

Brief of Robert Nash

ADMINISTRATIVE PROCEEDING FILE NO. 3- -18045



I hope the Securities and Exchange Commission [SEC] will review all the briefs I have filed. A few weeks prior to the hearing I received a call from the lead prosecutor of the Department of Enforcement [DOE] asking me about a settlement. I told him you charged me with knowingly providing forged documents to FINRA. I said, you have to know I never did that and never would and would have no reason to do it. I would have no reason to do so and the facts will show that. He told me none of that matters because everything is SUBJECTIVE. That statement turned out to be one of the few true statements FINRA made. This is REGULATION OUT OF CONTROL.

Prior to joining Merrimac I was the Area Financial Manager for the Florida Division of Securities working out of the Orlando office for 21 years and have almost 40 years experience in the industry including over 5 years at The New York Stock Exchange. I had a staff of six examiners and my office did a few joint examinations with NASD and SEC. I testified as an expert witness in a number of securities cases which were based on evidence not a summation of OTR's. We could never bring a complex case like this with a witness that never spent a single day at the firm. Furthermore, I never heard of anyone taking an OTR and not have the person not being able to review the testimony for possible corrections and I had been involved in dozens of OTR's in the past. Everytime FINRA and now the N.A.C responds to briefs they mention the same things and never respond to important statements. I admit I never heard of the N.A.C. until after the hearing. When I looked them up on their web-site, I was shocked to see our hearing officer worked 5 years at the DOE prior to becoming a hearing officer. This may explain why every motion I filed was denied and every DOE request was allowed. I'm going to mention three specific things they won't address, however, I'm hoping they'll address them for the SEC.

This involves David Matthews settlement offer signed off on by Susan Light, Senior V.P. and Chief Counsel and accepted by the N.A.C.. This is in the Certificate of Record [COR] dtd 05/15/2014. The order states " In addition, Matthews failed to review dozens of forged Deposit Securities Request forms and thus allowed to be processed dozens of penny stock transactions absent any supervisory review". Under the section MATTHEWS FAILED TO SUPERVISE PENN STOCK TRADING ACTIVITY, the order says " Despite knowing as early as September 2010 that a Member of Merrimac's staff had forged a significant but unknown number of Deposit Securities Request forms and thus caused numerous unregistered penny stocks to be deposited into Merrimac customer accounts absent supervisory review". Does this information in the order sound familiar? So why did they charge Matthews and why did the N.A.C. sign off and accept this if they felt another person was responsible for these charges. Another example of REGULATION OUT OF CONTROL.

The second item relates to [COR, CX66, CX66A, CX66B], these exhibits were not included in discovery as required. These were incomplete documents and were used to imply improper practices by Merrimac. Wong found these in the firm's emails after the complaint was filed to give the impression that Merrimac representatives were having clients send in signed DSR's not filled to imply this was a deliberate practice at Merrimac. In a prior brief I responded to this, however, they never respond to things they can't explain. If Wong was reviewing Merrimac emails he would have or should have seen that these were part of a Merrimac package sent by operations to the customers, which included new account forms, Person paperwork and other forms documents. These documents were in the same emails as the DSR's in these exhibits but were not included in the exhibits.. This gave a false representation to the significance of the exhibits. These DSR's couldn't be processed without the customers providing a filled out DSR along with all the documents necessary to source the stock. In fact these DSR's were never even processed. These exhibits never should have been admitted and letting them be introduced was a grave error on the part of the hearing officer.

The third item involves the calling of Blake Synder as a witness. Blake Synder was the Surveillance Director and the most knowledgeable person at FINRA concerning this case. He was involved in every aspect of the case, from the beginning period to the ending period of the case. The hearing officer asked what witnesses I still had to call and I asked to call Blake Synder. At that point Watling of the DOE butts in and tells her that Synder was in New York and unavailable to testify. Based on this statement which turned out to be a lie, he never took the stand and about an hour later we rested. As we were leaving about 5:00 PM to take the elevator down to the lobby, Blake Synder is waiting for an elevator on the same floor. That night at dinner I mentioned this to Mark Thomes who had taken the witness stand earlier that day. Mark said while he was waiting in the lobby to be called to testify he also saw Blake Synder coming in to

the lobby possibly coming back from lunch. This bothered me so much that when we got back to Orlando, I contacted the Florida Bar to file a complaint. I was told that none of the DOE attorneys were members of the Florida Bar or has requested a waiver to practice in Florida.

Modern day missing witness rule will grant an adverse inference when four factors are satisfied. [1] The witness is available to testify on behalf or under control of the party. [2] The witness is unavailable in a practical sense to the opposing party. [3] The testimony of the witness would be relevant and non-cumulative. [4] No reasonable excuse for failure to produce the witness has been shown. See [State of New Jersey v Alonzo Hill, Decided July 14, 2009 and Graves v United States 150 US, 118, 1893]. What makes this most egregious is this was an actual lie and was a violation of our Constitutional rights to a fair hearing. If Watling wasn't going to call Blake Synder, why would he even know he was in New York. He was not only not in New York, but was working on the same floor as the hearing. It is not illogical for one to assume FINRA should know where their employees are. This egregious lie should be reasonable grounds for a reversal of all charges.

. Now I will go over the actual facts regarding the four FINRA requests where forged documents [ now considered falsified documents ] which were knowingly provided to FINRA according to Wong. These are the same charges in David Matthews settlement orders charging him of this, which was previously accepted by the N.A.C.e

[1] The first request to the firm was an 8210 request dated September 23, 2010 [ CX-35 ]. If you look at page 5 of 5 of this exhibit you can see it was signed 11/2/2009. This was the first DSR submitted by the Orlando office and was clearly my original signature. This was stated as an original in my OTR testimony and again during the hearing. The cross-examination of Wong also supported this. This request came from Jack Delaney, Office of Fraud Detection and Market Intelligence [OFD]. I handled all requests from the OFD, since I was the one that approved all trading. All broker trades which used our trading platform came to my computer screen for review and if there were no errors or problems with the order, I released the trade for execution. I was also able to get any trading information from the system relating to regulatory requests. So to summarize, this information was sent to OFD by me and included an original signature on the DSR. It would be impossible to copy a signature when no DSR had ever been submitted.

[2] The January 6, 2011 request was sent as part of a cycle exam [CX-35A]. The information was due January 20, 2011. The response was handled by operations under the supervision of Rick Barrett. Mr Barrett was hired to handle all regulatory requests during examinations. Dozens of FINRA examiners could easily attest to this. The response to this request was sent to Micah Ferrante electronically according to FINRA instructions. According to Wong's testimony at the hearing the response had well over 1000 documents and consumed three boxes. FINRA claims because the letter had my name on it I was responsible for the supervision of these documents. Almost every request from FINRA and other regulatory requests came to either me as CCO or Mark Thomas as FINOP. A rational person would understand that requests like these are not normally handled by the CCO. The majority of my day was spent reviewing trades and placing orders for accounts that had representatives not having access to our trading platform. Prior to the opening of trading I would review exception reports and previous days trades and checks and wires, and other duties. Rick Barrett was hired specifically to work on FINRA exams. He met with the examiners to gather information requests and to get them whatever they needed. In fact the office where Wong was working had been dealing exclusively with Rick Barrett for nearly a year. Also, Wong was asked on cross-examination who sent the FINRA response on January 20, 2011. His response was he didn't know because the password to access these files was no longer active.

[3] The third 8210 request was from Ashley Melisher dated March, 2011 and she asked for the information by March 25, 2011 [CX-45 page 6 of 6]. In the request she had 4 bullet items and asked for the following for 2 accounts: 1. account application documents, 2. monthly account statement, 3. copy of ADBI stock certificates, 4. copies of any wire transfers. She never asked for a DSR, just look at the letter. Furthermore, any DSR regarding ADBI stock for either customers contained no falsified signatures. In summary, just review the letter.

[4]. The December 20, 2012 letter reference Star Matter No. 20110273119. I don't even know what the term Star Matter means and never worked on anything involving a Star Matter. Let's examine the heading of the 8210 request.: [CX-35B].

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Wong called me one time and we spoke for less than one minute. The call was to inform me that they wanted to schedule OTR's for Merrimac employees. The next time I spoke to him was around February, 2013 when I went for my OTR. Rick Barrett was the only one handling obtaining information and based on Wong sending the letter to Forkey's office in Fort Lauderdale he was clearly in contact directly with Forkey. I had absolutely nothing to do with this request. In summary, just look at the evidence. I responded to two of the four requests which contained no falsified documents.

Now I have to address the time line the N.A.C. addressed in their response which is their reasoning that I knowingly provided false documents in the original complaint this is cause of action 3. They claim we knew based on a meeting which occurred prior to September 2010, based on something Pizzuti said in his OTR. Pizzuti was clear in his testimony that the meeting he was referring to was the meetings regarding the implementation of the Policies and Procedures for clearing low priced securities. During the hearing his sworn testimony stated the meeting with CS and Dubrule occurred in April or May of 2011. My testimony at the OTR and the hearing was the meeting took place in April or May. I now know the meeting took place in May because Dubrule was bragging about money he had won betting on the Kentucky Derby. I didn't know at the time but I've come to find out that the Derby is always in May. The meeting was about 2 DSR operations brought to Dave Matthews attention because 2 DSR's appeared to have signatures which were copies of my signatures. FINRA claims there is no record of the meeting and nothing was at the time. Actually, the testimony refutes this. Merrimac reviewed the DSR's and had Dubrule provide all the documents required in the September policies and procedures to source the shares. One customer was not proving the material fast enough and we told them if they didn't provide it we were closing the account. We received everything necessary and for the DSR and supporting documents and all the details were put in the customer files. However, Wong never visited any Merrimac office and never looked in any files. In addition, FINRA has never provided any evidence that these 2 DSR were ever requested by them. The N.A.C. seems to say Pizzuti changed his testimony but that is false. It was clear it was Wong who was confused about which meeting he was talking about in the OTR. During the hearing Wong testified that I told him a number of documents were forged. However, on cross-examination I proved during 2 days of my OTR the word forgery was never once said and that the DSR in the September 2010 request was an original, after he had testified I told him it was a forgery. In order to prove the truth I had him look at the index and try to find the word forgery and he couldn't because it wasn't there. I also had him look at the testimony of the September 2010 request where I said the DSR was an original. Now if you look at the list of OTR Transcripts the DOE entered into evidence [ COR CX-83A through CX-85 ]. What you find is OTR's of John Dubrule and David Matthews for the purpose of Cause of Action 3. Remember they did settlement offers with both Dubrule and Matthews. Now, what you don't see is the OTR's of Nash and Pizzuti because he was making statements on what he recalled which as I explained above, were not true statements. Pizzuti and my OTR's were not used as evidence because it couldn't help their case because it would be evidence to refute nearly everything Wong said. So here's the time line if you follow the evidence rather than supposition.

1. The first FINRA request was September 2010 and the DSR contained an original signature.
2. The meeting with CS and Dubrule took place in May 2011.
3. During my OTR testimony in January or February 2013 when Wong showed me DSR's that may have copied signatures was the first time I learn of this. When I got back I called Dubrule.
4. Dubrule goes for his OTR [COR and RXN-2] and tells FINRA he just found out about the copied signatures when Nash called him last week. He spoke to CS about it and she admitted she did it either 5 or 7 times, John couldn't recall if she said 5 or 7 he thinks it may have been 5. He also stated on 2 separate occasions that he was involved in everyone of the DSR's and supervised every DSR processed. So despite the fact that the N.A.C. is spinning a story. The evidence and facts support the fact that everyone found out about this in 2013 and no one at Merrimac ever knowingly provided any falsified documents to FINRA. Incidentally, during his testimony Wong said that he noticed the possible copied signatures when he was spreading them out on the floor during his review. When you think about this logically this is the only way you could find something like this, which is basically by chance.

On page 20 concerning the Pizzuti we cite the N.A.C. States " Matthews, who was designated to review advertising, failed to review the web site Merrimac's procedures provided that Nash was responsible for establishing adequate procedures. Nash, however, failed to establish procedures which provided for the review of web sites as advertising." First of all this makes no sense they state

Matthews failed to review the web site since he was responsible for advertising, so why would I be responsible for establishing procedures for advertising. In addition there was not testimony to support this statement. I never had anything to do with advertising. As far as reviewing websites, I reviewed all approved websites and kept a log of all reviews. Each representative was aware any web site must be approved for use. Merrimac sent out a quarterly form to be completed by each representative which included a section to provide all outside business activity and websites. The website in question was never approved. In fact, it was a test site that Rick Barrett told the examiner Dudley Blevins this during his cycle examination. Blevins asked to look at. Barrett gave him a password which was necessary to see it with the understanding it was a test site and not finished or approved. No member of the public ever accessed this site. Despite the N.A.C. determination, every policy since the first day of Merrimac's existence was always approved by the President of Merrimac. This was David Matthews and later on when Dave's health was failing Rick Barrett became president. Pizzuti testified at the hearing and on cross-examination I asked him 2 questions. First, Mr Pizzuti, the website that's been referred to that was put up November 11<sup>th</sup>, was I aware of that website, to the best of your knowledge? His response was "NO". Second question. Prior to my reviewing the website, who at Merrimac would have reviewed and approved it? Response, it would have gone to Rick Barrett, who was the president at the time and then to David Matthews.. These are the facts and the evidence. Once again proof that everything's SUBJECTIVE. [REGULATION OUT OF CONTROL]

On page 20 concerning the foreign finders I'll write The entire statement by the N.A.C. " Finally we agree that Merrimac and Nash failed to timely adopt procedures concerning foreign finders and, when they did adopt procedures, they were inadequate. The one-page foreign finder procedure was not adopted until six months after Merrimac entered into the Foreign Finder Referral Agreement. That procedure failed to identify who would supervise foreign finders and how the supervision would be conducted". Let me first say to the DOE's credit how they got these charges through the panel and affirmed by the N.A.C., without even having a witness testify. Sounds unbelievable but it's true. The foreign finders review was done by Dudley Blevins. Of course had he testified it would have hurt their case. Dudley would have had to testify that the foreign finders file had over 100 pages of information and documents. Every customer signed a disclosure acknowledging that fees would be paid to the finder, contracts were included and every step checked off from the FINRA notice on foreign finders. DAVID Matthews signed the contract in November and the first trade was around March. At the time the policy was dated, this was closer to zero percent than 1% of Merrimac business. In addition, what I actually find funny is during the hearing although the question he was asked didn't pertain to foreign finders, Forkey asked him what the rule was when a firm must implement procedures. He said there is no specific time, it's up to the firm but usually when it becomes a significant part of their business. This seems to be the only time the panel didn't believe Wong? I know the SEC won't be able to affirm these charges. After all if you don't even need a witness, why even bother with a hearing. But once again everything's SUBJECTIVE. [REGULATION OUT OF CONTROL]

In retrospect, you have to give the DOE credit. When they called me about a settlement they told me their main witness, however, in the weeks in between they decided not to use him, instead use Wong a person that never spent one minute at the firm. Instead he relied on OTR's, most of which he couldn't recall accurately. Wong testified on cross-examination the following: {1} He didn't know what the Patriot Act was, but he heard of it. {2} He didn't know about the Bank Secrecy Act. {3} He felt a \$1000 check to a customer's A final thing I like to say that when I reference the testimony in the case, checking account was a red flag, however, a wire transfer to a third party was not a red flag. {4} He testified on unregistered securities, however, he couldn't recall what any rules or forms relation to unregistered securities were. Over my years as a regulator I been my hearings and court cases and not one time in a case of unregistered securities would the state not use an expert witness. However, the DOE was smart to use someone without any knowledge of what constitutes an unregistered security because an expert could never have claimed the things Wong did.

When I refer to testimony from the hearing I am unable to cite the specific page. The reason for this is because I never received a copy of the transcripts. I called to get them, however, they wanted \$7000.00 and I didn't have that type of money.

Sincerely,

Robert Nash

 10/26/17