BCLP. Client Intelligent

Insights

A CAUTIONARY TALE OF A SMALL BROKER-DEALER'S AND ITS ASSOCIATED PERSONS' FAILURE TO HONOR FINRA'S SUSPENSION RULES

Jan 27, 2021

Being a small business owner *is* tough. You often wear several hats and juggle multiple responsibilities while you try to build a successful business. This is especially true for small financial services firms that are subject to rigorous oversight by the U.S. the Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA"). In an effort to thrive in the securities industry, these competing demands often overwhelm small broker-dealers (defined as those with fewer than 100 registered representatives) which make up approximately 90% of the registered broker-dealers and their associated persons.

FINRA recognizes the challenges small broker-dealers face and, in recent years, has touted its willingness to help support small firms. But, from an enforcement perspective, FINRA will hold small broker-dealers and their associated persons accountable for violations of the securities laws and regulations. The legal saga of Bruce Martin Zipper ("Zipper") and Dakota Securities International ("Dakota") is a cautionary tale for small broker-dealers and their associated persons.

Zipper, founder and majority owner of Dakota, entered into a Letter of Acceptance, Waiver, and Consent ("AWC") with FINRA in April 2016 after failing to amend his U-4 with three judgments against him. As part of the AWC, Zipper consented to a statutory disqualification and three-month suspension, which was to run from May 31, 2016 through August 30, 2016 (the "Suspension Period"). This barred him from associating with Dakota (or any member firm) in *all capacities.* FINRA was unwilling to agree to a "principal capacity" suspension, which would have allowed Zipper to perform limited activities through Dakota. In an "all capabilities" suspension, FINRA Rule 8311 prohibited Zipper from undertaking any conduct, including even **clerical or administrative functions** for a member firm's securities business.

During the Suspension Period, Zipper had his friend Robert Lefkowitz ("Lefkowitz") run Dakota so the firm could remain in business. Dakota failed to restrict Zipper's access to the firm's email system or trading systems. This allowed Zipper to operate Dakota from his home. He regularly emailed clients, placed hundreds of trades for clients and held himself out as Dakota's "President." Lefkowitz responded to incoming calls and emails, opened new accounts, handled Dakota's

finances, and entered some trades. But Lefkowitz – fully aware of Zipper's activity – failed to stop Zipper from acting as an "associated person" during his suspension.

Not surprisingly, when FINRA's Enforcement personnel learned of Zipper's actions, it filed a complaint against Zipper and Dakota. FINRA"s Hearing Panel permanently barred Zipper and expelled Dakota from FINRA membership on June 18, 2018. Zipper appealed the Hearing Panel's findings to the National Adjudicatory Council ("NAC") and the SEC. The SEC mostly upheld the NAC's findings and sanctions, but it remanded the matter to the NAC so it could clarify whether the sanctions should remain in light of a finding the SEC set aside. Although Zipper's and Dakota's legal saga continues, this case serves as a reminder of how expansively the SEC and FINRA will view certain conduct activities carried out on behalf of the securities business as triggering associated person status.

Experienced compliance professionals would not likely be surprised by the SEC's findings that Zipper's conduct during his Suspension Period (described above) should have been performed by an associated person of Dakota that was not statutorily disqualified. The SEC has ample precedent for arriving at its conclusion.[1]

These decisions highlight the trend that regulators view "associated person" conduct broadly and their objective with these types of actions is to protect the public, regardless of the size of the firm.

Firms should take note of these decisions and evaluate whether (and to what extent) they need to screen individuals performing activities related to the firm's securities business. FINRA and the SEC will evaluate each individual's role on facts and circumstances basis. Firms would be wise to do so as well.

1. See, e.g., Bruce Zipper & Dakota Sec. Int'l, Inc., Release No. 90737, n.21 (Dec. 21, 2020) *citing* Joseph Patrick Hannan, Exchange Act Release No. 40438, 1998 WL 611732, at *1, 4 (Sept. 14, 1998)(unregistered person paid hourly wage who answered phones, logged emails, and prepared sales report); Vladislav Steven Zubkis, Exchange Act Release No. 40409, 1998 WL 564562, at *3-4 (Sept. 8, 1998)(unregistered person who acted as CEO and possessed "some" firm documents); Stephen M. Carter, Exchange Act Release No. 26264, 1988 WL 902876, at *1 (Nov. 8, 1988) (unregistered "customer cashier").

RELATED PRACTICE AREAS

- Securities Litigation and Enforcement
- Financial Regulation Compliance & Investigations
- Broker-Dealer and Investment Advisor Regulatory Enforcement, Disputes and Investigations
- White Collar

MEET THE TEAM

Jeffrey A. Ziesman

Kansas City

jeff.ziesman@bclplaw.com
+1 816 374 3225
