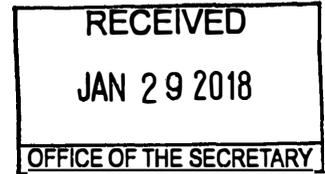


HARD COPY
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC



In the Matter of the Application of
The Association of Bruce Zipper
With Dakota Securities International, Inc.
For Review of Denial of Registration by
FINRA
File No. 3-18256

**FINRA'S OPPOSITION TO
APPLICANT'S MOTION TO COMPEL DISCOVERY**

I. Introduction

On January 23, 2018, FINRA received applicant Bruce Zipper's January 1, 2018 motion to compel FINRA to produce a broad range of discovery. Zipper's motion rehashes the overarching, and completely unsupported, theme to his numerous filings in this proceeding and a related proceeding before the Commission—that FINRA is biased against him.¹ Zipper's alleged evidence in support of his bias claims is utterly lacking. As a result, Zipper is interested in going on a "fishing expedition" with the hope of obtaining support for his unsubstantiated claims and

¹ In Zipper's other proceeding currently before the Commission (File No. 3-17963), he appealed the underlying settlement that resulted in his statutory disqualification. The Commission dismissed Zipper's appeal. *See Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf> (the "Dismissal Order"). The Commission recently requested that the parties submit additional information in connection with Zipper's pending motion to reconsider the Dismissal Order. *See Bruce Zipper*, Exchange Act Release No. 82486 (Jan. 11, 2018) (Order Requesting Additional Written Submissions), <https://www.sec.gov/litigation/opinions/2018/34-82486.pdf>. The parties' additional written submissions are due in the next several weeks.

to deflect attention from the fact that FINRA denied his statutory disqualification application on three independent and well-established grounds. The Commission has repeatedly rejected efforts to obtain discovery from FINRA under similar circumstances. In fact, it rejected Zipper's attempt to do exactly the same thing in the context of his other pending proceeding. The Commission should therefore deny Zipper's motion here.²

II. Zipper's Purported Evidence of Bias Is Without Merit

As an initial matter, Zipper has failed to demonstrate that his claims of bias have any basis in fact. The three pieces of "proof" that allegedly substantiate his bias claims consist of: (1) an incorrect settlement figure for a customer complaint against Zipper set forth in the recommendation of FINRA's Department of Member Regulation ("Member Regulation") to deny Zipper's statutory disqualification application; (2) Member Regulation's failure to explain in its recommendation letter the reason for one of Zipper's three personal bankruptcy filings; and (3) Zipper's claim that his "punishment" for willfully failing to update his Form U4 "itself shows bias" because FINRA allegedly overcharged him for this misconduct.³

The foregoing matters do not show that FINRA was biased in denying Zipper's statutory disqualification application. As an initial matter, the NAC—not Member Regulation—analyzed the parties' arguments and the evidence presented to conclude that Zipper's statutory disqualification application should be denied. Any alleged bias by Member Regulation (which Zipper has not demonstrated) is irrelevant. *See Donner Corp. Int'l*, Exchange Act Release No.

² As stated in Zipper's motion, in mid-December 2017 he demanded that FINRA produce all emails and other communications that reference Zipper or the Firm originating from three FINRA offices from 2014 to the present. FINRA declined to produce such documents. FINRA attached this correspondence to its brief in opposition filed on January 16, 2018.

³ Zipper has made similar claims of bias, citing this alleged "proof," in various prior filings in this proceeding.

55313, 2007 SEC LEXIS 334, *66 (Feb. 20, 2007) (“Moreover, it is the NASD, not the staff, that makes decisions. Even if a member of the staff were biased, that would not mean that the NASD decision is biased.”). Further, the NAC did not rely upon Zipper’s customer complaint and 2016 bankruptcy filing to deny the application.⁴ Indeed, neither event had any bearing on the NAC’s denial. Instead, the NAC denied Zipper’s statutory disqualification application based upon his serious violation of the terms of his agreed-upon suspension, the firm’s proposal of completely unqualified supervisors for Zipper, and the firm’s woefully inadequate supervisory plan for him.⁵ See RP 1304-12.

Zipper’s claim that FINRA’s bias is evident by its having overcharged him for his willful failures to update his Form U4 also misses the mark. The Commission should reject Zipper’s baseless collateral attack upon the settlement agreement that he agreed to. See *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (stating that “[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have previously been made against him”). Moreover, and setting aside that Zipper agreed to the sanctions for his Form U4 violations, FINRA has broad discretion in charging respondents. See *David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, *23 (Sept. 29, 2017) (stating, in

⁴ With respect to the customer complaint referenced in Member Regulation’s recommendation letter, the NAC in fact *agreed* with Zipper and noted that FINRA’s Central Registration Depository (“CRD”®) showed that he settled this matter for the amount he claims. See RP 1297.

⁵ Zipper does not allege that the NAC or the hearing panel who presided over his eligibility proceeding were biased against him. Regardless, the fact that the NAC denied his statutory disqualification application would not support any such claims. See *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009) (holding that adverse rulings on their own do not evidence bias; “bias by a hearing officer is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case”), *aff’d*, 416 F. App’x 142 (3d Cir. 2012).

context of respondent's argument that FINRA "has acted inconsistently" in bringing Form U4 disclosure cases, that "FINRA has broad prosecutorial discretion in deciding against whom charges should be brought and what those charges should be"), *appeal docketed*, No. 17-15283 (11th Cir. Nov. 28, 2017); *Wedbush Secs., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *59-60 (Aug. 12, 2016) (rejecting applicant's claim of bias and reiterating that FINRA has broad prosecutorial discretion).⁶ The proposed sanctions contained in the settlement offer presented to, and accepted by, Zipper for his misconduct simply do not show that FINRA was biased against him in any way.

III. The Commission Should Reject Zipper's Discovery Requests Based Upon Unsubstantiated Claims of Bias

Zipper's alleged support for his claims of bias rings hollow, and nothing in the record substantiates Zipper's claims. As such, the Commission should reject Zipper's discovery requests. Indeed, the Commission has previously rejected requests for discovery based upon unsubstantiated claims of bias. *See Asensio & Co., Inc.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *58 & n.85 (Dec. 20, 2012) (citing cases). Zipper has provided no reason for the Commission to deviate from this precedent to enable him to go on a "fishing expedition."

Moreover, Zipper's current request for discovery conveniently overlooks the fact that just several months ago, the Commission denied a similar request by Zipper in his other proceeding

⁶ Zipper continues to refer to the denial of his statutory disqualification application as a "punishment." The Commission, however, has consistently recognized that a "statutory disqualification is not a FINRA-imposed penalty or remedial sanction." *See Anthony A. Grey*, Exchange Release No. 75839, 2015 SEC LEXIS 3630, at *47 n.60 (Sept. 3, 2015); *see also Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 (Mar. 15, 2016) (holding that "FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F)."), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

pending before it. In that matter, Zipper requested discovery from FINRA to expose alleged bias against him and an alleged cover-up by FINRA staff of its unfair and inconsistent treatment of him. The Commission denied Zipper's request. *See Dismissal Order*, at 5 ("We have previously rejected requests for discovery related to unsubstantiated allegations that FINRA is biased, and do so again here because Zipper has failed to substantiate any claim of bias.")⁷ Zipper's current discovery request is similarly based upon completely unsupported claims of bias, and should be denied.

IV. Conclusion

Zipper's mere repetition of the same assertions in support of his unsubstantiated claims of bias cannot serve as the basis for his broad requests for documents from FINRA. The record is devoid of any such evidence, and instead shows that the NAC denied Zipper's statutory disqualification application because Zipper's continued employment in the securities industry

⁷ The Commission's recent request that the parties submit additional information in connection with Zipper's pending motion to reconsider the Dismissal Order does not implicate the Commission's refusal to grant Zipper's discovery requests. Further, for the reasons stated in the Dismissal Order, the Commission should deny Zipper's current request that it perform an independent investigation into his claims of bias. *See Dismissal Order*, at 5-6.

presented an unreasonable risk of harm to the market and investors. Consequently, the Commission should deny Zipper's motion to compel.

Respectfully submitted,



Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
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(202) 728-8281

January 26, 2018

CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 26th day of January 2018, I caused a copy of the foregoing FINRA's Opposition to Applicant's Motion for Discovery to be served by messenger on:

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5400

On this date, I also caused a copy of the opposition to be served via overnight FedEx and electronic mail on:

Bruce Zipper

████████████████████
Miami, FL ██████████
████████████████████@gmail.com

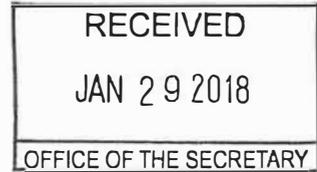
Different methods of service were used because courier service could not be provided to Mr. Zipper.



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January 26, 2018

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, DC 20549-1090

RE: In the Matter of the Application of Bruce Zipper
Administrative Proceeding No. 3-18256

Dear Mr. Fields:

Enclosed please find the original and three copies of FINRA's Brief in Opposition To Applicant's Motion To Compel Discovery in the above-captioned matter.

Please contact me at (202) 728-8281 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be "Andrew Love", written over a horizontal line.

Andrew Love

cc: Bruce Zipper
Brennan Love