

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISORS ACT OF 1940
Release No. 6130

ADMINISTRATIVE PROCEEDING
File No. 3-21097

In the Matter of

GRENDA GROUP, LLC

Respondent.

INVESTMENT ADVISORS ACT OF 1940
Release No. 6131

ADMINISTRATIVE PROCEEDING
File No. 3-21098

In the Matter of

GREGORY M. GRENDA

Respondent.

BRIEF OF THE RESPONDENTS

Respondents Grenda Group, LLC, and Gregory M. Grenda submit this brief pursuant to the order requesting briefs, dated March 10, 2023, which seeks "the view of the parties on whether it appropriate to consolidate" the Matter of Grenda Group, LLC, and the Matter of Gregory M. Grenda proceedings.

For the reasons set forth herein, Respondents oppose the consolidation of the two proceedings because common questions of law or fact do not exist with respect to the conduct of

Walter Grenda, Grenda Group LLC, and Gregory M. Grenda. 17 C.F.R. § 201.201(a). In this proceeding Respondents maintain that common questions of law or fact do not exist with respect to the conduct of Grenda Group, LLC, and Gregory M. Grenda.

Initially, Respondents distinguish *Matters of Jocelyn Murphy and Michael Sean Murphy*, Rel No. 91797, 2021 WL 1835414, *1 (May 7, 2021) on procedural grounds. In *Murphy*, the court noted that *Respondents moved to consolidate the proceedings* pursuant to Commission Rules of Practice 201(a) based on common issues of law or fact and that the Division of Enforcement did not oppose their request.

Similarly, in the *Matters of Wesley, Kyle Perkins and World Tree Financial LLC*, Rel No. 34-9535 WL 2910104 (2022), is factually and legally distinguishable due to the alleged conduct of Respondents in disproportionate allocated unfavorable trades to large accounts owned by a single client, while allocating favorable trades to accounts owned by Perkin, his wife, and other World Tree clients, which resulted in ill-gotten gains of \$354,232 during the course of the scheme. In the present proceeding, due to an SEC motion in limine, there was no evidence of Grenda Group, LLC client gains or losses.

In his Answer to the Order Instituting Administrative Proceedings pursuant to Section 203(f) of the Investment Advisors Act of 1940, Respondent Gregory M. Grenda raised three (3) affirmative defenses to be considered by the Commission in these proceedings. The affirmative defenses are set forth below:

1. The conduct of Respondents, Grenda Group, LLC, and Gregory Grenda, recited in Section II(B) did not result in the loss of any client investment funds.
2. In light of the Court's August 11, 2022 Opinion and Order and August 26, 2022 judgment which imposed a permanent injunction and substantial monetary sanctions against Respondents, sought by the Commission, any further sanctions sought by the Commission against Grenda Group, LLC, and Gregory Grenda,

including but not limited to the suspension or ban of Grenda Group, LLC, and Gregory Grenda, are not warranted.

3. In light of the Court's August 11, 2022 Opinion and Order and August 26, 2022 judgment which imposed a permanent injunction and substantial monetary sanctions against Respondents, sought by the Commission, any further sanctions sought by the Commission against Grenda Group, LLC, and Gregory Grenda, including but not limited to the suspension or ban of Grenda Group, LLC, and Gregory Grenda, are disproportionate, inequitable, and not warranted in light of the terms of the Commission's 2015 and 2018 settlements against Reliance Financial Advisors and Walter Grenda.

In its Complaint in the U.S. District Court action, 1:18-cv-00954, filed August 30, 2018, the SEC charged Defendant, Gregory M. Grenda, for association with Walter Grenda, on or after July 1, 2015 after Reliance Financial Advisors and Walter Grenda entered into a June 2015 Consent Decree with the SEC which included a 3-year suspension of Walter Grenda and a \$25,000 fine. On or about December 2018, Walter Grenda entered into a second Consent Decree with the SEC which contained a permanent injunction, a ban from engaging in the securities industries, and a \$25,000 fine.

The Complaint filed by the SEC against Respondents contains outrageous allegations against Walter Grenda's conduct with Grenda Group, LLC, which included, repeatedly impersonating his son, Gregory M. Grenda, on telephone calls with the firm's broker-dealer Charles Schwab and Co. ("Schwab") regarding the firm. On at least one occasion Walter Grenda impersonated a Grenda Group client on a telephone call with Schwab. Finally, on at least one occasion Walter Grenda equalized Schwab trade imbalances. The trial record established that neither Grenda Group, LLC, nor Gregory M. Grenda had knowledge of Walter Grenda's actions until the summer of 2016 when Gregory M. Grenda received a telephone call from Schwab in which it played him tape recordings of Walter Grenda attempting to disguise his voice while he engaged in the foregoing activities.

On August 11, 2022, the Hon. Christina Reiss, District Judge for the United States District Court, issued an Opinion and Order granting in part and denying in part the SEC's motion for post-trial remedies (Doc. 135). In her August 11, 2022 Opinion, Judge Reiss stated, "[a]s the SEC points out, the evidence at trial established that Walter Grenda had a history of 'predatory' conduct, including taking money from clients under false pretenses and 'marketing a hedge fund that lost all its value' to vulnerable, elderly investors." (Doc. 135 at 9.) She also stated that the evidence at trial established that Walter Grenda impersonated Defendant Gregory M. Grenda and a Defendant Grenda Group client in attempts to gain access to client accounts.

In response to the SEC motion for post-trial remedies, Defendants opposed the SEC request for a permanent injunction and the imposition of third-tier penalties. Defendants requested the court to impose first-tier penalties, rather than the SEC's requested third-tier penalties for permitting a barred person, Walter Grenda, "to become, or remain, a person associated with Defendants in violation of Section 203(f)..." In the SEC motion for post-trial remedies, it asked for third-tier penalties, totaling \$1,550,000 against Respondent Grenda Group, LLC, and \$320,000 against Respondent Gregory M. Grenda. In Judge Reiss' decision concerning the imposition of civil penalties against Grenda Group, LLC, and Gregory M. Grenda for the violation of Section 203(f), she imposed only first-tier civil penalties in the amount of \$7,500 against Gregory M. Grenda and \$80,000 against Grenda Group, LLC for their respective violations of Section 203(f).

With respect to the violation of Sections 206(1) and 206(2), the Court imposed \$160,000 tier-two penalty against Gregory M. Grenda (\$80,000 for his violation of Section 206(1) and \$80,000 for his violation of Section 206(2)) and a \$320,000 tier-two penalty against Defendant Grenda Group (\$160,000 for its violation of Section 206(1) and \$160,000 for its violation of Section 206(2)) for their respective violations of Section 206. The total civil penalties for violations

of Sections 203(f), 206(1), and 206(2) were \$167,500 for Gregory M. Grenda and \$400,000 for Grenda Group, LLC.

In this proceeding, the conduct alleged against Grenda Group, LLC, and Gregory M. Grenda does not involve common questions of law or fact. The trial record makes it clear that the perpetrator of the events which gave rise to the action against Respondents, was the conduct of Walter Grenda with whom the SEC entered into two Consent Agreements in 2015 and 2018. Significantly, the trial record established that prior to the imposition of his 2015 3-year suspension, Walter Grenda advised Gregory M. Grenda, that his suspension only affected his ability to associate with Grenda Group, LLC on securities matters, not unrelated activities, such as providing Grenda Group, LLC clients with estate and tax planning services. Regrettably, Gregory M. Grenda accepted his father's statements concerning the scope of the association ban.

Respondents maintain that they were misled by Walter Grenda as to the scope of the 3-year association ban which they understood only affected his right to engage in securities activities for Grenda Group, LLC clients and not unrelated activities, such as estate and tax planning services. Furthermore, the evidence at trial is unrebutted that Gregory M. Grenda knew nothing about Walter Grenda's impersonation of him, clients, or trade equalization. In its brief, the SEC emphasizes the jury verdict determination that violations of sections 203(f), 206(1), and 206(2) were determined to occur. However, in its brief the SEC does not address the underlying uncontested facts which differentiate the actions of Walter Grenda, Grenda Group, LLC, and Gregory M. Grenda. By way of example, the trial record established that when Gregory M. Grenda learned of his father's outrageous conduct in impersonating him and clients, he took prompt remedial action to address the situation including changing Grenda Group, LLC office locks, key fobs, cell phone access, and computer passwords. The trial record further established the difficulty

in Gregory Grenda banning Walter Grenda, his father, from the Grenda Group, LLC offices because Walter Grenda owned the building.

Respondents maintain that consolidation of the proceedings involving Grenda Group, LLC, and Gregory M. Grenda are unduly prejudicial to Gregory M. Grenda because the Commission must distinguish between and among the conduct of Walter Grenda, Grenda Group, LLC, and Gregory M. Grenda which gives rise to the present proceedings. In the event of consolidation, Gregory M. Grenda, may be held responsible for the conduct of Walter Grenda and Grenda Group, LLC instead of his individual conduct. Furthermore, there is a material difference in the impact of the SEC seeking to impose a corporate ban or suspension on Grenda Group, LLC as well as one personally on Gregory M. Grenda which would adversely affect his ability to continue to earn a living in the financial services industry.

DATED: March 24, 2023
Buffalo, New York

Respectfully submitted,

/s/ Joseph G. Makowski

Joseph G. Makowski, Esq.
Attorney for Respondents
Office and Post Office Address
448 Delaware Avenue
Buffalo, New York 14202
Telephone: (716) 881-1890
Facsimile: (716) 551-0828
Email: jmakowski@aol.com

cc: David Stoelting

Certificate of Service

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & .151, I certify that a copy of Respondent's Brief Opposing Consolidation was served on the following on March 26, 2023, via email at the email address indicated below:

David Stoelting
StoeltingD@SEC.GOV
Counsel for Division of Enforcement

/s/ Joseph G. Makowski

Joseph G. Makowski, Esq.
Counsel for Respondent