

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 70632 / October 8, 2013

Admin. Proc. File No. 3-13678

In the Matter of the Application of  
JOHN M.E. SAAD  
For Review of Disciplinary Action Taken by  
FINRA

ORDER REMANDING  
PROCEEDING TO REGISTERED  
SECURITIES ASSOCIATION

On May 26, 2010, we issued an opinion finding that John M.E. Saad, formerly a registered representative associated with Homer, Townsend & Kent ("HTK"), a FINRA member firm, had violated NASD Rule 2110 by accepting reimbursement based on Saad's submission of false expense reimbursement requests and receipts. We also sustained FINRA's imposition of sanctions, which were a bar in all capacities and an assessment of costs.<sup>1</sup>

Saad appealed our decision to the United States Court of Appeals for the District of Columbia Circuit. Saad did not contest that he had violated Rule 2110, but instead asserted only that the Commission had abused its discretion in upholding the bar. In particular, Saad argued that the Commission had ignored two mitigating factors: (1) that HTK had terminated Saad's employment before FINRA detected his misconduct, and (2) Saad's claim that he was under personal and professional stress at the time of his misconduct.

The D.C. Circuit agreed with Saad's contention that the Commission had failed to consider his two claims of mitigation and remanded the proceeding to the Commission for further consideration of those issues.<sup>2</sup> In doing so, the court found that the Commission had acknowledged Saad's claim that his firm had fired him before FINRA detected his misconduct, but that neither FINRA nor the Commission had fully addressed that claim. The court concluded

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<sup>1</sup> *John M.E. Saad*, Securities Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

<sup>2</sup> *Saad v. SEC*, 718 F.3d 904, 912–14 (D.C. Cir. 2013). Although the court remanded for further consideration of Saad's claims of mitigation, the court affirmed the Commission's finding that FINRA had appropriately used the FINRA Sanction Guideline regarding the conversion or improper use of funds or securities when considering whether a bar was an appropriate sanction. The court also found that the Commission had correctly noted that a bar was a possible sanction regardless of whether FINRA had used the guideline for conversion/improper use or, as Saad argued was more appropriate, the guideline for forgery/falsification of records. *Id.* at 911–12.

that consideration of this factor was relevant because FINRA's Sanction Guidelines state that, when determining sanctions, adjudicators should consider "[w]hether the member firm with which an individual respondent is/was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection."<sup>3</sup> The court also found that the Commission had noted, but did not address, Saad's claim that "he was under severe stress with a hospitalized infant and a stressful job environment."<sup>4</sup> The court did not accept the Commission's contention that it had, at a minimum, implicitly rejected these claims of mitigation by denying all arguments that were inconsistent with the views expressed in the Commission's decision. The court instead ordered the Commission "to fully address *all* potentially mitigating factors that might militate against a lifetime bar," while noting that the court took "no position on the proper outcome of this case."<sup>5</sup>

We have determined to remand to FINRA the portion of this proceeding concerning the imposition of a bar to give FINRA an opportunity to explain its views on its Sanction Guidelines and Saad's claims of mitigation. We direct FINRA's particular attention to the following questions:

- (1) When considering Principal Consideration Number 14 of FINRA's Sanction Guidelines (which concerns the consideration of whether a member firm disciplined an associated respondent prior to regulatory detection), does that guideline apply as to the member firm, the associated person, or both (*e.g.*, does the guideline apply when determining whether (a) the *member firm's* misconduct was mitigated because the firm disciplined an associated person before regulators detected the misconduct, (b) the *associated person's* misconduct was mitigated because the firm had already disciplined the associated person, or (c) *either* the member firm's *or* the associated person's misconduct was mitigated by such disciplinary action)?
- (2) In light of FINRA's finding as to question (1) above, is Saad's claim that HTK had terminated his employment before FINRA detected his misconduct mitigating?
- (3) Is Saad's claim that he was under personal and professional stress at the time of his misconduct mitigating?
- (4) Are there any other considerations that Saad has raised (whether or not discussed in the D.C. Circuit's decision) that are mitigating?
- (5) In light of FINRA's findings as to questions (1) through (4) above, what is an appropriate sanction in this case?

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<sup>3</sup> *Id.* at 913 (quoting FINRA Sanction Guidelines ("Guidelines"), at 7 (Principal Consideration No. 14)).

<sup>4</sup> *Id.* (quoting *Saad*, 2010 SEC LEXIS 1761, at \*27). Unlike with Saad's claim regarding his termination, FINRA's Sanction Guidelines do not contain a guideline about whether claims of personal or professional stress can be mitigating.

<sup>5</sup> *Id.* at 914 (emphasis in original).

At the conclusion of FINRA's proceeding on remand, Saad will have the right to file an application for review of FINRA's decision with the Commission pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 and Rule 420 of the Commission's Rules of Practice.<sup>6</sup>

Accordingly, IT IS ORDERED that this proceeding is remanded to FINRA for issuance of a decision in this matter as to the appropriate sanction for Saad's violation of NASD Rule 2110.<sup>7</sup>

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>6</sup> 15 U.S.C. § 78s(d)(1); 17 C.F.R. § 201.420. The Commission may also, on its own initiative, order review of FINRA's decision pursuant to Exchange Act Section 19(d)(1) and Rule of Practice 421. 15 U.S.C. § 78s(d)(1); 17 C.F.R. § 201.421.

<sup>7</sup> We do not intend to suggest any view as to the appropriate outcome of these proceedings.