UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISION

ADMINISTRATIVE PROCEEDING
File No. 3-21098

In the Matter of

GREGORY M. GRENDA,

Respondent,

RESPONDENT, GREGORY M. GRENDA'S, MEMORANDUM OF LAW IN OPPOSITION TO THE DIVISON OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND REQUEST FOR REMEDIAL SANCTIONS

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OS Received 01/16/2024

INTRODUCTION

In this memorandum of law, respondent Gregory M. Grenda ("Greg Grenda") opposes the Securities and Exchange Commission's (the "SEC") motion for summary disposition and remedial sanctions brought pursuant to Rule 250 of the SEC's Rules of Practice. As will be more fully set forth below, because there are genuine issues with regard to material facts, summary disposition in the SEC's favor is not appropriate, the SEC's motion should be denied in its entirety. Accordingly, an evidentiary hearing should be held on the issue of remedial sanctions.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Prior to July 31, 2015, Walter Grenda, Greg Grenda's father, was involved in the financial services industry for many years. Walter Grenda founded Reliance Financial Group, Inc. ("Reliance Group"), an SEC registered, Buffalo-based investment adviser, in 2011 (*see Reliance Financial Advisors, LLC*, Rel. No. 3976, 2014 WL 696737, at *2 [Dec. 10, 2014]). Walter Grenda and Timothy Dembski co-founded, and jointly owned, Reliance Financial Advisors, LLC ("Reliance Financial"). Reliance Financial, now defunct, was a registered investment adviser. In approximately February 2011, Walter Grenda and Timothy Dembski began transferring their advisory clients from Reliance Group to Reliance Financial.

In early 2011, Timothy Dembski co-founded Prestige Wealth Management, LLC ("Prestige") and its general partner, Prestige Wealth Management Fund, LP (the "Prestige Fund"), with his friend, Scott Stephen. Stephen had no professional experience in the securities industry when he was hired by Reliance Group to work in marketing. Dembski and Stephen, without Walter Grenda, set up the Prestige Fund to trade based on a trading algorithm developed by Stephen. Walter Grenda, who never became an owner of the Prestige Fund, reviewed the Prestige Fund's documents, including the private placement memorandum and the trading algorithm, and

recommended investment in the Prestige Fund to certain of his advisory clients at Reliance Financial.

From February 2011 until March 2012, Walter Grenda invested approximately $8 million in the Prestige Fund on behalf of his advisory clients, telling them that the Prestige Fund's trading would be fully automated and directed by the trading algorithm. However, in September 2011, Stephen stopped using automated trading altogether because the algorithm never worked as intended, and he began manually placing trades. In or about October 2012, Walter Grenda withdrew his clients' investments from the Prestige Fund due to its mediocre investment performance between 2011 and 2012. By October 2012, Walter Grenda's clients had collectively lost approximately $320,000, or 4% of their investment funds. In December 2012, the Prestige Fund collapsed, losing approximately 80% of its value.

On December 10, 2014, the SEC issued an order instituting administrative and cease-and-desist proceedings against Walter Grenda, Timothy Dembski and Scott Stephen, alleging violations of the Securities Act of 1933, the Securities Exchange of 1934, the Advisers Act and the Investment Company Act of 1940 arising out of the collapse of the Prestige Fund and two (2) unrelated loans Walter Grenda previously took from his advisory clients (*see id.*).

On July 31, 2015, Walter Grenda negotiated a settlement with the SEC, accepted a three (3) year bar, and agreed to pay disgorgement of $25,000.00 and civil penalties of $50,000.00. Pursuant to the Offer of Settlement, on July 31, 2015, Walter Grenda was "barred from association with any broker, dealer, investment adviser . . . with "the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission" (*Reliance Financial Advisors*, Rel. No. 4152, 2015 WL 4597605 [July 31, 2015]).

Greg Grenda, Walter Grenda's son, made his career in the financial services industry (*see* SEC Ex. 6, at 6). Walter Grenda had planned for Greg Grenda to succeed him at Reliance Financial when he retired. However, given the SEC problems Walter Grenda faced in 2014 and 2015 with the collapse of the Prestige Fund, Walter Grenda and the Grenda family decided that Walter Grenda's succession plan for selling the business and its assets to Greg Grenda should be put in place (*see* SEC Ex. 1 at 8). Accordingly, in early 2014 Greg Grenda formed the Grenda Group, LLC ("Grenda Group"), a single member New York limited liability company, and Grenda Group entered into an Asset Purchase Agreement and Promissory Note, drafted by counsel, transferring the assets of Reliance Financial, including clients, all telephone numbers to the business, furniture, office equipment and technologies and tangible property to the Grenda Group.

When Greg Grenda initially formed the Grenda Group and purchased the Reliance Financial book of business in early February 2014, Walter Grenda assisted in the transfer of the former Reliance Financial clients to the Grenda Group, as Walter Grenda had longstanding personal and professional relationships with the clients. Between February 2014 and July 31, 2015, Walter Grenda was free to assist the Grenda Group and Greg Grenda in the transfer of former Reliance clients to the Grenda Group. Walter Grenda never became associated with the Grenda Group as an owner, consultant, employee, independent contractor, or investment adviser. In August 2016, Greg Grenda was contacted by Schwab, the client custodian for the Grenda Group, concerning a series of recorded telephone calls which were later discovered to have been made by Walter Grenda impersonating him.

On August 30, 2018, the SEC commenced civil litigation against the Grenda Group, Greg Grenda and Walter Grenda, alleging the Grenda Group and Greg Grenda permitted Walter Grenda to associate with the Grenda Group despite Walter Grenda's July 31, 2015 bar, and that the Grenda

Group and Greg Grenda failed to disclose Walter Grenda's bar to Grenda Group clients (*see SEC v Grenda Group, LLC, et al.*, No. 1:18-cv-00954-CCR).

On November 6, 2018, Walter Grenda entered into a Consent Decree with the SEC in the civil litigation. Pursuant to the November 6, 2018 Consent Decree, Walter Grenda was permanently restrained and enjoined from violating the SEC's July 31, 2015 Order, and ordered to pay a civil penalty in the amount of $25,000.00. On December 3, 2018, the District Court issued a Final Order concerning Walter Grenda, and Walter Grenda was released as a defendant in the civil action (*see SEC v Grenda Group, LLC, et al.*, No. 1:18-cv-009540CCR, at Doc. No. 22).

The civil litigation continued against Greg Grenda and the Grenda Group. On May 17, 2021, the District Court granted the SEC's motion for partial summary judgment on its claim under Section 203(f) of the Advisor's Act, holding that the Grenda Group and Greg Grenda permitted Walter Grenda to associate with the Grenda Group in violation of Section 203(f), and that Greg Grenda aided and abetted the Grenda Group's violation of Section 203(f) (*see* SEC Ex. 1).

On December 13, 2021, after an eight (8) day trial, a jury found that the Grenda Group and Greg Grenda violated Sections 206(1) and 206(2) of the Advisors Act and that Greg Grenda aided and abetted the Grenda Group's violation of Sections 206(1) and 206(2) of the Advisors Act (*see* SEC Ex. 2).

On August 1, 2022, the District Court issued its post-trial order regarding remedies, in which it permanently enjoined the Grenda Group and Greg Grenda from future violations of Sections 203(f), 206(1) and 206(2) of the Advisers Act, and imposed civil penalties of $400,000 against the Grenda Group and $167,500 against Greg Grenda (*see* SEC Ex. 3). On August 26, 2022, the District Court entered a final judgment as to the Grenda Group and Greg Grenda (*see* SEC Ex. 5).

OS Received 01/16/2024

The SEC issued the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisors Act of 1940 and Notice of Hearing on September 16, 2022. The Grenda Group and Greg Grenda filed their answer with affirmative defenses on February 23, 2023. On April 25, 2023, the Division of Enforcement determined that consolidation of the proceedings involving the Grenda Group and Greg Grenda was not appropriate (*see In the Matter of Grenga Grp., LLC,* Rel. No. 97379, 2023 WL 3090021 and *Gregory M. Grenda*, Rel. No. 97380, 2023 WL 3090023 [each Apr. 25, 2023]). The parties conducted a telephonic pre-hearing conference on April 13, 2023. On October 19, 2023, the SEC issued an Order Granting an Extension of Time granting the "Division's request for an extension of time to file its opening brief until November 20, 2023" (*Gregory M. Grenda*, Rel. No. 646, 2023 WL 6926331 [Oct. 19, 2023]). Following the granting of the SEC's extension, the SEC granted respondent several extensions and this memorandum of law is filed in response thereto.

ARGUMENT

1. There is a Genuine Issue of Material Fact With Respect to Whether an Associational Bar is the Appropriate Remedy Against the Greg Grenda Which Requires an Evidentiary Hearing as to Remedial Sanctions

As previously set forth above, on August 11, 2022, the District Court permanently enjoined Greg Grenda from violating sections 203(f), 206(1) and 206(2) of the Advisors Act and ordered that he pay a civil penalty of $167,500 (*see* SEC Ex. 3 at 10). The District Court entered a final judgment against Greg Grenda on August 26, 2022 (*see* SEC Ex. 5). The Division of Enforcement now moves for summary disposition against Greg Grenda for an associational bar. In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the nonmoving party (*see Felix v N.Y.*

City Transit Auth., 324 F.3d 102, 104 [2d Cir. 2003]; *O'Shea v Yellow Tech. Svcs., Inc*., 185 F.3d 1093, 1096 [10th Cir. 1999]); *Cooperman v Individual, Inc*., 171 F.3d 43, 46 [1st Cir. 1999]).

A. The Permanent Injunction and the Fine Imposed by the District Court Are Sufficient Equitable and Legal Remedies Against Greg Grenda

Since the District Court permanently enjoined Greg Grenda from violating sections 203(f), 206(1) and 206(2) of the Advisors Act on August 11, 2022, nearly one and one half (1½ years ago, Greg Grenda has not committed any violations of sections 203(f), 206(1) and/or 206(2) of the Advisors Act.

The permanent injunction, coupled with the $167,500 fine, placed on Greg Grenda by the District Court are sufficient equitable and legal remedies in this action. As the Division of Enforcement notes in its memorandum of law, Greg Grenda was working as a registered advisor since 2012, when he was a young man (*see* Division of Enforcement's memorandum of law, Gregory Grenda, at p. 3). Since the jury verdict, and the imposition of the permanent injunction and fine, Greg Grenda has not violated the permanent injunction; however, he has had difficulty paying the civil fine levied by the District Court.

Given the difficulties the permanent injunction and fine have imposed on all aspects of Greg Grenda's life, it is submitted that the permanent injunction and fine are sufficient equitable and legal remedies.

B. An Associational Bar is Not in the Public Interest

Contrary to the argument made by the Division of Enforcement, an associational bar is not in the public interest. When the Commission is determining whether to assert an associational bar, it considers:

> "the egregiousness of [the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future

> violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations."

Steadman v SEC (603 F.2d 1126, 1140 [5th Cir. 1979], *aff'd on other grounds* 450 U.S. 91 [1981]).

There are material questions of fact as to whether each of the first three factors have been met by the Division of Enforcement requiring a hearing on the associational bar. As set forth in the declaration of Joseph G. Makowski, Esq. (hereinafter referred to as the "Makowski dec."), Greg Grenda did notify Grenda Group clients of Walter Grenda's bar (*see* declaration of Peter Andrews, attached to the Makowski dec. as Exhibit A, at ¶¶ 5-7; declaration of Joseph A. Cherico, attached to the Makowski dec. as Exhibit B, at ¶¶ 5-6; declaration of Patrick Lyons, attached to the Makowski dec. as Exhibit C, at ¶¶ 5-7). At the trial, both Peter Andrews and Patrick Lyons testified they received notification of Walter Grenda's bar. There was also evidence at the trial of newspaper announcements of Walter Grenda's bar. This presents questions of fact requiring a hearing as to Greg Grenda's scienter, as he informed clients about Walter Grenda's bar and that Greg Grenda took action to prevent Walter Grenda from having contact with clients (*see* Makowski dec., at Exhibits A, B and C).

There are also questions of fact present, requiring a hearing, with respect to Greg Grenda's assurances against future violations, his recognition of the wrongful nature of his conduct and the likelihood that his occupation in the future will present opportunities for future violations. Prior to the verdict, Greg Grenda had engaged in no conduct in violation of any SEC rules or regulations. Since the verdict, Greg Grenda has engaged in no violation of the terms of the permanent injunction. Significantly, Greg Grenda's conduct did not involve the loss of any client investment money. Given the conduct that Greg Grenda has exhibited over the past eighteen (18) months, it demonstrates that Greg Grenda will not engage in future violations. In addition, since his bar in

December 2018, Walter Grenda has not engaged in any violation of his associational bar. As such, the Division of Enforcement's motion for summary disposition should be denied in its entirety and an evidentiary hearing should be ordered on remedial sanctions.

The case of *Imeprato v SEC* (693 F. Appx. 870 [11th Cir. 2017]), cited by the Division of Enforcement, can be distinguished from the case at bar (*see* Division of Enforcement's memorandum of law, Gregory Grenda, at pp. 8-9). In *Imperato*, the SEC sought to permanently restrict the respondent from participating in any penny stock offering (*see* 692 F. Appx. at 872). However, in *Imperato*, the respondent's conduct consisted of making false and deceptive material statements to lure investors to his company with an intent to deceive; respondent sold unregistered shares of his company to investors; used invested funds for his personal ends; and filed false statements with the SEC that inflated the value of his company by millions of dollars (*see id.*, at 873-874). The same can not be said of Greg Grenda, who, as set forth in the investor declarations, advised clients that Walter Grenda had been barred; did not sell unregistered shares of a company; did not use investor funds for his personal ends; did not file false statements with the SEC; did not inflate the value of his company; and did not lose any client investment money.

With respect to proportionality, the respondent's conduct in the case of *Eric S. Butler* (Rel. No. 413, 2011 WL 174245 [Jan. 19, 2011]), is plainly distinguishable from that of Greg Grenda when it comes to "the Commission routinely enter[ing] bars in follow-on administrative proceedings where the respondents have already been permanently enjoined and ordered to pay significant financial penalties" (Department of Enforcement memorandum of law, Greg Grenda, at p. 10). In *Eric S. Butler*, the respondent had been found *criminally* guilty of three (3) felonies, conspiracy to commit securities fraud, securities fraud and conspiracy to commit wire fraud, and actively engaged in a scheme to invest clients' fund in assets riskier than those he told his clients

he would invest in and manipulated documents to cover it up (*see id.*, at * 4-5). Given this behavior, the respondent was ordered to pay a $5 million fine and forfeit $250,000. In the case at bar, Greg Grenda was not charged with, let alone found guilty of, any criminal charges, nor did he engage in a scheme to invest his clients' funds in assets risker than he told his clients that he would and manipulate documents to then hide the lie and the conduct of Greg Grenda did not involve the loss of investment funds.

2. The Administrative Proceeding is Untimely

As previously set forth above, the District Court entered its injunction permanently enjoining Greg Grenda from violating sections 203(f), 206(1) and 206(2) of the Advisors Act and civil fine on August 11, 2022 (*see* SEC Ex. 3, at 4-5, 10). Since the imposition of the injunction, Greg Grenda has not violated the injunction's terms.

However, although Greg Grenda has committed no violations of the injunction, the Commission commenced this administrative proceeding on September 16, 2022 (*see* Division of Enforcement memorandum of law, at p. 5). The Commission did not file its motion for summary disposition and request for remedial sanctions until November 20, 2023, two (2) years after the District Court verdict and *fifteen (15) months* after the District Court entered the injunction and fine.

It is submitted that in waiting more than two (2) years after the District Court verdict, and more than fifteen (15) months from the issuance of the injunction and fine to the filing of the motion for summary disposition and remedial sanctions is untimely and the requested associational ban is excessive. After seven (7) years, Greg Grenda is attempting to move forward with his life following the Commission's lengthy investigation, the trial, and the jury verdict and imposition of the permanent inunction and fine. Given that more than two (2) years have passed since the verdict, and an additional fifteen (15) months have passed since the District Court injunction and

fine, the related request for an associational ban is untimely, the requested ban is excessive and does not serve the public interest.

On this record, even if the Commission were to determine that the administrative proceeding is timely, the motion for summary disposition of the Division of Enforcement should be denied and an evidentiary hearing should be granted on the issue of remedial sanctions.

CONCLUSION

Given the foregoing, it is submitted that there are genuine issues of material fact as to whether an association ban is the appropriate sanction. As such, the Division of Enforcement's motion for summary disposition should be denied in its entirety and an evidentiary hearing should be held on the appropriate remedial sanctions.

DATED: January 15, 2024
Buffalo, New York

Respectfully submitted,

/s/ *Joseph G. Makowski*

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OS Received 01/16/2024

CERTIFICATE OF SERVICE

Pursuant to the Commission's Order of October 19, 2023, Rule 150(c) and the extensions granted to the respondent by the SEC, respondent, Gregory M. Grenda, certifies that he served his Memorandum of Law in opposition to the Division of Enforcement's Motion for Summary Disposition on January 15, 2024.

/s/ *Joseph G. Makowski*
Joseph G. Makowski

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISION

ADMINISTRATIVE PROCEEDING
File No. 3-21098

In the Matter of

GREGORY M. GRENDA,

Respondent,

Declaration of Joseph G. Makowski in Opposition to the Division of Enforcement's Motion for Summary Disposition Against Respondent Gregory M. Grenda

I, Joseph G. Makowski, Esq., declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an attorney duly licensed to practice in the State of New York in the United States District Court for the Western District of New York. I am counsel of record for respondent, Gregory M. Grenda in this proceeding. As such, I have personal knowledge regarding the documents listed herein. I submit this Declaration in opposition to the Division of Enforcement's Motion for Summary Disposition against respondent, Gregory M. Grenda.

2. Attached hereto as **Exhibit A** is the Declaration of Peter Andrews, verified on September 25, 2020.

3. Attached hereto as **Exhibit B** is the Declaration of Joseph A. Cherico, verified on September 25, 2020.

4. Attached hereto as **Exhibit C** is the Declaration of Patrick Lyons, verified on September 25, 2020.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: January 15, 2024
Buffalo, New York

/s/ *Joseph G. Makowski*
Joseph G. Makowski

OS Received 01/16/2024