



Michael M. Smith
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November 25, 2020

VIA ELECTRONIC MAIL

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
apfilings@SEC.gov

**RE: In the Matter of the Application of Silver Leaf Partners, LLC,
Administrative Proceeding No. 3-19896**

Dear Ms. Countryman:

Enclosed for filing in the above-referenced matter, please find FINRA's Motion to Strike the Affidavit of Janice Parise and Saule Sundetova.

Please contact me at michael.smith@finra.org if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael M. Smith".

Michael M. Smith

Enclosure

cc: Jeffrey A. Sexton, Esq.
jsexton@jeffsexton.com

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

In the Matter of the Application for Review of

SILVER LEAF PARTNERS, LLC

Administrative Proceeding No. 3-19896

**FINRA'S MOTION TO STRIKE THE
AFFIDAVIT OF JANICE PARISE AND SAULE SUNDETOVA**

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Vice President and
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FINRA moves to strike the Affidavit of Janice Parise and Saule Sundetova, which Silver Leaf improperly attached to its reply brief in support of its application for review. Silver Leaf did not move to admit this affidavit as additional evidence, as required under Commission Rule of Practice 452. Additionally, the affidavit does not meet the criteria for admission of new evidence. As a matter of fairness and to ensure compliance with Rule 452, the Commission should strike the affidavit and all references to it in Silver Leaf’s reply brief.

I. Procedural and Factual Background

On June 29, 2020, FINRA’s National Adjudicatory Council (the “NAC”) found that Silver Leaf paid transaction-based compensation to nonmember brokers or dealers, in violation of NASD Rule 2420 and FINRA Rule 2010. RP 6598-6603. The NAC also found that Silver Leaf failed to establish and maintain a system to supervise its business reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010. RP 6603-08. For this misconduct, the NAC (1) fined Silver Leaf a total of \$100,000, (2) ordered the firm to retain an independent consultant to conduct a comprehensive review of its policies, systems, and procedures, and

(3) suspended the firm from engaging in its Corporate Advisory business, including making introductions to stock loans and block trades, until it certifies its implementation of the independent consultant's recommendations. RP 6610-14. Silver Leaf appealed the NAC's decision to the Commission. RP 6617-19.

On September 29, 2020, Silver Leaf filed its opening brief in support of its application for review, but did not move to adduce any new evidence or attach any affidavit to its brief. On November 16, 2020, Silver Leaf filed its reply brief, and attached to it the Affidavit of Janice Parise and Saul Sundetova. In its reply, Silver Leaf states that the firm has "hired one of the premier out-sourced FinOp and accounting services provider, SDDCo, to handle all aspects of its financial operations and accounting processes pursuant to the terms of a January 18, 2017 Accounting & FinOP Services Agreement[.]" Reply Brief at 17. In support of this assertion, Silver Leaf cites the affidavit. *Id.* Parise and Sundetova are identified in the affidavit as SDDCo's "partner" and "manager," respectively.

II. Argument

Under Rule 452, the Commission may permit a party to introduce new evidence if the moving party shows with particularity that (a) the evidence is material and (b) there were reasonable grounds for its failure to adduce such evidence previously. *Jack H. Stein*, 56 S.E.C. 108, 119 (2003); 17 C.F.R. 201.452. Silver Leaf failed to submit such a motion or to otherwise establish, as required by Rule 452, that the evidence in the affidavit is material and that reasonable grounds exist for its failure to adduce the evidence previously.

A. The Affidavit Does Not Contain Material Evidence

The affidavit does not contain evidence material to the NAC's findings of violation or the sanctions it imposed. All of the violations the NAC found occurred before 2016. *See* RP 6586-

97. Parise and Sundetova state in the affidavit that Silver Leaf hired SDDCo in January 2017. Affidavit ¶ 1. SDDCo therefore was not responsible for, or involved in any way with, the violations at issue. SDDCo's involvement in Silver Leaf's business from 2017 forward is not material to the firm's liability for violations that occurred before 2016.¹

The affidavit also does not contain evidence material to the sanctions the NAC imposed. Although FINRA's Sanction Guidelines provide that a firm's voluntary employment of corrective measures to revise procedures to avoid recurrence of misconduct may be a mitigating factor when done before a regulator detects the misconduct,² Silver Leaf did not hire SDDCo until after regulators had detected the firm's misconduct. In 2012, almost five years before Silver Leaf hired SDDCo, SEC examiners identified Silver Leaf's payment of transaction-based compensation to nonmembers as one of the firm's "deficiencies and weaknesses." RP 4799-4802. FINRA's Department of Enforcement opened the investigation that led to this proceeding in 2015. RP 3028-30. Because the affidavit does not contain evidence showing that Silver Leaf attempted to employ corrective measures before its misconduct was detected by the SEC and FINRA, Silver Leaf would not be entitled to any mitigation based on it.³

¹ See *Jack H. Stein*, 56 S.E.C. at 119-20 (refusing to consider brokerage statements submitted by respondent for the first time on appeal because the "statements cover periods after the events at issue here and are thus not material to the suitability of [respondent's] recommendations in this period.").

² *FINRA Sanction Guidelines 7* (March 2019) (Principal Considerations in Determining Sanctions No. 3) (instructing adjudicators to consider "Whether . . . member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention . . . by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.").

³ See, e.g., *Wedbush Secs., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *47 (Aug. 12, 2016) ("Applicants point to no corrective measures taken before regulators began notifying the Firm of their concerns, so the record does not support consideration of efforts to improve regulatory reporting as a mitigating factor."), *aff'd*, 719 F. App'x 724 (9th Cir. 2018).

Silver Leaf's hiring of SDDCo does not obviate the need for an independent consultant to review the firm's policies, systems, and procedures. SDDCo's role is limited to processing payments to independent contractors as directed by Silver Leaf. Parise and Sundtova explicitly state in their affidavit that the "determination of a representative being authorized to receive payment *is made by Silver Leaf's management and is based on information provided to us by Silver Leaf* in our limited capacity as the processor of independent contractor payments." Affidavit ¶ 5 (emphasis added). In other words, Silver Leaf determines whether a payee is eligible to receive transaction-based compensation based on its own policies, systems, and procedures, and SDDCo only processes the payment. The independent consultant, by contrast, will conduct a comprehensive review of Silver Leaf's policies, systems, and procedures for its entire business, including, specifically, its payment of transaction-based compensation and its corporate advisory business, to ensure they are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Silver Leaf's hiring of SDDCo to process payments to independent contractors, as directed by Silver Leaf, does not diminish the acute need for the independent consultant's review.

B. There Are No Reasonable Grounds for Silver Leaf's Failure to Introduce the Evidence Previously

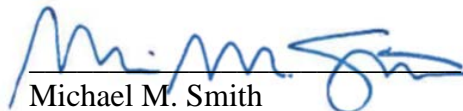
There are no reasonable grounds for Silver Leaf's failure to introduce the evidence in the affidavit during FINRA's disciplinary proceeding. This disciplinary proceeding was pending before FINRA for two years and nine months, and Silver Leaf knew the entire time that its systems, policies, and procedures for payment of transaction-based compensation were central to the allegations against it. Enforcement filed its complaint against Silver Leaf in September 2017, nine months after Silver Leaf purportedly hired SDDCo. *See* RP 1-22. The complaint specifically alleged that Silver Leaf paid transaction-based compensation to nonmember entities

affiliated with its registered persons and to Halim, and that Silver Leaf failed to reasonably supervise its payment of transaction-based compensation and its corporate advisory business. *See id.* The Hearing Panel issued its decision in January 2019, and Silver Leaf appealed to the NAC in February 2019. RP 6087-6131, 6221-48. The NAC issued its decision in June 2020. RP 6579-6615. At no time during FINRA’s disciplinary proceeding did Silver Leaf attempt to introduce the evidence contained in the affidavit. There are no reasonable grounds for Silver Leaf’s decision to wait until now to do it.⁴

III. Conclusion

Because the evidence in the affidavit is not material, there are no reasonable grounds for Silver Leaf’s failure to introduce it during FINRA’s disciplinary proceeding, and Silver Leaf did not move to introduce new evidence when it submitted its reply brief, the Commission should strike the affidavit and all references to it in Silver Leaf’s reply brief.

Respectfully submitted,



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November 25, 2020

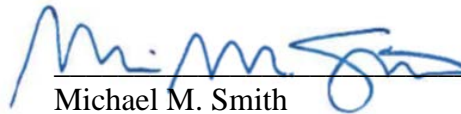
⁴ *See Jack H. Stein*, 56 S.E.C. at 109 (finding no reasonable grounds for admission of new evidence because respondent provided “no explanation why he did not introduce this document before the NASD Hearing Panel in 2000 or before the National Adjudicatory Council (‘NAC’) in 2001.”).

CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 25th day of November 2020, I caused a copy of FINRA's Motion to Strike the Affidavit of Janice Parise and Saul Sundetova, in the matter of *Application for Review by Silver Leaf Partners, LLC*, Administrative Proceeding No. 3-19896, to be served by electronic mail on:

Vanessa A. Countryman, Secretary
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Jeffrey A. Sexton, Esq.
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