SECURITIES AND EXCHANGE COMMISSION

DEPARTMENT OF ENFORCEMENT, Complainant, v. JASON LYNN DIPAOLA (CRD No. 2648836), Respondent.	FINRA Disciplinary Proceeding No. 2018057274302

RESPONDENT JASON LYNN DIPAOLA'S BRIEF IN SUPPORTOF APPLICATION

JASON DIPAOLA
[redacted]

PRELIMINARY STATEMENT

Respondent Jason Lynn DiPaola ("Respondent" or "Mr. DiPaola"), in accordance with FINRA Rule 9347 as well as the Schedule, dated August 20th, 2023, respectfully submits Respondent's Brief in Support of Application to the Securities and Exchange Commission ("SEC") appealing the NAC ruling of suspending Mr. DiPaola's license for 4 years and fining him $40,000. This case isn't about wrongdoing by Mr. DiPaola, it is about wrongdoing by the Department of Enforcement ('Enforcement") and specifically by Gary Chodash ("Chodash"), the Senior Regional Counsel for Enforcement.

Enforcement's crusade against Mr. DiPaola started when they reached a preliminary determination that Mr. DiPaola committed a violation based on emails, they reviewed prior to the interview then accused him during questioning in a July 18th, 2019, On the Record ("OTR") appearance. Despite Enforcements' deceptive claims that this was a fact gathering session, which they repeated every time the record was being started, (1) Enforcement accused Mr. DiPaola of insider trading. Mr. DiPaola quickly refuted this claim as a simple Reg FD issue, after which, Enforcement backed down as Mr. DiPaola was correct. Enforcement was left humiliated by such an incompetent accusation, considering Reg FD is taught in the first 2 chapters of the Series 7 licensing exam. The fact that Chodash didn't review the other Enforcement officers' questions as the senior agent underscores his complete dereliction of duty. After the big gotcha moment blew up in Chodash's face, Enforcement, specifically Chodash, painted a bullseye on Mr. DiPaola's back and harassed him for the next 2 years with several unsubstantiated accusations that were proven not to be true, such as stock manipulation, and at least one other insider trading accusation, also proven false. Mr. Chodash is obsessed with pinning anything he can on Mr. DiPaola to try and save face since clearly, he couldn't get over his own personal failures and

humiliation. This is clearly Enforcement's motive in harassing Mr. Dipaola the way they have.

Enforcement works under a guilty until proven innocent premise and throws as many accusations as possible against the wall to see what sticks. Mr. DiPaola was forced to incur over $200,000 in legal expenses to refute these numerous false claims by Enforcement. (2) Mr. DiPaola was fined thousands of dollars and suspended based upon Enforcement's spurious claims while ignoring the immeasurable stress, time, and expense this process has cost him for the last several years. Enforcement also played a major role in Mr. DiPaola's divorce, having sent almost a dozen registered letters to his home demanding phone records that went too far back to retrieve. The contents of these requests also contained numerous threats to bring disciplinary proceedings against Mr. DiPaola, which were translated by his wife as criminal charges which caused her to file for divorce. Apparently, all this damage created by Enforcement does not satisfy Enforcement's appetite for unmitigated vengeance.

The SEC will observe that while Enforcement appealed prior sanctions imposed on all three causes of action, its primary focus is on seeking a permanent bar against Mr. DiPaola for his alleged violation of Rule 8210, instead of the 30-day suspension imposed. Although Enforcement is vague as to its reasons, two possibilities may answer the question of Enforcement's motivation: (1) Enforcement has a continued personal vendetta against Mr. DiPaola, seemingly more and more likely as this action continues; and (2) this appeal is merely a stalking horse (with Mr. DiPaola as collateral damage) to obtain a precedent holding that, if a respondent does not attend an OTR sought *post-Wells Notice* (and sans Wells submission), a Respondent will be *barred*. However, as argued herein and in Mr. DiPaola's Brief on Cross-Appeal, it was simply never the practice (nor does Respondent believe it is lawful) to seek an

OTR after issuing a Wells Notice where no new information was obtained, such as a Wells Submission.

To bar Mr. DiPaola in the face of Enforcement's abusive and unannounced expansion of its regulatory processes is completely inappropriate. Imposing a bar on Mr. DiPaola here would change the trajectory of Staff investigations in a way that would completely deprive all respondents of the already minimal due process afforded to them.

POINT I

STANDARD OF REVIEW

The standard of review over a NAC sanctions determination necessarily guides adjudication of Enforcement's appeal. The SEC need look no further than the FINRA Sanction Guidelines to lay Enforcement's arguments to rest. The General Principles Applicable to All Sanction Determinations require a hearing panel to tailor sanctions to address the circumstances of each individual case. The Sanctions Guidelines "are not absolute" and they "do not mandate" specific sanctions. *See* Sanctions Guidelines, p. __. A hearing panel must consider all "the facts and circumstances of a case" and "may determine that no remedial purpose is served by imposing a sanction within the range recommended in the applicable guideline" but that "a sanction below the recommended range, or no sanction at all" would be appropriate. *Id.* at __.

To this end, "[a]djudicators have discretion to decide based on the facts and circumstances of the case to impose a sanction above or below the recommended range, or even no sanction at all." *Dep't of Enforcement v. Integrity Brokerage Services, Inc., and Joshua Helmle,* Disciplinary Proceeding No. 2018056456001 (July 23, 2021); *see Dep't of Enforcement v. James W. Flower*, Disciplinary Proceeding No. 2017052701101 (May 27, 2021); *Dep't of Enforcement v. Dreamfunded Marketplace, LLC*, Disciplinary Proceeding No. 2017053428201

(June 5, 2019). The Sanction Guidelines "'merely provide a starting point in the determination of remedial sanctions.'" *Saad v. SEC*, 405 U.S.App.D.C. 254, 259 (D.C. 2013).

As explained in the Sanction Guidelines, "[a]djudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case." *See* Sanctions Guidelines, p. __. Thus, the Sanctions Guidelines recommendations for the alleged violations at issue were not binding on the Hearing Panel, nor do the Guidelines' respective recommendations account for the exceedingly unique facts and circumstances of this case.

POINT II

DIPAOLA SHOULD NOT BE BARRED FOR HIS ALLEGED VIOLATION OF RULE 8210 UNDER ENFORCEMENT'S THIRD CAUSE OF ACTION[1]

The NAC sanctioned Mr. DiPaola for his alleged violation of Rule 8210 by suspending him from the industry for a period of 2 years. FINRA006339. The reasons relating to the sanction being a harsh and unmeasured response are simple. Enforcement falsely claims that Mr. DiPaola "Intentionally failed to appear in response to two OTR notices" (3) Mr. DiPaola was ready, willing, and able to show up to an OTR. Mr. DiPaola had a conflict on the original request date of March 26th, 2021, and reflected that to his attorneys at Fox Rothchild, being represented by Ernest Badway ("Badway"). Enforcement admits and submits into evidence exhibit after exhibit with communications between FINRA and BADWAY, and only BADWAY, not Mr. DiPaola. Mr. DiPaola did not have one single interaction or communication with Enforcement, so it is impossible for him to "intentionally" fail to appear. And because of the pending divorce proceedings, with date of commencement March 23, 2021, Mr. DiPaola advised his legal counsel

that he wasn't in the frame of mind to do an OTR on March 26th, just 3 days after Mr. DiPaola had his entire world shattered. Again, Mr. DiPaola was ready, willing, and able to do an OTR and was just requesting a later date. Based on Mr. DiPaola's conversations with Badway, Mr. DiPaola was advised that Badway was negotiating a new OTR date. Mr. DiPaola was relying solely on his legal representation to schedule this. In conjunction, Badway was requesting what new evidence Enforcement claimed to have against Mr. DiPaola to be requesting not the second, not the 3rd, but 4th day of OTR questioning. Enforcement stonewalled all Badway's request for new evidence as Enforcement had none at the time. But Enforcement only had until April 25th, 2021, to question Mr. DiPaola as his license was set to expire on the 2 year anniversary of him resigning from a FINRA member firm to work at a hedge fund. Enforcement, being frustrated by Badway, who was waiting for enforcement's new evidence to give an OTR date, decided to take their frustrations out on Mr. DiPaola by issuing a Wells Notice. As quoted by Enforcements own words in their opening brief June 3, 2022 "After being stonewalled by DiPaola's legal counsel for 2 weeks, Enforcement set the OTR for April 5th, 2021, and it issued a new Rule 8210 notice on Marh 26th, 2021. Enforcement simultaneously issued a Wells Notice. The Wells Notice stated that Enforcement had made a **preliminary determination** to recommend disciplinary action against DiPaola for manipulative trading, trading while in possession of material non-public information, failing to disclose an outside brokerage account, and submitting false and misleading disclosure forms to his Firm. (4)

So Enforcement clearly lied by saying they had 2 new enforcement staff that had new questions into DiPaola's trading activities (5). If as stated above in the Wells Notice, that Enforcement made a "preliminary determination" into DiPaola's guilt, then why the need to request an OTR? There wasn't. It was a punitive measure to harass Mr. DiPaola one last time before the April 25th,

2021, deadline and to cause Mr. DiPaola to incur more legal fees, which total north of $10,000 for a day of OTR. They should not have had any questions, they already had hard evidence according to the Wells Notice. But that was a lie as well. They had zero evidence, they wanted one more fishing expedition against Mr. DiPaola, as DiPaola was never charged with insider trading nor manipulative trading. And why? Because it never happened, and Enforcement made the accusations up out of thin air as an excuse to try and question him one more time. This is incompetence at its finest. The fact of the matter is Chodash has an obsession with trying to pin anything he can on DiPaola to justify now over 4 years of time, energy, and money on a case because Chodash doesn't know what Reg FD is.

Initially, a suspension of any length can (and will) have an inordinate effect on Mr. DiPaola, as his job at the hedge fund is now on the line. Badway approached Enforcement numerous times during years of proceedings to try and come to a settlement agreement. It was explained to enforcement that any suspension of DiPaola's license would cause him to lose his current job as a Portfolio Manager. But he could and was willing to pay a fine to get this over with, even though DiPaola maintains his innocence. But Enforcement rebuffed all efforts. They are not interested in justice being served, which is what a settlement would have been. They are only interested in destroying Mr. DiPaola personally. The real culprit and bad actor is Enforcement itself for adopting the cavalier approach in believing it could change "the rules of game" on the fly during the proceeding by issuing a Wells Notice while attorneys were working out a simple calendar issue.

A prior hearing panel made up of two civilian and one FINRA representative agreed with Mr. DiPaola's position that "(1) Enforcement's preliminary decision to recommend charges against dipaola (i.e. its Wells Notice) suggested FINRA considered DiPaola's prior Rule 8210

responses substantially compliant and significant enough to recommend charges; and (2) the topics FINRA staff wanted to address in DiPaola's 2021 OTR overlapped with those addressed in DiPaola's previous OTR's" (5a)This decision again throws cold water on Enforcements assertion they had new information they wanted to question Mr. DiPaola about.

The Hearing Panel Did Not Improperly Determine Sanctions Based on Enforcement's Issuance of the Wells Notice

In an effort to upend a prior Hearing Panel's sanctions determination for Mr. DiPaola's alleged violation of FINRA Rule 8210, Enforcement hangs on two sentences of the Hearing Panel's 35-page Decision. Namely, Enforcement takes issue with the second to last paragraph of the Hearing Panel's Decision, wherein it pointed out that Enforcement's issuance of a Wells Notice prior to the FINRA Rule 8210 request suggested that Enforcement considered Mr. DiPaola's prior responses to the FINRA Rule 8210 requests in 2019 to be significantly, if not, substantially, compliant. Decision, pp. 34-35.

Initially, this finding was appropriate and well-supported by the record. There is not a scintilla of evidence in the record that Mr. DiPaola's prior responses to the FINRA Rule 8210 requests in 2019 were not significantly or substantially compliant – other than Enforcement lawyers pounding their fists on the table, after the fact, that Mr. DiPaola never substantially complied with any of the FINRA Rule 8210 requests. In fact, Enforcement literally conceded to the Hearing Panel in its Post-Hearing Brief that "DiPaola complied with some earlier FINRA Rule 8210 requests for information and documents." Enf. Post Hearing Br., pp. 28-29. Now, Enforcement says it was improper for the that Hearing Panel to have inferred there was

compliance with the prior FINRA Rule 8210 requests despite its specific admission. This is ludicrous.

Everything in the record indicates that Mr. DiPaola went through great and unrelenting efforts to comply with the prior FINRA Rule 8210 requests in 2019, including, but not limited to, Mr. DiPaola's attendance at OTRs on April 16, 2019, July 17, 2019 and July 18, 2019, and Mr. DiPaola's response to multiple requests for documents and information between August 6, 2019 and June 23, 2020 – all before Enforcement issued a Wells Notice against Mr. DiPaola. (CX-2, CX-3, CX-4). Further, Mr. DiPaola spent countless days exerting overwhelming and best faith efforts to obtain cell phone records from his phone carrier from March 1, 2015 to July 31, 2017 – that Mr. DiPaola's cell phone carrier did not maintain. This entailed, but was not limited to, several visits to and phone conversations with Mr. DiPaola's cell phone carrier that Mr. DiPaola was prompted to record given Enforcement's unreasonableness. (Tr. 618:21-619:8).

To be sure, Hearing Panels routinely consider a respondent's prior efforts in assisting Enforcement as a mitigating factor and hold that where such prior efforts have been made, failure to respond to a subsequent FINRA Rule 8210 request should *not* result in a bar. *See, e.g., In The Matter of the Application of John Joseph Plunkett,* Securities Exchange Act Release No. 69766, June 14, 2013 ("Plunkett correctly asserts that he complied with several earlier Rule 8210 requests made during the course of the same investigation, which addressed a wide range of potential violations involving numerous entities and individuals, including Plunkett."); *In The Matter of the Application of Kent M. Houston,* Securities Exchange Act Release No. 66014, Dec. 20, 2011 ("[B] ecause Houston did respond in some manner to NASD's request, any sanction imposed, whether a bar or otherwise, should analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner.")

Separately, Enforcement frankly offers more significance to this singular finding than warranted. Enforcement misconstrues the Hearing Panel's statements as an express finding of substantial compliance with the prior FINRA Rule 8210 requests, but the Hearing Panel was merely pointing out that mitigating circumstances exist. Here, the Hearing Panel was faced with the supremely unique situation where FINRA issued a FINRA Rule 8210 request for more information *after* issuing a Wells Notice (and *not* in response to a Wells Submission). Given this uncontroverted fact, the Hearing Panel properly accounted for the fact that Respondent had provided multiple responses to prior FINRA Rule 8210 requests and found that mitigating circumstances existed as a result. In doing so, the Hearing Panel expectedly pointed out that here, untraditionally, a Wells Notice had already been issued at the time of the subsequent FINRA Rule 8210 request where Enforcement allegedly clams non-compliance.

A. Prior evidence from the Civilian Hearing panel Correctly Found Overlap Between the Information Sought by Enforcement in 2019 and 2021

Enforcement next argues that the Hearing Panel incorrectly found there to be "extensive overlap" between the information sought in 2019 and 2021. Enforcement Br., p. 20. Although Enforcement would like the NAC to ignore the facts, this finding is clearly and abundantly supported by the record.

Enforcement's suggestion that this finding implies that the Hearing Panel thought Enforcement did not "need" the 2021 OTR is nonsensical. The Hearing Panel never second-guessed Enforcement's supposed need for the 2021 OTR, stating: "[W]e has no basis for disregarding Enforcement's view that the matters it sought to question DiPaola about in April 2021 were important. We accept its assertions that after the 2019 OTR interviews, it developed additional questions it wanted to ask DiPaola about the topics it believed he had not sufficiently covered in 2019." Decision, p. 33.

Nonetheless, Enforcement continues to argue, as it did before the Hearing Panel, that the nature of its 2021 OTR was not duplicative. Simply stated, this is totally inconsistent with the record. Enforcement argues that "[t]he fact that the staff's questions in both 2019 and 2021 related, on some level, to the main subjects of FINRA's investigation does not prove that the information sought was duplicative." Enforcement Br., p. 21. However, Enforcement is massively understating the extensiveness of the overlap.

Enforcement's evidence presented to the Hearing Panel unequivocally demonstrated that the 2021 OTR would have *extensively* overlapped with the questions already asked at the 2019 OTRs, exactly as the Hearing Panel determined. While Enforcement swears that a finding of "extensive overlap" was unfounded, Enforcement did not recall or produce a written outline or list of exhibits for the 2021 OTR (Tr. 465:5-466:12), likely, since none actually existed. Therefore, the only evidence the Hearing Panel had regarding if there would have been overlap in the 2021 OTR was the testimony of Staff investigators Mr. Park and Mr. Roundy. Their testimony established that there would have been overlap between the 2019 and 2021 OTRs, including that:

- Mr. DiPaola's trading activity was covered in the 2019 OTRs (Tr. 276:17-21);
- ADMD and XXII were mentioned and addressed in Mr. DiPaola's 2019 OTRs (Tr. 446:4-447:20; 600:5-10);
- Enforcement reviewed Mr. DiPaola's and his mother's trading records with him during the 2019 OTRs (Tr. 447:21-448:4);
- Enforcement reviewed with Mr. DiPaola during the 2019 OTRs if he had access to non-public information relative to his trading (Tr. 448:5-12);
- Enforcement reviewed with Mr. DiPaola during the 2019 OTRs Mr. DiPaola's trading activity in connection with concerns of market manipulation (Tr. 448:13-22; 602:15-18);

- Enforcement explored with Mr. DiPaola during the 2019 OTRs if there were perceived conflicts of interest in his trading (Tr. 448:23-449:3; 602:15-20);

- Enforcement had already questioned Mr. DiPaola about the volume of his trades and his end-of-day trading in his 2019 OTRs (Tr. 599:19-600:10; 601:7-16);

- Enforcement had already questioned Mr. DiPaola about multiple bid offers at different prices in his 2019 OTRs. (Tr. 601:17-602:14); and

- Enforcement admitted that ADMD and XXII were already "in focus" at the very beginning of Enforcement's investigation. (Tr. 286:1-6).

Given these demonstrable facts and Enforcement admissions, the Hearing Panel was perfectly within its rights to determine that there was extensive overlap between the 2021 OTR and 2019 OTRs.

Enforcement also attempts to escape the Hearing Panel's reliance on *Dep't of Enforcement v. Plunkett*, 2011 WL 1451761 (N.A.S.D.R. 2011). Enforcement argues "there was no basis for the Panel to find any overlap because, unlike in *Plunkett*, DiPaola refused to appear for an OTR in 2021 and *never* answered the staff's questions. As a result, there is no evidence that the information sought from DiPaola in 2021 was duplicative of information he previously provided to FINRA during the 2019 OTRs." Enforcement Br., p. 20. However, as detailed above, there was substantial testimony from Enforcement's witnesses that the topics it sought to ask about in the 2021 OTR were duplicative of those topics asked in the 2019 OTRs. Therefore, there was certainly evidence that the information sought from Mr. DiPaola in 2021 was duplicative and the Panel's reliance on *Plunkett* was proper.

B. The Hearing Panel Appropriately Declined to Consider Certain Factors Raised by Enforcement as "Aggravating"

Enforcement next argues that the Hearing Panel erred by failing to treat as aggravating "the regulatory pressure that FINRA had to exert in an effort to secure DiPaola's cooperation and the intentional nature of his misconduct." Enforcement Br., p. 21. However, Enforcement pays

no mind to the most critical fact here – that Mr. DiPaola was willing to attend. It was Enforcement, who refused to permit the 2021 OTR to go forward, by not withdrawing the Wells Notice. FINRA006181.

In other words, Enforcement needed to exert *zero* regulatory pressure to have Mr. DiPaola attend; Mr. DiPaola's attendance was completely within its control. All Enforcement had to do was withdraw the Wells Notice pending the 2021 OTR – in accordance with decades of regulatory practice.

Enforcement's focus on the "intentional nature" of Mr. DiPaola's "misconduct" also misses the mark. This was not a run-of-the-mill failure to appear at an OTR because a respondent did not feel like it. Rather, as explained above, Mr. DiPaola was subject to unrelenting regulatory abuse by Enforcement after constant compliance with prior FINRA Rule 8210 requests in years prior. Mr. DiPaola never stated that he was unwilling to appear for an OTR, and Mr. DiPaola's attorney communicated to Enforcement he would appear at an OTR if the Wells Notice was withdrawn. Enforcement refused to withdraw the Wells Notice. (Tr. 620:4-621:12; JX-25). The Hearing Panel acknowledged this undisputed evidence. FINRA006320. Enforcement intentionally obstructed the 2021 OTR, not Mr. DiPaola.

In contrast to "aggravating factors" existing, there were *mitigating* factors. As the Hearing Panel acknowledged, Mr. DiPaola not appearing for the 2021 OTR was "at the end of a long investigation, during which he had provided testimony on three days and after he had complied with other Rule 8210 information requests" and was not a "'complete failure'" by the Sanction Guidelines' standards. FINRA006338. The Hearing Panel appropriately noted that "Enforcement did not launch its effort to re-interview Mr. DiPaola until *a year and eight months after the 2019 OTR interviews, a lapse of time attributable to Enforcement, not DiPaola.*" *Id.*

(emphasis added). Moreover, the Hearing Panel stated that "Enforcement's unsuccessful efforts to find a mutually agreeable date to conduct the interview occurred over slightly more than a month, from March 11 to April 15" and therefore "the number of requests and the length of time of this process was not inordinate." *Id.* at 006337-38. This is all not to mention the extensive cooperation summarized above that Mr. DiPaola provided in response to prior FINRA Rule 8210 requests.

Enforcement's insistence that a bar be the sanction for Mr. DiPaola's alleged violation of Rule 8210 has no basis in law or reality, and ignores the unique circumstances presented here – such circumstances being a product of Enforcement's own obstinance.

POINT III

DIPAOLA SHOULD NOT BE SANCTIONED ON ENFORCEMENT'S FIRST AND SECOND CAUSES OF ACTION

DiPaola's license was suspended for 2 years and received a $20,000 fine from the NAC panel. After the prior Civilian hearing panel only recommended a 30-day suspension of the license and a $5,000 fine for all 3 accusations, the NAC, which essentially is FINRA, Mr. DiPaola's false accusers, recommend a total of 4 years and $40,000 for the same 3 accusations. The only reason Mr. DiPaola wasn't completely exonerated by the civilian panel is because it was made up of one FINRA member.

FINRA has yet to prove Mr. DiPaola had discretion over his mother Janet DiPaola's account and has falsely accused him of not reporting his mother's account to his employer. Janet DiPaola testified under oath at the last appeal hearing that she was 100% in control over her own account, that the funds in the account were 100% hers, and that she was very protective of what little money she had left. She even stated that she trusted her son, but she made all the buy and sell decisions in her own account. When she was asked if she had ever been contacted by FINRA

to question her prior to the appeal hearing she replied “no”. As far as Janet DiPaola was concerned, she was in full control over her own account contrary to Enforcements false claims. Enforcement has the audacity to tell Janet DiPaola that she was not in control of her own account, even though she made no complaint to FINRA. She admitted, and so did Mr. DiPaola, that his mother shared her login information because she didn’t have a computer in her home and that she wasn’t able to effectively manage her account. Mr. DiPaola also admitted to helping his mother buy entering buy and sell orders on behalf of his mother at her direction. Janet DiPaola testified to the same. Enforcement is also trying to claim that Mr. DiPaola should have disclosed his mother to his employer Chardan Capital. Mr. DiPaola is only required to disclose his own accounts, that of his wife or children or any other he has a financial interest in. Enforcement has not proved that Janet Dipaola was not in control of her own account. Even Chodash even admitted as much when questioned at the last appeal hearing stating that because he could not obtain DiPaola’s phone records, he could not prove Janet Dipaola was in control of her own account. This is just another obvious and desperate attempt to pin some minor accusation on Mr. DiPaola after the first 2 insider trading accusations were proven false as well as the false stock manipulation charge.

Enforcement conceded before the Civilian Hearing Panel that the two most active stocks in Mrs. DiPaola’s account – three quarters of her trades – were ADMD and CATS. Mr. DiPaola traded the same securities in his *disclosed* accounts. Moreover, Respondent has been arguing all along that the overlapping securities between Mr. DiPaola’s disclosed accounts and his mother’s account was a countervailing consideration – something Enforcement never challenged. As both stocks were extremely illiquid, it sometimes took months to sell the stock. ADMD specifically was a Pink Sheet stock that traded zero volume most days and was a sub penny stock, trading

between $0.0003 and $0.003 for many years. Since it was low priced and illiquid, it required the entering of many orders to break up the entire position into smaller orders in hopes of execution. Over 90% of these orders expired with no execution and would have to be re-entered the next day at Janet DiPaola's direction, which Enforcement admitted they cannot prove otherwise. Enforcement added up all these "Nothing Done" trades that had zero execution and tried to argue that Mr. DiPaola "entered thousands and thousands" of trades on behalf of his mother. This is misrepresenting the fact that these orders were essentially the same order being entered into the system on a daily basis for months because of the lack of trade executions. Entering the same orders daily does not define having discretion over an account. He was simply helping his senior citizen mother who did not have access to a computer. Nor did Mr. DiPaola sign discretionary papers. The spirit of the law of having discretion over an account is typically for a full-service broker who is making buy and sell decisions in a client account without contacting the client prior to. As Janet DiPaola testified under oath, she and her son spoke on a daily basis and she told him what to do, a fact supported by Mr. DiPaola's testimony on 3 separate OTR's. Janet DiPaola didn't file a complaint with FINRA, FINRA concocted a complaint that they admitted under oath that they couldn't prove.

CONCLUSION

For the foregoing reasons, Respondent requests that SEC reverse the NAC's Decision, deny Enforcement's claims in their entirety, and award Respondent the costs and expenses incurred in this proceeding. In the alternative, Respondent requests that SEC reject the improper and excessive suspension imposed upon Mr. DiPaola.

Dated: Babylon, New York
August 25, 2023

Respectfully submitted,

JASON DIPAOLA

By:_____

[redacted]