

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 SECOND MOTION
FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE**

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LLC, John D. Lowry and Kim M. Monchik*

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 Second Motion for Leave to Adduce Additional Evidence and further 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 five 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 eleven 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. Moreover, because these Awards were rendered after Respondents submitted their original Motion to Adduce Additional Evidence, Respondents could not seek to include them in that Motion.

For each Award, a FINRA Arbitrator expunged the customers' 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 identifies each customer claim:

Expungement Award for FINRA Case No. 23-02836 (Exhibit C)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277075 (Lowry)	Richard J. Walsh	18-03407	Schd. C	C-1
2277642 (Monchik)	Richard J. Walsh	18-03407	Schd. D	C-2
2277074 (Lowry)	Philip T. Hoff	18-01927	Schd. C	C-3
2277649 (Monchik)	Philip T. Hoff	18-01927	Schd. D	C-4
2277066 (Lowry)	Michael R. Flick	18-01926	Schd. C	C-5
2277648 (Monchik)	Michael R. Flick	18-01926	Schd. D	C-6

Expungement Award for FINRA Case No. 23-02837 (Exhibit D)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277077 (Lowry)	Royce Felder	16-03554	Schd. C	D-1
2277635 (Monchik)	Royce Felder	16-03554	Schd. D	D-2
2277054 (Lowry)	Balwinder P. Dhaliwal	15-01888	Schd. C	D-3

² The expungement Awards are attached hereto as Exhibits C through G. Respondents refer the Commission to their first Motion to Adduce Additional Evidence, to which they attached other expungement Awards as Exhibits A and B.

2277645 (Monchik)	Balwinder P. Dhaliwal	15-01888	Sched. D	D-4
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Expungement Award for FINRA Case No. 23-02857 (Exhibit E)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277065 (Lowry)	Ronald & Janet Wittmer	17-00927	Schd. C	E-1
2277088 (Lowry)	William Sauey	16-00839	Schd. C	E-2
2277063 (Lowry)	Lowell E. Andersen	16-00019	Schd. C	E-3
2277045 (Lowry)	John Russo	15-00497	Schd. C	E-4

Expungement Award for FINRA Case No. 23-02861 (Exhibit F)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277086 (Lowry)	Brian Robertson	17-02196	Schd. C	F-1

Expungement Award for FINRA Case No. 23-02862 (Exhibit G)

Occurrence Number	Underlying Customer(s)	Underlying FINRA No.	Decision (R. 25319)	Corresponding Exhibit
2277040 (Lowry)	Louis Cimino	17-02818	Schd. C	G-1

Moreover, these Awards evidence that the expungement process took over a year to complete, causing the false information to remain Lowry and Monchik’s public records, and Lowry and Monchik incurred \$13,800 in FINRA hearing session fees (exclusive of filing fees and other administrative costs) in connection with the foregoing expungement Awards. *See* Ex. C, at p. 8; Ex. D, at p. 5; Ex. E, at p. 4; Ex. F, at p. 4; and Ex. G, 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 and/or that Lowry and Monchik were not involved in the alleged investment-related sales practice violation. By way of example, for two sets of customers identified in the OHO Decision at Schedules C and D, Royce Felder (FINRA No. 15-02845) and Balwinder P. Dhaliwal (FINRA No. 15-01888), the Arbitrator found as follows: “***The evidence (testimony and documents) did not show that either [Lowry or Monchik] was involved with either of the customers or any activity complained of.***” Exhibit D, at pp. 3-4 (emphasis added). By way of further example, with respect to the claims brought by Ronald & Janet Wittmer (FINRA No. 17-00927), William Sauey (FINRA No. 16-00839), Lowell E. Anderson (FINRA No. 16-00019) and John Russo (FINRA No. 15-00497), identified in the OHO Decision at Schedule C, the Arbitrator determined as follows: “All the occurrences are the result of the same facts, outside of the different customers.... It is the finding of the sole arbitrator that [Lowry] was originally included in these claims ***solely because***

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”).

of his position as CEO and not because he had anything to do with the allegations of the customers.” Exhibit E, at p. 3 (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. Further, the Awards were rendered after Respondents filed their first Motion to Adduce Additional Evidence and, therefore, could not be included with that Motion. *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’ Second Motion because the additional evidence is material and there were reasonable grounds for not previously introducing the evidence.

Respectfully submitted,

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