

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20204

In the Matter of

**ADVANCED PRACTICE
ADVISORS LLC,**

and

PAUL C. SPITZER

Respondents.

**DIVISION OF ENFORCEMENT'S RESPONSE
TO SPITZER'S MOTION TO APPEAR AND ARGUE
AT HEARING BEFORE THE COMMISSION**

March 1, 2023

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I. INTRODUCTION

On February 8, 2023, Respondent Paul C. Spitzer filed a motion requesting “that the Commission hold a hearing on Spitzer’s application to lift the limitation on supervisory activities imposed on Spitzer by the Commission’s [settled] order dated January 14, 2021 ... and that counsel for Mr. Spitzer be permitted to make argument at that hearing.” His supporting brief asserts that such a hearing is compelled by: (i) procedural due process; (ii) Section 556(d) of the Administrative Procedure Act (“APA”); (iii) Section 557(d) of the APA; and (iv) the purported “capital punishment” character of the supervisory limitation imposed on Respondent by the Commission’s January 14, 2021 Order. Because the Commission’s decision in *In the Matter of Wanger*, Admin. Proc. File No. 3-14676, SEC Rel. No. 4728, 2017 WL 2953368 (Comm’n op.) (Jul. 10, 2017) rejects each of Respondent’s asserted justifications for a hearing, the Division of Enforcement respectfully requests that the Commission deny the motion.

II. ARGUMENT

Respondent first argues that “fair play” and “[due] process” require a hearing. Br. at § I. Neither of Spitzer’s cited authorities – *Schreiber* and *Morgan* – offer any support for that conclusion. *Schreiber* and *Morgan* do not address adjudicatory action by the Commission, nor do they address circumstances analogous to those here – a petitioner seeking relief from a settled order that he voluntarily consented to. See *FCC v. Schreiber*, 381 U.S. 279 (1965); *Morgan v. United States*, 304 U.S. 1 (1938).

Spitzer next contends that the procedural provisions of APA Section 556 apply to his motion to vacate the Commission’s settled order under Section 554(a) of the statute. Br. at § II. Spitzer is incorrect. As the Commission has previously held:

In contrast to a proceeding imposing a remedial sanction, which is required by statute to be on the record after notice and opportunity for a

hearing ... there is no statutory requirement for a hearing in [his petition for relief under Rule 193.]

Wanger, 2017 WL 2953368, *2, n. 4. The same is true of Spitzer’s present motion to vacate, which his motion concedes should have been brought as a Rule 193 petition. Because his motion to vacate and its “supporting materials lay out his factual and legal arguments in detail” and because a hearing would not “significantly aid [the Commission’s] decisional process,” the Commission should deny his request for a hearing. *Id.*

Spitzer urges, third, that “the Commission’s practice of only allowing the staff to address the Commission when deciding sanctions” constitutes *ex parte* communication prohibited by Section 557(d) of the APA. Once again, these provisions apply only to adjudications “required by statute to be determined on the record after opportunity for an agency hearing,” 5. U.S.C. § 554(a), and Spitzer’s motion to vacate is not required by statute to be determined on the record.

Finally, Spitzer contends that a hearing is warranted because the Commission’s supervisory limitation “amounts to a lifetime bar,” citing *Saad v. SEC*, 980 F.3d 103 (D.C. Cir. 2020). Spitzer misapprehends the Commission’s sanction in his case – *Saad* addressed a permanent FINRA associational bar, 980 F.3d at 104; Spitzer in contrast is subject to a supervisory limitation. In any case, Spitzer:

[H]ad the right to present evidence at a hearing, to submit proposed findings of fact and law, to receive an initial decision by the Law Judge, to obtain *de novo* review by the Commission, and to obtain judicial review by an appropriate United States Court of Appeals. While represented by counsel, he chose instead to waive those rights and offer to settle.

Wanger, 2017 WL 2953368, *4. His motion should accordingly be denied.

III. CONCLUSION

The Division of Enforcement respectfully requests that the Commission deny Spitzer’s motion for a hearing for the reasons set forth above.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its Attorneys:

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CERTIFICATE OF SERVICE

I certify that on March 1, 2023, I caused the foregoing document to be served on the following persons, in the manner described below:

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