



Financial Industry Regulatory Authority

HARD COPY

Lisa Jones Toms
Assistant General Counsel

Direct: (202)728-8044
Fax: (202)728-8264

December 9, 2016

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090



RE: KIMBERLY SPRINGSTEEN-ABBOTT
ADMINISTRATIVE PROCEEDING NO. 3-17402

Dear Mr. Fields:

Enclosed please find FINRA's Opposition to Kimberly Springsteen-Abbott's Motion to Submit Additional Evidence to Supplement the Record

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lisa Jones Toms". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

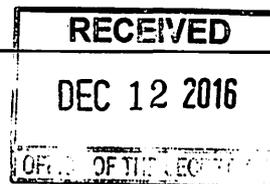
Lisa Jones Toms

cc: Joel E. Davidson, Esq.
Steven M. Felsenstein, Esq.

Enclosures

HARD COPY

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of the Application of
Kimberly Springsteen-Abbott

For Review of Disciplinary Action Taken by

FINRA

File No. 3-17560

**FINRA'S OPPOSITION TO SPRINGSTEEN-ABBOTT'S MOTION TO SUBMIT
ADDITIONAL EVIDENCE TO SUPPLEMENT THE RECORD**

Alan Lawhead
Vice President and
Director – Appellate Group

Lisa Jones Toms
Assistant General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8044 Telephone

December 9, 2016

HARD COPY
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of
Kimberly Springsteen-Abbott
For Review of Disciplinary Action Taken by
FINRA
File No. 3-17560

**FINRA'S OPPOSITION TO SPRINGSTEEN-ABBOTT'S MOTION TO SUBMIT
ADDITIONAL EVIDENCE TO SUPPLEMENT THE RECORD**

Kimberly Springsteen-Abbott filed a motion on December 2, 2016 to introduce into evidence a “disk” containing hundreds of pages of documents to supplement an already extensive record.¹ The Commission should deny the motion. FINRA received the purported documents via a USB thumb-drive that contained over 13 gigabytes of file folders and subfolders that appear to be miscellaneous publications, calendars, notes, and spreadsheets, without a roadmap as to their evidentiary purpose or reasonable grounds as to why Springsteen-Abbott did not previously submit the documents into evidence during the hearing.² The motion fails to

¹ References to “Mot.” are to Springsteen-Abbott’s Motion to Submit Additional Evidence to Supplement the Record. “RP” refers to the page number in the certified record of this case filed with the Commission.

² FINRA did not receive not paper copies of the documents referenced in Springsteen-Abbott’s motion, as required by the paper-form filing requirement under Rule 152 of the Commission’s Rules of Practice. FINRA presumes that the files on the USB thumb-drive are the same documents she references in her motion and has provided to the Commission.

establish reasonable grounds for why the proposed evidence was not introduced earlier, as required by Rule 452 of the Commission's Rules of Practice. Consequently, the Commission should deny Springsteen-Abbott's motion in its entirety.

I. BACKGROUND

This is a misuse of funds case in which Springsteen-Abbott was found liable in a FINRA National Adjudicatory Council ("NAC") decision rendered on August 23, 2016 for improperly using investment fund monies to pay for 1,840 items of personal and other non-related business expenditures that was charged on her corporate credit card, in violation of FINRA Rule 2010. For her dishonest practices, Springsteen-Abbott was barred, fined \$100,000 and ordered to disgorge her ill-gotten gains of \$208,953.75, plus prejudgment interest.

Springsteen-Abbott filed an application for review of FINRA's disciplinary action and the Commission acknowledged her application on September 22, 2016. After the Commission ordered a briefing schedule, Springsteen-Abbott filed a brief in support of her application for review on November 23, 2016. Springsteen-Abbott now moves to essentially undo seven days of testimony at the hearing and hundreds of exhibits presented and accepted into evidence before an Extended Hearing Panel, and instead add to an already voluminous 8,000-paged record by introducing hundreds of pages of unauthenticated documents with the hopes of "reorganizing" and supplementing the record. For the reasons set forth herein, the Commission should deny her motion.

II. ARGUMENT

Rule 452 of the Commission's Rules of Practice governs motions to introduce additional evidence in appeal proceedings. It provides that Rule 452 motions shall show with particularity that such additional evidence is material "and that there were reasonable grounds for failure to

adduce such evidence previously.” Springsteen-Abbott’s motion fails to meet the requirements of Rule 452 because she lacks reasonable grounds for failing to adduce the additional evidence previously. On this basis, FINRA opposes her motion.

Springsteen-Abbott argues in her motion that “FINRA had established a prima facie case by identifying 1840 items it believed were misallocated, without submitting any evidence to support its contention” with respect to 98% of the items. Mot. at 1 (¶ 2). She then argues that the NAC’s finding that Enforcement met its burden and established a prima facie case of violation based on a preponderance of the evidence created an “unexpected” burden shift on her to prove that the 1,840 items at issue were legitimate business expenses. Mot. at 1 (¶ 2); RP 7894. An “unexpected” burden shift stated in the NAC decision has prompted Springsteen-Abbott to now “demonstrate that [the 1,840] items were in fact documented and legitimate” by submitting hundreds of pages of additional documents to “reorganize” the record and in some cases supplement evidence in the record. Mot. at 1 (¶ 3).

Springsteen-Abbott’s motion is nothing more than an attempted document-dump. She has no reasonable grounds for piling on an already voluminous record with hundreds of pages of *additional* documents at this late stage of the proceeding. On the one hand, Springsteen-Abbott admits that some of the documents she seeks to introduce are already part of the record, which makes her Rule 452 motion unnecessary. On the other hand, she fails to state with any particularity why she did not offer the additional documents into evidence during the hearing or on appeal before the NAC. Although Springsteen-Abbott vaguely mentions in her motion that the NAC’s decision imposed an “unexpected” burden on her to prove that the 1,840 items were legitimate business expenses, Mot. at 1 (¶ 2), an unexpected finding or unfavorable decision does not meet the standard of granting her motion pursuant to Rule 452. Simply put, Springsteen-

Abbott's opportunity to litigate the appropriateness of the 1,840 misallocated expenses have come and past.

The evidentiary hearing before the Extended Hearing Panel below provided Springsteen-Abbott with ample opportunities to rebut any evidence presented in the case and offer evidence and testimony of her own accord to support her defense. Indeed, Springsteen-Abbott testified before an Extended Hearing Panel and supplied extensive evidence and supporting documentation in furtherance of her contention that the 1,840 charged items were legitimate investment fund expenses.³ She proffered a defense against the alleged violation but it was proven unsuccessful. After an independent review of the record, the NAC issued a decision and affirmed the Extended Hearing Panel's findings of violation based on a preponderance of the evidence. RP 7885-7902.

With no reasonable justification as to why hundreds of pages of new documents were not previously introduced, and no explanation of what purpose each document aims to achieve, Springsteen-Abbott's motion reflects an attempt to employ a new litigation strategy and re-litigate the case. But Springsteen-Abbott has not been cross-examined on the additional evidence she now wishes to submit pursuant to her motion. Introducing new evidence at the eleventh hour undermines a fair and orderly administrative process and the finality of FINRA's disciplinary proceedings. "[A] respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action." *Russo Sec., Inc.*, 55 S.E.C. 58, 78 (2001). Accordingly, the Commission should deny her motion.

³ See e.g., Exhibit CX-131, which incorporates over 1,100 pages of documents that Springsteen-Abbott compiled and produced to FINRA in support of her defense that the 1,840 charged items were legitimate business expenses. RP 3971-5080.

III. CONCLUSION

Springsteen-Abbott provides no reasonable grounds for failing to adduce the additional evidence subject to her motion at an earlier time. Commission should deny her motion and should ignore any references made by Springsteen-Abbott in her reply brief that refer to documents that are not part of the record.

Respectfully submitted,



Lisa Jones Toms
Assistant General Counsel
FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8044 Telephone

December 9, 2016

CERTIFICATE OF SERVICE

I, Lisa Jones Toms, certify that on this 9th day of December 2016, I caused a copy of the foregoing FINRA's Brief in Opposition to the Application for Review (File No. 3-17560) to be sent via messenger and fax to:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915 – Mailstop 1090
Washington, DC 20549-1090
Fax: (202) 772-9324

and via overnight delivery and electronic mail to:

Joel E. Davidson, Esq.

[REDACTED]
Ft. Lee, NJ [REDACTED]
[REDACTED]

Steven M. Felsenstein, Esq.
Greenberg Taurig, LLP
2700 Two Commerce Square
Philadelphia, PA 19101
felsensteins@gtlaw.com

Service was made on the Securities and Exchange Commission by messenger and on the Applicant's counsel by overnight delivery service and electronic mail due to the distance between the offices of FINRA and the counsel for the Applicant.



Lisa Jones Toms
Assistant General Counsel
FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8044 Telephone