BEFORE THE

U.S. SECURITIES & EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Christopher P. Tranchina

For Review of Disciplinary Action Taken by

FINRA

File No. 3-21390

APPLICANT'S BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW

Jon-Jorge Aras
WARREN LAW GROUP
519 8th Avenue
25th Floor
New York, NY 10018
Tel: 866-954-7687
Fax: 212-656-1200
jj@warren.law

Dated: June 26, 2023

TABLE OF CONTENTS

PAGE(S)

I. Introduction 1

II. Exceptions 2

III. Factual Background 3

IV. Procedural History 3

V. Standard of Review 3

VI. Argument 4

A. Tranchina Should Not be Barred for a Violation of Rule 2010 5

i. Contextual Background 6

ii. NAC Failed to Apply Precedent 7

iii. Appropriate Sanction 10

B. Tranchina Did Not Willfully Violate Rules 1112 and 2010 12

VII. Conclusion 14

OS Received 06/26/2023

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL DECISIONS

Paz Secs., Inc. v. SEC, 566 F.3d 1172, 1176 (D.C. Cir. 2009) 10
Saad v. SEC, 718 F.3d 904, 906 (D.C. Cir. 2013).....10
Saad v. SEC, No. 19-1214 (D.C. Cir. 2020).....3
The Robare Group, LTD. v. SEC, No. 16-1453 (D.C. Cir., Apr. 30, 2019).....4, 14

COMMISSION DECISIONS AND RELEASES

Edward S. Brokaw, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583 3
Dante J. Difranceso, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012) ..7, 8
Robert D. Tucker, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496 (Nov. 9, 2012). 4

FEDERAL AND STATE STATUTES

15 U.S.C. § 78s(e)(1)(A)-(B). 3
Exchange Act Section 3(a)(39), 15 U.S.C. § 78c(a)(39).....4
Investment Advisers Act of 1940 14
N.J.S.2C:1-4(b).....13

FINRA DECISIONS AND SETTLEMENTS

Dep't of Enf't v. Shvarts, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6 (NASD NAC June 2, 2000) 4
In the Matter of Brian S. Johnson, Respondent (AWC 2013035959901, December 17, 2013) 9
In the Matter of Dudley Franklin Stephens, Respondent (AWC 2013037374401, June 16, 2014) 9
In the Matter of Edward Thomas Hill, Respondent (AWC 2013036393901, August 7, 2014) 9
In the Matter of Gabriel Schulman, *Respondent* (AWC 20110264491801, November 1, 2013) ...8
In the Matter of Jason Gerald Medvec, Respondent (AWC 2014039937101, November 10, 2015) 9
In the Matter of Jonathan Layne Heise, Respondent (AWC 2016050818701, January 4, 2018) ...9
In the Matter of Jonathan S. Perry, Respondent (AWC 201102645010, November 1, 2013) 8
In the Matter of Paul D. Ferrante, Respondent (AWC 2011026450201, November 1, 2013).....8

OS Received 06/26/2023

In the Matter of Ryan Wallace, Respondent (AWC 2015047832501, April 7, 2017) 9
In the Matter of Tracy Lynn Munce, Respondent (AWC # 2014041443801, May 13, 2015).....9

FINRA REGULATIONS AND GUIDELINES

FINRA By-Laws 1, 2
FINRA Rule 2010.....passim
FINRA Rules 1122 .....1, 4
FINRA Sanction Guidelines (2022) 10

BEFORE THE
U.S. SECURITIES & EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Christopher P. Tranchina

For Review of Disciplinary Action Taken by

FINRA

File No. 3-21390

APPLICANT'S BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW

Applicant Christopher P. Tranchina ("Tranchina" or "Applicant"), by and through undersigned counsel, hereby submits this brief in support of the application for review of the National Adjudicatory Council's ("NAC") decision (the "Decision") regarding FINRA Complaint No. 2018058588501.[1]

I. Introduction

Tranchina appears before the Securities and Exchange Commission (the "Commission") seeking to vacate the NAC's decision to bar him from the securities industry for violating FINRA Rule 2010 ("Rule 2010") by gaining unauthorized access to firm information.[2] Tranchina does not dispute that his conduct violated Rule 2010, and he understands that sanctions are merited. However, the imposition of a bar under these circumstances is excessive, oppressive, and in contradiction to well-established precedent for similar violations of Rule 2010. The NAC

[1] Applicant requests oral argument to be held in person in support of the Application for Review.
[2] The NAC also found that Tranchina violated FINRA By-Laws and FINRA Rules 1122 and 2010 by failing to amend his Form U4 and assessed a six-month suspension in all capacities and a $10,000 fine. The NAC did not impose either the suspension or the fine. NAC Decision (Bates No. 001935) (the "Decision") at 1. Moreover, the NAC dismissed the allegation that Tranchina converted customer files. *Id*. at 11.

OS Received 06/26/2023

misapprehended the law, failed to give appropriate weight to mitigating record evidence, and arrived at a punitive sanction not supported by Tranchina's conduct. With the benefit of a full review, Tranchina respectfully requests that the Commission exercise its broad discretion to vacate the bar and modify the sanctions to be remedial.

II. Exceptions

The following are the exceptions to the findings and conclusions made by the NAC in its Decision, which Applicant has raised in the instant appeal:

NAC's decision is clearly in error because:

(a) NAC's conclusions and basis for those conclusions are premised upon a misreading of the law and factual determinations not supported by the record;

(b) NAC's explanation of how its findings of violations inform the sanctions imposed is based upon a misreading of the law and factual determinations not supported by the record;

(c) NAC's finding that Appellant violated FINRA Rule 2010 because he gained unauthorized access to customer files of his former member firm which is clearly in error and premised upon a misreading of the law and factual determinations not supported by the record;

(d) NAC's finding that Appellant violated FINRA By-Laws and Rules by willfully failing to disclose material information on his Form U4 which is clearly in error and premised upon a misreading of the law and factual determinations not supported by the record;

(e) NAC's finding that FINRA Enforcement met its burden of proof which is clearly in error and premised upon a misreading of the law ad factual determinations contradicted by the record;

(f) NAC's order of a permanent bar from associating with any member firm in any capacity, which is clearly in error, grossly excessive, punitive, and premised upon a misreading of the law and factual determinations not supported by the record;

(g) NAC's order of a statutory disqualification, which is clearly in error, grossly excessive, punitive, and premised upon a misreading of the law and factual determinations not supported by the record;

(h) NAC's order of a fine of $10,000, which is clearly in error and premised upon a misreading of the law and factual determinations not supported by the record; and

(i) NAC's order of hearing costs of $4,977.43 and appeal costs of $1,504.66.

OS Received 06/26/2023

III. Factual Background

The material facts pertinent to this matter are generally not in dispute. Applicant herein adopts the facts recited by the Decision under subsection "I. Facts."[3] To be clear, Applicant does not adopt the NAC's conclusions drawn from the facts.

IV. Procedural History

The procedural history pertinent to this application for review is not in dispute. Applicant herein adopts the procedural history as recited by the Decision under subsection "II. Procedural History."[4] However, Applicant notes that the NAC dismissed Enforcement's conversion cause of action lodged against Tranchina.[5]

V. Standard of Review

The Commission conducts its own review of the disciplinary action, and may modify, affirm, or set aside a sanction.[6] 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."[7]

FINRA Rule 2010 states, "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." To establish a Rule 2010 violation when there is no violation of any other FINRA rule or federal securities law, Enforcement must prove that the respondent acted unethically or in bad faith.[8] Conduct is unethical when it is "not in conformity with moral norms or standards of professional conduct," while bad

[3] Decision at 2-7.
[4] *Id.* at 7-8.
[5] *Id.* at 11.
[6] 15 U.S.C. § 78s(e)(1)(A)-(B).
[7] *Id*. *See also Saad v. SEC*, No. 19-1214 (D.C. Cir. 2020) at 5.
[8] *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (discussing FINRA Rule 2010's predecessor, NASD Rule 2110).

faith means "dishonesty of belief or purpose."[9] In determining whether a Rule 2010 violation occurred, a review employs "a flexible evaluation of the surrounding circumstances with attention to the ethical nature of the conduct."[10]

FINRA Rule 1122 states that, "no member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."[11] A failure to disclose information on a Form U4 is willful "if the respondent of his own volition provides false answers on his Form U4."[12] Willful conduct requires an intent to omit the information that constitutes the disclosure violation.[13] A finding of a willful violation results in a registered representative being statutorily disqualified from continuing to work in the securities industry.[14]

VI. Argument

Tranchina's conduct does not support the NAC's imposition of a lifetime bar from the securities industry, nor should he be subject to a statutory disqualification. The NAC found that Tranchina violated FINRA Rule 2010 by gaining unauthorized access to firm information by entering his former firm's office, after he was terminated, and removing customer files.[15] Further, the NAC found that Tranchina was "extremely reckless" in failing to disclose a theft charge on his

[9] *Id*. at *33.
[10] *Dep't of Enf't v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *15 (NASD NAC June 2, 2000) (discussing FINRA Rule 2010's predecessor, NASD Rule 2110).
[11] FINRA Rule 1122. *See https://www.finra.org/rules-guidance/rulebooks/finra-rules/1122* (Last accessed on June 26, 2023).
[12] *Robert D. Tucker,* Exchange Act Release No. 68210, 2012 SEC LEXIS 3496*,* at *41 (Nov. 9, 2012).
[13] *The Robare Group, LTD. v. SEC*, No. 16-1453 (D.C. Cir., Apr. 30, 2019) (holding that an investment adviser and its principals could not have "willfully" omitted a material fact when the conduct involved was merely negligent).
[14] *See* Exchange Act Section 3(a)(39), 15 U.S.C. § 78c(a)(39) (defining a "statutory disqualification" to include any person who has been found to have willfully made a false or misleading statement of material fact, or omitted to state a fact required to be disclosed, in any application or report filed with a self-regulatory organization).
[15] Decision at 7. Notably, the NAC dismissed FINRA Department Enforcement's ("Enforcement") conversion allegation against Applicant, which originally served as the basis for the bar imposed by the Hearing Panel. *Id.* at 6.

Form U4 and therefore is subject to statutory disqualification.[16] The NAC's conclusions in both regards are based upon a misapprehension of the law and relevant facts.

To the extent Tranchina violated FINRA Rule 2010, he should be sanctioned according to well-established legal precedent in cases where former registered representatives came into possession of customer files from their former member firms. To the extent that Tranchina failed to disclose material information of the Form U4, his conduct was not willful, and the Commission should overturn and vacate the NAC's imposition of a statutory disqualification.

For the reasons set forth below, the Commission should vacate and modify the NAC's sanctions.

A. Tranchina Should Not be Barred for a Violation of Rule 2010

The NAC's rationale to bar Tranchina from the securities industry is based entirely on the manner in which he retrieved files from his former office.[17] The NAC made clear that determining ownership of the files is not appropriate for its review and that it need not engage in such analysis because ownership was not material to its finding that Tranchina violated Rule 2010.[18] In sum and substance, the NAC barred Tranchina because, in its view, he acted "unethically" by "breaking into" his former office.[19] The NAC's contrived moral judgment of Tranchina is rooted in an exaggeration of the relevant facts and a disregard for other FINRA enforcement actions where the conduct was similar if not far more egregious. Tranchina's conduct could be described as juvenile, imprudent, or impulsive, but he was not unethical or immoral to the point of deserving a bar.

[16] *Id*. at 15.
[17] *Id*. at 19-21.
[18] *Id*. at 9-10.
[19] *Id*. at 7-8, 20-21.

i. Contextual Background

By way of context, Tranchina was terminated from Hornor, Townsend & Kent, Inc. ("HTK"), the broker-dealer arm of Penn Mutual Life Insurance Company ("Penn Mutual") (collectively "HTK/Penn Mutual") due to a dispute with his former mentor, Jerry Goldberg ("JG").[20] That dispute arose after he experienced regular berating and harassment from JG, who he had originally trusted and respected.[21] Upon his termination, Tranchina was told by the Firm that nearly every client file he shared with JG would be retained by the Firm.[22] These files comprised nearly his entire business, much of which he developed on his own through friends, family, and referrals.[23] Tranchina believed he stood to lose his entire business and feared he would no longer be able to provide for his wife and two small children.[24] The confluence of his toxic relationship with JG, the termination from the only firm he was registered with throughout his career, the loss of the business he independently developed for over a decade, and the potential inability to take care of his children all put Tranchina under extreme duress.[25] As a result, on the same day as his termination, he acted in poor judgment in deciding to return to the Firm's office to retrieve files he believed were his to possess.[26] This is a decision that Tranchina deeply regrets, which he has expressed throughout the entirety of these proceedings.[27] These circumstances are submitted to the Commission not to excuse Tranchina's conduct, but to provide relevant background.

[20] *Id.* at 2-3.
[21] CX-26 Complete Statement of Christopher Tranchina submitted to FINRA, dated September 4, 2018 (Bates No. 001471).
[22] Decision at 3.
[23] *Id.* at 2-3.
[24] Hearing Transcript January 27, 2021 (Bates No. 000843) at 478-81.
[25] *Id*. at 484-86.
[26] Decision at 3-4.
[27] Hearing Transcript January 27, 2021 (Bates No. 000843) at 484.

ii. NAC Failed to Apply Precedent

In its *de novo* review of the record, the NAC not only failed to consider the context of Tranchina's actions, but it also disregarded similar enforcement actions where the underlying conduct was substantially the same. Take for example *In the Matter of Dante J. Difranceso* where the respondent, after agreeing to terminate his registration with the firm, surreptitiously downloaded firm client information onto a portable flash drive.[28] The respondent was previously caught by his firm trying to email himself client information, which lead to the agreement to terminate his registration.[29] The respondent admitted that he used the flash drive because he thought another email "would get blocked off," and because he wanted to get "[his] account over" to a new firm.[30] In total, the respondent downloaded ***36,000*** customer files containing confidential information and then immediately used that information to solicit clients at his new firm.[31] The respondent was charged with violations of NASD Conduct Rule 2110 (now FINRA Rule 2010). After a disciplinary hearing and through an appeal to the Commission, the respondent was found to have acted unethically in violation Rule 2010. The respondent was sanctioned only with a ***10-business day suspension and a $10,000 fine***.

In comparison to Tranchina, the respondent in *DiFrancesco*, after attempting to email himself client files, was similarly told by his firm that he would not be getting his client files.[32] Instead of hiring an attorney to dispute the matter, the *Difrancesco* respondent admittedly engaged in self-help and devised a scheme to obtain the information with the intention of evading detection from his member firm. He was financially motivated to get the client information, which he

[28] *See Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012).
[29] *Id*.
[30] *Id*. at 4.
[31] *Id.* at 5.
[32] *Id*. at 4.

immediately started using at his new firm.[33] By contrast, Tranchina ended up taking a handful of files, which he later returned to HTK/Penn Mutual through counsel.[34] He also did not devise a scheme to evade detection, but rather acted on impulse and out of fear, returning to his former office and gaining access in a slapstick manner. The import of comparing Tranchina to *Difrancesco* is that the "unethical" nature of their conduct is substantially the same. However, while Tranchina is barred, the *Difrancesco* respondent received a mere 10-day suspension and fine. Such a result is inconsistent and inequitable.

By way of further example, take *In the Matter of Gabriel Schulman*, where the respondent accessed his firm office after business hours without any legitimate business and removed confidential and proprietary documents.[35] The respondent was anticipating a move to a new firm and physically moved documents from the member firm office to his home. For his conduct, he was terminated by his member-firm and agreed to a violation of FINRA Rule 2010, which resulted in a 5-day business suspension and a $5,000 fine.[36] In comparison to Tranchina, the respondent also returned to his firm office after hours knowing he was taking files for which his firm claimed ownership and which he was not authorized to take. Again, while Tranchina is barred from the securities industry for the rest of his life, the respondent in Schulman was able to return to work in 5 business days.

These two matters represent a mere handful of FINRA disciplinary actions involving registered representatives taking customer files from their member firms without authorization.

[33] *Id*. at 5.
[34] Decision at 4-5.
[35] *In the Matter of Gabriel Schulman*, *Respondent* (AWC 20110264491801, November 1, 2013). *See also In the Matter of Jonathan S. Perry, Respondent* (AWC 201102645010, November 1, 2013) and *In the Matter of Paul D. Ferrante, Respondent* (AWC 2011026450201, November 1, 2013).
[36] *See* FINRA BrokerCheck, Gabriel Schulman, available at https://brokercheck finra.org/individual/summary/5107746#disclosuresSection (Last accessed on June 26, 2021); *In the Matter of Gabriel Schulman*, *Respondent* (AWC 20110264491801, November 1, 2013).

There are many other instances of such conduct; because this conduct occurs so regularly in the securities industry.[37] In its disregard for this body of precedent, the NAC attempted to distinguish Tranchina's conduct as "deeply disturbing", and therefore reasoned that any other cases involving the unauthorized taking of customer files were inapplicable to its analysis.[38] In employing such reductionist logic, the NAC gave weight to what it described as "breaking and entering" and failed to take into account that the sanctions imposed for similar underlying conduct are substantially less.

The difference in Tranchina's case compared to the cases cited herein appears to be that the other firms did not report the taking of files to the police, an extraordinary step taken by Mr. Barrett.[39] This distinguishing feature should not result in Tranchina being barred, as respondents who knowingly took firm information without authorization are able to return to work in a short period of time. The NAC was unduly influenced by the New Jersey complaint-summons and gave far too much weight to Tranchina's conduct which was ill-conceived and carried out under duress. In addition, the NAC failed to account for the fact that the New Jersey complaint-summons was dismissed in its entirety and expunged from Tranchina's record.[40] The substance underlying Tranchina's conduct and the conduct of other respondents charged with Rule 2010 violations for unauthorized access to firm information is essentially the same. Nevertheless, while the NAC's outrage with Tranchina is understandable to some extent, barring him from the securities industry goes beyond a sanction that is appropriate and is well out of line with precedent.

---

[37] *See In the Matter of Tracy Lynn Munce, Respondent* (AWC # 2014041443801, May 13, 2015); *In the Matter of Edward Thomas Hill, Respondent* (AWC 2013036393901, August 7, 2014); *In the Matter of Jason Gerald Medvec, Respondent* (AWC 2014039937101, November 10, 2015); *In the Matter of Dudley Franklin Stephens, Respondent* (AWC 2013037374401,June 16, 2014); *In the Matter of Brian S. Johnson, Respondent* (AWC 2013035959901, December 17, 2013); *In the Matter of Ryan Wallace, Respondent* (AWC 2015047832501, April 7, 2017); and *In the Matter of Jonathan Layne Heise, Respondent* (AWC 2016050818701, January 4, 2018).
[38] Decision at 21.
[39] *Id.* at 5.
[40] *Id*. at 6, 21.

Lastly, the NAC's dismissal of the conversion charge is an admission that whether Tranchina had the right to these files was a matter of contract.[41] Assuming Tranchina had the right to the files in question, HTK/Penn Mutual's denial of his access should not form the basis for a finding that Tranchina gained unauthorized access to HTK information. Tranchina was not charged by Enforcement with "breaking and entering", he was charged with gaining unauthorized access to firm information. The NAC on the one hand cannot say his access was unauthorized to access the file while simultaneously maintaining that his right to the files was a matter of contract interpretation. Such an inconsistent statement should further assist the Commission in deciding that a bar under these circumstances is unsupported and unwarranted.

iii. Appropriate Sanction

The NAC's sanction of a bar is clearly penal and serves no remedial purpose. According to the FINRA sanction guidelines, "[s]anctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct.[42] When a sanction is imposed for punitive purposes as opposed to remedial purposes, the sanction is excessive or oppressive and therefore impermissible.[43] A lifetime bar is the "securities industry equivalent of capital punishment."[44] A proper application of the relevant facts, principal factors, and precedent should convince the Commission to vacate the bar and impose a remedial sanction.

In justifying its bar against Tranchina, the NAC claimed Tranchina's conduct was premeditated and consisted of several intentional acts.[45] This statement is demonstrably false. As explained above, Tranchina's conduct was the result of duress and was not planned in any

[41] *Id*. at 10-11.
[42] FINRA Sanction Guidelines, September 2022 ("Guidelines") at 3.
[43] *See Paz Secs., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009).
[44] *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).
[45] Decision at 20.

meaningful way. The NAC failed to take into account the circumstances of Tranchina's conduct, which should be viewed as one single act rather than a series of acts leading to his retrieval of files from his office. Furthermore, the NAC failed to take into account any mitigating factors, such as the isolated occurrence of this conduct, Tranchina's lack of relevant disciplinary history or customer complaints[46], Tranchina's return of the files to HTK/Penn Mutual[47], Tranchina's employment of an attorney to assist in his dispute with HTK/Penn Mutual[48], the fact that his conduct did not result in an injury to any customer, and Tranchina's full participation and compliance with FINRA's investigation[49].[50]

The NAC explicitly punished Tranchina by barring him from the securities industry. There is nothing remedial about barring Tranchina, especially when his conduct did not involve any clients or money and was born out of a contractual dispute with his former member firm. The Commission can still send a powerful message to registered representatives and the investing public by imposing a sanction that is meaningful and remedial but falls short of a bar and allows Tranchina to return to the industry to serve his customers. If anything, barring Tranchina is a disservice to his customers who have never complained about his service. Moreover, Tranchina has demonstrated he is fit for the industry after being registered at a new firm following his dismissal from HTK/Penn Mutual.[51] He is not a risk to the investing public. Tranchina made a terrible mistake, but he should not be faced with the end of his career.

Accordingly, the Commission should vacate the bar and impose a sanction that conforms within the guidelines of what is remedial.

---

[46] CX-02 BrokerCheck Report for Tranchina, dated November 2, 2020 (Bates No. 001121).
[47] Decision at 4.
[48] *Id.*
[49] *See* CX-26.
[50] Guidelines at 7-8 Principal Considerations Nos. 1, 2, 7, 8, 10, 11, 12, 13, 15, and 17.
[51] Decision at 5.

B. Tranchina Did Not Willfully Violate Rules 1112 and 2010

It is undisputed that Tranchina did not report on his Form U4 the New Jersey complaint-summons.[52] However, to the extent Tranchina is required to make such disclosure, he at most acted negligently and not willfully.

The two questions on Form U4 relevant to the allegation of violation are:

> Question 14B(1)(a) asks whether the applicant has ever "been convicted of or pled nolo contendere ('no contest') in a domestic, foreign, or military court to a *misdemeanor involving*: investments or an *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?", and
>
> Question 14B(1)(b) asks whether the applicant has ever "been *charged* with a *misdemeanor* specified in 14B(1)(a)?"[53]

In response to Questions 14(B)(1)(b) Tranchina answered "no".[54] Contrary to the NAC's convoluted explanation of why, in its opinion, Tranchina willfully failed to update his Form U4, a proper analysis yields demonstrates a clear conflict between FINRA guidance and state law.

Mr. Barrett initiated a citizen's complaint against Mr. Tranchina in the state of New Jersey, resulting in a petty disorderly person's offense.[55] A "petty disorderly person's offense" is not defined by FINRA.[56] The term "charged" is defined by FINRA for the purposes of Form U4 as, "being accused of a ***crime*** in a formal complaint, information, or indictment (or equivalent formal charge)".[57] Under New Jersey Law, according to the state's constitution, a petty disorderly

[52] CX-22 Complaint-Summons issued to Tranchina in State of New Jersey vs. Christopher P. Tranchina by the Municipal Court of Edison, New Jersey Case No. 18027328, dated July 23, 2018 (Bates No. 001465).
[53] Decision at 12.
[54] *Id*.
[55] *Id*. at 5; RX-07 Disposition of New Jersey Complaint (Bates No. 001569).
[56] A, Explanation of Terms for Uniform Registration Forms, available at http://www finra.org/refistration-exams-ce/classic-crd/forms/explanation-of-terms. (Last accessed on June 26, 2022).
[57] *Id*. (emphasis added).

person's offense is not considered a crime.[58] The importance of these facts is that Mr. Tranchina was not charged with a crime (as defined by FINRA).

The NAC rejected the arguments asserted by Tranchina in his appeal[59] and found that Tranchina was charged with a crime, because the NAC claimed it was "not bound by New Jersey's unusual classification of offenses."[60] Instead, the NAC turned to the Merriam-Webster Dictionaries' definition of a "crime", to justify that Tranchina was "charged" with a crime, and claimed Tranchina's argument was "semantical".[61] However, the New Jersey Criminal Code states that a petty disorderly person's offense is not a crime. The Form U4 asks if the applicant was ever charged, which charge, as defined by FINRA requires being accused of a crime. FINRA does not define what constitutes a crime.[62] Clearly, there is a conflict between New Jersey's definition of crime as it relates to a petty disorderly person's offense and FINRA's definition of charged, which the NAC took over a year to address and arrive at the conclusion that it deems Tranchina should have figured out himself.

In addition, regarding materiality, the allegations which essentially mirror the New Jersey complaints-summons were already publicly available on Tranchina through BrokerCheck. HTK disclosed that "on the day of his termination (and, after his termination), the RR entered the member firm's premises after business hours, accessed his locked, former office without authorization, and removed items from the office without authorization."[63] Moreover, while Tranchina was the subject of the New Jersey complaint-summons, it was both dismissed and

[58] N.J.S.2C:1-4(b). "Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State."
[59] Respondent's Opening Brief dated September 29, 2021 (Bates No. 001715) at 13-15.
[60] Decision at 14.
[61] *Id.* at 13.
[62] *Id*. at 14.
[63] CX-02 BrokerCheck Report for Tranchina, dated November 2, 2020 (Bates No. 001121).

expunged from Tranchina's record, which renders its disclosure on the Form U4 moot from the date of expungement.[64]

If the Commission determines that Tranchina was required to disclose the New Jersey complaint-summons, it should find that he acted negligently and not willfully. Tranchina's "no" answer to question 14B1B of Form U4 was at most the result of negligence of the New Jersey criminal code as it applies to the FINRA rules and terminology for U4 disclosure issues.[65] Accordingly, Tranchina should not be subject to a statutory disqualification.

VII. Conclusion

For the reasons stated herein, the NAC should overturn the Panel's decision, vacate the bar and the statutory disqualification, and reform the sanctions to be reasonable and appropriate.

Respectfully submitted,

By: */s/ Jon-Jorge Aras*
Jon-Jorge Aras, Esquire
WARREN LAW GROUP
519 8th Avenue
25th Floor
New York, NY 10018
Tel: 866-954-7687
Fax: 212-656-1200
jj@warren.law

Dated: June 26, 2023

[64] Decision at 6; RX-07 Disposition of New Jersey Complaint (Bates No. 001569).
[65] The D.C. Circuit Court of Appeals held that an adviser's negligent failure to disclose conflicts under Section 206(2) of the Investment Advisers Act of 1940 (Advisers Act) cannot also support a finding of willfulness under Section 207 of the Advisers Act because "willful" requires an intent to omit the information that constituted the disclosure violation. *The Robare Group, LTD. v. SEC*, No. 16-1453 (D.C. Cir., Apr. 30, 2019).

OS Received 06/26/2023

CERTIFICATE OF COMPLIANCE

I, Jon-Jorge Aras, certify that:

(1) Applicant's Brief in Opposition 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 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 4285 words.

By: */s/ Jon-Jorge Aras*
Jon-Jorge Aras, Esquire
WARREN LAW GROUP
519 8th Avenue
25th Floor
New York, NY 10018
Tel: 866-954-7687
Fax: 212-656-1200
jj@warren.law

Dated: June 26, 2023

OS Received 06/26/2023

CERTIFICATE OF SERVICE

On June 26, 2023, I, Jon-Jorge Aras, certify that I caused a copy of Applicant's Brief in Support of the Application for Review, in the matter of Christopher P. Tranchina, Administrative Proceeding File No. 3-21390 , to be filed through the SEC's eFAP system and sent via email to:

The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 2059-1090
AdministrativeProceedingsFax@sec.gov

Attn: Michael M. Smith
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington D.C. 20006
michael.smith@finra.org
nac.casefilings@finra.org

Respectfully submitted,

By: */s/ Jon-Jorge Aras*
Jon-Jorge Aras, Esquire
WARREN LAW GROUP
519 8th Avenue
25th Floor
New York, NY 10018
Tel: 866-954-7687
Fax: 212-656-1200
jj@warren.law

Dated: June 26, 2023