to the rules of Due Process and afford me the right to review all relevant documents. Said motions were denied by FINRA.

On December 15, 2016 I sent a letter to Mrs. McConathy stating that I was unable to provide a current witness list for the hearing, as I had not received any Discovery in the case. I was told there were over 5,000,000 documents without any indexing or breakdown of the documents. I was never given the opportunity to review anything that could be relevant or pertain to these accounts or my defense. I asked for assistance and an adjournment. This was denied by FINRA.

Additionally on January 5, 2017, I wrote to FINRA DOE asking for a thirty (30) day adjournment of the upcoming hearing in order in order to have time to get Discovery and prepare to cross examine witnesses brought by FINRA DOE as well as prepare to offer witnesses in my defense. This was denied by FINRA.

I contacted FINRA DOE again on January 11, 2017 asking for reconsideration of the Hearing Officer's denial of my motion to give me time to get the Discovery and review same. I was also alerted to the fact that some former clients would be testifying at the hearing telephonically. Which I asked to have postponed as I was neither prepared for that or able to understand the legal ramifications thereof. FINRA denied such request.

Again, on January 20, 2017 I sent a letter to FINRA Hearing Officer Fitzgerald in regard the lack of production of the trade confirmations and correspondence sent to clients. As of that date trade confirmations and correspondence with clients was not given by FINRA DOE under the normal procedures of Discovery as afforded to me under the Constitution of the United States of America. How is it possible that FINRA's DOE was making the claim that accounts were excessively traded but the complete evidence of all the trading done for said clients was never presented? It would seem only logical that if the claim was that there was excessive trading in certain client's accounts, then FINRA DOE should have made all of the Discovery in regard to those accounts available. The fact that I did not receive Discovery and have no idea whether or not the correct documents were looked at, or had no ability to actually cross examine each witness using a complete set of documents is again a violation of my Due Process Rights. were I had still not received any Discovery in the case with which to be able to defend myself. What is completely to the Countless times I asked for adjournments up to and including the day of the hearing, when I informed the Chief Hearing Officer that I was not able to open the documents/discovery sent to me and therefore required time to be able to do so. On numerous occasions I tried to explain my position to the experienced lawyers at FINRA that had all of the documents and other parts of discovery at their

fingertips. I made multiple motions to attempt to compel FINRA DOE to adhere to the rules of Due Process and afford me the right to review all relevant documents. Said motions were denied by FINRA.

VI. HEARING

At the hearing, Hearing Officer Fitzgerald acknowledges, via questioning FINRA DOE officials that I was not provided Discovery in this case, and attempts to make the assumption that I may or may not need it all. How Hearing Officer Fitzgerald determines this is beyond comprehension since he is neither my counsel nor is he making rational sense. What he does do at the hearing on Pages 5 – 39 of the Hearing Transcript, admit on the record through testimony of FINRA DOE employees that I had asked for and never received the full Discovery in this case. At that time the Hearing Officer had a duty to FINRA and to myself to not violate my rights to Due Process afforded me under the Constitution of the United States and should have adjourned the hearing until I could prepare and receive the proper Discovery. I should have been allowed to adjourn the Hearing and have ample time to get the information and then ample time to review that information. Without that information, the Hearing was one sided and I was not able to defend myself with the proper documentation and information as I am a Pro Se litigant. The fact that the lawyers from FINRA DOE allowed the Hearing to continue is a further willful violation of my Constitutional Rights afforded to me under the Federal Rules of Procedure.

VII. ARGUMENT

In *Brentwood Academy v. Tennessee Secondary Sch. Athletic Ass'm, 531 U.S. 288, 121 S. Ct. 924 (2001)* the Court held that a private organization would be considered a State Actor, if it is substantially interwoven with a governmental agency. Since FINRA, which was born out of the NASD is overseen by the SEC and cannot make any policy decisions without the SEC approving said decisions, then by definition FINRA is a State Actor. FINRA further takes its Code of Procedure directly from the SEC rules and all of the prescripts of its actions are standardized to mirror actions taken by the SEC.

Additionally, since no other SRO exists for the licensing and keeping of said licenses, FINRA has been enacted to provide a service not only to broker / dealers and individuals getting these licenses, but to the SEC and by extension the Federal Government. Since FINRA is the only repository of said information it is by sheer structure a "State Actor" as it is entwined with the SEC. FINRA acts on behalf of the federal government and the SEC to license, report and enforce. By definition that makes FINRA an extension of the "State Actor".

As FINRA is a "State Actor" it is then subject to the Due Process rules afforded under the Constitution of the United States of America. Since that is the case, then FINRA violated those rules by refusing to disclose all Discovery materials and giving Discovery in such a way that would make it more difficult to get actual discovery.

In *Standard Investment Chartered Inc. v. National Association of Securities Dealers, 637 F. 3d 112, 114-15 (2d Cir. 2011)* the Second Circuit held that the then NASD was immune from tort law damages actions for all actions related to a regulatory act. If the NASD and its successor FINRA are immune from tort claims, then one cannot use tort law claims as a check on the regulatory abuses of FINRA. Since FINRA cannot be enjoined into such actions, then by definition FINRA is subject to Due Process claims. As the SEC is fully aware, the possibility of tort liability has been used as a deterrent to behavior and regulatory abuses. If FINRA is to be treated with government status, being insulated from possible private tort claims, it must be made responsible for violations of due process which government entities or "State Actors" assume in their roles. Additionally, since FINRA has grown in size over the past decade it has become what some refer to as a Co-regulator. Since it has shown it is equal in size and power to that of the SEC, it must be held to the same standards that the SEC is held and must be subject to Due Process.

Further to the argument that FINRA is a "State Actor", in *Flero v Fin. Indust. Regulatory Auth., Inc, 660 F. 3d 569, 571-72 (2d cir. 2011)*, FINRA gets its authority through the SEC as a national securities association

pursuant to the *Maloney Act of 1938, 15 U.S.C. §780-3, et seq.* It has been determined that all brokers and securities firms doing business with the public must be members of FINRA. According to the rule of law that was used to set up SRO's, namely the NASD and its successor entity FINRA, *is "responsible for regulatory oversight of all securities firms that do business with the public".* This makes FINRA the one and only SRO responsible for this. Making it the national repository on behalf of the federal government and the SEC. Further, FINRA's disciplinary proceedings are governed by the FINRA Code of Procedure, which has been approved by the SEC, as is required by *Section 19 of the Securities Exchange Act of 1934 15 U.S.C. § 78s(b).* Said statue of the US Code lays out the procedures for the SRO to make a rule change.

"FINRA has the power to initiate a disciplinary proceeding against any FINRA member or associated person for violating any FINRA rule, SEC regulation, or statutory provision. Id. § 78s(h)(3). To issue a complaint, FINRA's Department of Enforcement or Department of Market Regulation must obtain authorization from the FINRA Regulation Board or FINRA Board. FINRA COP § 9211. After a complaint is filed, a hearing panel conducts a hearing and issues a decision. Id. § 9231. Final decisions of the hearing panel may be appealed to the FINRA National Adjudicatory Council ("NAC"), which can affirm, modify, or reverse the hearing panel's decision. Id. §§ 9311, 9349(a), 9268–9269. NAC decisions may then be appealed to the SEC, pursuant to 15 U.S.C. § 78s(d), and from the SEC to the United States Court of Appeals, pursuant to 15 U.S.C. § 78y. 15 U.S.C. §§ 78s(d), 78y(a); see also Mister Discount Stockbrokers v. SEC, 768 F.2d 875, 876 (7th Cir.1985)." Due to this FINRA should be deemed to be a "State Actor" subject to claims of Due Process.

According to a recent decision by the Office of the Chief Counsel of the Internal Revenue Service, No. 201623006 / June 3, 2016, FINRA is a "State Actor". According to the IRS decision FINRA is a corporation serving as an agency or instrumentality of the government of the United States...". It is the IRS' determination that FINRA is a governmental agency and/or a "State Actor" and should be held to

the strict guidelines of such. "FINRA's restated certificate of incorporation, the delegation to FINRA Regulation, Inc., and the applicable federal securities laws and regulations all clearly show FINRA's role as an SRO conducting federally-mandated enforcement and disciplinary proceedings relating to the federal securities laws and regulations. FINRA enforces compliance with the Securities Exchange Act, SEC regulations, and FINRA's own rules. FINRA does so by bringing disciplinary proceedings to adjudicate violations, which are subject to review by the SEC. *Saad v. SEC, 718 F.3d 904, 907 (D.C. Cir. 2013).* "[W]here FINRA enforces statutory or administrative rules, or enforces its own rules promulgated pursuant to statutory or administrative authority, it is exercising the powers granted to it under the Exchange Act. Indeed, FINRA's powers in that regard are subject to divestment by the SEC under Section 19(g)(2) of that Act." *Fiero, 660 F.3d at 575-576.* The court in Fiero held that Congress did not empower FINRA to bring judicial actions to enforce its own fines; however, as the court noted, the SEC asserts the authority to issue an order affirming sanctions, including fines, imposed by FINRA, and to bring an action in a federal district court to enforce that order. See id. at 575 n.7.

The SEC reviews sanctions imposed by FINRA to determine whether they impose any burden on competition not necessary or appropriate, or are excessive or oppressive. *Saad, 718 F.3d* at 910. The court reviews the SEC's conclusions regarding sanctions to determine whether those conclusions are arbitrary, capricious, or an abuse of discretion. Id.; *Siegel v. SEC, 592 F.3d 147,155 (D.C. Cir. 2010),* cert. denied, 560 U.S. 926 (2010). Although the SEC has express statutory authority to seek judicial enforcement of penalties and to seek monetary penalties for violations of the federal securities laws, the SEC is prohibited from bringing an action against any person for violation of, or to command compliance with, the rules of a SRO unless it appears that (1) such SRO is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors. *Fiero, 660 F.3d at 574-575.*

In the decision hereto, FINRA has been delegated the right to exercise part of a sovereign power of a government, it performs a necessary governmental function and it has the authority to act with the sanction(s) of the government behind it. Moreover, FINRA has absolute immunity with respect to actions taken in furtherance of its regulatory duties. *Labaito v. Fin. Indus. Regulatory Auth., Inc., 599 Fed. Appx. 400 (2d Cir. 2015), cert. denied, 193 L. Ed. 2d 445 (2015); Santos-Buch v. Fin. Indus. Regulatory Auth., Inc., 591 Fed. Appx. 32 (2d Cir. 2015), cert. denied, 136 S. Ct. 43 (2015).* Therefore, under the Guardian Industries test, FINRA is a corporation serving as an agency or instrumentality of the government of the United States for when it is performing its federally-mandated duties under the *Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.*, of conducting enforcement and disciplinary proceedings relating to compliance with federal securities laws, regulations, and FINRA rules promulgated pursuant to that statutory and regulatory authority.

VII. The Rules of Discovery

Rules 26 – 37 of Title V of the Federal Rules of Civil Procedure deal with depositions and discovery. Rule 26(a) states that parties to litigation are "required" to share evidence supporting their case without being requested by the other party. Rule 26 is defined as follows:

- **Rule 26(a)**: Parties are required to share evidence supporting their case without being requested by the opposite party. Failure to do so can preclude that evidence from being used at trial. The following is a breakdown of the Discovery Rules-
- **Rule 26(b)**: Describes what is subject to discovery and what is exempt. Anything that is not privileged or otherwise protected and is relevant can be requested through discovery. Courts are given the power to limit discovery if found that the request is unnecessary, redundant or too difficult to produce vis-à-vis its significance to the case/issue.

- **Rule 26(c)**: Provides for protective order to parties against whom discovery is sought. The party can file a motion seeking protective order, and the court if convinced will pass an order for good cause to protect the party or parties from full or partial discovery.
- **Rule 26(d)**: Provides the timing and sequence of discovery. Generally, parties are not allowed to seek discovery before the parties have conferred. Otherwise, the parties should be authorization by court, stipulation or federal rules, or should be in a proceeding exempted from initial disclosure.
- **Rule 26(e)**: Parties are given chance to correct any wrong information that may have been submitted.
- **Rule 26(f)**: This rule provides for a very significant event, a special meeting between the litigating parties to organize their discovery procedure.
- **Rule 26(g)**: Court can award sanctions to any party who has made use of a discovery device with an intention to subvert the flow of justice, purposefully delay the proceedings or to harass the opposite party

Based on the Federal Rules of Civil Procedure which govern all of the actors in these proceedings, Rule 26 must be specifically followed. FINRA did not follow Rule 26(a) and is in violation thereof as it has not yet, still to this day given me proper and complete Discovery of documents and material related to the case against me. Further to that, FINRA has willfully and knowingly violated Rule 26(g) by specifically giving the respondents a format they knew would be difficult to use and by not conforming to other known methods of document Discovery. FINRA then further violated the beginning of Rule 26, as it continued to press forward with Hearings without full disclosure of all materials related to the case. FINRA then further added insult to injury by suggesting, on the record, that the respondents did not need certain documents, when they have charged me with excessive trading of a customer account but refuse to allow me access

to the discovery that would allow me to defend myself, or prove otherwise. Additionally, FINRA on its own tried to determine what was necessary for me to review as discovery, which is a further violation of Rule 26. FINRA willfully and negligently did not give the proper information to the respondents. Some information was sent and codes were given after the actual hearing took place, which is not the way the rules of Discovery and Due Process work. FINRA has violated Rule 26 multiple times in this case and continues to violate it today.

How can FINRA utilize rules and regulations from the rules of engagement in all proceedings that allow discovery of relevant documents but not be subject to the due process rules afforded under The Constitution. The picking and choosing of what rules to listen to and what rules not to listen is not acceptable for FINRA. FINRA is a "State Actor" and a state actor must adhere to the laws of the state.

VIII. BEYN CLIENTS

The fact that FINRA brought a case against me for proposed violations of FINRA rules and Securities Law Violations, based on excessive trading, but failed to bring forth each and client trade confirmation for the customers being singled out, is a violation of my Due Process Rights (See page 59 and 64 and 65 of the January 24, 2017 transcript). As I have stated prior, it would be a sheer impossibility to examine a client or cross examine them without the use of the confirmation. Such confirmations would show a key point as to whether the trade was solicited, or not, and whether that client had an opportunity to object to the contents of the confirmation, which is why confirmations exist in the first place. One is only left to believe that such conduct was intentional and meant to harm me and my ability to make a case for my own defense.

FINRA definitively downplays the Affidavits signed by the clients who testified against me at the hearing. It is a fact that Messrs. Kennedy, Pixley and Heikkila signed sworn affidavits that reflect that they were experienced investors, and that they did not believe the trading in their accounts were excessive and that

they had ultimate control over the accounts. Each of these individuals "swore that the information in their affidavit was accurate and true". (see last line of each Affidavit). FINRA makes the case at the hearing, utilizing the testimony of these clients that they were coerced or forced into signing said affidavits. But what was not revealed was the correspondence between FINRA and the clients during their investigation, whether via mail or email. What was also not disclosed were any investigative notes that were taken when FINRA spoke with, met with or had interviews with these clients. Since these are egregious violations of my Due Process and the Discovery Rules under Federal Laws of Civil Procedure, FINRA should be held accountable for making false and misleading statements without the evidence to support these claims. They have the burden proof to provide evidence showing the excessive trading, which they did not achieve. They have the burden of proof to impeach the affidavits which they cannot. The customers signed said documents of their own volition and the disclosure of same would have assisted me in utilizing that in my examination and cross examination of the clients. Further on the face of these documents, they are indisputable and any other conclusion is not fathomable. So were the clients lying when they signed the sworn notarized affidavits under penalty of perjury? Or were they lying under oath in a hearing held by FINRA under oath under penalty of perjury? These Affidavits are evidence that the customers knew about the commission structure and were all well aware of the strategies they were employing for their investment capital.

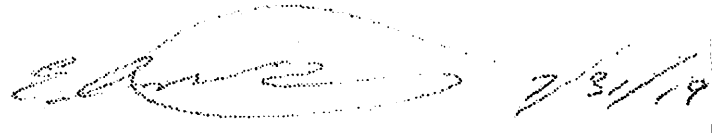
Additionally, I will reiterate that I was neither a principal of the firm, an owner, officer or director. I was a registered representative and could not carry out any trade or work with any client that management of the firm or compliance did not allow me to do. The compliance officer and those with Series 24 licenses should also be a party to this action and I see their absence as a further indication that the proper people are not being held accountable for their actions or roles here. What is the use of FINRA's licensing and enforcement if you are not going to utilize it. If you claim I have excessively traded then where are the violations against the principals and compliance officers that allowed such trading?

IX. CONCLUSION

THEREFORE, the DOE has violated my right to Due Process under the Constitution of the United States of America numerous times during these proceedings and failed to correct such violations. I was not offered a new hearing nor was I afforded the right to properly defend myself against all of this. FINRA did not follow the Federal Rules of Civil Procedure, namely the aforementioned Rule 26 and should be sanctioned for trying to utilize a method of discovery they knew would not work. FINRA willfully and knowingly withheld pertinent information and purposely utilized only the evidence they wanted to utilize.

Due to that I respectfully ask the SEC to dismiss the case against me or in the very least remand the case back to FINRA to rehear the case, this time with the proper discovery and all legal rights most especially due process being followed.

Yours, Etc.



BY: EDWARD BEYN

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July 29, 2019

VIA FACSIMILE

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RE: In the Matter of the Application for Review of Edward Beyn
Administrative Proceeding No. 3-19007

Dear Ms. Countryman:

Enclosed please find my Reply Brief to FINRA's Brief in Opposition of the Application for Review in the above captioned matter.

If you have any questions please do not hesitate to contact me.

Sincerely,

Edward Beyn

BCC: