

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of
SPARTAN CAPITAL SECURITIES, LLC, JOHN D. LOWRY, and KIM M. MONCHIK

For Review of Disciplinary Action Taken by FINRA

Admin. Proc. File No. 3-22285

**RESPONDENTS/APPELLANTS SPARTAN CAPITAL SECURITIES, LLC,
JOHN D. LOWRY, AND KIM M. MONCHIK'S MOTION FOR LEAVE TO ADDUCE
ADDITIONAL EVIDENCE**

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Pursuant to SEC Rule of Practice 452, Respondents/Appellants Spartan Capital Securities, LLC (“Spartan”), John D. Lowry (“Lowry”) and Kim M. Monchik (“Monchik”) (collectively, “Respondents”) hereby file this Motion for Leave to Adduce Additional Evidence and supplement the record before the Commission.

I. FACTUAL BACKGROUND

On October 19, 2021, FINRA’s Department of Enforcement (“Enforcement”) filed the Complaint against Respondents asserting three causes of action. The first cause of action is against Spartan and asserts it failed to make, or made late, U4 and U5 disclosures for its registered representatives and alleged violations of Article V, Sections 2(c) and 3(b) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. It is based on allegations relating to disclosure issues by Spartan, as an entity, arising from certain broker arbitrations, financial events, and customer complaints. It is not asserted against Lowry and Monchik.

The second cause of action is against Lowry for alleged U-4 disclosure failures and alleged violations of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. It is limited to a claim that Lowry failed to report arbitrations and/or customer complaints on his own U4. The third cause of action is against Monchik for alleged U-4 disclosure failures and alleged violations of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. It is limited to allegations that Monchik failed to report arbitrations on her own U4.

On March 28, 2023, H.O. Dixon, on behalf of the Extended Hearing Panel, issued the Extended Hearing Panel Decision dated March 28, 2023 (the “OHO Decision”). [R.25319].¹ In the OHO Decision, H.O. Dixon found that Spartan violated Article V, Sections 2(c) and 3(b) of

¹ Similar to Respondent’s Brief in Support of their Application for Review, references to the Record on Appeal are hereinafter referred to by the Bates Number for the Index on Appeal and will be referred to as [R. ____].

FINRA's By-Laws and FINRA Rules 1122 and 2010 and found Spartan's failure to report various U4 and U5 amendments was willful.

Respondents appealed the OHO Decision to the National Adjudicatory Counsel ("NAC"). On October 9, 2024, NAC issued its decision affirming the violations and "willful" finding (the "Decision"). [Decision, R. 26067]. However, unlike a disclosure for a financial event or arbitration where the individual was the broker who engaged in the alleged sales practice – where the failure to make a U4 disclosure will be considered willful conduct, the standard for determining the reportability of an Officer Disclosure is driven by FINRA in its published Form U4 and U5 Interpretive Questions and Answers (the "FINRA Guidance"). The FINRA Guidance for an Officer Disclosure provides that the Officer or Principal, if named in a claim based on their position, may make a good faith determination, on a case-by-case basis, as to whether or not a statement of claim alleges that the Officer or Principal failed to supervise the specific representative alleged to have committed a reportable sales practice violation.

In reaching the conclusion that Respondents willfully failed to disclose the Officer Disclosures on Lowry, other Spartan Officers, and Monchik's U-4, NAC and H.O. Dixon committed reversible error by applying the incorrect legal standard and failing to apply the good faith determination test for each statement of claim required by the FINRA Guidance. Had they applied the correct standard, NAC would have found that the evidence demonstrated Respondents made a good faith determination for each arbitration's statement of claim, and the Officer Disclosures were not reportable by Lowry, other Spartan Officers, and/or Monchik.

II. ADDITIONAL EVIDENCE TO BE SUBMITTED

Respondents now request to introduce two recent expungement awards issued by FINRA Arbitrators through FINRA Dispute Resolution as additional evidence in support of their

Application for Review.² These expungement awards pertain to eight customers who were allegedly harmed by the Respondents' conduct and were identified in the NAC's Decision. [Decision, R. 26067, p. 85-90]. Thus, the Awards are material, and they were unavailable for Respondents to submit with the Record and their Motion and Reply because FINRA issued them after Respondents filed their Reply Brief.

For each Award, a FINRA Arbitrator expunged the customer's complaints – complaints that formed part of the OHO Decision and were identified in Schedules C and D thereto.. Since the expungement awards refer to the disclosures by Occurrence Number, and not the name of the corresponding customer complaint, the below chart which identifies each customer claim:

Expungement Award for FINRA Case No. 23-02842 (Exhibit A)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277051 (Lowry)	Earl Fayard	15-02421	Schd. C	A-1
2277644 (Monchik)	Earl Fayard	15-02421	Schd. D	A-2
2277057 (Lowry)	William Conklin	15-03422	Schd. C	A-3
2277638 (Monchik)	William Conklin	15-03422	Schd. D	A-4

Expungement Award for FINRA Case No. 23-02855 (Exhibit B)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277041 (Lowry)	Jerald Burco, et al.	19-01439	Schd. C	B-1
2277085 (Lowry)	William & Jane Maycock	19-01489	Schd. C	B-2
2277076 (Lowry)	Ricky Marcellini, et al.	19-01243	Schd. C	B-3
2092855 (Lowry)	Richard Fischer, et al.	20-02035	Schd. C	B-4

Moreover, as discussed in Respondents' Moving Brief at fn. 9, these Awards evidence that the expungement process took over a year to complete – while false information remained on

² The expungement awards are attached hereto as Exhibits A and B.

Lowry and Monchik’s public records, and they incurred over \$8,000 and \$10,000 in FINRA fees in connection with each expungement Award. *See* Exhibit A at pp. 4-5; Exhibit B at p. 4.

III. ARGUMENT

The Commission may allow the submission of new evidence upon a motion filed by a party “at any time prior to issuance of a decision.” 17 C.F.R. § 201.452. The Commission has broad authority to “accept or hear additional evidence” itself. *Id.*; *Calais Res. Inc.*, Release No. 34-67312, 2012 WL 2499349, at *4 n.19 (June 29, 2012) (granting motions by both respondent and the Enforcement to adduce additional evidence). Furthermore, Rule 452 allows additional evidence where the moving party shows “(1) with particularity that such additional evidence is material and (2) that there were reasonable grounds for failure to adduce such evidence previously.”³ 17 C.F.R. § 201.452. Moreover, in granting a motion, the Commission “may accept or hear additional evidence,” “remand the proceeding” to an SRO, or “refer the proceeding to a hearing officer for the taking of additional evidence.” *Id.*

The expungement awards are material because they demonstrate that Respondents made a good faith determination for each arbitration’s statement of claim, and that the Officer Disclosures were not reportable by Lowry, other Spartan Officers, and/or Monchik because independent, FINRA trained expungement Arbitrators found that the allegations were false. Indeed, for one set of customers identified in the OHO Decision at Schedule C, William and Jane Maycock, FINRA No. 19-01489, Occurrence No. 277085, the Arbitrator found the claim “***was brought without the knowledge or consent of the customers. When they were informed of the case, they contacted FINRA directly and withdrew the case as to all parties.***”. Exhibit B, at p. 3 (emphasis added).

³ Respondents are a “party” to the current proceeding based on its petition “seeking Commission review of a decision.” See 17 C.F.R. § 201.101 (defining “party”).

Further, with respect to the Maycocks' claim and three other sets of customers identified in the OHO Decision at Schedule C (Jerald Burco, *et al.*, FINRA No. 19-01439, Occurrence No. 277041; Rickey Marcellini, *et al.*, FINRA No. 19-01243, Occurrence No. 2277076; and Richard Fisher, *et al.*, FINRA No. 20-02035, Occurrence No. 2092855), the Arbitrator found, “[i]n each matter, the claims named John D. Lowry solely because he was the Chief Executive Officer of the firm. He had no involvement in the issues that formed the basis of the cases.” (*Id.*) (emphasis added). See *BDO China Dahua CPA Co., Ltd.*, Release No. 34-72140, 2014 WL 1871078, at *3-4 (May 9, 2014) (granting respondents’ motions to adduce additional evidence that, according to respondents, “‘undermine[d] the sanction proposed by the [ALJ’s] initial decision’”). Next, Respondents have reasonable grounds for not previously adducing this evidence because these expungement awards recently became available. In fact, the expungement awards were provided by FINRA after Respondents had submitted their Application for Review and Reply Brief; consequently, it was not possible to provide this evidence at an earlier time. *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 SEC LEXIS 2024, at *38 (June 29, 2012) (granting the Division’s motion to adduce two declarations where the evidence was material and there were reasonable grounds for failure to adduce the declarations previously because they were not available).

IV. CONCLUSION

The Commission should grant Respondents' Motion because the additional evidence is material and there were reasonable grounds for not previously introducing the evidence.

Respectfully submitted,

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