

August 17, 2020

BY ELECTRONIC MAIL

Vanessa A. Countryman
Secretary
Securities and Exchange Commission 100 F Street, NE
Room 10915
Washington, DC 20549-1090

**RE: In the Matter of the Application for Review of Shlomo Sharbat Administrative Proceeding
No. 3-19870**

Dear Ms. Countryman:

For filing in the above-referenced matter, enclosed please find Shlomo Sharbat's Sur-Reply to FINRA's Motion to Dismiss Application for Review and to Stay Briefing Schedule. Please contact me directly should you have any questions or concerns.

Sincerely



Cathy J. Bardenstein

Enclosures

Cc: Megan Rauch, Esq.
Alan Lawhead, Esq.

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
Shlomo Sharbat
For Review of Action Taken by FINRA
File No. 3-19870

**SHARBAT'S SUR-REPLY TO MOTION TO DISMISS APPLICATION FOR REVIEW
AND TO STAY BRIEFING SCHEDULE**

BARNEA JAFFE LANDE & CO.

Zvi Gabbay NY Bar # 4343026
Hadar Israeli NY Bar # 5551288

BARNEA JAFFE LANDE & CO.

HaRakevet St 58
Tel Aviv-Yafo 67770106
Israel
+972 03.6400600 Firm Telephone
+972 03.6400659 Fax

Counsel for Applicant

Dated: August 17, 2020

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

 A. Sharbat is Not Required to Make a Complete Offer of Proof in His Application for Review 2

 B. Because of the COVID-19 Pandemic, Sharbat’s Application for Review was Filed as Soon as Possible After Learning of the Administrative Judgments Against Those Who Threatened Him 2

III. CONCLUSION 3

TABLE OF AUTHORITIES

FEDERAL RULES AND STATUTES

§201.420 (c)..... 1,2

COMMISSION RULES

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, Exchange Act Release No. 88318 (March 4, 2020) 3

COMMISSION DECISIONS AND ORDERS

Barry Honig, Exchange Act Release No. 24771 (March 16, 2020)..... 2

PennMont Sec., Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *18-19 (Apr. 23, 2010)..... 3

Stephen Robert Williams, Exchange Act Release No. 89238, 2020 SEC LEXIS 2045, at *11-13 (July 7, 2020)..... 3

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
Shlomo Sharbat
For Review of Action Taken by FINRA
File No. 3-19870

**SHARBAT’S SUR-REPLY TO MOTION TO DISMISS APPLICATION FOR REVIEW
AND TO STAY BRIEFING SCHEDULE**

I. INTRODUCTION

FINRA, in its Motion and in its Reply to Shlomo Sharbat’s Opposition to its Motion, contends that this is the forum in which Sharbat is required to make a full offer of proof as to the extraordinary circumstances that exist which warrant this late appeal. This position is in complete disregard of 17 C.F.R. §201.420(c), which limits an application for review to “a brief statement of the alleged errors in the determination and supporting reasons therefor” that “should not exceed two pages in length.” To do so would have required Sharbat to go far beyond the limit allowed and scope prescribed. FINRA’s argument extended beyond the limited threshold issues that were the only matters that should have been raised.

FINRA also argues that Sharbat should have immediately appealed after the March 2020 administrative judgment against Barry Honing, one of the persons who threatened Sharbat, and explained why that provision provided him with comfort. It is critical to note that this judgment was not rendered until after the COVID 19 pandemic had already begun. Applicant asks the

Commission to take judicial notice of the March 2020 onset of the COVID-19 Pandemic which unexpectedly shut down much of the world.

II. ARGUMENT

A. Sharbat is Not Required to Make a Complete Offer of Proof in His Application for Review

FINRA, in its Motion and in its Reply to Shlomo Sharbat's Opposition to its Motion, contends that this is the forum in Sharbat is required to make a full offer of proof as to the extraordinary circumstances that exist that warrant this late appeal. This position is in complete disregard of 17 C.F.R. §201.420 (c), limiting an application for review to a two page document stating the alleged errors and the reasons supporting the challenge.

Sharbat's two-page application for review complied with the requirements of §201.420 (c) by providing a brief statement of the alleged errors and his supporting reasons, including a statement about the threats he was receiving. The restrictions on the length of the application prevented adding more information regarding the nature of the threats and other circumstances. As stated earlier, to accept FINRA's argument would impermissibly expand the scope of this regulation as well as Sharbat's burden. The information FINRA seeks would be expanded if the Commission would allow full briefing on this matter.

B. Because of the COVID-19 Pandemic, Sharbat's Application for Review was Filed as Soon as Possible After Learning of the Administrative Judgments Against Those Who Threatened Him

The administrative judgment against Barry Honig was not released until March 16, 2020¹, well after the current COVID-19 Pandemic began. The impact of COVID-19 was recognized by the Commission at least as early as March 4, 2020 when it issued an Order providing regulatory relief and assistance for companies dealing with COVID-19.²

¹ *Barry Honig*, Exchange Act Release No. 24771 (March 16, 2020)

² Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, Exchange Act Release No. 88318 (March 4, 2020)

As soon as he was able, and in the exercise of due diligence, in late May 2020, Sharbat found new counsel to respond to FINRA and seek a review of its default decision. Little more than one month after being retained, the pending application for review was filed.

In this instance, the *PennMont Sec.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at *18-19 (Apr. 23, 2010), and *Stephen Robert Williams*, Exchange Act Release No. 89238, 2020 SEC LEXIS 2045, at *11-13 (July 7, 2020) cases cited by FINRA, are not appropriate precedent, and the unique nature of the COVID-19 pandemic should, in itself, constitute an extraordinary circumstance beyond the control of Shlomo Sharbat, and at the very least, should allow Sharbat the opportunity to fully brief this matter.

III. CONCLUSION

The Commission should disregard the substantive issues raised by FINRA in its Motion and should not dismiss Sharbat's application for review without a full and fair review by the Commission.

Respectfully submitted,

BARNEA JAFFE LANDE & CO.

/s/ Hadar Israeli
Zvi Gabbay NY Bar # 4343026
Hadar Israeli NY Bar # 5551288
HaRakevet St 58
Tel Aviv-Yafo 67770106
Israel
+972 03.6400600 Firm Telephone
+972 03.6400659 Fax
hisraeli@barlaw.co.il

Dated: August 17, 2020