

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 RESPONSE TO OPPOSITION

JASON DIPAOLA

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PRELIMINARY STATEMENT

Respondent Jason Lynn DiPaola (“Respondent” or “Mr. DiPaola”), in accordance with FINRA Rule 9347 as well as the Schedule, dated November 15th, 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. Also included are Payne Templeton (“Templeton”) Senior Litigation Counsel for Enforcement, and Joshua Roundy (“Roundy”) Senior Principal Investigator 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 started, Enforcement accused Mr. DiPaola of insider trading. Lea Satterfield, a FINRA investigator with no experience, no legal background and no Series 7 license, was put in charge of coming up with all the questions for a 2 day interrogation that ended with her falsely accusing DiPaola of trading on inside information, which Mr. DiPaola quickly refuted as a simple Reg FD issue. Enforcement, specifically Chodash, admitted Mr. DiPaola was correct, there was no insider trading. 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. These 2 days of unnecessary

questioning cost DiPaola over \$25,000 in legal fees. 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.

At this he put Roundy on the case as lead investigator, another person with no legal background. RP 260 Roundy testified that he wanted to question DiPaola because he had concerns about stock manipulation and Insider Trading. Enforcement has used this testimony to try and justify calling DiPaola in for a 4th On the Record meeting. We will show that not only was Roundy not qualified to make any legal determinations that would require an OTR, but no legal determinations period as he is not a trained attorney and he showed a lack of basic knowledge of FINRA rules, let alone legal matters. We will also show that he perjured himself under oath clearly at the direction of Chodash to justify an OTR that Enforcement tried to get done weeks prior to DiPaola not being under their jurisdiction anymore. We will also show that Enforcement on numerous occasions proved themselves inept and showed a complete lack of knowledge to this case and was obvious they were unprepared and had done little investigating. One investigator testified he didn't know whether DiPaola held a Series 7 license, and Templeton didn't know whether or not DiPaola still worked at a member firm when he questioned DiPaola on November 18th, 2021. Templeton started off the November 18th, 2021 OTR by asking DiPaola RP 53 "Your current employer is Axiom Capital Management; is that right?" DiPaola response "NO" "Okay. What's your present Employer?" "First New York" How is it that lead counsel for FINRA, who has been investigating DiPaola since 2019, does not know if he worked at a FINRA Member firm or not?

If enforcement doesn't know the answers to such simple basic things, they shouldn't be believed in any of the false charges they've brought. Through Enforcements own testimony they claim not to have any proof of these accusations, including from Lead hearing panel member Matthew Campbell ("Campbell") who is the FINRA Hearing Officer in the NAC appeal.

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. 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.

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 originally 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.

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.

DIPAOLA SHOULD NOT BE BARRED FOR HIS ALLEGED VIOLATION OF RULE 8210 UNDER ENFORCEMENT'S THIRD CAUSE OF ACTION¹

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. RP208-209 409-415 so Enforcements statement that DiPaola “ignored” requests are false and intentionally misleading. 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. DiPaola had moved out of his family home on March 24th 2021 and was living in a hotel for 2 ½ months while he focused on looking for a place to live and interviewing divorce attorneys, all while working full time at a Hedge Fund. Again, Mr. DiPaola was ready, willing, and able to do an OTR and was

¹ “RP” refers to record page

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. FINA rules require them to provide any new evidence that is to be discussed if they want to schedule another OTR, so as not to rehash old topics. 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)

Enforcements contention that they had new evidence they wanted to question DiPaola about are false. 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. RP 664-666. No inside trading charges or stock manipulation charges were ever brought against Mr. DiPaola and even Enforcements own Campbell said there was no evidence of either false accusation, so it's clear Enforcement was using this as a way to try and justify extending this unjustified prosecution of Mr. DiPaola past the April 25th, 2021 deadline and figure out the evidence after the fact.

Enforcements lack of evidence was clear when they had Roundy testify as to why he, a non attorney with no legal background, wanted to question DiPaola about legal issues. He was "curious" about an email. Curiosity is not evidence of wrongdoing to require a new OTR. They had zero evidence so they made some up. Chodash submitted into evidence CX-68 to show DiPaola's personal holdings in AMIC stock at Etrade. RP 329-330. Roundy testified that between March 2015 and December 2015 DiPaola bought AMIC stock. RP 330. Templeton separately submitted CX-12 into evidence to show that 100% of DiPaola's Etrade account was fully invested in AMIC as of October 31st, 2015. RP 94. Those dates don't line up, how could DiPaola buy stock in December if he was fully invested in October? RP 897-598 Roundy's "expert" testimony contradicts Enforcements prior submission of DiPaola's holdings 2 months prior. Next Roundy testified that emails regarding AMIC had come to light that he had previously overlooked, even though Enforcement already had them in their possession, but they were somehow new. RP 313 He claimed that several emails starting in February 2016 raised concerns about DiPaola having inside information regarding AMIC. Again the timelines contradict Roundy's testimony. How could DiPaola have inside information back in March of 2015 when he began buying the stock, through October 31st 2015 when Enforcement states Dipaola was 100% invested, based on emails in February 2016? He can't. It's an impossibility.

Enforcement flat out lied and tried to generate an excuse as to why they said they needed to question DiPaola one last time. Even FINRA Hearing Officer Campbell stated there was no such evidence of insider trading or stock manipulation. “Keep in mind that there is no evidence that Mr. DiPaola engaged in any inside trading or manipulation”. RP 369. DiPaola was never charged with insider trading nor manipulative trading. Enforcement also admitted under oath that they never tried contacting the SEC or the Justice department to investigate these claims. If they had the evidence as the Wells Notice suggests, that would have been the next proper steps. But they didn’t contact any other law enforcement because they lied about the charges. RP 443-444.

Enforcement made the accusations as an excuse to try and question him one more time. This is not only incompetence, but in the real world this would be a crime to falsify evidence after the fact to justify prior false accusations. The fact of the matter is Chodash is obsessed 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 and for his dereliction of duty in overseeing his staff and their questions. 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, which signifies the end of an investigation, not a request for more interviews, while attorneys were working out a simple calendar issue. And again, Mr. DiPaola was relying solely on his attorneys to work these issues out.

The fact that Enforcement intentionally lied to cover their tracks shows that all 3 charges against Mr. DiPaola should be dismissed, Chodash, Templeton and Roundy should all be terminated immediately and Enforcement should be made to pay DiPaola’s legal bills totaling \$200,000. On top of that Mr. DiPaola couldn’t afford to pay his attorney’s and they quit his case so he had to represent himself Pro Se in these final briefs. Enforcement has intentionally drained

Mr. DiPaola of his finances, the result of which has dwarfed any fines or suspensions imposed by the NAC and was done so intentionally as a punitive punishment. Mr. DiPaola's current job at a hedge fund should not be in jeopardy over a suspension of a license he willingly gave up years ago and no longer holds as it expired in 2021.

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.

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 claims non-compliance. 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’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 November 19th 2021 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". She was asked if Mr. DiPaola had a financial interest in her account, she replied "no". She was asked if Mr. DiPaola ever executed a trade in her account without her knowledge, she replied "no". She was asked if Mr. DiPaola ever entered an order without discussing it with her prior, she replied "no". RP 560-570. Enforcements claims that DiPaola entered orders without his mother's knowledge is an outright lie. They have no proof and no testimony to support this claim. They are trying claim discretion when no discretion was given. All decisions to enter an order or not were Mrs DiPaola's. In Enforcements opening remarks by Templeton, Enforcement even admits Mrs. DiPaola gave permission "She gave Mr. DiPaola verbal authority to place buy and sell orders in her account" RP 20-21. Their statements in their opening remarks refute their own

claims that Mr. DiPaola entered orders without her knowledge. The rest of Enforcements claims about trading in stocks that were issuers, conflating watch lists with restricted lists, if Mr. DiPaola knew if his mother did any research on stocks, are all white noise to distract from the fact that they couldn't prove that Mr. DiPaola did anything wrong. Chodash even claimed that without the phone records we couldn't prove if they spoke or not. Many of these orders were also "Good til Cancelled" orders and marked as such, which are considered non discretionary orders, so if Mr. DiPaola actually did as Enforcement contends, which they still have not proven on any specific orders, that Mr. DiPaola entered an order without immediately speaking to his mother, it still falls under the category of non discretion. Enforcement jumps to their own conclusions as to if DiPaola spoke to his mother or not and still have not proven that any specific trades were made on a discretionary basis. RP 606-610 RP 617-619

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 proven that Janet Dipaola was not in control of her own account. RP 611-616

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 because of a lack of phone records. 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 daily for months because of the lack of trade executions. Entering the same orders daily at the direction of Mrs. DiPaola does not define having discretion over an account. He was given instructions requested by his senior citizen mother who did not have access to a computer. 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 that there was unauthorized trades in her account, FINRA concocted a complaint that they admitted that they couldn't prove without phone records and contradicted that statement with their own remarks.

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 as well as sanctioning all members of Enforcement for their egregious behavior in this case.

Dated: Babylon, New York
August 25, 2023

Respectfully submitted,

JASON DIPAOLA

By: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 want.

2 If you recall in my opening, I said,
3 well, if that's the logic that they want,
4 that means I suppose they could use thumb
5 screws and a cattle prod in their OTRs,
6 they can do what they want. That is the
7 ultimate, ultimate in a runaway regulator
8 that has absolutely no support in the law,
9 that has absolutely no support in the
10 evidence of this particular case.

11 In fact, all of the guidance that was
12 presented, including as this hearing panel
13 will take notice of, the points that we
14 made on the FINRA Regulatory Notice, it
15 specifically said that Wells notices are
16 issued after the conclusion of an
17 investigation.

18 You can't have it both ways. And the
19 precise guidance that has been issued has
20 carved out one specific exception, if the
21 proposed respondent submits to a Wells
22 submission, of course FINRA is entitled,
23 of course Enforcement is entitled to look
24 into that. They chose not -- they chose
25 not to withdraw it. And we also offered

1 to them, too, as the evidence explicitly
2 states, we chose, and we said to them we
3 would attend the OTR, withdraw the Wells
4 Notice. They chose not to.

5 Do you know why they chose not to?

6 Here's why. Mr. Templeton -- excuse
7 me, withdraw that.

8 Mr. Chodosh and his band of merry
9 examiners knew that Mr. DiPaola's time in
10 the industry was coming to a close. That
11 the ability for them to do anything to
12 destroy, to attempt to destroy his life
13 and his name in any meaningful manner,
14 would come to an end once jurisdiction
15 ceased.

16 What you have here is nothing more
17 than an absolute and utter -- utter
18 twisting of procedure, law, statute and
19 regulation. What you have here is nothing
20 more than a sham, as I said to you before.

21 This is not a legitimate inquiry,
22 this was not legitimate. You even saw
23 from their Wells Notice, the first charge
24 in their Wells Notice was going to be
25 insider trading and manipulation.

1 Well, you had two people who barely
2 conducted any investigation, never
3 contacted any of the companies about
4 insider trading, never -- never -- never
5 contacted Mrs. DiPaola, the person that
6 they are basing the first two causes of
7 action on, never contacted her. Never
8 brought in here anybody from Chardan,
9 never brought anybody in from E-Trade,
10 never brought in Mr. DiPaola's supervisor
11 or anybody else.

12 That's the failure of this
13 investigation. That's the twisting of
14 what Enforcement has done in this
15 particular matter.

16 And when you look at what happened --
17 again, I go back to pomposity and hubris,
18 it is their way of exercising dominion and
19 control. And I will tell you that there
20 is nothing, nothing that will happen in
21 the industry except good, because this
22 needs to be reigned in, this conduct needs
23 to be reigned in. FINRA Enforcement is
24 not the be all and end all. They do not
25 get to write the rules.

1 HO CAMPBELL: Overruled.

2 You can answer the question, go
3 ahead, sir.

4 A In my experience, I haven't gone
5 through the process. So I'm not familiar with
6 the process of reaching out to issuers.

7 Q And you also said that you didn't
8 reach out to Circadian; is that correct?

9 A Correct, the staff didn't reach out
10 to Circadian.

11 Q Didn't reach out to Circadian.

12 Did you reach out to the Securities and
13 Exchange Commission staff and ask them to reach
14 out to Circadian?

15 MR. CHODOSH: Objection.

16 HO CAMPBELL: Overruled.

17 MR. CHODOSH: Now you're getting into
18 privileged --

19 HO CAMPBELL: Oh, I don't think
20 that's privileged. Go ahead, you may
21 answer.

22 A Can you repeat the question, please.

23 Q Yes. Did you or anyone from the
24 Enforcement staff reach out to the SEC so that
25 they could reach out to Circadian?

1 A I don't recall any conversations with
2 the SEC with regard to reaching out to
3 Circadian.

4 Q Did you reach out to any state
5 securities regulator to have them reach out to
6 Circadian to obtain the information?

7 A I did not reach out to a state
8 regulator, no.

9 Q And did you reach out to the
10 Department of Justice to ask them for
11 information, to obtain information from
12 Circadian?

13 A I did not reach out to the Department
14 of Justice, no.

15 Q No, Mr. Roundy, you would agree with
16 me that -- let me withdraw that question.

17 You recall yesterday Mr. Chodosh showing
18 you a number of emails during your testimony --
19 do you?

20 A Yes, I recall that.

21 Q And if I recall correctly, you
22 indicated that all of these documents you would
23 have liked to have asked Mr. DiPaola about them
24 in his April 2021 OTR; is that correct?

25 A Those were among email communications

1 account was divvied up among her four children
2 equally. We all got different stocks on
3 occasion. And I had it with them for, I don't
4 recall any great length of time, because their
5 fees were, I thought, very high. And other
6 people that I knew who had stock didn't pay
7 such high fees.

8 So I then spoke to my son and, you know,
9 questioned him about it. And the rest is
10 history.

11 Q Well, we're going to get to that
12 history in a moment.

13 A I hope.

14 Q I promise you. So you spoke with
15 your son, Jason; correct?

16 A Yes.

17 Q And do you recall when you first
18 spoke to him about the account?

19 A Well, my mom died in '13, April
20 of '13. And, ah, I don't know, maybe a year,
21 within that year sometime. I mean, I, you
22 know, who knew I would have to come to this and
23 document my thoughts.

24 Q One of the contentions that's being
25 put forward by the Enforcement department is

1 that they claim that your son, Jason, had
2 control over your account; is that true?

3 A No.

4 Q Why do you say that, ma'am?

5 A After dealing with Wells Fargo, I
6 wanted -- listen, it wasn't a huge amount of
7 money, but it was, for me, it was my funny
8 money. And, uhm, you know, I didn't like
9 paying, ah, being overcharged, what I thought I
10 was being overcharged, their fees were quite
11 high. And, uhm, I was talking to Jay, and he
12 just said, you know, to leave Wells Fargo and
13 go elsewhere. Elsewhere was like, okay, where
14 do I -- I don't know. And he said, you know,
15 start with E-Trade.

16 Q And ultimately you opened up an
17 E-Trade account?

18 A Yes.

19 Q Okay. And there were a series of
20 trades, and I'm sure when the Enforcement
21 attorney gets a chance to question you, they're
22 going to show you these big, big charts with
23 all of the trades in the account. Okay.

24 Did you talk with your son, Jason, about
25 the trades before he made the trades in the

1 account?

2 A Absolutely.

3 Q Do you recall anything specific about
4 the trades -- I know it's a long time ago, but
5 do you recall any specific trades?

6 A Yeah, I mean, there were a couple --
7 I mean, most, you know, it was the alphabet
8 soup of acronyms, you know, botta bing, botta
9 bing, botta bang. And so, I mean, the one that
10 I was most impressed with, if you want to call
11 it being impressed by a stock, was ADMD.

12 Q And why is that?

13 A The reason for that, basically, is
14 because at my age, I mean, I have known and
15 still know people with cancer, some unable to
16 have surgery.

17 So this particular application or
18 treatment was a polymer that they would
19 actually put on a tumor, so that they did not
20 irradiate the healthy tissue around it with
21 chemo, and it would give the person a better
22 chance of survival. And they were having good
23 luck, or success in the treatment of animals at
24 the time.

25 Q Were you discussing any other stocks

1 with Jason in the account?

2 A Yeah, I mean, you know, some of them
3 overlap. You know, it's hard to -- if you
4 could be -- but the other one was, uhm -- oh,
5 shoot.

6 Q That's okay. I just wanted to know
7 if you have any recollection.

8 A The acronym, oh, the cigarette one.
9 Because I am a smoker.

10 Q Mrs. DiPaola, did Jason ever execute
11 a transaction in the account that you did not
12 approve of?

13 A No.

14 Q Why is that?

15 A Because I'm a mean -- listen, you
16 know, screw me once, shame on you. Twice,
17 shame on me.

18 Q And that relates to what happened
19 with Wells Fargo?

20 A And I know my son doesn't -- you
21 know, we're very close.

22 Q How often would you speak to Jason
23 about the trading in your accounts?

24 A Whenever we -- often. I mean,
25 sometimes without discussing just my account,

1 uhm, like -- you know, sometimes on the
2 weekends he would come with my grandchildren,
3 you know, we would have dinner or whatever, and
4 we would, ah -- it just got into general
5 conversation. It wasn't, you know, other than
6 just general.

7 Q And Mrs. DiPaola, did he also speak
8 to you about the accounts and trades during the
9 weeks as well, during the week?

10 A Yeah. You know, he would call, tell
11 me what he was thinking of. And I figured, you
12 know, okay, fine. And he would place the order
13 for me.

14 Q And did he -- did you give him any
15 particular instructions on how to place the
16 order?

17 A How to place it?

18 Q Yes. Like did you say it's got to be
19 done in one shot, or it could be --

20 A No.

21 Q -- done in increments?

22 A No.

23 Q Did that matter to you at all?

24 A No.

25 Q Okay.

1 A Just so long as it was done and
2 wasn't costing me a fortune.

3 Q Now I'm going to ask you a pivotal
4 question. Did you always make money in the
5 account?

6 A No.

7 Q Why don't you tell the panel about
8 the results in the account.

9 A The results in the account, I mean,
10 there were days when it was terrific and days
11 when it wasn't. And when it was terrific, I
12 would take some cash out and, you know.

13 Q And when days were bad, what did you
14 do?

15 A I grinned and beared it, and
16 generally got on the phone. And, I mean, you
17 can ask --

18 Q Who did you get on phone with?

19 A Jason would you tell you how I can
20 harass him like it was his fault, you know.

21 Q Did you --

22 A The company wasn't doing as well as
23 they said they were going to do.

24 Q And you monitored your account?

25 A Definitely.

1 Q So you saw the transactions in the
2 account?

3 A Yeah.

4 Q Did you look at the statements?

5 A Yes.

6 Q So you saw the buys and sells?

7 A I would call him and see where they
8 were, you know.

9 Q And did you ever notice any
10 transactions in there that were done without
11 your permission?

12 A No. No, that was -- well, he knows.

13 Q They're going to -- Enforcement is
14 going to ask you a bunch of questions, most
15 likely, about whether he had discretion in the
16 account. Okay.

17 And the question that I ask you, is did
18 you ever provide any written notice to Jason,
19 or oral notice that he could trade in the
20 account without your permission?

21 A He -- no, he knows better than to do
22 anything without my knowledge. All my kids.

23 Q All right. Did Jason ever own the
24 account?

25 A My account?

1 Q Yes.

2 A How could he own my account?

3 Q But there came a time when Jason's
4 name was placed on the account; is that
5 correct?

6 A Ah, it was placed on the account as
7 not the owner.

8 Q Not the owner, okay.

9 A I mean, follow my social, it's in
10 the, ah -- there's no other -- that account has
11 been mine in my name, my social, in my right to
12 take out money, leave it in, do what I want.

13 Q The Enforcement department also
14 argues that your son controlled the account.

15 Did he control the account?

16 A No.

17 Q Did Jason have a financial interest
18 in the account?

19 A No.

20 Q Has Jason ever taken any money out of
21 the account?

22 A For me, yes. When I asked him. At
23 times I wanted to go on a trip, and I needed
24 "X" amount.

25 Q I asked --

1 A And then if there was cash in there,
2 fine. Otherwise, I told him to sell the, uhm,
3 the least agreeable account, that was stagnant,
4 as it may be, and instead of waiting for
5 improvement on it, just get rid of it and then
6 give me the cash.

7 Q And I ask you, Mrs. DiPaola -- well,
8 I should have been much clearer in my question,
9 I apologize -- but did Jason ever take any
10 money out of the account for himself?

11 A No. That I know.

12 Q All right.

13 A And he didn't charge me the crazy
14 commissions like, you know, the other company
15 did.

16 Q Did he charge you any commissions?

17 A No.

18 Q Okay.

19 A That's a bonus.

20 Q Has Jason forced you to testify here
21 today?

22 A No.

23 Q Did he promise you anything for
24 testifying here today?

25 A No.

1 Q Now, this is going to come out,
2 because as you probably can imagine, you're his
3 mother, are you only testifying today because
4 he's your son?

5 A No.

6 Q Is there any reason to believe you
7 aren't telling the truth?

8 A Only if you're unwilling to learn the
9 truth.

10 Q I'm going to ask you, you know, FINRA
11 has conducted an investigation, I think you're
12 aware of that, did anyone from FINRA ever reach
13 out to you?

14 A No.

15 Q Did anyone from the FINRA Enforcement
16 group reach out to you?

17 A No.

18 Q Did anyone from FINRA market
19 surveillance reach out to you?

20 A Market surveillance?

21 Q I'm just asking you did anybody reach
22 out to you from them?

23 A No.

24 Q If they had reached out to you, what
25 would you have told them?

1 A Depends on what they thought, what I
2 thought this reaching out meant.

3 Q Well, if they were to have asked you
4 questions about the trading in the account,
5 what would you have told them?

6 A Exactly what I said. It's my
7 account, it was my money, came from a small
8 inheritance from my mother. I mean, he was the
9 knowledgeable one, not me.

10 Other than that, he's my son, I trust him.
11 I trust him a whole lot more than I did Wells
12 Fargo.

13 MR. BADWAY: We have no further
14 questions at this time, Mr. Campbell.

15 HO CAMPBELL: All right. Now the
16 Enforcement lawyer will have some
17 questions for you, Mrs. DiPaola.

18 Mr. Templeton?

19 MR. TEMPLETON: Yes, thank you.

20 Can we please display page 1 of
21 Exhibit CX-7.

22 CROSS EXAMINATION OF JANET DiPAOLA

23 BY MR. TEMPLETON:

24 Q Do you recognize CX-7 as your online
25 account application filled out by you in

1 Proceedings

2 Rule 3050(c)'s written
3 disclosure requirement allowed member
4 firms to review outside brokerage
5 account activities of its employees
6 for improper trading, including for
7 real or potential conflicts of
8 interest with the firm, Chardan for
9 example, or its customers.

10 As will be shown, Chardan's
11 procedures required its employees to
12 send to the firm's compliance
13 department duplicate statements for
14 brokerage accounts maintained
15 elsewhere. The evidence will show
16 that Rule 3050(c) applied to
17 Mr. DiPaola's mother's account
18 because Mr. DiPaola exercised
19 discretionary authority in her
20 account. More specifically, his
21 mother relied on him to trade her
22 account. She lacked the ability to
23 trade the way Mr. DiPaola did. She
24 gave Mr. DiPaola verbal authority to
25 place buy and sell orders in her

1 MR. BADWAY: And the declaration, I
2 believe is still on file with the panel;
3 is that correct, Mr. Campbell?

4 HO CAMPBELL: Yes.

5 Q All right. I want to begin with
6 something that came out of Mr. Park's
7 testimony, Mr. DiPaola.

8 Mr. Park testified regarding Exhibit 78,
9 which was a listing of the trades; is that
10 correct?

11 A Correct.

12 Q And he also testified about
13 Exhibit 42 that related to some Circadian
14 comments and everything.

15 Do you recall that?

16 A Yes, I do.

17 Q You heard him testify; is that
18 correct?

19 A I did.

20 Q What is your understanding of what he
21 testified to?

22 A Well, Mr. Park testified that he had
23 new information that needed to -- he needed to
24 question me about. Which was that he had
25 discovered an email from Circadian, and then he

1 needed to question my trading, because somehow
2 they lined up.

3 But they don't line up. Because, as he
4 proved, CX-78, which lists my trades, the
5 trades were from February and March of 2015.
6 CX-42, which is the Circadian email, is from
7 like March or April of 2016.

8 So the email came a year after I bought
9 the stock. So how does that match up? There
10 is no new information. They just lied.

11 Q Now, Mr. DiPaola, I want to also
12 clear up something about Circadian, okay.

13 What is your understanding of Circadian?

14 A Circadian is an investor relations
15 firm. They help companies develop investor
16 relations and marketing plans, and help, ah,
17 you know, they do investor reach out to
18 institutional investors and retail investors.

19 Q What is your understanding of their
20 retention regarding ADMD?

21 A As far as I know, they were never
22 hired. ADMD was virtually bankrupt, and that's
23 the reason why they were asking us to
24 constantly help them raise money. The company
25 literally had no money. And as Mr. Templeton

1 you breaking up the trades as you did with
2 different pricing, that somehow was untoward?

3 A Never.

4 Q Now, Mr. DiPaola, I want to move on
5 to a different topic, there was something
6 mentioned about Enforcement asking for your
7 phone records.

8 Do you recall that?

9 A Yes.

10 Q It happened around this time last
11 year; is that correct?

12 A Well, it happened a lot more than
13 that, but, yes.

14 Q Could you tell the hearing panel
15 about that situation?

16 A I mean, they sent me at least ten
17 letters home requesting phone records, half of
18 which my wife saw, my soon to be ex-wife. And
19 these letters, you know, had a good portion of,
20 ah -- the reasoning why I ended up getting
21 divorced, is because my wife ended up thinking
22 I was a criminal, because she said why would
23 they keep sending you these threatening letters
24 saying that we're going to bring actions
25 against you if you don't reply.

1 But the bottom line is they kept sending
2 letters over and over again, and we kept
3 replying to them that the phone company keeps
4 telling us they don't maintain these records
5 back that far. The records don't exist.

6 And we told Enforcement this over and over
7 again, yet they refused to accept this answer,
8 and they kept on sending these threatening
9 letters to my home. Of which, like I said, my
10 wife saw at least five or six of these letters.
11 And I would try to tell her, listen, this is
12 just a witch hunt, they're coming after me for
13 no reason, because they tried to prove another
14 case that was -- that we proved wasn't, you
15 know, didn't exist. And now they're just
16 chasing us for no reason.

17 Q What happened, what did FINRA do,
18 what did Enforcement do?

19 A They brought an action against me for
20 not providing phone records that didn't exist.

21 Q What did you do in response?

22 A So then I called the phone company, I
23 recorded the phone calls. I drove around all
24 over Long Island to four or five different AT&T
25 stores, I walked in, I videotaped those

1 conversations with these different branches of
2 the conversations requesting these records,
3 uhm, to prove, once and for all, that the
4 records did not exist, that, you know, AT&T did
5 not maintain these records going back to this
6 time period.

7 Q What happened, sir?

8 A It was finally dismissed.

9 Q And now moving on to another topic,
10 okay. I know you've already answered the
11 questions, and I'm not going to repeat them
12 about the connection between quote/unquote new
13 stuff for the 2021 thing.

14 But you were aware that FINRA wanted
15 another OTR for you; is that correct?

16 A I was.

17 Q Now, you were also aware that FINRA
18 issued a Wells Notice; is that correct, sir?

19 A Yes.

20 Q What is your understanding of a Wells
21 Notice?

22 A I mean, I'm not an attorney, but, I
23 mean, I just know it's not good. I don't
24 really have --

25 Q And you also know that they asked for

1 A My accounts.

2 Q And that's another E-Trade account.

3 Do you see that?

4 A Yes.

5 Q What kind of trading occurred in that
6 account?

7 A Very aggressive trading.

8 Q Did it involve any trades involving
9 ADMD?

10 A Yes, it did.

11 Q Did it involve the transactions that
12 Enforcement has already questioned you on?

13 A Yes, it did.

14 MR. BADWAY: Now I want to go to, if
15 we can go to the -- one second. I'm
16 moving faster than I thought. Could you
17 go to JX-3.

18 Q I'm not going to read the same thing,
19 but if you could take a look at this document,
20 Mr. DiPaola. This is for the year 2016, it's
21 already entered into evidence and everything.

22 If you can go down to "Related Accounts",
23 has the language changed at all?

24 A No, same language.

25 Q Have the answers changed at all?

1 A No.

2 Q I'm going to ask you again, just to
3 be very quick about it so that we can move this
4 along, did you have a financial interest,
5 direct or indirect in this account?

6 A No, I did not.

7 Q Did you have any fiduciary interest?

8 A No, I did not.

9 Q And you listed other accounts that
10 you owned here as well, too; correct?

11 A Correct.

12 Q I'm just going to ask you these
13 questions again. Did you control your mother's
14 account in 2016?

15 A No, I did not.

16 Q Why didn't you control her account in
17 2016?

18 A Because it was my mother's money, all
19 I did was help her enter buy and sell orders
20 when she asked me to place trades.

21 Q You know, I didn't ask this question
22 before, but do you live with your mother?

23 A No, I do not.

24 Q Did you live with your mother in
25 2015?

1 A No, I did not.

2 Q Did you live with your mother in
3 2016?

4 A I did not.

5 Q Did you live with her in 2017?

6 A I did not.

7 Q Did you support your mother in any
8 material way?

9 A No.

10 MR. BADWAY: Let's move to JX-4.

11 Q I'm looking at 2017, has the language
12 changed here for 2017, sir?

13 A No, it has not.

14 Q Have the answers changed, sir?

15 A Yes.

16 Q Tell us why.

17 A Because it says if you're -- if it's
18 a joint account, that it must be listed.

19 MR. BADWAY: Let's go to that page, I
20 guess the last page.

21 A In 2017 I was made a joint account
22 holder. So prior to being made joint account
23 holder, I reached out to Chardan compliance and
24 requested permission to be added to my mother's
25 account. Chardan gave, granted the permission.

1 And then I, in turn, was added to the account
2 on E-Trade.

3 Q Okay, great. Now, I'm not going to
4 go through all the series of questions, but you
5 are not here contending that it wasn't your IP
6 address; is that correct?

7 A Correct.

8 Q Now, I want to ask you during this
9 time frame, from 2015 to 2017, did you disclose
10 all of your personal brokerage accounts with
11 Chardan?

12 A Yes, I did.

13 Q And did anyone at Chardan ever give
14 you the impression that you had to disclose
15 your mother's account prior to becoming the
16 co-owner of the account?

17 A No. No.

18 Q Did anyone from compliance tell you
19 that you had to do that?

20 A No.

21 Q Now, Mr. DiPaola, we've had some
22 testimony here today -- Chardan's not here,
23 they're not a witness, they haven't been a
24 witness in this case, but Chardan was
25 concerned, or at least Enforcement seems to

1 suggest that -- and I want to direct your
2 attention to this -- that Chardan not knowing
3 about your mother's account somehow was
4 important to them. Okay.

5 Could you let us know what your
6 understanding of that is?

7 A I mean, my mother -- if my mother --
8 if it's not my account, the rules are clearly
9 listed. You know, family accounts outside of
10 wife and children aren't required to be listed.
11 So it has nothing to do with Chardan, so it's
12 not under their purview.

13 Q Does Chardan maintain retail accounts
14 for its brokers?

15 A No, they don't.

16 Q Okay. So Chardan specifically
17 requests that the accounts be maintained
18 somewhere else; is that correct?

19 A Yes, it is.

20 Q Now, Chardan had your trading; is
21 that correct?

22 A It did.

23 Q And so it's your understanding
24 Chardan kept getting your account statements;
25 is that correct?

1 A They got every trade confirm, they
2 knew every trade that was ever done by me.

3 Q And they knew about your relationship
4 with ADMD; is that correct?

5 A Of course.

6 Q And they knew about your trading in
7 ADMD?

8 A Yeah. As Mr. Templeton pointed out,
9 I sat five feet from Joe Reda, and Joe Reda
10 could hear my conversations. So obviously they
11 knew about my discussions when I spoke to ADMD.

12 Q And did Chardan ever complain about
13 your trading in ADMD?

14 A Never.

15 Q Did they ever indicate to you that
16 you were engaging in insider trading?

17 A No, never.

18 Q Did they ever indicate to you that
19 you were manipulating the price of the stock?

20 A Never.

21 Q Did they ever indicate to you that
22 you were engaging in some form of front
23 running, or something along those lines?

24 A Never.

25 Q Did they ever indicate to you that

1 What did you do for your mother regarding
2 the E-Trade account?

3 A I would enter the buys and sells for
4 her, since she didn't have a computer.

5 Q And did you discuss these
6 transactions with your mother prior to entering
7 them in?

8 A Yes, I did.

9 Q Now, you've heard the testimony from
10 Mr. Park, Mr. Roundy, about the multiple
11 transactions during the day. Okay.

12 Did you speak with your mother about the
13 multiple transactions during the day?

14 A That's no need to. If she gave me --
15 if she said, hey, buy me "X" amount of dollars
16 of stock and I had to enter it, you know, with
17 multiple orders, there's no rationale for
18 having to call her every time I entered an
19 order. There's one standing order, was buy me
20 the stock.

21 Q And also sell stock, too?

22 A Yeah, and the same goes for the sell
23 stock. I mean, again, when you're dealing with
24 illiquid stocks, you don't always get filled,
25 that's the whole point. So, you know. And if

1 the stock is, you know, doesn't trade that
2 much, you can't enter huge orders, because they
3 show up on the bid or on the ask. And you got
4 to do it in small pieces, it's just the way it
5 is.

6 Q And did you discuss this with your
7 mother?

8 A I don't recall if I -- yeah. I mean,
9 I don't recall how we discussed, exactly how.

10 Q And did you discuss the transactions
11 with your mother?

12 A We always discussed what we were
13 buying and selling. She knew. She knew what
14 was going on.

15 Q And Enforcement has been contending
16 that you exercised discretionary authority over
17 your mother's account.

18 Is that true?

19 A No, it's not.

20 Q Why is that not true?

21 A Because it's my -- because A, we
22 discussed the trades prior to; B, I was not her
23 stockbroker, I was her son helping her enter
24 buys and sells.

25 Q And Enforcement also contends that

1 you controlled the account.

2 Is that correct?

3 A False.

4 Q Why is that false?

5 A Because it wasn't my money, it was my
6 mother's money. And I was simply a son helping
7 a mother execute trades.

8 Q Who owned the account?

9 A My mother.

10 Q Whose money was in the account?

11 A My mother's.

12 Q Did you own the account?

13 A I did not.

14 Q Now I'm going to show you what's been
15 marked as JX-2.

16 MR. BADWAY: I believe this has
17 already been entered into evidence,
18 Mr. Campbell.

19 HO CAMPBELL: It has.

20 Q I direct you down to family account.
21 Do you see that, sir?

22 A Yes.

23 Q And I'm sorry, excuse me, related
24 accounts. You can go down little further.

25 Do you see that?

1 A Yes.

2 Q Related account?

3 A That's it, yeah.

4 Q Related account, why don't you read
5 it for the panel.

6 A "Related account is any securities
7 account other than an employee or a family
8 account, in which any of the following has a
9 direct or indirect interest, including a
10 financial or fiduciary interest: Parents,
11 parents-in-law, children, children-in-law,
12 siblings or siblings-in-law. The definition
13 encompasses joint, partnership, trust and
14 custodial accounts, and the accounts of any
15 corporation controlled by the categories of
16 individuals listed."

17 MR. BADWAY: Now, if you can go to
18 the date, I just want to make sure we see
19 the date on there.

20 Q The date is 2015. Do you see that,
21 sir?

22 A Yes.

23 Q Enforcement contends that you should
24 have checked "yes" for this box.

25 Do you see that?

1 A Yes.

2 Q Why is that incorrect?

3 A Because I didn't have a -- I didn't
4 have a financial interest in the account. It
5 was my mother's account.

6 Q Did you have a direct interest in the
7 account?

8 A No, I did not.

9 Q Did you have an indirect interest in
10 the account?

11 A No, I did not.

12 Q Did you have a financial interest in
13 the account?

14 A I did not.

15 Q Did you have a fiduciary interest in
16 the account?

17 A I did not.

18 Q Now, I also want to note, if you look
19 at number 2, you listed accounts there; is that
20 correct?

21 A Yes, I did.

22 Q Those are three separate accounts?

23 A Correct.

24 Q Are they your accounts or a family
25 member's?

1 Roundy - Direct

2 example, relating to the insider
3 trading, relating to manipulation and
4 some of the individuals that they
5 mentioned here today, Mr. Schechter,
6 Mr. Reda, I did not anticipate -- you
7 know, you heard me last week. You
8 know, I was kind of surprised that
9 this has been so -- expanded so much
10 and I'm not, let me be very clear
11 about this with all due respect, I'm
12 not criticizing you, sir. I'm just
13 saying it's been expanded.

14 My client's rights, he has a
15 right to respond.

16 HO CAMPBELL: Well, let's
17 see what -- let's see what reflection
18 overnight allows us to conclude
19 tomorrow. Keep in mind that there is
20 no evidence that Mr. DiPaola engaged
21 in any inside trading or
22 manipulation. That's not what the --
23 what I understood the thrust of that
24 testimony to be, but that it was --
25 this is something you'll be able to

1 particular trade dates of ADMD by
2 Mr. DiPaola.

3 HO CAMPBELL: All right, I'm
4 satisfied. Your objection is overruled.

5 MR. BADWAY: May I just --

6 HO CAMPBELL: CX-80 is admitted.

7 MR. BADWAY: Mr. Campbell --

8 HO CAMPBELL: CX-80 is admitted, and
9 I don't think we need to hear any more
10 about it.

11 (Exhibit CX-80 admitted.)

12 MR. BADWAY: All right. Just note my
13 objection, Mr. Campbell.

14 HO CAMPBELL: Your objection is
15 always noted, Mr. Badway. Seriously.

16 BY MR. CHODOSH:

17 Q Mr. Roundy, I now want to discuss
18 with you requests that the staff made for
19 Mr. DiPaola's 2021 on the record interview.

20 MR. CHODOSH: Let's first display
21 JX-13, please.

22 Q And Mr. Roundy, you will see JX-13 is
23 a FINRA Rule 8210 request dated March 11, 2021
24 to Mr. Jason DiPaola, care of Mr. Badway,
25 asking that he appear, that Mr. DiPaola appear

1 on March 26, 2021 for his on the record
2 interview.

3 Do you see that?

4 A Yes, I see it.

5 Q To whom did the staff send JX-13 --
6 I'm sorry, I apologize.

7 How did the staff send the document?

8 A Sure.

9 MR. BADWAY: The document speaks for
10 itself.

11 MR. CHODOSH: Fair enough.

12 Q Mr. Roundy, do you see that the
13 document was sent by certified mail,
14 first-class mail and email to Mr. Badway?

15 A Yes.

16 Q Let's now turn to another document,
17 that is -- bear with me a moment.

18 MR. CHODOSH: Let's display JX-14.

19 MR. BADWAY: Mr. Campbell, what's the
20 purpose of all of this?

21 HO CAMPBELL: Let's ask Mr. Chodosh.

22 MR. CHODOSH: Well, I was just
23 getting across that the document was sent
24 in the various ways, but I will streamline
25 things. So with respect to JX-14, I ask

1 that it be admitted into evidence.

2 HO CAMPBELL: Is there any objection
3 to JX-14?

4 MR. BADWAY: No objection.

5 HO CAMPBELL: It's admitted.

6 (Exhibit JX-14 admitted.)

7 MR. CHODOSH: Let's turn to JX-16.

8 JX-16 includes a back and forth email
9 correspondence between FINRA staff and
10 Mr. Badway, in March 2021. I ask that it
11 be admitted.

12 MR. BADWAY: Let's see the other
13 pages.

14 HO CAMPBELL: Sure.

15 MR. BADWAY: Okay, we have no
16 objection.

17 HO CAMPBELL: All right, it is
18 admitted.

19 (Exhibit JX-16 admitted.)

20 MR. CHODOSH: Please display JX-17.

21 And JX-17 is additional back and
22 forth correspondence between FINRA staff
23 and Mr. DiPaola's counsel, Ernest Badway
24 in March of 2021. I ask that JX-17 be
25 admitted into evidence.

1 HO CAMPBELL: Any objection,
2 Mr. Badway?

3 MR. BADWAY: No, it's a joint
4 exhibit, Mr. Campbell.

5 HO CAMPBELL: Right, I know that,
6 thank you. You know, still sometimes a
7 lawyer has second thoughts, so you don't,
8 and it's admitted.

9 (Exhibit JX-17 admitted.)

10 MR. CHODOSH: Now please display
11 JX-19.

12 HO CAMPBELL: Which is already in.

13 MR. CHODOSH: Yes.

14 BY MR. CHODOSH:

15 Q Mr. Roundy, did FINRA staff issue
16 JX-19, a Rule 8210 request for Mr. DiPaola's
17 April 5th, 2021 testimony by certified mail,
18 first-class mail, and email, as indicated on
19 the first page of the exhibit?

20 MR. BADWAY: Mr. Campbell, the
21 document is already admitted and it speaks
22 for itself.

23 HO CAMPBELL: I'm not quite sure, Mr.
24 Chodosh, what -- where you're going with
25 this. Do you have another question to

1 THE WITNESS: JX-21 is correspondence
2 from the Department of Enforcement to
3 Mr. DiPaola, care of Ernest Badway. And
4 it's basically what would be termed as a
5 Wells Notice.

6 MR. CHODOSH: And JX-21 has been
7 admitted?

8 HO CAMPBELL: Yes, sir.

9 MR. CHODOSH: Okay, thank you.

10 Let's turn to JX-22, please.

11 BY MR. CHODOSH:

12 Q Mr. Roundy, what is JX-22?

13 A So JX-22 is an email, an email from
14 Mr. Chodosh to Mr. Badway, dated April 1st,
15 2021 at 9:51 a.m. And Mr. Chodosh is asking
16 Mr. Badway to confirm whether, ah, Mr. DiPaola
17 will appear on April 5th for his interview, as
18 scheduled.

19 MR. CHODOSH: I move to admit JX-22.

20 HO CAMPBELL: Any objection to that
21 Joint Exhibit, sir?

22 MR. BADWAY: Mr. Campbell, if we can
23 just try to streamline this a little bit.

24 First of all, I could object if I
25 wanted to, because that's not a proper

1 Roundy - Direct

2 quickly through, CX-37 because it was
3 presented before. Please display
4 CX-37.

5 HO CAMPBELL: I have it down
6 as admitted.

7 MR. CHODOSH: Oh, was it
8 admitted? I'm sorry.

9 May I ask one question?

10 HO CAMPBELL: Sure.

11 Q Mr. Roundy, what questions,
12 if any, did you have for Mr. DiPaola with
13 respect to CX-37?

14 A Sure. So CX-37 is an e-mail
15 between Jason DiPaola and Jason Adelman
16 dated February 24, 2016 with an
17 attachment titled Strategic Plan for
18 Advanced Medical Isotope. So some of the
19 questions regarding this would be what
20 the strategic plan was, you know, what
21 did it mean to the issuer, who he shared
22 it with and things of that nature, trying
23 to get an understanding of why he was
24 developing a strategic plan for an issuer
25 that his firm wasn't engaged with.

1 DiPaola - Direct
2 advisory agreement was marked as
3 Exhibit CX-17 in evidence as of this
4 date.)

5 Q Mr. DiPaola, you maintain a
6 brokerage account at E*Trade, several
7 accounts at E*Trade; correct?

8 A Yes.

9 Q And one of them was an
10 account ending in the numbers 9833; is
11 that right?

12 A Yes.

13 MR. TEMPLETON: Now, if we
14 could please display CX-12 at page 1,
15 we'll start there for 10 seconds and
16 then we'll go to page 84.

17 (The above-referred-to
18 account statements were marked as
19 Exhibit CX-12 for identification as
20 of this date.)

21 Q Mr. DiPaola, do you
22 recognize CX-12 as -- and if you want to
23 you can look at the hard copies which I
24 believe you have on the table there -- as
25 a group of your E*Trade monthly

1 DiPaola - Direct
2 statements for your E*Trade account with
3 the account number ending in 9833 that
4 runs from the period March 2015 through
5 October 2015?

6 A Yes.

7 MR. TEMPLETON: Now if we
8 could go to page 3 of CX-12.

9 Q As of October 31, 2015, the
10 total value of securities in this
11 particular E*Trade account of yours,
12 9833, was \$119,000, correct, the
13 securities?

14 A All right.

15 MR. TEMPLETON: Okay. And
16 if we go to page 5 then.

17 Q And as of October 31, 2015,
18 all of that value, the 119,000, was in
19 Advanced Medical Isotope stock; correct?

20 A It appears that way.

21 Q Yeah. And at that point you
22 owned 85 million shares of ADMD on
23 October 31, 2015?

24 MR. BADWAY: Mr. Campbell,
25 we object. We've already

1 Roundy - Direct

2 level?

3 A So high level it shows
4 purchases of ADMD by Mr. DiPaola in his
5 BMA account it looks like from March 2015
6 through December of 2015.

7 Q What was the significance of
8 CX-68 to your investigation?

9 A We took this data and
10 included it with data we obtained from
11 Fidelity, as well as E*Trade to get an
12 understanding of Mr. DiPaola's holdings
13 in ADMD, as well as transactional
14 activity.

15 Q Thank you.

16 MR. CHODOSH: I move for
17 admission of CX-68 into evidence.

18 HO CAMPBELL: Any objection?

19 MR. BADWAY: We have no
20 objection. We've already stipulated
21 he traded in it.

22 HO CAMPBELL: No objection,
23 it is admitted. Thank you,
24 Mr. Badway.

25 (The above-referred-to data

1 Roundy - Direct
2 e-mail was marked as Exhibit CX-3 in
3 evidence as of this date.)

4 HO CAMPBELL: All right,
5 Mr. Chodosh.

6 MR. CHODOSH: Please turn
7 to -- bear with me one moment.
8 Please turn to CX-68.

9 (The above-referred-to data
10 excerpts were marked as Exhibit CX-68
11 for identification as of this date.)

12 Q While we are turning to
13 that, Mr. Roundy, what, if any, order
14 data did the staff obtain from BMA and
15 Fidelity?

16 A FINRA or the staff sent
17 requests for information to both firms
18 requesting Mr. DiPaola's order and
19 execution data for the brokerage accounts
20 he held at each firm.

21 Q What is CX-68?

22 A CX-68 is data excerpted from
23 BMA's securities blotter of Jason
24 DiPaola's orders in ADMD.

25 Q What does CX-68 show, high

1 DiPaola - Direct

2 Mr. Badway's comment on that.

3 But, yes, I offer JX-1 into
4 evidence at this point and CX-1
5 later.

6 HO CAMPBELL: All right. It
7 is admitted.

8 (The above-referred-to CRD
9 record was marked as Exhibit JX-1 in
10 evidence as of this date.)

11 MR. BADWAY: Note our
12 objection, please.

13 HO CAMPBELL: Yes. Your
14 objection is noted, sir.

15 Q Your current employer is
16 Axiom Capital Management; is that right?

17 A No.

18 Q Okay. What's your current
19 employer?

20 A First New York.

21 Q First New York. And how
22 long have you been at First New York?

23 A Since May of '19.

24 Q So you left Chardan and
25 joined First New York; is that correct?

1 Roundy - Direct

2 A Sure. So prior to joining
3 FINRA, I worked for an organization
4 called General Dynamics NASSCO, National
5 Steel and Ship Building Company. I
6 worked within their finance department
7 and assisted with risk management and
8 their Worker's Compensation Program.

9 Q What is your educational
10 background?

11 A Sure. I have a Bachelor of
12 Science in business administration from
13 San Diego State University and I'm
14 currently 2023 a BA candidate at the
15 University of Kansas.

16 Q What, if any, certifications
17 do you hold?

18 A So at my prior career at
19 NASSCO, I had a number of certifications
20 involving Worker's Compensation
21 certificates and stuff of that nature and
22 I currently hold ACAMS, which is a money
23 laundering certification specialist that
24 I completed.

25 Q Thank you.

CERTIFICATE OF SERVICE

On November 15th 2023, a copy of Jason DiPaola's Reply Brief in Response To Opposition was filed to be served upon the following, via electronic email:

FINRA Department of Enforcement

Elizabeth.sisul@finra.org

Dated: Babylon, New York

November 15th, 2023

By: _____

Jason DiPaola

Pro Se Counsel for Respondent