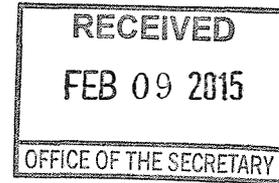


Administrative Proceeding
File No. 3-16155



In the Matter of
Nicholas B. Rowe,
Respondent.

MR. ROWE'S ARGUMENTS AGAINST DIVISIONS MOTION FOR SUMMARY DISPOSITION

Now comes Mr. Nicholas B. Rowe with arguments as to why the Division of Enforcement's Motion for Summary Disposition should not be acted on.

Marc Jones in his plea, sites 15 U.S. Code § 80b-3(f). Mr. Rowe includes the section here and highlights a section of the sited section.

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, *if the Commission finds, on the record after notice and opportunity for hearing,* that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) of this section within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e) of this section. It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him

without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

Mr. Rowe is not a lawyer and does not pretend to understand all matters of the law, however it would appear that this is law, as written by congress. This law indicates Mr. Rowe must be given an opportunity for a hearing (see highlighted section above).

1. If Mr. Rowe understands Marc Jones position correctly he wishes to use an administrative rule (Rule 250 of the commission's Rules of Practice [17 C.F.R. 201.250]) to supersede the law enacted by congress.

It is Mr. Rowe's understanding that a law enacted by congress cannot be superseded by an administrative rule. The law states that Mr. Rowe is entitled to a hearing. Mr. Rowe requests a hearing.

This is especially important in this case because the SEC has up until now proved incapable of, or disinclined to, reading the material Mr. Rowe has provided to the SEC that proves conclusively that he is innocent.

2. Marc Jones notes in his request that Mr. Rowe does not dispute that the NH Bureau of Securities Regulation entered a Consent Order on March 12, 2012.

This statement is true, however Mr. Rowe has clearly indicated to the SEC and Marc Jones that Mr. Rowe was forced to sign the Consent Order by use of threats of a fixed hearing, assuring an adverse outcome, and monetary damages so insurmountable that it threatened the existence of Mr. Rowe and his wife. These threats were witnessed by Mr. Rowe and his Bankruptcy attorney. Without the use of duress the NH Bureau could not impel Mr. Rowe to sign the Consent Order. This matter will be addressed in NH superior court once Mr. Rowe's bankruptcy case is concluded. Mr. Rowe will seek to have the Consent Order thrown out. Mr. Rowe delays this action only because the Bureau's actions have deprived Mr. Rowe of the ability to hire an attorney and Mr. Rowe cannot withstand the piling on effect of this case added to the SEC, and bankruptcy cases. Mr. Rowe asked for a delay in the SEC matter until the matter of the Consent Order could be resolved first. Marc Jones refused.

Exhibit A (attached) shows why this matter cannot possibly be handled without a hearing. It refers to more than 3000 pages of documents that cannot possibly be presented in paper via. US mail. However

in a hearing setting it will be easy and quickly possible to point to the proofs. All of these exhibits except one have already been submitted to the SEC via electronic (CD) media.

I hereby swear everything contained in this document and its exhibit is truthful.

Respectfully submitted,



Nicholas Rowe



January 7, 2015

Originals sent to:

3 copies

Honorable Jason S. Patil
Office of Administrative Law Judges
SEC Commission
100 F St., N.E.
Washington, DC 20549-2557

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Yeah, it never fails to amaze me how a single lie can undo an entire lifetime of good.
SHERRILYN KENYON

A lie told often enough becomes the truth.
VLADIMIR LENIN

EXHIBIT A:

Administrative Proceeding
File No. 3-16155

In the Matter of

Nicholas B. Rowe,

Respondent.

MR. ROWE'S ARGUMENTS AGAINST DIVISIONS MOTION FOR SUMMARY DISPOSITION **EXHIBIT A:** PROOFS THAT THIS MATTER CANNOT BE HANDLED OUTSIDE OF A HEARING

"I know you didn't do anything wrong, but I will say that you did. You have to pay me to be quiet or you will lose everything, I have done this before to Dave Losher and he lost everything. NH shut him down and barred him from the industry and they will do the same to you. No one will believe you. It doesn't matter that you are innocent no one will believe you." **Ron Ferrante JR.** Claimant and NH Investor number 3 to Mr. Rowe during his first of three extortion demands.

"Nick you don't understand he [Ron Ferrante Jr.] will lie and everyone will believe him. He has done this before many times. Whatever he wants pay him, he will destroy you. The courts will believe him, the brothers [ministers] will believe him. He has the ability to lie in such a convincing way no one will believe the truth". **Sarah Ferrante** former wife of Ron Ferrante Jr. spoken to Mr. Rowe out of concern for Mr. Rowe and his wife's welfare.

"I don't care. You tell your client that if he won't settle this I will destroy him" **Mr. Fuller (Claimants Attorney)** in answer to being told his clients had lied to him and being offered proof at that moment so he would not be in the position of lying to Judge David Garfunkel of NH Superior Court early in this case.

"We are an unfunded department, we have to find guys like you guilty in order to collect fees and fund our unfunded department". **Eric Forcier New Hampshire attorney with the NH Bureau of Securities Regulation** together with Jeff Spill, Deputy Director of the Bureau on a phone conversation with Mr. Rowe and his bankruptcy attorney explaining why they influenced the Arbitrators and refused to allow a

fair arbitration proses and why they wished to force Mr. Rowe to sign a consent decree that was filled with lies.

"If this goes to a hearing you will lose, and we will fine you \$200,000.00 to \$250,000.00 and it will not be dischargeable by bankruptcy". **Either Jeff Spill Deputy Director of the NH Bureau of Securities Regulation or Eric Forcier of the NH Bureau of Securities Regulation** on a phone conversation with Mr. Rowe and his bankruptcy attorney, successfully using duress to force Mr. Rowe to sign the consent decree filled with lies and untruths.

"Well it is just like David said. I cannot believe they actually told us the fix was in, they told us the outcome was fixed, they didn't say they are confident they would win. They didn't say they think I have a weak case. They told us what the outcome will be". **Mr Rowe** to attorney Peter Tamposie while Jeff Spill and Eric Forcier were on hold during the phone conversation just after the two statements made above.

"You are screwed. You have to sign this. These guys are the mob, they are demanding protection money... and they are the government". **Peter Tamposie Mr. Rowe's bankruptcy attorney**, about the NH consent decree, after being told by Jeff Spill of NH securities department, on a phone conversation with Mr. Rowe and his bankruptcy attorney, that the potential hearing held for Mr. Rowe would be tried by his office (the NH Security Bureau), and there would be no independent judge over the matter and the outcome was assured.

"It is a kangaroo court. You will get all the consideration of a woman at a Salem Witch trial". **David Ward Mr. Rowe's Securities attorney** about the corruption and patently unfair process of a securities hearing in NH.

"I'm sorry, can you tell me again what an ADV is?" a question asked regularly on and off the record and among the last of the questions asked by **Jane Venckus Zirlis**, one of the 3 arbitrators, after 7-8 days of hearings.

"I don't understand Exchange Traded Funds and they scare me." **Jane Venckus Zirlis**, one of the 3 arbitrators, stated virtually every day at some point during the day, but off the record.

"ZZZzzzz" **Bill McCarter the chair of the FINRA arbitration** as he slept through much of the arbitration hearing.

'Well... yes we have been directed by Washington to improve our numbers' **An SEC employee from the Boston Office** explaining to attorney David Ward why the SEC was pursuing this case about a guy who had been screwed by the State of NH so the department could look good in the press, when the guy was no longer in the business and had no plans to be in the business and who presented no public threat.

My Name is Nicholas Rowe, I am not an attorney, and I cannot afford one. The reason I cannot afford to hire one is because Jeff Spill Deputy Director of the NH Bureau of Securities Regulation and Eric Forcier of the NH Bureau of Securities Regulation refused to allow a fair arbitration proses by blatantly influencing the arbitrator's deliberations of this case by creating a front page newspaper article filled with lies even before receiving and reviewing all the transcripts of the hearing which they had previously stated were crucial to their ongoing investigation. Later in this document it will be demonstrated that the arbitrators ignored the factual documents and expert testimony and either made a purely arbitrary decision based on the well delivered and emotional perjury of the claimants, or followed the clear direction of the NH Bureau of Securities Regulators. This resulted in Mr. Rowe's bankruptcy. In a very unusual move the regulator explained their motive for taking this action. Money. This will be addressed later in this document.

Because Mr. Rowe is not an attorney and he has been deprived of the ability to hire one by the actions of the NH Bureau of Securities Regulation Deputy and Eric Forcier, Mr. Rowe asks for the forbearance of the readers of this document. This document will be written as simple statements of truth and facts. Any area of the law that is touched on is simply what any ordinary citizen is able to reason on or discover through research materials available to the common man. No doubt this document will fall short of perfection in matters of law. For example Mr. Rowe does not pretend to understand why law trumps justice as Mr. Marc Jones tried to explain to him in their phone conversation of 11-11-2014. When he indicated the law allows him to ignore evidence of wrongdoing by the NH Bureau of Securities Regulation and accept its Consent Order as truth. To Mr. Rowe's simple thinking, any law that brings about an injustice should not and cannot be followed. And to follow a law that clearly brings about an injustice and harms an innocent person is to break a greater law that no man can properly do. This thought will be explored more fully later in this document.

1. The SEC must not pursue this case at all;

A. The SEC must employ 'willful blindness' in order to proceed with this case.

The SEC has been informed By Mr. Rowe via phone calls and various written documentations informing them of the criminal behavior by; the Deputy and Mr. Eric Forcier of NH Bureau of Securities Regulation; the perjuring claimants in the FINRA arbitration; an expert witness for the claimants with a documented history of perjuring himself in other cases and now in this case as well; Mr. Fuller (the claimants attorney) lying in both court and the FINRA arbitration; the chair of the FINRA arbitration sleeping through large portions of the arbitration; and another of the FINRA arbitrators speaking plainly about not knowing what an ADV was right up to the last days of an 8 day trial and stating "I don't understand ETFs and they scare me" so many times over so many days, when the arbitration recorder was not recording that those present could not keep count.

The SEC in pursuing this case must act like a child who wears a blindfold, stick his fingers in his ears and loudly sings "LaLaLaLaLa".

The verifiable facts found in the (honorable) expert testimony on risk (excluding the one claimant expert with a documented history of lying and errors in other cases, and who did not measure risk in any way for this case) show Mr. Rowe and his firm acted correctly and in his clients best interest. The verifiable facts also show profits in claimant's accounts when the year 2008 is excluded (the historic market collapse) these accounts making many hundreds of thousands of dollars. As Mr. Rowe has stated before, this is not a case about a bad adviser, this is an insurance fraud case with claimant's known to each other, perjuring themselves in verifiable ways simply by examining the exhibits in the case, in order to collect money in an effort to recapture 2008 losses without the need to risk their money.

All claimants acknowledged filling paperwork out at home and or receiving copies of all paperwork within days or sooner, after filling it out in Mr. Rowe's office, for their review and filing.

B. The sec must join itself to, and become a partner in crime with, the state of NH in order to continue this case; The SEC joins in the lies accepted by the NH Bureau and repeated by them as findings of facts in their consent order.

2. If the SEC does pursue this case it must allow Mr. Rowe a hearing;

The volume of evidence that the NH Bureau of Securities Regulation at the very least made unconscionable mistakes in depending on witnesses who demonstrated their propensity for lying and perjury cannot be handled by paper and mail.

Marc Jones contends he does not need to concern himself with the fact that the NH Bureau of Securities Regulation made a multitude of errors in depending on perjurers to make their determination and findings in their Consent Order. Mr. Jones says the law allows him to take action because they took action. This may be true, but it is wrong, and it goes against everything this nation was founded on.

History is rife with individuals who followed the law and brought about injustice. All honest hearted humans who value truth and justice have condemned such behavior. Notable and notorious examples are;

The first century Scribes and Pharisees who followed the law while arranging for the torture and murder of Jesus by the authorities.

The Romans who following the law burned Christians and threw others into the arenas where they were torn apart by lions and other wild animals to provide entertainment for the crowds in the latter ½ of the first century.

The religious and political rulers of 1536 AD followed the law when they strangled William Tyndale then burned his body at the stake for creating the first common language English bible translated directly from the original languages. Tyndale ranked 26th in a 2002 poll in England ranking the top 100 Britons. We can still read his work today because the King James Bible is a virtual cut and paste of Tyndale's work with over 70% of the material unchanged from Tyndale's text.

The United States of America too, has had much to say about the matter of laws that bring about injustice. It is the main subject matter of the Declaration of independence. This document asserted that certain natural and legal unalienable rights belong to all mankind and cannot be contravened by any man made law and that these rights are self-evident. Surely the right of an innocent person to have a fair trial before being convicted by an agency of the United States is one of those rights.

Many individuals in the USA followed the law and used it to justify their holding and mistreating slaves. Today we condemn their behavior without a second thought. So did many individuals of the time regardless of the laws of the time, they like the founding fathers recognized there were certain natural

and legal unalienable rights that belong to all mankind and cannot be contravened by any man made law. Their proper behavior condemns their peers who used the law to enslave their fellow countrymen.

United States Judges and Prosecutors brought about the most severe punishments on those who followed the laws of their nation and followed orders from military commanders that brought about injustice on innocent people, at the Nuremberg Trials. The Prosecutors successfully argued even though the law of the land permitted inhumane acts and murder, these individuals should have recognized a higher power, that recognized by the founding fathers of the United States and so many other countries since then... that all mankind have certain natural and legal unalienable rights which no man made law can contravene.

The SEC seeks to join those who followed the law of their land, and brought about injustice on innocent victims. In doing so it spits in the faces of the founding fathers of the United States who clearly and outspokenly disagreed with this practice. Hiding behind laws or rules drafted by the SEC in order to perpetrate an injustice is an unspeakable disemboweling of truths and natural laws the founding fathers held dear. However such behavior while it may be legal is no more correct than all those who used the tactic in the past from the Scribes and Pharisees of Jesus day, right down to the Nazis of the 1930s and 40s.. Following a law that brings about an injustice and ignores the "laws of nature" and "unalienable rights" belonging to all men, brings about a government the forefathers identified as "destructive". The SEC has been fully informed of the state of New Hampshire's criminal behavior in this case. The SEC has conducted an audit and Investigated Mr. Rowe and his firm and could, if it wished, seek to take action based on its own findings. But it chooses not to do so. Why? Because the evidence from that investigation and Mr. Rowe's subsequent reply to the auditor's preliminary findings make it clear there is no basis for taking any action whatsoever! Furthermore there is now a clear documented record of countless lies and perjuries by the people the state of New Hampshire depended on to reach its conclusions, proving they could not be trusted to report if the sun was shining on a cloudless day. An honest and complete investigation into the SECs actions in this matter will show that this case was initiated not to protect the public; not to punish someone who broke rules; but because the Boston office of the SEC was directed to pad its statistics. The attitude of 'the law permits us to prosecute and punish an innocent man, therefore we will do it because it helps our credibility in Washington' is a first order example of 'a government becoming destructive'. This is exactly what the founding fathers decried in the declaration of independence.

(The rest of this document is attempted to be designed so that the reader may hold the following document in his/her hand and follow both documents together.)

In the introduction of the ADMINISTRATIVE PROCEEDING File No. 3-16155 Marc Jones refers to the State of NH Bureau of Securities Regulation March 12, 2013 Consent Order. And he states:

“The Consent Order details how “Rowe’s trading in NH Customers’ accounts was reckless and grossly inconsistent with Focus Capital’s own recorded investment profiles and risk tolerances”. Consent Order, p3, ¶ 11.5(a). It describes how “Rowe completely ignored the NH Customers’ individual and specific risk tolerances”. *Id.* The Bureau summarized Respondent’s conduct, stating, “Although Rowe claimed he was engaging in a legitimate and complicated trading strategy, analysis of the NH Customers’ accounts revealed that Rowe was essentially placing large, short-term and very speculative directional bets on the stock market while increasing the NH Customers’ risk tolerance over time.” The entry of the Consent Order establishes the statutory basis to impose an associated bar. As discussed below, the nature of the Respondent’s actions, his failure to recognize any wrongdoing on his part, his accusations against his former clients, and the likelihood of future violations all indicate that such a bar would be in the public interest.”

This statement repeats some of the lies made by the NH Bureau of Securities Regulation they are:

1. “Rowe’s trading in NH Customers’ accounts was reckless and grossly inconsistent with Focus Capital’s own recorded investment profiles and risk tolerances”.

This position was disproven beyond any shadow of a doubt during the expert testimony of Mr. Daniels of Capital Forensics, Inc. at the arbitration. His was the only risk analysis ever done on the Customers’ accounts. We know this because the expert the NH Bureau of Securities Regulation used in their analysis is the same expert for the claimants in the arbitration. He testified under oath at the arbitration that he never measured the risk of the portfolios by any method. This however did not stop him from speculating on the risk in the portfolios, however his statements and postulations about risk were pure speculation as he testified he did not in any way measure the portfolios for risk. Therefore the State of NH makes its claim without ever having its expert measure the risk in the portfolios! Mr. Daniels work and testimony was unimpeachable, he measured the risk taken in client accounts individually and as a group. All of this data has been made available to the SEC and Marc Jones cannot claim ignorance of it except by *willful blindness*. Mr. Daniels stated that the client accounts risk was measured by Standard Deviation (*Standard Deviation analysis was identified by Dr. McCann expert*

witness for the claimants (also the expert used by the State of NH Bureau of Securities) as “the most useful measure of risk of an investor’s portfolio” and he also verified his statement that: “standard deviation is the correct measure of risk for investors’ entire portfolios.”.) The standard deviation analysis does not support the NH Bureau of Securities Regulation’s position as repeated by Marc Jones here.

2. “Rowe completely ignored the NH Customers’ individual and specific risk tolerances”.

This statement was disproven beyond any shadow of a doubt by the testimony of Mr. Daniels of Capital Forensics, Inc. at the arbitration hearing. The SEC and Marc Jones have his exhibits in their entirety which show beyond any doubt there is no merit to this claim. The only way Marc Jones can repeat this claim is by Willful Blindness.

3. “Although Rowe claimed he was engaging in a legitimate and complicated trading strategy, analysis of the NH Customers’ accounts revealed that Rowe was essentially placing large, short-term and very speculative directional bets on the stock market while increasing the NH Customers’ risk tolerance over time.”

First and foremost, this claim is pure speculation by the NH Bureau of Securities Regulation. The expert for the state testified under oath at the arbitration that he did not measure the risk of the portfolios in any way. He did speculate as to the risk and I must assume the Bureau bases its statement on his speculation. However the SEC need not depend on speculation, the analysis was done properly using standard deviation (see point 1. above) by Mr. Daniels of Capital Forensics, the reports of his firm which the SEC and Marc Jones have in their possession show that the NH Bureau of Securities Regulation lied in its statement about risk. In truth the Forensic reports on standard deviation showed conclusively that on average claimants as a group took 18% less risk than the markets over the entire time they were invested , but took 41% less risk in the years of 2009 and 2010. The last years the Claimants were with Mr. Rowe and his firm. The truth is just the opposite of the statement by NH Bureau of Securities Regulation the Customer accounts took less risk as time went on. Furthermore, a standard deviation of 41% less risk than the market speaks for itself. These portfolios were not invested in a speculative way. Marc Jones and the SEC have the exhibits and the testimony of Mr. Daniels of Capital Forensics, Inc. in their possession, the only way Mr. Jones can take this position is by willful blindness.

Mr. Jones then goes on to speculate, based on his faith that the NH Bureau of Securities Regulation acted properly, honorably and correctly;

“the nature of the Respondent’s actions, his failure to recognize any wrongdoing on his part, his accusations against his former clients, and the likelihood of future violations all indicate that such a bar would be in the public interest.”

Mr. Rowe, the Respondent, did not act improperly as has been proven by an independent, unbiased, unimpeachable forensic expert. At the end of the arbitration, the claimant’s attorney was a wreck, even taking a smoke break in the middle of his closing arguments! It looked as though he was going to have a break down. On the other hand there was a calm confidence on the part of the defense. The documents and expert analysis proved Mr. Rowe innocent and the attorneys on both sides knew it. Only the testimony of Mr. Rowe changing virtually every answer on every form could not be proved conclusively to be lies. *However the fact that the claimants made that same claim about forms that were date stamped and clearly sent to the clients to be filled out and returned to Mr. Rowe’s office proved that these claimants were prone to lie on this subject as well.* The situation changed when the NH Bureau of Securities Regulation blatantly influenced the arbitrator’s deliberations of this case by creating a front page newspaper article filled with lies even before receiving and reviewing all the transcripts of the hearing which they had previously stated were crucial to their ongoing investigation. They explained their actions much later in a phone conversation with Mr. Rowe and his bankruptcy attorney “*We are an unfunded department, we have to find guys like you guilty in order to collect fees and fund our unfunded department*”. **Eric Forcier New Hampshire attorney with the NH Bureau of Securities Regulation** together with Jeff Spill, Deputy of the department, on the line.

In the ADMINISTRATIVE PROCEEDING File No. 3-16155 page 3 ¶ 6. The statement is made:

“Respondent signed the Consent Order on March 8, 2013. Consent Order, p. 11. By signing the Consent Order, Respondent agreed that he had: “voluntarily consented to the entry of this Consent Order and represent[ed] and aver[red] that no employee or representative of the Bureau has made any promise, representation or threat to induce its execution.” Consent Order, p. 9, ¶ IV.1.

Mr. Rowe did not voluntarily consent to the Consent Order any more than a person who had a gun put to their head and told ‘sign this document or I will blow your brains out’ could be understood to have voluntarily consented. Simply adding wording that “no employee or representative of the Bureau has made any promise, representation or threat to induce its execution”, does not prove that no threat occurred. In fact threats were made and there are two witnesses of the threats being made, Mr. Rowe and his attorney Peter Tamposi. Specifically they are:

1. *"We are an unfunded department, we have to find guys like you guilty in order to collect fees and fund our unfunded department"*. Eric Forcier New Hampshire attorney with the NH Bureau of Securities Regulation together with Jeff Spill, Deputy Director of the Bureau on a phone conversation with Mr. Rowe and his bankruptcy attorney explaining why they influenced the Arbitrators and refused to allow a fair arbitration process and why they wished to force Mr. Rowe to sign a consent decree they were aware was filled with lies.

2. *"If this goes to a hearing you will lose, and we will fine you \$200,000.00 to \$250,000.00 and it will not be dischargeable by bankruptcy"*. Either Jeff Spill Deputy Director of the NH Bureau of Securities Regulation or Eric Forcier of the NH Bureau of Securities Regulation on a phone conversation with Mr. Rowe and his bankruptcy attorney, successfully using duress to force Mr. Rowe to sign the consent decree filled with lies and untruths.

These two individuals actually told Mr. Rowe and his attorney the fix was in, they told them the outcome was fixed, they didn't say they were confident they would win. They didn't say they thought Mr. Rowe had a weak case. They said what the outcome would be.

Mr. Rowe believes no court will allow the consent order to stand considering the immense duress the NH Bureau of Securities Regulation had to exert in order to force Mr. Rowe to sign it.

Nothing in the Consent order can be relied on. The NH Bureau of Securities Regulation may as well have included that Mr. Rowe shot president John F Kennedy from the grassy knoll. It would have been just as true as the other statements made in that document.

Nothing in the ADMINISTRATIVE PROCEEDING File No. 3-16155 authored by Marc Jones that refers to the Consent decree from the NH Bureau of Securities Regulation can be relied on for accuracy. It is filled with lies that are easily disproven if anyone will just look at the evidence from the FINRA arbitration.

Page 4 ¶ 7. The statement is made; *"("Respondents agree to be permanently barred from any security licensure in the State of New Hampshire.)"*; p. 11, ¶V.4 *"("Respondents are barred from securities licensure in the state of NH.)"*

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; Mr. Rowe did not agree to be permanently barred from any security licensure.

Page 4 ¶ 8. “The Consent Order is based on Respondent’s violations of New Hampshire laws prohibiting fraudulent, manipulative, or deceptive conduct in the purchase and/or sale of securities. Consent Order, p. 7 ¶ III.2 (detailing violated provisions of New Hampshire securities law RSA 421-B:4, V(a) & (h), which prohibit investment advisers from engaging in unethical business practices, including the recommendation of unsuitable investments and misrepresentations to advisory clients); Consent Order, p. 9, ¶ IV.3 (“Respondent’s agreed to cease and desist from any alleged violations of RSA 421-B:3 and 421-B:4).”

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; Mr. Rowe did not violate any New Hampshire law. This was proven beyond any shadow of a doubt by documents and expert testimony along with forensic analysis at the FINRA arbitration.

Page 4 ¶ 9.” In the Consent Order, Respondent agreed to, “not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or creating the impression that the Consent Order is without factual basis.” Consent Order, p. 10, ¶ IV.9.”

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; however, this statement is partially correct. Jeff Spill Deputy Director of the NH Bureau of Securities Regulation and Eric Forcier of the NH Bureau of Securities Regulation explained on the phone conversation with Mr. Rowe and his bankruptcy attorney, that this paragraph would not apply to Mr. Rowe’s dealings with the SEC or his pursuing the claimants who are members of Mr. Rowe’s religion for their lies, in a religious setting. They said this was about not publicizing their behavior, and the incorrectness of the Consent Order. They were impelled to take away Mr. Rowe’s freedom of speech in order to cover over their blatant misconduct in this matter.

Page 4 ¶ 10. “(2) he is subject to a final order of a state securities commission that either bars him from association with an entity regulated by such a commission or constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct as specified in Advisers Act Section 203(e)(9); and (3) the sanction is in the public interest. 15 U.S.C. 80b-3(f).”

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; Mr. Rowe contends that this Consent Order

will be overturned by a New Hampshire court. Therefore it can call itself 'final' all it wants, that is yet to be seen.

Page 5 ¶ 11. "At the time of his misconduct, Respondent was associated with investment adviser, Focus Capital. See ¶ 4, above."

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; Marc Jones relies on this document to establish Mr. Rowe engaged in misconduct. In fact, expert testimony, forensic analysis of client accounts, and review of the documents at the FINRA arbitration show no misconduct occurred.

Page 5 ¶ 12. "The Consent Order constitutes a final order. OIP, ¶ 2 (not denied in Respondent's Answer); Consent Order, p. 9, ¶ IV.2 ("Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter.")"

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; the Consent Order will be contested in New Hampshire Superior Court. It is not final until there is a judicial review of this matter.

Page 5 ¶ 14. "The facts and legal conclusions above establish the statutory basis to impose an associational bar against Respondent."

As explained above, under the explanation for page 3 ¶ 6 Mr. Rowe did not voluntarily consent to the Consent Order and nothing in that order can be relied on; the information in the Consent Order is not factual, as can be established by a review of the documents, expert testimony, and forensic analysis of client accounts. Therefore, any legal conclusion that relies on the lies contained in that Order cannot be relied upon, and do not establish anything. This matter is best established in New Hampshire Superior Court. After that review, the SEC will be in a better position to establish the proper action, if any, to take with regards to Mr. Rowe. Or the SEC could simply review the documents it has in its possession and see for itself the truth of Mr. Rowe's statements.

Page 5 ¶ **COLLATERAL ESTOPPEL** Page 6 ¶ 2 "However, the Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against a respondent, whether resolved by consent, as Respondent did here; by summary judgment; or after trial."

Mr. Rowe does not seek to re-litigate issues from a civil proceeding. Mr. Rowe wishes to establish the NH Bureau of Securities Regulation broke the law, made findings of fact that in truth were simply restatements of lies of claimants seeking to recapture losses from the historic market collapse of 2008. This can easily be established because there is now a record of the truth found by examining the FINRA expert testimony, forensic analysis of client accounts, and documents. Mr. Rowe understands if the SEC doesn't want to examine these truths. Mr. Rowe contents the SEC should allow the New Hampshire Court system to do the job. And then the SEC can either take action or take no action, based on due legal process, rather than the fantasy claims made by the NH Bureau of Securities Regulation.

Page 6 ¶3 "While Respondent would like here to revisit the circumstances that led to his consent to the Consent Order, at no time does he deny that he is subject to the Consent order. Nor does he deny that the Consent order bars him from participation in the securities industry in the state of New Hampshire."

Clearly Mr. Rowe denies the validity of the Consent Order. However, he obeys the laws of his state, which includes this Consent Order no matter how immoral and improper it is, until such time as there can be a proper judicial review. Will the SEC allow there to be a judicial review before joining the NH Bureau of Securities Regulation and making itself a partner in the Bureau's misconduct?

Page 6 ¶ SANCTION

"A full associational bar against the Respondent is in the public interest. Steadman v. SEC sets forth the public interest factors guiding what remedial sanction is appropriate. Those factors are: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of the scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations."

This paragraph is completely dependent on the validity and correctness of the Consent Order. That Order is a fantasy fabrication. It is a virtual cut and paste of the original complaint filed in court by the claimants. It bears no resemblance to the truth. It can be proved to be inaccurate in virtually every detail simply by reading through documents in the hands of both the state of NH and the SEC. Why does everyone fear simply reading them and looking for truth? Is expediency so much more important than justice? If the SEC is so pressed for time then why not let the NH court have a look at the matter and delay this action until after that? Mr. Rowe has had hundreds of clients. He has talked to most of them after this matter was made public by the NH Bureau of Securities Regulation. The most common

responses to Mr. Rowe by these former clients were; “This is bullshit we know you didn’t do anything wrong”; “It broke our hearts to see them do this to you of all people”; “It makes you wonder if our government can be trusted with anything if they can screw this up, to this degree”; “The most common response was to Mr. Rowe offering to help former clients to fill out claims against the estate in his bankruptcy; “Nick We don’t want any part of this, this is blood money, we know you are entirely innocent”. These are the people who knew Mr. Rowe better than anyone, who received their statement every month, who met with him from 3 – 6 times a year. Don’t believe the few that looked to profit off an honest man in order to recapture their losses from the historic market collapse of 2008 as the SEC must do if it relies on the Consent Order.

Page 7 ¶ 2 “here, the Steadman factors weigh heavily in favor of a permanent associational bar against Respondent. To begin with, Respondent’s actions should be considered egregious. While Respondent claimed to his clients that he was engaging in a legitimate and complicated trading strategy, he essentially was placing large, short-term and very speculative directional bets on the stock market for clients whose risk tolerance was far less than would be appropriate for this speculative trading strategy. See Consent Order, p. 3, ¶ II.5. The Consent Order details eleven different investors for whom Rowe made unsuitable investments, completely ignoring his customers risk tolerances and investment horizons. See Consent Order, pp. 3-7. The Consent Order concludes that Rowe is largely responsible for \$2,376,087 in investment losses by his clients. Id.”

The information in this paragraph has largely been dealt with previously in this response. The consent order where it deals with risk is contradicted by the forensic analysis presented in the Arbitration which was the only analysis done on the portfolios by an independent source. Furthermore the expert who analyzed the portfolios for the state of NH testified he did not measure in any way the risk of the portfolios. Mr. Rowe also did analysis and interestingly his work was in perfect agreement with the evidence presented on the portfolios in the Arbitration. Mr. Rowe’s work was contained in his response to the SEC’s earliest finding of facts and is already in the SEC’s possession. Interestingly all the risk analysis ever performed on client accounts agrees with Mr. Rowe’s contention that the portfolios took less risk than the markets at all times and many of the portfolios took 40 to 50% less risk than the markets. Furthermore the portfolios were proven to take less risk over time. This is in direct contradiction to statement in the Consent Order which Marc Jones is relying on in making his recommendations to the SEC.

Page 7 ¶ 3 "Rowe's conduct, as alleged in the Consent Order, was recurrent and would likely have continued if Rowe had been left unchecked. For at least eleven investors, during the period 2007 through 2013, Rowe engaged in a continued course of very speculative trading, ignoring his clients' risk tolerances. See Consent Order, ¶ 11.5-11.11. Even today, he fails to recognize the unsuitability of his trading strategies (involving leveraged and inverse ETFs for his moderate risk tolerance clients) and claims that these strategies were less risky than the market as a whole. See Answer, p.2."

Mr. Rowe did not engage in the conduct alleged in the Consent Order. The 11 investors mentioned here are known to the SEC they are the same investors mentioned in the SEC's finding of facts. Interestingly the 11 Investors are also all connected to each other with the exception of Janet Legacy NH Investor #2. Janet Legacy came to Mr. Rowe in late 2002 and early 2003. She informed Mr. Rowe she wished to sue her prior investment counselor because of the losses in her accounts in the 2000-2001 50% +or- market drop. Mr. Rowe informed her she did not have a case because the adviser could not be blamed for the market, only for wrongdoing on his part. Furthermore she had profits in her accounts for the time she was invested with him and when Mr. Rowe examined the investments used by him they were neither inappropriate nor used in a speculative way and standard deviation analysis of her accounts bore this out. She was very disappointed but did not wish to pay a lawyer with the assurance from Mr. Rowe he would most likely have to speak in favor of the advisor. The standard deviation analysis performed for the SEC and included in the response to the findings of the SEC by Mr. Rowe show exactly what Mr. Rowe has been saying, that the NH Bureau of Securities Regulation facts are wrong. The analysis covers the entire timeframe of her being with the firm and covers 1-13-03 to 3-31-10. The exhibit is labeled "Legacy" it shows; 1. That profits were made in her accounts, and 2. That the risk taken in her accounts did not go up over time as the NH Bureau of Securities Regulation stated in its Consent Order but rather, substantially lower over time. The standard deviation for the time frame of 1-13-03 through 9-30-07 shows her portfolios were 26.55% less volatile than the market. However from 10-1-07 through 3-31-10 the standard deviation of her portfolios were 42.14% less volatile (the words volatility and risk are commonly interchangeable when discussing risk in portfolios) than the market (in all cases both Mr. Rowe and the independent firm used the S&P500 as the benchmark and this is common industry practice). So the data shows Mr. Rowe managed her portfolios in a less risky way as time went on and just in time for the historic market crash of 2008! This is typical of all client portfolios and is the reason why the NH Bureau of Securities Regulation behavior is so outrageous in this case. The Bureau states in the Consent Order that she lost \$133,370.00 between January 07 and May 2010 but it does not say how

large her account was at the beginning of the timeframe! In fact the Bureau never gives a reference for the losses any of these clients suffered. These were substantially large portfolios. If the account started at one million dollars than she was down 13.37% during the worst stock market crash in 80 years with just fractions shy of a 60% loss in the S&P500. Other clients with this same performance were recommending new clients into the firm! However Ms. Legacy made a trip to the Bureau to see if she could get her money back. Just like she wanted to do with her losses from 2000-2001. I will say this about Ms. Legacy, she did not collude with other investors in an attempt to win back losses in an insurance scam.

All other NH Investors are connected in one way or another to each other. This will become clear as it is explained how this case came about.

Many years ago Mr. Rowe agreed to have another adviser (name not disclosed to preserve the opportunity for Mr. Rowe to sue this adviser) work out of his firm. This adviser brought in an assistant (name not disclosed to preserve the opportunity for Mr. Rowe to sue the adviser responsible for her actions) that was employed by Mr. Rowe. This move would lower the overhead costs of the adviser enabling him to get on his feet and would provide a stipend to Mr. Rowe's Firm (Focus Capital) and would add an employee who had experience with back office detail work. It was always understood this relationship would not be permanent and at some time in the future the adviser would leave with the assistant when he had more clients and could better afford his own firm. The adviser also hoped to gain some clients from Mr. Rowe as Mr. Rowe focused on clientele with larger portfolios. One such transfer was done however before the next transfer of clientele could take place (planned for about one year later) Mr. Rowe began to have concerns of some of the advisers business practices and so decided not to transfer any more of his clients to the adviser. This caused some resentment and friction on the part of the adviser. Over the years the adviser built up his book of business and could better afford to move out on his own. During and shortly after the historic market collapse of 2008 took place the adviser and the assistant began sowing discontentment in the office. Soon after this it became clear they were doing the same with at least one of Mr. Rowe's clients Francis Straccia. In time the adviser and the assistant left the Focus Capital to start a new firm. They left with Mr. Rowe's blessing. Shortly after setting up their new firm it became clear they had and were using the "disturb the client technique" in an attempt to steal some of Mr. Rowe's largest net worth clients. This was confirmed when one of Mr. Rowe's clients, Ron Ferranta Jr. informed Mr. Rowe he had met with the adviser and the assistant at their new firm and had been told many disturbing things. He presented Mr. Rowe with the notes he had taken

during these discussions and stated; "Nick, I know you didn't do anything wrong, But they are meeting with your clients and they will steal them from you, this thing is going to get out of hand, eventually this will become public. This can destroy you. I was involved in the Dave Loshier Case nobody believed him, the state of NH barred him from practicing for life. He was ruined and the same thing will happen to you. You need to pay me to be quiet or I will tell my father and Bill Duby and other clients of yours that I know and this thing will get out and you will lose everything. This will destroy you. The state of NH will not care that you are innocent any more than they cared about Loshier. We all said he promised returns and gains and there was nothing he could do. You need to pay me to be quiet I want \$80,000.00 to keep my mouth shut". Mr. Rowe said he would consider the matter but would need copies of all Mr. Ferrante Jr's. notes to review for a day or two. Mr. Ferrante handed over his hand written notes from his meeting with the adviser and his assistant. Mr. Rowe made copies of these notes and has these copies in his possession to this day. At the next meeting Mr. Ferrante reaffirmed "I know you didn't do anything wrong but I will say that you did, and so will everyone else. This will be just like what happened to Dave Loshier you need to pay me to be quiet, pay me \$80,000.00 or I will tell Bill Duby and My Father, I will make this public and you will be destroyed and NH will bar you and disgrace you just like what happened to Loshier." Mr. Rowe stated "I don't pay extortion and how much more so when you pronounce me innocent and say you will manufacture lies in order to commit the extortion opportunity! Mr. Ferrante exclaimed under protest that this is not extortion and I didn't make up these lies [Adviser and Assistant] did. Mr. Rowe stated, Yes it is extortion, and If you go forward with this I will force you to go on record with your lies and if you are able to get other clients to join you by repeating what you admit you know are lies, then you make these lies your own, and I will hold you accountable for your actions with your religion and I will do everything in my power to see to it that you do not collect one dime. So sir, you risk your standing in your religion, so you better ask yourself if \$80,000.00 is worth that." Mr. Ferrante was a bit put back by this statement but he countered by naming two other advisers who Mr. Rowe knows who are both in the same religion and said "they paid me off in the past and if you know what is good for you, you will do the same." At this point Mr. Rowe told Mr. Ferrante Jr. it was time for him to leave Mr. Rowe's office. Mr. Ferrante left without remembering to take the originals of his notes from the meeting with the adviser and his assistant. These notes were returned to Mr. Ferrante Jr. at a later date during a meeting with a Mr. Wayne Berrebi (sp?) who was acting as a witness of sorts to a further meeting of Mr. Rowe and Mr. Ferrante Jr. This meeting was an utter failure because Mr. Wayne Berrebi (sp?) had allowed himself to be so polluted by listening to Mr. Ferrante Jrs. Claims in the weeks prior to the meeting so as to make it impossible to be a neutral party.

NH Investor #6 is Francis Staccia her children are Investor #s 7,8,&9 She was solicited by the Advisor and his assistant and the disturb the client technique was used on her by them. She contacted NH Investor # 1 Mary Beth Lambert and she was brought on board.

NH Inverstor # 3 is Ron Ferrante Jr. in fulfilling his extortion threat he told his Father NH Investor #4 and his mother is NH Investor # 5. NH Investors # 10 and 11 are Mr. Bill Duby and his wife, just as Mr. Ferrante Jr. threatened he would tell them of the matter if Mr. Rowe refused to pay up.

So NH Inestors 1-11, with the exception of Janet Legacy, are really three families who were talked to by the adviser and assistant who attempted to steal clients from Mr. Rowe's firm, and the Duby husband and wife, who were informed because Mr. Rowe would not pay extortion money.

All of these people, with the exception of Janet Legacy, are in one way or another connected to the Adviser and his assistant who left the firm and tried to take clients with them to their new firm.

Mr. Rowe asks a simple question. How can the SEC depend on statements by the NH Bureau of Securities Regulation when the SEC has in its possession the only forensic analysis done on the portfolios by an independent source which clearly shows the finding by the Bureau to be false? The apparent answer is they have not looked at it. They do not care about the truth or about justice. Let's screw this adviser as long as it helps our stats... Marc Jones seeks to deny a fair hearing of the facts. He won't even include Mr. Rowe's response to the original SEC finding of facts to the judge reviewing the case. Why? Because an honest review would result in a loss in some win/loss ratio he tracks for himself? What is the possible motive to use willful blindness in order to convict and innocent person who has already been screwed over by a state government with a record of incompetence so notorious that the former Deputy of the NH Bureau of Securities Regulation wrote a book about it? The SEC knows all about this. It has been provided to them in past communications by Mr. Rowe. They simply don't care.

Page 7 ¶ 4 "Rowe has neither recognized the wrongfulness of his conduct nor provided assurances against future violations. In his Wells response to the Division and in his answer to the O1P, Rowe"

Page 8 ¶ 1 "has continued to deny all responsibility for his actions. Answer, p. 2 ("All allegations in the consent order . . . are denied by Mr. Rowe."). He also denies that the securities trading practices he engaged in were unsuitable for his investors. See, e.g. , Answer, p.,2 (claiming statistical research that shows that leveraged and inverse ETFs were less risky than the market as a whole)."

This is a material misstatement of what Mr. Rowe said by Marc Jones. Mr. Rowe does no such thing as "claiming statistical research that shows that leveraged and inverse ETFs were less risky than the market as a whole" Mr. Rowe has never commented on what a portfolio of leveraged ETFs would perform like and Mr. Rowe never managed portfolios of solely leveraged ETFs. If Marc Jones had simply gone to the exhibit as the misquoted statement directed, this would have been obvious, but that would require Mr. Jones looking for truth rather than a conviction, apparently that is just too much to ask.

If Mr. Rowe's client portfolios were 100% invested in leveraged ETFs than the standard deviation analysis would have shown risk of 200% or more in those accounts. The standard deviation analysis showed that Mr. Rowe's client portfolios took 40% less risk than the markets during 2009 and 2010 (the time the Bureau stated they increased in risk). And this analysis was performed not by Mr. Rowe but by perhaps the most respected forensic analysis firm in the country.

Page 8 ¶ 2 "Respondent has provided no assurances against future violations. To the contrary, he has expressed his desire to "ask the courts to vacate the consent decree." Answer, p. 2. In combination, Respondent's vehemence that his investment strategies were suitable and his desire to challenge his Consent Order indicate a high likelihood of future violations if Respondent is not permanently barred."

If no violations were committed as is borne out by the forensic analysis and the documents and exhibits in the Arbitration hearing, then it can reasonably be concluded that Mr. Rowe will not initiate and start on a course of violations. This of course would also be dependent on Mr. Rowe's desire to reenter the Investment world again, something he has no stomach for after watching people he thought were good people reduce themselves to perjurers in the hope of succeeding in insurance fraud to recapture market losses after the historic market collapse of 2008.

Page 8 ¶ 3 "Rowe's Answer places blame on everyone but Rowe himself. He repeatedly claims that his former clients are "perjurers and liars" and that the staff of the Bureau is "corrupt or, inept." See, e.g., Answer, p. 2 (stating "The corrupt or inept representatives of the Bureau that dealt with. Mr. Rowe made the mistake of believing the stories of perjurers and liars."); p. 3 (stating the "corrupt or inept representatives of the Bureau" made it "clear he would not receive a fair hearing"); p-3.. (stating "If the SEC relies on the "Consent Order" then the SEC joins the State of NH Bureau of Securities Regulation in its criminal misconduct, mistakes, use of duress or undue influence, and fraud."); p. 3 (claiming "the morally weak and greedy complainants lied"); p. 3 (claiming "the morally weak and greedy complainants

plays devil's advocate and looks at the claims and documents to see if maybe, just maybe the SEC can... well maybe not right a wrong, but at least not continue a wrong?

I must ask; How is anyone harmed by allowing the courts in NH to review the actions of Eric Forcier and Jeff Spill, of the NH Bureau of Securities Regulation?

Mac Jones presents this document as though time is of the essence. Something must be done to stop the evil Mr. Rowe. From what? Why? Mr. Rowe is not practicing as an adviser in any shape or form. After seeing people Mr. Rowe believed to be good people say anything in an effort to recapture there portfolio losses from the historic market collapse of 2008 Mr. Rowe has no plans to practice in the future. He never wants to see people in such emotional turmoil again... the market has done it more than once it will surely happen again. Mr. Rowe has lived in NH for approximately 45 years. Mr. Rowe owns no property outside NH. Mr. Rowe has no plans to move outside the state. So why can the SEC not let this matter contained in NH, stay in NH until the matter is fully resolved. Once the matter is resolved in the courts in NH then let the SEC make a decision of how to proceed.

Mr. Rowe does not understand the purpose of this document. He has provided it because he was requested to provide it. But it cannot replace a hearing.

Mr. Rowe has regularly and constantly requested a hearing. The documents that prove Mr. Rowe's innocence have been provided to the SEC prior to this document via electronic media if they were attached in paper form to this document they would require some 3000 pages. The best and only venue this matter can be properly heard is in a hearing where Mr. Rowe can point to the documents and show the SEC what they clearly refuse to look at in the comfort of their offices. These documents prove conclusively that Mr. Rowe is innocent and the SEC makes a mistake in pursuing this matter.

Respectfully submitted,

Nicholas B. Rowe

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