

U.S. SECURITIES AND EXCHANGE COMMISSION

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In the Matter of the Application of :

ERIC S. SMITH :

For Review of Disciplinary Action Taken By :

FINRA :

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APPLICATION OF ERIC S. SMITH FOR REVIEW
OF DISCIPLINARY ACTION TAKEN BY FINRA

Pursuant to Rule 420 of the Rules of Practice of the U.S. Securities and Exchange Commission (“Commission”), by and through undersigned counsel, Mr. Eric S. Smith hereby applies to the Commission for review of disciplinary action taken by the National Adjudicatory Council of the Financial Industry Regulatory Authority (“FINRA”), in a decision dated September 18, 2020 (the “Determination”) [FINRA Complaint No. 2015043646501].

Mr. Smith seeks review by the Commission of the following *erroneous* findings and conclusions in the Determination:

(a) FINRA had jurisdiction to institute a disciplinary action against Mr. Smith despite the fact that Mr. Smith never consented to FINRA jurisdiction in any way whatsoever;

(b) FINRA’s Department of Enforcement is not required to prove each and every element of a cause of action by a preponderance of the evidence in order for FINRA to find a respondent liable for a violation;

(c) the alleged misrepresentations and omissions were “material”, thereby ignoring the fact that FINRA’s Department of Enforcement introduced no evidence concerning the materiality of alleged misrepresentations and omissions;

(d) actual disclosures concerning the risks of the loans made by four persons during the Summer and Fall of 2015 should be ignored as “boilerplate” when assessing the materiality of the alleged misrepresentations and omissions;

(e) the financial statements and other financial information included in the documents distributed to potential lenders did not matter when assessing the materiality of the alleged misrepresentations and omissions;

(f) Mr. Smith acted with scienter;

(g) Mr. Smith acted “willfully”;

(h) loans made by three out of four persons in the Summer and Fall of 2015 met the definition of “securities” when, in fact, they were merely short-term loans;

(i) Mr. Smith engaged in fraudulent conduct and securities fraud in connection with the 2015 Bridge Loan Notes Offering;

(j) Mr. Smith acted as an unregistered general securities representative and principal of a FINRA member firm;

(k) the sanction of a bar from association with FINRA member firms was warranted by the actual evidence presented during the disciplinary proceeding;

(l) the sanction of a \$130,000 restitution order was warranted by the actual evidence presented during the disciplinary proceeding; and

(m) fines of \$125,000 and suspensions from association with FINRA member firms, based upon the alleged failure to obtain FINRA licenses to act as a general securities representative and principal of a FINRA member firm, were warranted by the actual evidence presented during the disciplinary proceeding.

The FINRA disciplinary proceeding instituted against Mr. Smith is erroneously based upon the assertion by FINRA – a privately-owned corporation that is licensed as a self-regulatory organization by the Commission – that it may institute disciplinary proceedings against any person in the United States regardless of whether that person has consented to FINRA’s jurisdiction to bring such a proceeding. This egregious abuse of self-regulatory authority by FINRA must be reversed emphatically by the Commission. Never again should a non-licensed person such as Mr. Smith be subjected to more than five (5) years of investigation and disciplinary proceedings, at a devastating financial and personal cost, when FINRA never had any jurisdiction over that person in the first place.


In addition to the wrongful assertion of jurisdiction, FINRA compounded its violation of Mr. Smith’s rights by making findings of liability based on assumption rather than actual evidence presented at the hearing. Unless reversed by the Commission, FINRA’s argument that liability may be found without actual evidence introduced by its Department of Enforcement would have the effect of turning a FINRA disciplinary proceeding (with supposed rights of cross-examination) into a type of “show trial”, with pre-determined outcomes, favored by autocrats and dictatorships throughout history.

For these reasons and based upon the additional submissions to be made by Mr. Smith, the Commission should reverse the Determination in its entirety and prohibit FINRA from pursuing any further disciplinary proceeding against Mr. Smith.

Mr. Smith can be served upon undersigned counsel, who is contemporaneously filing a Notice of Appearance pursuant to Rule 102(d). Counsel can be contacted at the address and telephone number listed below.

Dated: October 19, 2020
New York, New York

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