

UNITED STATES COURT OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of:

**DreamFunded Marketplace, LLC and
Manuel Fernandez,**

**ADMINISTRATIVE PROCEEDING
File No. 2017053428201**

For Review of Disciplinary Action Taken By:

FINRA

**APPLICANT'S OPENING BRIEF IN SUPPORT OF
APPLICATION FOR REVIEW**

Manuel Fernandez
Pro Se

██
██
██
██

Applicant

TABLE OF CONTENTS

I. FACTS RELEVANT TO THIS APPEAL.....1-4

 A. The Parties.....1

 B. Procedural History.....1-2

 C. Facts.....3-4

II. ISSUES PRESENTED ON APPEAL.....4-16

 A. Legal Standards.....4-6

 B. Sanctions.....6-11

 C. The NAC failed to properly make a finding against.....11-14

 DreamFunded and Fernandez

 D. Capacity to Understand and/or Assist Counsel.....14-15

 E. Conflict of Interest.....15-16

 F. Scierter.....17-18

III. CONCLUSION.....18-19

TABLE OF AUTHORITIES

CASES

<i>Birkelbach v. SEC</i> , 751 F. 3d 472, 474-5 (7th Cir. 2014).....	4-5
<i>Dusky v. United States</i> , 362 US 402 (1960).....	14
<i>See Ernst & Ernst v. Hochfelder</i> , 425 U.S. 185, 193-94 n. 12, 96 S.Ct. 1375, 1381 n. 12, 47 L.Ed.2d 668 (1976)	19
<i>Kokesh v. SEC</i> , 137 S. Ct. 1635, 1638 (2017).....	7-8
<i>Saad v. SEC</i> , 873 F. 3d 297, 299 (D.C. Cir. 2017).....	5,7
<i>Saad v. SEC</i> , 980 F. 3d 103, 104-105 (D.C. Cir. 2020).....	5-6
<i>Schweiker v. McClure</i> , 456 US 188, 195-196 (1982).....	10-11
<i>U.S. v Armstrong</i> , 517 US 456, 456-457, (1996).....	9
<i>Whren v. United States</i> , 517 U.S. 806, 813 (1996).....	9

RULES

FINRA Rule 8210.....	11
NASD Rule 1010 Series.....	11

I. FACTS RELEVANT TO THIS APPEAL

A. The Parties

DreamFunded Marketplace, LLC (hereinafter “DreamFunded”) is a Limited Liability Company registered in the State of Delaware. Manuel Fernandez (hereinafter Fernandez”) is an individual who is a resident of San Francisco, California.

B. Procedural History

On February 28, 2018, the Department of Enforcement filed a Complaint against DreamFunded and Fernandez in Disciplinary Proceeding No. 2017053428201. The Complaint alleges in paragraph 2 that from July 2016 through October 2017, the actions and conduct of DreamFunded and Fernandez were the basis on which the alleged causes of action were filed.

On June 19, 2019, the Financial Industry Regulatory Authority, Office of Hearing Officers issued an Extended Hearing Panel Decision in the case.

On September 27, 2021, National Adjudicatory Council (“NAC”) issued a Decision in the case. On page 1, the NAC stated that:

“This case of first impression interprets and applies the Securities and Exchange Commission’s (“SEC”) crowdfunding rules and FINRA’s funding portal rules to a FINRA funding portal member and its associated person.

Between July 2016 and November 2017, DreamFunded Marketplace, LLC (“DreamFunded Marketplace”) was a FINRA funding portal member. Manuel

Fernandez was DreamFunded Marketplace’s founder, chief executive officer, chief financial officer, and chief compliance officer. On June 5, 2019, an Extended Hearing Panel found that DreamFunded Marketplace and Fernandez violated numerous SEC regulation crowdfunding rules and FINRA funding portal rules as they served as intermediaries for crowdfunded offerings facilitated through their online funding portal – DreamFunded.com”

Also on page 1, the NAC found that “For sanctions, the Hearing Panel expelled DreamFunded Marketplace from funding portal membership, and barred Fernandez from associating with any FINRA funding portal member in any capacity.”

C. FACTS

On July 12, 2016, DreamFunded Marketplace was the first to become a registered funding portal in Silicon Valley California and one of a few nationwide under Title III which was a new law and the first in over 80 years. This law was the first time that FINRA allowed a member who was not trained, licensed, or coached by FINRA.

Fernandez was a successful entrepreneur and investor, who had no training or education in the securities industry. The only thing that Fernandez received after the approval was a 2-page letter which stated in part that “the FP Firm may not commence business operations as a FINRA funding portal member.” Fernandez was assigned Stephanie N. Volkell as the Principal Examiner to provide assistance to

him. As to every question asked by Fernandez, Volkell repeated the same answer “ask your lawyer.”

Lead investigator John Doolittle announced that he was on the call at the beginning of the call “Um, so I think we got everyone on the line and just so people know who's speaking, this is Josh Doolittle, I'm with the enforcement department Rockville, uh, conference line. So Russell Johnson is also joining us from, uh, enforcement New York here in the room with me. I have, uh, three colleagues from (inaudible) Patrick Devio, and also my colleague from enforcement Rockville Ed Aridi. ” (Transcript can be found at Exhibit 1)

Marty Tate, my then attorney asked Josh Doolittle “And just so I'm clear if he does provide the, uh, the records would that we're still talking about the same settlement correct or . . .?” Josh Doolittle replied “Uh, well, so the difference would be that there would possibly be, uh, findings in that settlement that relate to the fundraising and what happened to those funds. Whereas if we did it at this stage and it were on the basis of, you know, not providing those records, instead, it would say we made a request for certain records related to fundraising and, and the use of the proceeds and the portal, and Mr. Fernandez said they would not provide, right. So there's no findings of the actual issues that arise from that fundraising of what happened to the money. It's just the fact that we asked for related to it. And those were not provided okay.

As to the underlying issues with the, the offerings on the portal itself, and some of the statements surrounding them and some of the statements that were made publicly, um, by the portal, um, those would be in either way, and it would look very similar, I think, you know, with modifications to facts. But I think it would look in broad terms, similar to the UFP settlement that was reached last year on that, the difference being that here we, we would be looking for the bar of Mr. Fernandez in addition to the explosion of the portal.” To the contrary Josh Dolittle stated “I kept an open mind until I would see the documents.” (FINRA 0018131)

Dreamfunded was purchased on January 21, 2018 by ValueSetters. Fernandez signed an agreement to rescind contract of sale on April 16, 2018. (FINRA 003385) After the Compliant was filed on February 23, 2018, Fernandez sent an email to FINRA about the sale, stating “why not ask the new company owner for the full docs?” Venable sent a letter stating that “My understanding is that our representation in this matter involves representing ValueSetter's in connection with a FINRA enforcement matter brought against DreamFunded Marketplace, LLC, which was acquired by ValueSetters. Our engagement at this time will be to seek a resolution with FINRA regarding that action.” (FINRA 004190)

II. ISSUES PRESENTED ON APPEAL

A. Legal Standards

“The SEC is the federal agency charged with the regulation of the securities industry, and, because the SEC lacks the resources to police the entire industry, it

relies on industry members to promote compliance with the securities laws and regulations and to pursue enforcement actions.’ *Gold v. S.E.C.*, 48 F.3d 987, 990 (7th Cir.1995). The Financial Industry Regulatory Authority, Inc. ("FINRA") is a not-for-profit self-regulatory organization formed under the Securities Exchange Act of 1934, 15 U.S.C. § 78o-3, which was created in 2007 following the consolidation of the National Association of Securities Dealers, Inc. ("NASD") and portions of the New York Stock Exchange Regulations, Inc. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *1 n. 1 (July 2, 2013). FINRA is empowered to bring disciplinary actions and impose sanctions to enforce its members' compliance with federal securities laws, SEC regulations, and FINRA's own rules and regulations.” *Birkelbach v. SEC*, 751 F. 3d 472, 474-5 (7th Cir. 2014)

“The violator may ... seek review of FINRA's decision by the Securities and Exchange Commission, FINRA Rule 9370, which superintends the disciplinary decisions of financial industry self-regulatory organizations like FINRA, 15 U.S.C. § 78s(d)-(e). The Commission conducts its own review of the disciplinary action, and may modify, affirm, or set aside the sanction. *Id.* § 78s(e)(1)(A)-(B). The Commission will set a remedial order aside if the order "imposes any burden on competition not necessary or appropriate" to further the purposes of the Securities Exchange Act, or if the sanction "is excessive or oppressive." *Id.* § 78s(e)(2).” *Saad v. SEC*, 873 F. 3d 297, 300 (D.C. Cir. 2017)

The Exchange Act directs the Commission to give "due regard [to] the public interest and the protection of investors." 15 U.S.C. § 78s(e)(2). **Our court has characterized those provisions as imposing, among other things, a "statutory requirement [] that a sanction be remedial," rather than a form of punishment.** *PAZ Securities, Inc. v. S.E.C.*, 566 F.3d 1172, 1176 (D.C. Cir. 2009); *see also Siegel v. S.E.C.*, 592 F.3d 147, 157 (D.C. Cir. 2010) ("**As an initial matter, it is important to remember that the agency `may impose sanctions for a remedial purpose, but not for punishment.**") (quoting *McCurdy v. S.E.C.*, 396 F.3d 1258, 1264 (D.C. Cir. 2005))" *Saad v. SEC*, 980 F. 3d 103, 104-105 (D.C. Cir. 2020)

B. Sanctions

In the instant matter, the sanction is both excessive and oppressive as it "barred Fernandez from associating with any FINRA funding portal member in any capacity." (p. 1 of NAC Decision)

The sanction of a lifetime bar against Fernandez which barred him in all capacities is not tailored to the offenses alleged.

The NAC stated in their Decision that "This case of first impression interprets and applies the Securities and Exchange Commission's ("SEC") crowdfunding rules and FINRA's funding portal rules to a FINRA funding portal member and its associated person. Between July 2016 and November 2017, DreamFunded Marketplace, LLC ("DreamFunded Marketplace") was a FINRA funding portal

member.” (p. 1 of NAC Decision)

“In determining the appropriate sanction to be imposed for a violation of its rules, FINRA's Guidelines outline eight factors to be considered: (i) the need for the sanction to be remedial, to deter future misconduct, and to improve business standards in the securities industry, (ii) the violator's status as a repeat or one-time violator, (iii) the appropriateness of the sanction for the specific misconduct, (iv) the need in a particular case either to aggregate or to sanction individually similar violations, (v) the appropriateness of restitution or rescission, (vi) the remediation needed to ensure the individual does not benefit from ill-gotten gains, (vii) the necessity of requalification before permitting continued participation in the securities industry, and (viii) the violator's ability to pay any fine or restitution. J.A. 87-90.”
Saad v. SEC, 873 F. 3d 297, 299 (D.C. Cir. 2017)

In *Saad*, the Court stated “With respect to the permanent bar on Saad's registration with FINRA and affiliation with its members, the court remands for the Commission to determine in the first instance whether *Kokesh v. SEC*, ___ U.S. ___, 137 S. Ct. 1635, 198 L.Ed.2d 86 (2017), has any bearing on Saad's case. *Id.*

The definition of "penalty" as a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws," *Huntington v. Attrill*, 146 U.S. 657, 667, 13 S.Ct. 224, 36 L.Ed. 1123, gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual." *Id.*, at 668, 13 S.Ct. 224. Second, a pecuniary sanction operates as a

penalty if it is sought "for the purpose of punishment, and to deter others from offending in like manner" rather than to compensate victims. *Ibid.* This Court has applied these principles in construing the term "penalty," holding, *e.g.*, that a statute providing a compensatory remedy for a private wrong did not impose a "penalty," *Brady v. Daly*, 175 U.S. 148, 154, 20 S. Ct. 62, 44 L. Ed. 109. Pp. 1641-1643." *Kokesh v. SEC*, 137 S. Ct. 1635, 1638 (2017)

As stated above, the Department of Enforcement has stated that Fernandez's involvement was from July 2016 through October 2017, which is a period that totals only 15 months.

In addition, it is important that the SEC understands that there are no findings in the NAC decision that Fernandez converted funds for his own personal use. The findings allege that Fernandez failed to provide documents during this 15 month time period.

A sanction to bar Fernandez is both excessive and oppressive.

This case, at best should be a letter of caution because the reason that this law was created to help entrepreneurs raise capital. This case is an attack on minority communities, namely black, brown, and women, directly and indirectly.

The enforcement action only occurred after Fernandez withdrew his membership and sold the startup. The testimony which was presented by FINRA evidences that FINRA was predisposed to seek that Fernandez be barred.

Based upon FINRA's pre-disposition, FINRA vigorously pursued this result from the Financial Industry Regulatory Authority, Office of Hearing Officers which

issued an Extended Hearing Panel Decision that found that Fernandez be barred as well as a finding of lack of credibility for Fernandez.

Then FINRA vigorously pursued the same result before the NAC which also found that Fernandez be barred as well as a finding of lack of credibility for Fernandez. Fernandez would suggest that FINRA used its' authority to bias the NAC against him.

All the case studies provided by FINRA have to do with licensed people which Fernandez is not. The instant matter reeks of Selective Enforcement. FINRA enforcement discriminated against Fernandez due to his race and the race(s) and gender(s) of the startup founders FINRA chose to go after along with Fernandez.

The United States Supreme Court stated in *Whren v. United States*, 517 U.S. 806, 813 (1996) that “We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race.”

Prior to the FINRA enforcement action in this matter, DreamFunded had no investor loss and were going through a funding cycle as all startups do. However, the expulsion and bar have caused the investors who funded DreamFunded to have significant losses. FINRA is not protecting investors, but instead is creating a major investor loss with this enforcement. Overturning the bar will make sure that DreamFunded is not 100% lost.

“Under the equal protection component of the Fifth Amendment's Due Process Clause, the decision whether to prosecute may not be based on an arbitrary classification such as race or religion.” *U.S. v Armstrong*, 517 US 456, 456-457,

(1996)

At the NCR hearing. Mr. Aradi testified that “There’s no evidence of any misconduct by the hearing panel. No evidence they came to a preordained determination, that they have it out for Mr. Fernandez. Their accusations of selective prosecution, there was no evidence at the hearing. This threat of criminal prosecution, Mr. Fernandez claimed that there was testimony saying he was never threatened that way.” (See Transcript at FINRA 004743 page 31) This is clearly a false statement because Mr. Aradi was present on the recorded call which has been submitted with this appeal and which Fernandez also added the transcripts as evidence. All other meetings were held with a court reporter, but not this one.

Lead investigator Josh Dolittle (hereafter “Doolittle”) did not honestly testify on the stand when he was asked by my then lawyer if he kept an open mind with Fernandez. This was because his relative, Avery Haskell, had been employed by DreamFunded and Fernandez and his employment was terminated by Fernandez, which resulted in a confrontation between Fernandez and Avery Haskell so there was obvious bias in not only the testimony of Dolittle, but also in the reason that DreamFunded and Fernandez were chosen to be the subject of an investigation.

“The hearing officers involved in this case serve in a quasi-judicial capacity, similar in many respects to that of administrative law judges. As this Court repeatedly has recognized, due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities. *E. g.*, *Marshall v. Jerrico, Inc.*, 446 U. S. 238, 242-243, and n. 2 (1980). We must start, however, from the presumption

that the hearing officers who decide Part B claims are unbiased. See *Withrow v. Larkin*, 421 U. S. 35, 47 (1975); *United States v. Morgan*, 313 U. S. 409, 421 (1941). This presumption can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. See *Gibson v. Berryhill*, 411 U. S. 564, 578-579 (1973); *Ward v. Village of Monroeville*, 409 U. S. 57, 60 (1972). See also *In re Murchison*, 349 U. S. 133, 136 (1955) ("to perform its high function in the best way `justice must satisfy the appearance of justice' ") (quoting *Offutt v. United States*, 348 U. S. 11, 14 (1954)). But the burden of establishing a disqualifying interest rests on the party making the assertion." *Schweiker v. McClure*, 456 US 188, 195-196 (1982)

C. The NAC failed to properly makde a finding against DreamFunded and Fernandez:

(1) failed to respond fully and completely to FINRA’s request for information and documents. (Cause #1)

Regarding 8210, Fernandez acted in good faith and used his best effort(s) to produce all documents required. FINRA did not have the right to ask for the documents. (FINRA 003204) All records were sent by Fernandez’s attorney. (FINRA 003211)

FINRA did not want the docs or already have them. A blanket statement of bank records not the former process used by FINRA when an application sent me a form (FINRA 00369). Why FINRA did not send one on what was missing?

NASD Rule 1010 Series (Membership Proceedings) (collectively, MAP rules), govern’s FINRA’s Membership Application Program (MAP). MAP had all of

the documents which FINRA claimed that Fernandez refused to provide.

As argued below, Josh Dolittle's lack of veracity at the hearing as to major portions of his testimony with regards to Fernandez's attorney asking whether Dolittle kept an open mind with respect to Fernandez as the recorded call cited above in (I. c. above titled Facts) wherein Josh Dolittle stated that Fernandez would be barred regardless of whether or not he complied with the records request.

(2) made false, exaggerated, unwarranted, promissory, and misleading statements about an investment in an issuer, issuer due diligence, and certain real estate investments. (Cause #3)

The NAC found that "In January 2016, Fernandez participated in the filming of the show with the chief executive officer of Issuer C. The video clip shows Fernandez making a \$1 million offer to the chief executive officer of Issuer C, and the chief executive officer of Issuer C accepting Fernandez's offer. During the show, the host introduces Fernandez as the chief executive officer of DreamFunded.com, 'a crowdfunding platform that's invested over \$100 million in startups.'" (D. a. (1), p. 46 of NAC Decision)

With respect to the CNBC television segment, Ms. Volkell testified that she couldn't remember where she saw it. She cannot remember. Ms. Volkell could not definitively state that she saw in Fernandez social media, but she does state: "So I have seen it on YouTube." (FINRA 002020) "I found the video on YouTube." (FINRA 002021) "I could not save the video" (FINRA 002023)

As to remembering where she saw the segment, Ms. Volkell stated: "I think it was on YouTube or maybe DreamFunded's site I can't recall right now", when asked

“So YouTube was the source?” she said “Yeah” (FINRA 002024) When asked “So you mentioned that you saw the video on YouTube; is that correct?” she said “Right” (FINRA 002025), “I can’t totally remember” (FINRA 002030), “I can’t really remember now” (FINRA 002031) “I cannot tell you a hundred percent that I watched the entire video from beginning to end. If, you know, if—I cannot remember. It was well over a year ago” (FINRA 002170), “I could have watched or could not have. I totally—I can’t remember” (FINRA 002034) When asked “Do you think Mr. Fernandez is a bad actor?” (FINRA 002081) she stated “I don’t believe he falls under the definition of a bad actor.” (FINRA 002082)

The reason why it matters whether Ms. Volkell saw the CNBC television segment on Fernandez’s social media or on YouTube is not a minor issue, but is an extremely important one because FINRA and the NAC gave a lot of weight to this television segment in decision to bar Fernandez. It also important to realize that YouTube is public social media, on which anyone can upload video segments.

“DreamFunded Marketplace and Fernandez state that the docuseries episode featuring Fernandez was recorded in late-2015 or early-2016, and that they cannot be liable for fraud because DreamFunded Marketplace did not exist when the show was recorded. In connection with this argument, DreamFunded Marketplace and Fernandez quibble with the Hearing Panel’s findings concerning the timing of the removal of video clip from DreamFunded Marketplace’s website and from social media platforms.” (D. c. (5), p. 52 of NAC Decision)

The Complaint alleged that the operative dates of Fernandez’s violations were

from July 2016 through October 2017 which is also when he sold DreamFunded.

“The record contains screenshots of the video clip on: (1) a social media platform on February 15, 2017;⁷⁰ (2) DreamFunded Marketplace’s website on September 8, 2017;⁷¹ and (3) a second social media platform on May 16, 2018.” (D. a. (5), p. 48 of NAC Decision)

The video clip was removed on May 18, 2018 (D. b. (5), p. 48 of NAC Decision) which was well after the Fernandez sold DreamFunded, so no one can state who removed the video clip.

In their Enforcement opening remarks FINRA stated Fernandez “raised \$870,000 using regulation crowdfunding.” The Extended Hearing Panel Decision stated that in 2008 Fernandez used crowdfunding to fund his real estate projects. Neither above statement or finding was supported by the evidence. Whether it as 2008 or 2018 this finding is patently false.

The Extended Hearing Panel Decision not only mocks Fernandez, but also intentionally released private content, which was later written about in blogs and online media articles.

D. Capacity to Understand and/or Assist Counsel

In *Dusky v. United States*, 362 US 402 (1960), the United States Supreme Court stated the standard is that “the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”

Fernandez did not have the ability to consult and/or assist his lawyer during the hearings. In addition, Fernandez was unable to have a rational understanding of what was taking place in those hearings. [REDACTED]

[REDACTED]. Fernandez stated six times on the record that he was tired. Since his attorney set up this meeting, Josh Dolittle should have rescheduled the OTR and further the transcripts of the OTR should not be admissible due to Fernandez's mental state during the interview. Fernandez stated on "I'll let you know of my mind is too clear—too cloudy, excuse me." "I'm tired." (FINRA 003406, 003407, 003477)

E. Conflict of Interest

The lead FINRA investigator was Josh Dolittle and it is Fernandez's belief that he is the uncle of an employee named Avery Haskell who Fernandez fired and who threatened to have his uncle involved to cause him to lose his ability to conduct business that was governed by the SEC and FINRA.

Plaintiff was offered a settlement before the FINRA investigator ever saw a single document. In addition, Josh Dolittle was prejudiced because a family member of his had worked for DreamFunding and Fernandez and was fired.

DreamFunding was the only Hispanic led business at the time and Josh Doolittle's prejudices totally blind-sided Fernandez.

Unfortunately, Fernandez has been unable to locate a copy online of FINRA's

official Employment Manual which outlines their policy on how an employee or agent of FINRA is required to handle a conflict of interest such as when the employee or agent has a relative who formerly worked for a Company under investigation and when that relative has a grudge against his or her former employer.

The investigation conducted by Josh Dolittle is a major issue in this case and one which FINRA has refused to acknowledge or accept.

Josh Dolittle had a lack of veracity at the hearing as to major portions of his testimony when Fernandez's attorney asked whether he kept an open mind with respect to Fernandez as the recorded call cited above in I. c. above titled facts wherein Josh Dolittle stated that Fernandez would be barred regardless of whether or not he complied with the records request.

F. Scierter

The Supreme Court has defined "scierter" in the context of § 10(b)¹ as a "mental state embracing intent to deceive, manipulate, or defraud." *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193-94 n. 12, 96 S.Ct. 1375, 1381 n. 12, 47 L.Ed.2d 668 (1976).

While the NAC mentions scierter, it fails to fully address the issue of intent – especially considering the issues that Fernandez has raised above regarding the CNBC video and the documents provided to MAP.

¹ § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, which establishes a private cause of action for securities fraud.

As argued above, the Extended Hearing Panel Decision stated that in 2008 Fernandez used crowdfunding to fund his real estate projects. Neither above statement or finding was supported by the evidence. Whether it was 2008 as stated or 2018 if FINRA argues otherwise, this finding is patently false, but the NAC panel *relied* in part on this finding to find scienter in their decision. There is absolutely not a scintilla of proof that Fernandez used crowdfunding to fund his real estate projects in either 2008 or 2018 – and both which are outside the dates that Fernandez was involved in crowdfunding.

Fernandez understands and recognizes that FINRA is a private corporation that is part of the SEC and means no disrespect by stating that the Department of Enforcement, the Financial Industry Regulatory Authority, Office of Hearing Officers and the NAC have their own agenda. These agencies and/or entities work together on an ongoing basis which was very evident to Fernandez throughout their involvement.

After consulting with attorneys about preparing this appeal, Fernandez has learned that by using terms such as “lack of credibility” and “scienter” are intentionally placed in rulings and decisions to make it more difficult for Fernandez to reverse the decision below.

III. CONCLUSION

For the reasons set forth herein, Applicant respectfully requests that the Commission reverse the NAC's findings of liability and any sanctions imposed

thereon.

In the alternative, to the extent some liability is imposed, Applicant respectfully request that the Commission reduce or eliminate the sanctions imposed by the NAC so that they comport with the evidence in the record as well as FINRA' s Sanction Guidelines.

Respectfully submitted this 10 day of June, 2022.

/s/ Manuel Fernandez, Pro Se

[Redacted signature block]

CERTIFICATE OF COMPLIANCE

In accordance with Rule 450(d) of the Rules of Practice, I certify that this brief, exclusive of the cover page, table of contents, table of authorities, and signature blocks is in compliance with the 14,000-word limit. The brief contains 4570 words, according to the word processing system used to prepare the brief.

/s/ Manuel Fernandez

DreamFunded Marketplace, LLC EX 1

Phone recording from FINRA

Below is the full transcript

Josh Doolittle:

Um, so I think we got everyone on the line and just so people know who's speaking, this is Josh Doolittle, I'm with the enforcement department Rockville, uh, conference line. So Russell Johnson is also joining us from, uh, enforcement New York here in the room with me. I have, uh, three colleagues from (XX) Samra Nero, and also my colleague from enforcement Rockville at Ed. Aridi. Um, so guys, thank you very much, everyone for, for, uh, getting together on pretty short notice. We thought maybe this was an opportune time to talk about where we might be going with with the, uh, the matter that's before us right now. Um, I wanna make clear before I continue though, this is not a Wells call, so, um, I want that to be on table before we.

Manny Fernandez:

A, what?

Josh Doolittle:

Call something called a Wells call, a Wells called W E L L S. And that would be in the normal procedure, um, enforcement. And also oftentimes the SEC will do, what's known as a well notice where we will tell you that we've made a preliminary determination to recommend charges and then outline those. This is not that type of call right now. Um, also, um, you know, I, I want to invite you if you have questions and I just start to speak to, to just let, let me know. So we can answer 'em like, for instance, what is a Wells call, but, um, with the, the preamble, this is not a Wells call. We thought, you know, we we've had the OTR, you provided a lot of records to us, and we have an outstanding request to you right now for records related to the fundraising on behalf of DreamFunded and what happened to that money.

And I will tell you, uh, at this point we have released severe or serious concerns about those issues, um, and in light of that one to, to discuss a possible way forward with you. Um, but also if you are of the mind that you want to continue to, uh, cooperate with the investigation and send us records, that is absolutely your right. But what I think we would propose is a possible way forward right now is that we would do a settlement in which DreamFunded Marketplace is expelled from membership for, um, issues related to the offerings that were listed on the, um, the portal and that we went through pretty good detail during the OTR. And also if you were inclined not to produce the records that we've asked for related to the fundraising and the use of funds for not providing those records, likewise, we would have a, a settlement that also would include a bar for Mr. Fernandez or similar thing. Uh, so we wanted to put that out there to you because you know, the 8th to outstanding and you absolutely may respond and provide the records if that's what you want to do. But given what the, the nature of, of the, um, the issues are, we want give you the opportunity to, to, um, say in fact, we will not produce those records and we will settle on, on the terms I just talked about. Um, so that, that's the basic outline. I don't know

if you guys have questions about what it is we're proposing or, um, what potential way forward it would be, but it would basically amount to if that were something that we were of interest to you, you would just respond to us to say, I'm not gonna, uh, provide the records that you've requested now or at any time in the future.

Manny Fernandez's Council, Marty Tate:

And just so I'm clear if he does provide the, uh, the records would that we're still talking about the same settlement correct or?

Josh Doolittle:

Uh, well, so the difference would be that there would possibly be, uh, findings in that settlement that relate to the fundraising and what happened to those funds. Whereas if we did it at this stage and it were on the basis of, you know, not providing those records, instead, it would say we made a request for certain records related to fundraising and, and the use of the proceed and the portal, and Mr. Fernandez said they would not provide, right. So there's no findings of the actual issues that arise from that fundraising of what happened to the money. It's just the fact that we asked for related to it. And those were not provided okay. As to the underlying issues with the, the offerings on the portal itself, and some of the statements surrounding them and some of the statements that were made publicly, um, by the portal, um, those would be in either way, and it would look very similar, I think, you know, with modifications to facts. But I think it would look in broad terms, similar to the U F P settlement that was reached last year on that, the difference being that here we, we would be looking for the bar of Mr. Fernandez in addition to the explosion of the portal.

Manny Fernandez's Council, Marty Tate:

Okay. Okay. Um, yeah, so I think Manny, you know, we should probably talk about this and then the, uh, you know, ramifications of it, um, will we, will we receive a letter or something to that extent?

Josh Doolittle:

No, that, that was normally common. If we had made a Wells call and this is, you know, uh, like I said, not a Wells call. We haven't actually reached the preliminary determination, uh, you know, stage that we would with a WELLS call, but we want to for everyone's sake care and for the sake of, um, efficiency, I mean, **I think it's likely that if we get to the well stage, it's gonna be for the exact same issues.** Um, yeah. And, and, you know, kind of, and run it and save everyone the hassle. But if you wanna avail yourself in that process absolutely. It's it's you just tell us, you know, and, and yeah,

That's fine. But, uh, you know, we thought we were at a good stage here to have this, you know, discussion, and

Manny Fernandez's Council, Marty Tate

I appreciate that. I think, I think you're correct. This is a, a preferable way to approach it. Um, Manny, do you have any questions?

Manny Fernandez:

What I hear is they want to expel, DreamFunded from membership from FINRA and they wanna do a bar. What does that mean? The second part.

Josh Doolittle:

So the second part you would bar from an association with a FINRA member, permanent bar.

Manny Fernandez's Council, Marty Tate:

So it means you couldn't, um, you know, associate with a platform. Um, you obviously, you couldn't file, you know, you couldn't apply to be another, to be a funding portal. Um, and couldn't associate with, you know, another funding portal that license would be, um, or, you know, broker dealer or the, like, that's basically what that far would be.

Josh Doolittle:

Right. Thank you, Marty. I wanted to, to expand, it would also apply to other types of members like broker dealers or primary types of members. Look, I will be very candid with you here, too. I, there is in thinking about this, **there is potential criminal liability that could come out of the, the issues with the use of funds as we understand it.** I, you know, maybe not, but it's something you might want to think about in terms of whether you want to, you know, proceed and provide those records or not.

Manny Fernandez:

I have every intention provide records. I mean, we have nothing to worry about here.

Manny Fernandez's Council, Marty Tate:

Manny we can just, we can kind of discuss the, the pro and cons of that. Um, and then what, uh, yeah. Do you have any other, I, I, I, I'm clear on, on kind of what's being presented and, um, you know, manage, wanna make sure that he's understand and, uh, you know, we can talk offline and get back to, um, quickly if I'm sure.

Josh Doolittle:

That probably makes sense. If you guys wanna do that offline and, you know, look you want take a day to it. Understandable. Um, if you wanna get back to this tomorrow with your thinking on it, it should be fine. And in the meantime, um, you have at least Pat contact information. Why don't I give you mine as well? Um, you have further follow questions. You can give me a call. You can call basically anyone in this room, but, uh, I'll give you mine. The top of my head is, uh, [REDACTED]

Manny Fernandez's Council, Marty Tate:

All right. Would you mind repeating that one time?

Josh Doolittle:

Yep. Oh [REDACTED] And to get, uh, Josh do little, if you wanna ask further question. Okay. And then, um, okay, perfect. Yeah. And if you don't, if you just let us know by, you know, roughly this time tomorrow, what you're thinking, that would be great.

Manny Fernandez's Council, Marty Tate:

Perfect. Perfect. Yeah, that sounds good. Um, if you have any other questions or not, I do not. We can talk.

Josh Doolittle:

Okay, great. Well, uh, like I said, feel free to reach out if, have any questions, uh, we'll look forward to hearing from you tomorrow. Sounds good. Appreciate it. All right. Thank you.