

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION.



In the matter of
THADDEUS J. NORTH

Application for Review of
Complaint No. 2012030527503

3-18150

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934,¹ applicant Thaddeus J. North asserts that but for cumulative evidentiary errors,² which decisions were not harmless error, committed by the FINRA Hearing Officer for the FINRA Hearing Panel and General Counsel for the National Adjudicatory Council (“NAC”), the outcome of Complaint No. 2012030527503 would have been different. FINRA Rule 9251(g). The NAC Panel erred in affirming the FINRA Hearing Panel findings of liability and assessing a fine of \$5,000 and costs. The sanctions fail the concept of proportionality because the NAC Panel relied on the Hearing Panel’s erroneous findings, which relied on the Hearing Officer’s erroneous evidentiary rulings that Email was irrelevant, expert testimony and evidence regarding failure of the electronic records archive were inadmissible, and Smarsh Reports, absent proper foundation, were admissible. Further, the firm’s written supervisory procedures (“WSP”) appointed the firm’s CEO to review Email during the beginning operations of the firm for practical and supervisory reasons. Mr. North was not a Municipal Securities Principal; one employee, directly supervised by the CEO and also the firm’s Municipal Securities Principal, was a significant source of income to the firm. There was no evidence that Mr. North was a supervisor of any person at the firm or that he was designated by management resolution as a or *the* principal responsible for

¹ Because Securities and Exchange Commission (“SEC”) procedural rules do not limit the application to single-sided pages, Counsel submits this pleading double-sided to comply the 8 ½” x 11” two-page limitation.

² See e.g. Mr. North’s pre and post hearing briefs for the FINRA and NAC Hearing Panels. In addition Mr. North has taken steps to bring his concerns before other appropriate authorities.

Email review, particularly while he bore all other compliance responsibilities in the firm's first operating months. Although responsible for the firm's overall compliance, when Mr. North recognized the failures of those directly responsible for Email review, he stepped in to fill the gap. His voluntary actions to ensure the firm performed Email review, should not penalize him with vicarious liability for the failure by the principals designated by the WSP.

The NAC subcommittee erred by denying Mr. North's motion to admit additional evidence and expert reports showing that:³ (a) according to the American Registry of Internet Numbers ("ARIN") records, Smarsh Inc. ("Smarsh") does not own, operate, or control any servers; therefore, Smarsh did not host Email services or servers for Ocean Cross employees and had no ability or intent to deliver regulatory compliance archiving; (b) Smarsh did not attach an archive server to the Email server hosting Ocean Cross employees' Email service, as is necessary for regulatory compliance archiving; (c) Smarsh could not host a Smarsh Management Console ("SMC") or produce the Smarsh Reports admitted in evidence because it does not own, operate, or control any servers; (d) the Smarsh Reports were created on non-Y2K compliant federal government resources that stored the Email to which FINRA has access; and (f) Smarsh's General Counsel confirmed that Smarsh gave instructions to Email users to change settings on communication devices and servers as the device triggering the unlawful interception of Email in violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2522 (2016) ("ECPA") and its delivery to FINRA where content was changed.

The Hearing Officer grossly abused her discretion by admitting the Smarsh Reports in evidence; the reports lack proper foundation, were prejudicial and intentionally designed to

³ The evidence includes: testimony of a Smarsh employee offered in a related case also before the SEC; the Declaration of Smarsh's General Counsel; and reports from Frank Huber, a professional Mr. North hired for his combined expertise in digital forensics, programming, and transportation, Y2K compliance, and XML, the language of Bloomberg communications.

discredit Mr. North's testimony. Before the Enforcement hearing and based on the principles of the Federal Rules of Evidence, Mr. North argued that the Smarsh Reports were inadmissible. Five months after an evidentiary hearing, convened for the sole purpose of admitting the Smarsh Reports into evidence, a FINRA Enforcement examiner admitted to 'fixing' the Smarsh Reports due to a leap year issue. Mr. North's expert, hired after the Hearing Panel began deliberation for his credentials, explained that a leap year issue meant that non-Y2K compliant resources owned by the federal government, but illegal for use in this industry, stored the Email and produced the Smarsh Reports. It should be discernable that since Smarsh does not own, control or operate any servers, the alleged archive, SMC, and Smarsh Reports were fictions created by Enforcement.⁴

Mr. North expert concluded that Enforcement used Smarsh to procure the interception of Ocean Cross employees' Email; such actions not only interfered with the firm's ability to ensure compliance, but caused substantive changes to critical compliance information in the Email content and destroyed the Email's security and encryption. Months after the Hearing Panel convened, Smarsh's General Counsel confirmed that Smarsh introduced the device—instructions to change user equipment settings—that triggered the interception and redirection of the Email and that violates the ECPA.

The NAC subcommittee's refusal to consider the additional evidence was intended to avoid considering credible evidence about FINRA Enforcement's and Smarsh's illegal actions.

Bias. The Hearing Officer's conclusion that the Email was irrelevant was not harmless error and was designed to prevent introducing proof of Enforcement's and Smarsh's role in intercepting Email in violation of the ECPA and in falsifying evidence derived from the stolen data. The Hearing Officer's rulings denied Mr. North the opportunity to elicit testimony and

⁴ Although not listed in his CRD, Mr. North completed the six-week FINRA Institute at Wharton Certified Regulatory and Compliance Professional program in 2009.

introduce evidence to impeach the testimony of Enforcement's witnesses and explore the source(s) and location of the Email, the alleged archive, and equipment used to prepare the alleged Smarsh Reports, now known to be non-Y2K compliant. Enforcement had argued that Email content showing the use of a non-authorized email account prompted its examination and subsequent complaint(s), yet the Hearing Officer illogically dismissed observable Email and metadata discrepancies as the Emails "say what they say." The Hearing Office could not know that the Email says what it says absent *ex parte* communication about its content and without ignoring the substantive issue of why the Email was not in archival condition, who bore responsibility for that failure, and how a gmail Email address could appear in the sender or receiver line of a Bloomberg message. The NAC Panel's strained deference to the Hearing Panel's conclusions reveals its bias. As lawyers, FINRA's Hearing Officer and General Counsel should have recognized the criminal and unconstitutional nature of the conduct identified by Mr. North. Instead, their biases were revealed by purposeful elimination from consideration of all evidence of Enforcement's and Smarsh's unlawful conduct by the Hearing and NAC Panels.

Mr. North is a victim the unlawful actions of FINRA and Smarsh employees; all rulings should be reversed and claims dismissed because the evidence was unlawfully obtained and thereafter contrived to support spurious charges against Mr. North.

Mr. North may be served at: [REDACTED] New Milford, CT [REDACTED]

Submitted this 30th day of August 2017 for THADDEUS J. NORTH

by: 
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In the matter of
THADDEUS J. NORTH

Certificate of Service for
Application for Review of
Complaint No. 2012030527503

Notice is hereby given that on this 30th day of August 2017, undersigned Counsel sent Counsel's Notice of Appearance, Application for Review before the Securities and Exchange Commission, In the Matter of Thaddeus J. North, FINRA Complaint No. 2012030527503, and Motion to Stay Sanctions in Complaint No. 2012030527503, by certified first class USPS mail to the following:

The Office of the Secretary
Securities and Exchange Commission
100 F Street NE, Room 10915
Washington, DC 20549-1090

Attention: Jennifer Brooks
FINRA Office of General Counsel
1735 K Street, NW
Washington, DC 20006

Respectfully submitted for THADDEUS J. NORTH

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