BEFORE THE U.S. SECURITIES & EXCHANGE COMMISSION

In the Matter of the Appeal of

DEPARTMENT OF ENFORCEMENT

Complainant,

vs.

THOMAS LEE JOHNSON

Respondent.

Reply Brief in Support of the Application for Review of Thomas Lee Johnson
AP File No. 3-20646

DATE OF SERVICE
March 14, 2022

ORAL ARGUMENT REQUESTED

Thomas L. Johnson ("Mr. Johnson" or "Applicant"), by and through his undersigned counsel, hereby submits this reply brief in support of the application for review of the National Adjudicatory Council's ("NAC") decision (the "Decision") regarding FINRA Complaint No. 201805684810.

I. Introduction

FINRA Department of Enforcement's ("Enforcement") brief in opposition to Mr. Johnson's application for review is meritless and based on the same misapprehension of the law and facts as the National Adjudicatory Council's ("NAC") decision. Accordingly, for the reasons stated herein, and in Mr. Johnson's opening brief, the Commission should overturn the NAC's decision in its entirety and dismiss the conversion charge lodged at Mr. Johnson.

II. Mr. Johnson Did Not Commit Conversion

Mr. Johnson did not commit conversion when he moved the proceeds from the liquidation of his Doosan Heavy Industries and Construction ("Doosan") securities between two accounts (brokerage and checking accounts) which he owned and operated. In its opposition

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brief, Enforcement's argument that Mr. Johnson committed conversion is summed up in the following statements:

> Johnson's conversion of $1 million was realized when he withdrew the money from RBC and put it beyond RBC's reach in an outside checking account. Johnson admitted that he would have kept the money if RBC had not detected the error.[1]

Enforcement's position, that Mr. Johnson committed conversion by moving proceeds between two accounts which he owned and operated, is not supported by any law, nor is it supported by common sense.[2] Based on Enforcement's "logic", Mr. Johnson would have committed conversion the second he received the Doosan proceeds in his brokerage account because he was allegedly not entitled to possess them. The movement of funds between his brokerage account and his checking account is immaterial and is not a basis for meeting the requirements of conversion.[3]

As to Mr. Johnson's "admission", Enforcement is mischaracterizing his testimony and essentially admitting that the case against Mr. Johnson is based on a hypothetical scenario, which never occurred.[4] When the Doosan securities liquidations were reversed, Mr. Johnson promptly covered the debit in his brokerage account. Mr. Johnson cannot be found to have committed conversion based on his thoughts.

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[1] SEC Opposition Brief ("Opp. Brief") at 2.

[2] "While common sense is no substitute for evidence, common sense should be used to evaluate what reasonably may be inferred from circumstantial evidence." *Jackson v. Stovall*, No. 2:08-CV-10094, 2010 U.S. Dist. LEXIS 41906, at *55 (E.D. Mich. Apr. 12, 2010) (quoting *United States v. Durham*, 211 F.3d 437, 441 (7th Cir. 2000)).

[3] Conversion is defined under FINRA's Sanction Guidelines as the "intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." FINRA Sanction Guidelines at 36 & n.2 (2020) ("Guidelines"). *See FINRA Sanction Guidelines* (2020), https://www finra.org/sites/default/files2021-10/Sanctions_Guidlines_2020.pdf.

[4] Opp. Brief at 2.

Enforcement has not cited a single case in support of its stated position that Mr. Johnson committed conversion by moving the Doosan proceeds between his accounts, likely because no such case exists. This matter concerns securities transactions that were later determined to be erroneous, which was then addressed by Mr. Johnson immediately. Funds belonging to RBC were never converted. The conversion charge is unsupportable and should be dismissed.

III. Mr. Johnson's Credibility

To the extent that Mr. Johnson's credibility is at issue in this proceeding, the Commission should consider that the Hearing Panel dismissed the complaint's 8210 charge, which alleged that Mr. Johnson provided FINRA with false information during its investigation.[5] Mr. Johnson was truthful throughout FINRA's investigation and throughout the entirety of this proceeding. To find him credible and then not credible, based on the same testimony, would be illogical and contradictory. Mr. Johnson has never attempted to conceal his conduct from FINRA's scrutiny.

Moreover, the Hearing Panel and the NAC unjustifiably, and with disregard to the record evidence, substituted Mr. Johnson's contemporaneous subjective understanding of the Doosan securities liquidations with their after-the-fact analysis. Had the Hearing Panel and the NAC appropriately analyzed and weighed the substantial record evidence, they would have concluded that Mr. Johnson credibly did not know that the funds from the Doosan shares were in fact the result of a currency conversion error.

The following facts are uncontroverted and form the basis of Mr. Johnson's knowledge of the Doosan share liquidation:

- Mr. Johnson inherited the shares of Doosan from his father.[6]

[5] Hearing Panel Decision (Bates Number 001387) at 1.

[6] Amended NAC Decision (Bates Number 001685) (the "Decision") at 2.

- Mr. Jonson was not involved in the liquidation or pricing of the Doosan shares and warrants.[7]
- Mr. Johnson received trade confirmations from RBC, which confirmed the price of the Doosan shares in US dollars.[8]
- Mr. Johnson did not see the currency designation of KRW when he researched the price of Doosan on the Bloomberg terminal in his office, which matched the confirmations provided by RBC.[9]
- The Doosan liquidation was not rebilled for two weeks.[10]

Mr. Johnson's feeling that something may be amiss about the Doosan securities liquidations should not be conflated with the baseless conclusion that he knew it was in fact made in error.[11]

IV. The Bar Should be Vacated

A bar under these circumstances is not in the public interest and is both excessive and oppressive. It serves no remedial purpose, and Mr. Johnson is not a risk to the investing public. Because Mr. Johnson did not commit conversion, the Commission should vacate the bar.

In the event that the Commission decides to impose a sanction, it is not required to affirm the bar. In *Department of Enforcement v. Doni*, the respondent was found to have committed conversion for taking computer code from his former firm.[12] However, despite committing

[7] *Id*. at 3.

[8] Parties' Stipulations Regarding Certain Facts and Exhibits, dated May 2, 2019 (Bates Number 000135) ("Stip.") at 14.

[9] Decision at 4.

[10] *Id.* at 6.

[11] Decision at 11.

[12] *Dep't of Enforcement v. Doni*, No. 2011027007901, 2017 FINRA Discip. LEXIS 46 (NAC Dec. 21, 2017).

conversion, the respondent in *Doni* was not barred, but instead was suspended for two years.[13] In declining to impose a bar, the NAC determined that a bar was not remedial because it does not serve the public interest.[14]

Similarly, Mr. Johnson's conduct does not warrant a bar because there are no record facts demonstrating that Mr. Johnson is a risk to the investing public. The Doosan securities liquidations occurred in Mr. Johnson's own account and the proceeds from those liquidations were never spent. Whether Mr. Johnson left those proceeds in his brokerage account, or moved them to his checking account, the end result would have been the same. These circumstances do not constitute a barrable offence.

V. Conclusion

For the reasons stated herein, and in Mr. Johnson's opening brief, the conversion charge should be dismissed.

Respectfully submitted,

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[13] *Id*.

[14] *Id.* at 19.

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CERTIFICATE OF COMPLIANCE

I, Jon-Jorge Aras, certify that:

1. Applicant's Reply Brief in support of the Application for Review complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information;

   and

2. Applicant's Reply Brief in support of the Application for Review complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 1,155 words.

Respectfully submitted,

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Dated: March 14, 2022

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CERTIFICATE OF SERVICE

On March 14, 2022, I, Jon-Jorge Aras, certify that I caused a copy of Applicant's reply brief in support of the application in the matter of Thomas Lee Johnson, Administrative Proceeding File No. 3-20646, to be filed through the SEC's eFAP system on:

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