

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Financial Industry Regulatory
Authority,

Complainant,

FINRA Complaint
No. 2019064813801

v.

NYPPEX, LLC, Laurence Allen, and,
Michael Schunk,

SEC File No. _____

Respondents.

**NOTICE OF APPEAL AND APPLICATION
FOR REVIEW OF FINRA NAC DECISION FOR
NYPPEX, LLC AND LAURENCE ALLEN**

Pursuant to Rule 420 of the Commission’s Rules of Practice, NYPPEX, LLC (“NYPPEX”) and Laurence G. Allen (“Mr. Allen”) (collectively, “Appellants”), by their undersigned counsel, hereby submit this Notice of Appeal and Application for Review by the United States Securities and Exchange Commission (the “Commission”) of the decision of the National Adjudicatory Council (“NAC”) of the Financial Industry Regulatory Authority (“FINRA”), dated April 8, 2024 (“Decision”). Appellants submit for review the NAC Decision for violations of (1) Article III, Section 3(b) of FINRA’s By-Laws and FINRA Rules 8311 and 2010 for association while subject to a statutory disqualification, (2) FINRA Rules 2210(e) and 2010 for posting a press release on the internet, and (3) FINRA Rules 8210 and 2010 regarding their alleged failures to provide complete responses to FINRA’s 8210 requests.

Pursuant to Section 19(d)(1) of the Exchange Act of 1934, 15 U.S.C. § 78s(d)(1), this Application is timely filed.

The NAC made conclusions of fact that are contrary to the record and evidence, are unsupported by the evidence, and are contrary to the weight of the evidence. The NAC abused its authority and discretion by making unfair and arbitrary findings and conclusions contrary to the law, resulting in fines and a bar against Mr. Allen and fines and a one-year suspension against NYPPEX that were unsupported by the facts and the law.

First, the NAC ignored evidentiary issues and made findings contrary to the law and FINRA's own rules and regulations regarding Appellants' alleged violations of Article III, Section 3(b) of FINRA's By-Laws and FINRA Rules 8311 and 2010 for Mr. Allen associating with NYYPEX while subject to a statutory disqualification. For example, the NAC did not properly take into account the applicable law or evidence that Mr. Allen's lawyers and FINRA staff assured Mr. Allen that he was not subject to a statutory disqualification or the applicable legal standards.

Second, the NAC misinterpreted or otherwise ignored the plain language of the at-issue press release, resulting in its erroneous decision against Appellants for violating FINRA Rules 2210(e) and 2010. The NAC's interpretation cannot withstand factual or legal scrutiny.

Finally, the NAC failed to address certain evidentiary deficiencies that would have demonstrated that Appellants did not violate FINRA Rules 8210 or 2010. For example, FINRA's Department of Enforcement failed to prove which specific bank accounts Mr. Allen controlled for which the 8210 Requests sought statements, instead generically referencing "an additional unspecified number" of bank accounts. Specifically, there was no evidence presented that Mr. Allen could obtain the bank statements upon demand—without seeking authority from others before disclosing to FINRA. In addition, the NAC did not give proper inferences and weight to the relevant communications between (1) NYPPEX, Mr. Allen, and their lawyers and (2) FINRA's Department of Enforcement regarding the at-issue 8210 requests.

Even if Appellants could be held liable on the charges here, the sanctions imposed were excessive and oppressive because the NAC failed to account for mitigating factors and to appropriately consider the FINRA Sanctions Guidelines. For example, the NAC's disregard for Appellants' states of mind based on their communications with their lawyers supports reduced sanctions. In addition, the NAC's finding that "[Mr.] Allen's conduct raises substantial doubt about whether he would respond completely to any future Rule 8210 requests issued to him" belies his nearly four decades in the securities industries with no violations. Finally, new evidence has become available since the hearing regarding Mr. Allen's state of mind. Mr. Allen was recently diagnosed with a traumatic brain injury from an automobile collision in May 2018 that negatively affected his cognitive abilities during the FINRA investigation and the hearing. This new evidence warrants consideration as a mitigating factor on any sanction.

Appellants therefore ask the Commission to review and set aside the sanctions imposed by FINRA, under Section 19(e)(1) of the Exchange Act, 15 U.S.C. § 78s(e)(1), and to reject the NAC Decision's finding of liability for violations of Article III, Section 3(b) of FINRA's By-Laws and FINRA Rules 2210(e), 8210, 8311, and 2010. At a minimum, the sanctions imposed should be canceled, reduced, or remitted under Section 19(e)(2), 15 U.S.C. § 78s(e)(2). Pursuant to Rule 401(d) of the Commission's Rules of Practice, Mr. Allen also requests that the Commission stay the effect of the bar during the pendency of its review.

Filed: May 7, 2024

Respectfully submitted,

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