3-20260

Disciplinary Proceeding No. 2018059545201

United States Securities and Exchange Commission

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT ESCOBIO,
(CRD No. 703813)

Applicant/Respondent.

APPLICATION FOR REVIEW
OF RESPONDENT – ROBERT ESCOBIO

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INTRODUCTION

Despite the absence of a single customer complaint, witness testimony or other reliable or admissible evidence showing that Robert Escobio ("Robert") used his old Southern Trust Securities (STS) email account after he resigned and retired as a registered broker to contact STS customers, Financial Industry Regulatory Authority (FINRA) launched and aggressively pursued a pointless enforcement action against Robert, seeking to impose a permanent bar upon a statutorily disqualified, retired member on the eve of his two year retirement anniversary.

The National Adjudicatory Council (NAC)'s ruling below ignored the rules of evidence when reviewing the sufficiency or admissibility of evidence FINRA submitted yet imposed evidentiary burdens upon the Respondent that far exceed the proof required to show coercion and duress.

This case, and others like it, exhibits NAC's double standards and FINRA's enormous waste of resources that would be better utilized to ensure that material violations historically overlooked for active members defrauding the public do not go undetected. It is because of enforcement actions like the one at the case at bar, and coercive immaterial enforcement actions against other small firm members for merely questioning FINRA's reasoning or authority for Rule 8210 requests, that it has become clear that FINRA's disproportionate and expansive application of Rule

8210 against small firms, must be limited, closely examined and requests for draconian sanctions for Rule 8210 "violations" denied. See, *Finra: Who's watching the watchdog?* *https://www.investmentnews.com/finra-whose-watching-the-watchdog-72102,* (Mark Schoeff, Jr. and Bruce Kelly, Sept. 2, 2017) at Appendix A, § 1.

STATEMENT OF THE CASE AND FACTS

The genesis of this case reportedly began in August 2018. FINRA alleged it opened an investigation in August 2018 to obtain additional information regarding Robert Escobio's ("Robert") "possible continuing association"[1] with Southern Trust Securities, Inc. ("STS") after he retired, was terminated and statutorily disqualified. *See* Arno Declaration, dated December 18, 2019. ("Arno Decl.") at ¶¶ 10, 12.

FINRA sat on the case for eight (8) months. On March 26, 2019 – after a District Court entered an illegal coercive Order[2] finding Robert in contempt -- FINRA mailed its first Rule 8210 request to Robert's residence. *Id.* at ¶ 11.

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[1] Based upon *unanswered* emails to an STS email address that Robert Escobio no longer had access to.

[2] See March 18, 2019 Order Finding Robert Escobio in Contempt at Doc. 281 ("Contempt Order") at p. 19, *U.S. Commodity Futures Trading Commission v. Southern Trust Metals, Inc., Loreley Overseas Corporation and Robert Escobio*, Southern District of Florida Case No. 1:14-cv-22739-JLK. ("CFTC Matter").

Two (2) days after FINRA mailed the first 8210 request, the illegal coercive Order required Robert Escobio to tender $350,000 followed by $10,000 monthly installments. The penalty for failing to make any of the payments was indefinite, repetitive incarceration.

Because Robert was unable to meet the March 28, 2019 deadline to pay $350,000 and subsequent $10,000 monthly installments, on April 1, 2019 Robert was indefinitely incarcerated until sufficient funds were deposited on April 26th,[3] and subsequently reincarcerated when monthly payments were not timely paid. Docs. 299 and 347, U.S. District Court, Southern District of Florida, Case No. 1:15:22739-JLK.

This egregious coercion and duress of facing repetitive, indefinite reincarceration did not cease until January 6, 2020 -- the day the Eleventh Circuit issued its opinion reversing the Contempt order – six (6) full months after FINRA mailed the last 8210 request. This is clear coercion and duress that FINRA and NAC patently disregarded in their rulings.

In March, April, May and June 2019, while Robert was illegally incarcerated and striving to maintain his employment as a flight instructor to support himself and attempt to pay the monthly $10,000 installments the Contempt Order required

[3] Except for a weekend furlough to attend a family member's funeral, Robert remained incarcerated until April 26, 2019. *Id.* at Doc. 314, 317, 322, 325-329, 334, 335.

to avoid re-incarceration, FINRA sent repetitive Rule 8210 requests for information and on the record ("OTR") testimony. FINRA was fully aware of the Contempt Order and the impact that Robert's incarceration and the order's onerous payment obligations had upon his ability to comply. Arno Decl. at ¶ 10 and 15.

Although Robert requested timely postponements for compliance with the 8210s he learned of while he was illegally incarcerated or and striving to maintain his employment as a flight instructor when he was not incarcerated, FINRA Enforcement made it clear that each time Robert did not appear for an OTR examination or produce records demanded, that FINRA Enforcement would file a Complaint seeking sanctions, including debarment, for each time he had failed to comply. *See* Arno Decl. at Ex. 25, p. 1 (email dated April 10, 2019, 3:43 pm threatening to fine, suspend or bar Robert if he did not appear for an OTR on April 18, 2019), *Id.* at Exhibits 30 and 40. Although Robert, who was statutorily barred from seeking reregistration, agreed not to seek reinstatement and to be voluntarily barred to resolve the investigation, *Id.* at 40, Enforcement refused to accept those terms, and demanded that Robert execute a Letter of Acceptance, Waiver and Consent containing false allegations of fact. FINRA, in a further waste of Enforcement's resources, filed a Complaint seeking sanctions after Robert refused to execute a document with false allegations of fact.

During the Enforcement proceeding, FINRA's Department of Enforcement ("DOE") filed a motion for summary disposition. On February 5, 2020, the Hearing Officer granted DOE's motion even though the undisputed facts showed that DOE's investigation was solely based upon Ms. Arno's suspicions and speculations, and was unsupported by any customer complaint, eye-witness testimony or copy of an email initiated by Robert to any STS client. The fact that the email account was left open to enable the Registered Entity, STS, to identify clients who were not aware that Robert no longer worked with STS, is not a violation. The Hearing Panel disregarded the following issues raised in this appeal:

STATEMENT OF ISSUES

1. Whether NAC erred in ruling that no mitigating evidence existed and in failing to remand this matter for an evidentiary hearing to address the continual coercion and duress Robert Escobio experienced as the result of indefinite, repetitive incarceration imposed by a subsequently reversed federal court Order?
2. Whether NAC's decision must be reversed because it improperly relied upon uncorroborated, inadmissible, speculative hearsay in an affidavit from an individual without personal knowledge to justify the Department of

Enforcement's (DOE) investigation and continued investigation into a statutorily disqualified resigned member?

3. Whether a Permanent bar in this case IS UNWARRANTED?

STANDARD OF REVIEW

Section 19(e)(2) of the Securities Exchange Act of 1934 does not require sanctions to be sustained where, after giving due regard to the public interest and the protection of investors, the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e)(2). As part of the review, the Securities and Exchange Commission (SEC) must consider aggravating or mitigating factors, and whether the sanctions are remedial or punitive. *Saad v. SEC,* 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC,* 494 F.3d 1059, 1064-65 (D.C. Cir. 2007). In making this determination, the SEC is not bound by FINRA's Sanction Guidelines. *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033 at *11, 2013 SEC Lexis 1699 at *42 (June 14, 2013).

SUMMARY OF THE ARGUMENT

NAC improperly relied upon DOE's speculative theories that Robert Escobio ("Robert") "associated" with STS based upon emails sent to Robert's old email account where no evidence, witness statement or customer complaint showed that Robert ever had access to that old email account or responded to any

emails sent to that account. Summary disposition cannot be granted on pretext suspicions, based upon "evidence" that is not admissible at a hearing or trial. Hearsay statements, unsupported inferences, speculation or conjecture are improper in summary disposition affidavits and declarations and cannot be considered on a motion for summary disposition.

The Hearing Panel improperly relied upon and condoned DOE's frivolous enforcement action orchestrated to subject Robert to 8210 requests at a time when he would be least able to accurately and completely respond, for the purpose of obtaining a permanent bar of a retired, statutorily disqualified individual shortly before FINRA lost jurisdiction to do so. Such fabricated investigations do not serve the public interest, waste valuable resources, and should not be condoned or upheld.

In contrast, NAC ignored the Hearing Panel's wholesale failure to consider the mitigating factors and disputed facts regarding the coercion and duress Robert was subjected to while being illegally incarcerated pursuant to an illegal, now reversed Order of Contempt that required monthly monetary payments well beyond Robert's income and assets, which if not paid, would result, and did result, in his immediate and indefinite incarceration. The NAC's failure to reverse and remand this matter for a hearing is clear error.

Moreover, NAC applied an improper standard for proving coercion and duress that is not supported by any reported citation of authority or rule of law. No reported case or evidentiary rule requires a psychological report to prove coercion or duress. Accordingly, NAC's factual findings and rulings on this issue are reversible error.

Moreover, NAC improperly disregarded DOE's orchestration its 8210 requests at the same time the CFTC enforced the Order of Contempt requiring the illegal incarceration of Robert each and every month he was unable to pay monetary installments in excess of his income and assets. By the time DOE's first two Rule 8210 requests would have been received, Robert was incarcerated and unable to respond. DOE's subsequent communications made it clear that earlier failures to respond already subjected Robert an enforcement action, and therefore, were futile.

DOE's use of 8210 requests against individuals unable to respond for the sole purpose of seeking a permanent bar where no complaints have been filed and no evidence shows that the retired/statutorily disqualified member ever responded to a single email that gave rise to the misplaced suspicions, should not be condoned. While DOE may assert that they are "authorized" to go on fishing expeditions in empty ponds to seek evidence that does not exist, the SEC should not condone the waste of DOE's resources for the sole purpose of increasing

FINRA's statistical disciplinary achievements, or to share records with other agencies that cannot otherwise share them legally. Such an improper use of 8210 violates the Rule of Law.

These Rule 8210 requests were not for the laudatory purpose of protecting investors, but rather for the purpose of extracting and sharing more records with the CFTC and to increase the statistical disciplinary achievements that FINRA could report to the public.

NAC failed to remand this matter to the Hearing Panel failed to consider the mitigating evidence, and improperly ruled that no mitigating evidence existed. Moreover, imposition of sanctions against a retired, statutorily disqualified member for failing to respond to 8210 requests while incarcerated or facing indefinite, repetitive incarceration should he miss work to attend an 8210 OTR, should not be condoned, and no sanctions should be issued in order to discourage FINRA's waste of enforcement resources in the future.

ARGUMENT

I.

NAC erred in ruling that no mitigating evidence existed and in failing to remand this matter for an evidentiary hearing to address the continual coercion and duress Robert Escobio experienced as the result of indefinite, repetitive incarceration imposed by a subsequently reversed federal court Order.

The Hearing Panel erroneously ruled that no mitigating factors existed and failed to discuss any mitigating factors in the Record. See Hearing Panel Decision at p. 11. The Record showed that at the time FINRA commenced its investigation, an illegal coercive District Court Order required the incarceration of Robert if he failed to make payments in excess of his earnings and ability to pay.[4] Two (2) days after FINRA mailed the first 8210 request, the illegal coercive Order required Robert Escobio to tender $350,000 followed by $10,000 monthly installments.

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[4] NAC failed to consider facts cited in the Eleventh Circuit's decision that document the illegality of the Contempt Order and the facts Robert relied upon to demonstrate his unavailability and mitigation. The rules of procedure and evidence do not require citations of reported opinions to be added to the record. Further, Rule 201 of the Federal Rules of Evidence requires courts to take judicial notice of facts that are not subject to reasonable dispute that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. See Fed. R. Evid. 201(b)-(d). A citation to a reported decision of an appellate court is not capable of reasonable dispute and is undeniably accurate. Moreover, "[j]udicial notice may be taken at any stage of the proceeding." *Id.* at ¶ (f). Therefore, this tribunal may take judicial notice of Court records and reported opinions cited in the Applicant's submissions below.

The penalty for failing to make *any* of the required payments was indefinite, repetitive incarceration.

Because Robert was unable to meet the March 28, 2019 deadline to pay $350,000 and subsequent $10,000 monthly installments, on April 1, 2019 Robert was indefinitely incarcerated until sufficient funds were deposited on April 26th.[5] In addition, Robert was threatened with and reincarcerated when he was unable to timely remit the $10,000 monthly payments. Docs. 299 and 347, U.S. District Court, Southern District of Florida, Case No. 1:15:22739-JLK.

NAC ignored the fact that the Hearing Panel did not mention or discuss this evidence and erred in ruling that in order to prove coercion that a member must present "evidence addressing his mental state." NAC Decision at p. 15. NAC never discussed or addressed the patent financial stress and physical and mental stress a continual threat of reincarceration for failure to make $10,000 monthly payments would place upon an individual who does not have the ability to pay the monthly installments. Nor did NAC provide a citation of authority to support is assertion that "evidence addressing … mental state" must be provided to prove coercion. Moreover, NAC never addressed or discussed the duress that the illegal Order imposed upon Robert. *Id.,* at 15.

[5] Except for a weekend furlough to attend a family member's funeral, Robert remained incarcerated until April 26, 2019. *Id.* at Doc. 314, 317, 322, 325-329, 334, 335.

No reported case or authority requires the submission of medical evidence to prove coercion or duress. The Record below showed that Robert's unavailability was due to either an illegal incarceration or threat of reincarceration each and every month if he failed to earn sufficient funds to pay $10,000 per month installments. These facts demonstrate that Robert was subjected to both coercion and duress stemming from an illegal Court Order, the violation of which would result in additional indefinite incarceration. Lack of free choice is "[a] crucial element of coercion or duress." *See Korn v. Franchard Corp.,* 388 F. Supp. 1326, 1333 (S.D.N.Y. 1975). The word "duress" implies feebleness on one side, overpowering strength on the other. *United States v. Bethlehem Steel Corp.,* 315 U.S. 289, 300, 62 S. Ct. 581, 587 (1942).

NAC citation to *John M.E. Saad,* Exchange Act Release No. 76118, 2015 SEC LEXIS 4176 (Oct. 8, 2015) and *Ahmed Gadalkareem*, Exchange Act Release No. 82879, 2018 SEC LEXIS 719 at *29-*30 (Mar. 14, 2018) are misplaced. Both cases involve facts and circumstances inapposite to the case at bar.

In *John M.E. Saad,* Exchange Act Release No. 76118, 2015 SEC LEXIS 4176 (Oct. 8, 2015), the member falsified expense receipts in order to hide the fact that he did not attend a business meeting in Memphis. Generic stress resulting in deceitful conduct is not remotely similar to the certainty of indefinite, illegal incarceration Robert – then 63 years old -- faced if he failed to timely pay the

$10,000 monthly payments which were in far in excess of his income and ability to pay. Thus, it was abundantly clear that every hour that Robert could possibly work he had to do so and that he could not risk losing his job as a flight instructor -- the only job he had – by failing to report to work when required. Without that job, Robert did not have any hope to earn the funds necessary to pay the $10,000 payments to avoid indefinite re-incarceration.

Likewise, NAC's citation to *Ahmed Gadalkareem*, Exchange Act Release No. 82879, 2018 SEC LEXIS 719 at *29-*30 (Mar. 14, 2018) does not excuse the Hearing Officer's failure to hold a hearing and NAC's failure to remand this matter for such a hearing. In *Gadalkareem*, the medical evidence presented addressing Gadalkareem's aggressive and harassing conduct was for a period of time well after the threatening and harassing conduct that Gadalkareem engaged in that gave rise to his disciplinary proceeding. The facts and rulings in *Gadalkareem* are wholly irrelevant to the case at bar. The conduct here -- failure to comply with moot[6] 8210 requests -- occurred at exactly the same time Robert was incarcerated and faced further indefinite periods of incarceration if he failed to pay the onerous $10,000.00 per month installments. As a result, NAC's citation to and reliance on *Gadalkareem* is misplaced.

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[6] The 8210 requests were moot for two reasons: (1) Robert was and is ineligible for reinstatement, and (2) the testimony of all witnesses confirmed that Robert never engaged in any inappropriate conduct or had access to a regulated firm's email account.

Accordingly, NAC's findings that Robert failed to present mitigating evidence must be rejected and remanded with directions to conduct an evidentiary hearing, and, alternatively, to rescind the bar imposed in this matter based upon the extreme conditions Robert was faced with at the time of DOE's 8210 requests.

II.

NAC's decision must be reversed because it improperly relied upon uncorroborated, inadmissible, speculative hearsay in an affidavit from an individual without personal knowledge to justify the Department of Enforcement's (DOE) investigation and continued investigation into a statutorily disqualified resigned member.

Hearsay evidence, unsupported inferences, speculation or conjecture are improper in summary judgment affidavits and declarations, cannot support or defeat a motion for summary judgment. See, Rule 56(c), Federal Rules of Civil Procedure. See also, *SEC v. Jacoby,* 2021 U.S.Dist. LEXIS 20262 (DC Md 2021); *Dorral v. Dep't of the Army*, 301 F.3d 1375, 1380 (Fed. Cir. 2002), overruled on other grounds by *Garcia v. Dep't. of Homeland Sec.,* 437 F.3d 1322 (Fed. Cir. 2006). The movant must show that it is entitled to summary disposition beyond all reasonable doubt. *SEC v. International Mining Exchange, Inc.,* 515 F.Supp. 1062, Fed Sec. L Rep. (CCH) ¶ 98013, Fed. Sec. L. Rep., (CCH) ¶98013, 1981 U.S. Dist. LEXIS 12268 (D. Colo 1981) *reh'g denied*, Fed. Sec. L. Rep. (CCH) ¶98278, 1981 U.S. Dist. LEXIS 14556 (D. Colo. 1981).

FINRA's Department of Enforcement ("DOE") motion for summary disposition showed that DOE's investigation was solely based upon Ms. Arno's suspicions and speculations. Not a single customer complaint, eye-witness testimony or copy of an email initiated by Robert to any STS client supported Ms. Arno's allegations.

A registered entity's business decision to leave an email account open after a member leaves is a prudent measure that businesses engage in to be able to identify clients that may not be aware that a member is no longer associated with the firm. None of the emails identified in Ms. Arno's affidavit were directed to clients. Rather, all of the client emails were all received from, not sent to client.

Moreover, FINRA suspicions were incorrect. No customer statements or complaint showed that Robert contacted customers for any prohibited purpose or acted in the capacity of a broker-dealer following his retirement from STS in July 2017. In this regard, Janine Arno, following an exhaustive investigation of STS and OTRs of four associated persons who worked closely with Robert prior to his retirement, Janine Arno issued a Wells Notice to Susan Escobio on April 29, 2020. See Rule 201, Fed. R. Evid. While there are numerous petty and unsubstantiated charge allegations contained in the Notice to Susan and STS, there is one glaring charge omission. There is no charge against either Susan or STS aiding and abetting Robert's acting in the capacity of a broker-dealer after his retirement from

STS. This is because Janine Arno and FINRA found no evidence whatsoever that Robert acted in such capacity. Accordingly, the whole premise for seeking Robert's OTR and document production requests pursuant to Rule 8210 was baseless.

Lacking the ability to bring a serious charge, Janine Arno and FINRA pressed forward with a much weaker charge of the Firm not terminating Robert's email connection, which does not implicate wrongdoing on the part of Robert. In this regard, the Hearing Panel should not have considered emails sent to the STS email account "robert.escobio@stshc.com" by former clients requesting information or actions to be taken regarding their accounts. None of those client emails were in response to an email that Robert sent, and no evidence showed that Robert ever read or responded to those emails. No eye witness testimony, customer complaints or forensic evidence showed that Robert had any access the "robert.escobio@stshc.com" email account, even though DOE had the ability to, and obtained records from STS and testimony from individuals with personal knowledge of whether Robert had access to STS emails. Once again, this weak email allegation really has no bearing on Robert and should not merit a sanction against him for lack of responding to a Rule 8210 request involving what demonstrably turned out to be a meritless fishing expedition.

Nonetheless, Janine Arno uttered a Declaration baldly asserting that the mere fact that the former clients sent emails to "robert.escobio@stshc.com" provided "evidence that [Robert] Escobio continued to use his Southern Trust e-mail address." *See* Escobio Disputed Facts regarding DOE's UF Nos. 7, 8 and 9. An affidavit in support of summary judgment must set out facts that would be admissible in evidence. Hearsay evidence, unsupported inferences, speculation or conjecture cannot be used to support summary judgment. *Id.* See, Federal Rule of Civil Procedure 56(c)(4); *Dorral v. Dep't of the Army*, 301 F.3d 1375, 1380 (Fed. Cir. 2002), *overruled on other grounds by Garcia v. Dep't of Homeland Sec.,* 437 F.3d 1322 (Fed. Cir. 2006).

Nonetheless, NAC condoned the frivolous enforcement action orchestrated to subject Robert to 8210 requests and questioning at a time when he would be least able to accurately and completely respond, for the purpose of obtaining a permanent bar of a retired individual who agreed to take a voluntarily bar, but refused to sign FINRA's unilaterally drafted Letter of Acceptance, Waiver and Consent containing false allegations of fact. The utter waste of FINRA's resources to prosecute this matter is shameful in light of the history of this case, and the need to investigate the never-ending investment scams that proliferate and prey upon sophisticated and unsophisticated investors.

III.

A Permanent bar in this case IS UNWARRANTED.

Although the genesis of this case reportedly began in August 2018, FINRA sat idly by awaiting the District Court's entry of an Order of Contempt in the *CFTC Matter* imposing onerous payment obligations in excess of Robert's ability to pay, coupled with repetitive, indefinite, incarcerative sanctions immediately imposed upon the CFTC's filing of a notice in the *CFTC Matter* that Robert failed to make payment in full. Protection of investors was obviously not the concern of FINRA in the eight-month period.

By the time Robert could have received the first two Rule 8210 "requests," this statutorily barred terminated former member was at the Federal Detention Center unable to email or contact individuals who were not on his approved call or email list, and all such communications are recorded and monitored. *See* *bop.gov/inmates/communications.jsp* Clearly, these Rule 8210 requests were not for the laudatory purpose of protecting investors, but rather to harass a former member and increase the statistical disciplinary achievements that FINRA could report to the public.

That is especially clear where, as here, the former member was approaching the sunset of FINRA's two year enforcement limit, and issuing a bar serves no purpose -- other than to create another reportable statistic of a permanent bar for

FINRA's website and social media publications. See *FINRA Claims To Be Reasonable When it Comes to Sanctions, But it is Clear that Permanent Bars are What it's All About*, (Wolper, April 29, 2020) and FINRA's March 30, 2020 blog post bragging that it has barred "an average of one [broker] per day." Attached at *Appendix A, § 2-3*, respectively.

NAC ignored the Hearing Panel's failure to consider or discuss any of the foregoing facts when ascertaining the "sanction" that should be imposed on this former member who, through counsel, noted he agreed to a voluntary bar, albeit, without being compelled to execute a document replete with false allegations of fact.[7] In cases such as this, FINRA's waste of resources in filing a Complaint should warrant the issuance of no sanctions in order to discourage FINRA's waste of enforcement resources in the future.

Rule 8210 has become a symbol of abuse for FINRA. Many industry commentators have been screaming for abrogation of the Rule because of the years of abuse. Susan and Robert Escobio both have horror stories to tell. In the Wells Notice served upon Susan on April 29, 2020, FINRA alleges a Rule 8210 violation because Susan did not turn over fast enough personal family cell phone records

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[7] Notably, Section 19(e)(2) of the Securities Exchange Act does not require sanctions to be sustained where they are excessive, oppressive or impose do not protect investors. Before imposing sanctions, the aggravating or mitigating factors must be considered as well as whether the sanctions are remedial or punitive. See *Saad v. SEC,* 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC,* 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

regarding Robert's phone. She is being charged with an 8210 violation because upon advice of counsel she asserted spousal privilege in initially not turning over the records. FINRA said it did not respect such privilege, and she was coerced to turn over the records. Her 8210 violation is simply she did not turn them over fast enough.

The SEC must take action to reign in the overzealous abuses by FINRA Enforcement and Hearing Panels in invoking serious sanctions for alleged 8210 violations in circumstances such as occurred in this case. In this regard, we urge that a bar is an inappropriate sanction for an alleged 8210 violation when there is no separate violation that relates to a customer complaint, material losses or a violation of a rule requiring a showing of malfeasance and/or scienter. In short, a bar is an unwarranted sanction, particularly in Robert's case where he is retired from the securities industry and already subject to an inability to re-enter the industry due to a statutory disqualification.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the SEC set aside NAC's Decision and the sanctions imposed below.

Dated: April 7, 2021.

By: */s/ Rhonda A. Anderson*

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2021 I filed the foregoing brief with The Office of the Secretary, Securities and Exchange Commission, 100 F Street, NE, Room 10915, Washington, D.C. 20549-1090 via overnight mail and electronic mail to apfilings@sec.gov, with copy to the Office of General Counsel, FINRA, 1735 K Street, N.W. Washington, D.C. 20006 Attn: Ashley Martin via electronic mail to Ashley.martin@finra.org. . I further certify that an electronic copy of the foregoing brief has been served via email on all counsel of record listed on the Service List below.

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