

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)	Re: FINRA No. 20901610001
)	
SHLOMO SHARBAT)	
)	
For Review of Action taken by)	
)	
FINRA)	

APPLICATION FOR REVIEW

Pursuant to Rule 9370(a) of the FINRA Code of Procedure, Section (19)(d)(2) of the Securities Exchange Act of 1934 (the "Act"), 17 C.F.R. §201.420, and Rule 420 of the Securities and Exchange Commission ("SEC") Rules of Practice, Shlomo Sharbat files this appeal of FINRA's decision to bar him for life from associating with any FINRA member in any capacity, for not appearing for testimony when there has been no evidence whatsoever of him taking part in any wrong doing.

Facts

Mr. Sharbat has been a registered broker since 1994, with no record of any FINRA violations. For a five-month period in 2008, he became affiliated with vFinance Investments, Inc. ("vFinance"). In 2009, after he left vFinance, FINRA began investigating vFinance and discovered possible violations related to its distribution of the securities of PERF Go-Green Holdings, Inc. ("Go-Green") in violation of the Act and FINRA Rules. During that investigation FINRA began to investigate Mr. Sharbat as well, and in 2012, four years after he disassociated from vFinance, FINRA sought Mr. Sharbat's testimony. At the same time, Mr. Sharbat was receiving threats against his life from Samuel DelPresto, Barry Honig and several others who were involved in the distribution of Go-Green, should he cooperate with FINRA's investigation, causing him to flee to Israel. After Mr. Sharbat failed to respond to two requests, FINRA commenced a Disciplinary Proceeding alleging that Mr. Sharbat violated FINRA Rule 8210 by refusing to provide testimony and even more significantly, that he violated Regulation M of the Act by inducing or attempting to induce customers to purchase securities in Go-Green while vFinance was participating in the distribution of convertible debentures of the same firm. Mr. Sharbat was served with the Notice of Complaint and Complaint on August 14, 2012 but did not file an answer. On September 12, 2012, FINRA filed a Statement in Support of a Motion for Entry of Default Decision and served it on Mr. Sharbat's attorney. In that filing, FINRA asked the Department of Enforcement to "enter a Default Order barring respondent Shlomo Sharbat for violating FINRA Rules 8210 and 2010, and suspending him for six months and fining him \$25,000 for violating Regulation M and NASD Rule 2110". The document stated in a footnote only that "*if Sharbat is barred for his failure to testify, the fine and suspension for violating Regulation M need not be imposed.*" Unfortunately, as a result of the text's ambiguity and his attorney's explanation at the time, Mr. Sharbat's understanding was that FINRA was only seeking a six months suspension and a fine. His attorney also advised him that in light of that, it might be best to simply allow the action to take place without responding. Based upon his understanding that his suspension was only for a short time, and in light of the threats he had received, Mr. Sharbat thought the safer course was neither testify nor appeal.

On November 8, 2012, the Hearing Officer, accepting all of FINRA's factual allegations as true, held as a matter of law that none of the factual offerings presented show that Mr. Sharbat was a distribution participant and "hence do not establish a prima facie violation of Regulation M" and dismissed that cause of action. The Hearing Officer did, however, find that Mr. Sharbat failed to provide the requested testimony and therefore barred him from "associating with any FINRA member in any capacity for violating Rules 8210 and 2010." Mr. Sharbat never received a copy of the default judgment imposing the bar, or any written notice (as required by FINRA Rule 9552) that his failure to respond would subject him to a lifetime bar.¹

Recently however, Mr. Sharbat learned that both DelPresto and Honig were brought to trial by the SEC and final judgments were obtained against them on November 21, 2019, and March 16, 2020, respectively, based on the stock manipulation scheme they had engaged in. This resolution provided Mr. Sharbat with the sense of security required to dare seek reversal of FINRA's judgment and penalties assessed against him.

Law

All sanctions which may be imposed by a regulatory agency are either remedial or punitive. In *Kokesh v. S.E.C.*, 137 S. Ct. 1635, 1638 (2017) ("*Kokesh*"), the Supreme Court opined that [s]anctions imposed for the purpose of deterring infractions of public laws are inherently punitive. A bar for life by FINRA is the "securities industry equivalent of capital punishment." (Justice Kavanaugh in his concurring opinion in *Saad v. Sec. & Exch. Comm'n*, 873 F.3d at 306.)², therefore, it is inherently punitive under *Kokesh*. Although FINRA is expressly allowed to impose expulsions and sanctions when appropriate, it may not do so, however, when those sanctions are "oppressive or excessive", since as such, they constitute a violation of both the Act³ and the Fifth Amendment guarantee of due process of law. It is up to the SEC to determine whether or not certain sanctions imposed by FINRA are "oppressive or excessive." 15 U.S.C. § 78s(e) (2). Among the factors that must be considered is whether there were any personal or professional stressors which might mitigate the penalty imposed. *Saad v. Sec. & Exch. Comm'n*, 873 F.3d 297, 299 (D.C. Cir. Cir. 2017). As noted above, Mr. Sharbat's life was threatened because of the possibility he might testify, making him flee to Israel to assure his personal safety. Mr. Sharbat remained under the impression that at the worst, he would be suspended for six months, while he was living in Israel responding to personal issues with his family, and unable to work as a broker. As a result of FINRA's decision, however, Mr. Sharbat has now been denied of his freedom to earn his livelihood as a broker for good, even though he has not engaged in any wrongful actions that would harm investors and despite the Hearing Officer's finding that FINRA had failed to even make a prima facie case that Mr. Sharbat had engaged in any wrongdoing. Other than failing to respond to their requests for testimony, for understandable reasons, Mr. Sharbat has no other disciplinary history with FINRA. In such a case, reversing a lifetime bar does not "undermine the ability of [FINRA] to . . . protect the public interest"⁴, while letting it stand, is oppressive and excessive.

For the foregoing reasons, Mr. Sharbat respectfully requests that the SEC grant a review of FINRA's disciplinary action as imposed in the default judgment.

Respectfully submitted this 2nd day of July 2020. Mr. Sharbat can receive service of process at the address below.

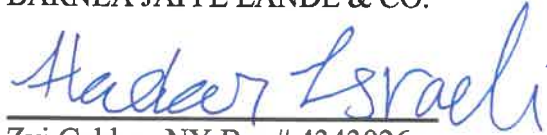
¹ This appeal is timely under SEC regulations because the receipt of threats against Mr. Sharbat should he fail to cooperate with the investigation constitute exceptional circumstances that would justify his failure to appeal within the 30 days allotted in 17 C.F.R. §201.420(b).

² The D.C. Circuit Court granted Saad's petition in part and remanded it back to the SEC to determine whether a lifetime bar was "excessive or oppressive" noting that the Commission had an obligation to ensure its sanction was remedial and not punitive. 873 F.3d at 301.

³ 15 U.S.C. § 78o-3(b)(8) and (h)(1).

⁴ Howard Brett Berger, Exchange Act Rel. No. 58950, at Pg. 6-7 (Nov. 14, 2008) denied, 347 F. App'x 692 (2d Cir. 2009).

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: July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020 at 1:05 PM Israel time, and on behalf of Hadar Israeli, Esq., I electronically served the Application for Review In the Matter of Shlomo Sharbat FINRA No. 20901610001 on FINRA by emailing a copy it to Alan.Lawhead@finra.org after obtaining prior consent by FINRA.

Eran Elharar

A handwritten signature in black ink, appearing to be 'Eran Elharar', written over the printed name.