FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CANDACE JEAN LEE (CRD No. 1502112), Respondent.	Disciplinary Proceeding No. 2013035095301 Hearing Officer–AHP **CORRECTED HEARING PANEL DECISION GRANTING MOTION FOR SUMMARY DISPOSITION**[1] October 1, 2015

Enforcement is precluded from relitigating issues previously determined in another case. Complaint dismissed.

Appearances

For FINRA's Department of Enforcement, Complainant: Meghan S. Bailey and Aimee Williams-Ramey, San Francisco, California.

For Candace Jean Lee, Respondent: Alan M. Wolper and Heide VonderHeide, Ulmer & Berne, LLP, Chicago, Illinois.

DECISION

Candace Jean Lee is associated with FINRA member firm Financial Services International Corp. ("FSIC"). On August 1, 2012, the State of Washington's Department of Financial Institutions Securities Division entered a consent order (the "Washington Order") that suspended her from acting in all principal or supervisory capacities at any broker-dealer for 12 months (from August 1, 2012, until July 31, 2013) (the "Suspension Period") and required that she retake and pass the examination for registration as a general securities principal before she could again associate with any firm in any principal or supervisory capacity. The Washington Order also rendered Lee statutorily disqualified from associating with any broker-dealer. Thus,

[1] This decision corrects a typographical error in the original decision dated September 30, 2015.

she was unable to continue her association with FSIC unless the firm obtained approval of her continued association from FINRA.

In September 2012, FSIC filed a Continuing Membership Application (the "Application"), requesting that FINRA permit Lee to continue to associate with the firm in a registered capacity. FINRA's Department of Member Regulation opposed the Application. Following the hearing[2] on the Application, FINRA's Statutory Disqualification Committee presented a written recommendation to FINRA's National Adjudicatory Council ("NAC"). Thereafter, on April 22, 2015, the NAC approved FSIC's Application.[3]

About one month before the NAC approved FSIC's Application to permit Lee to continue her association with the firm, the Department of Enforcement initiated this disciplinary proceeding. The gravamen of Enforcement's Complaint is that Lee violated the terms of the Washington Order by acting in a principal and supervisory capacity during the Suspension Period and that she thereby violated FINRA Rule 2010, which requires persons associated with a FINRA member firm to observe high standards of commercial honor and just and equitable principles of trade. Enforcement relies on the identical factual allegations Member Regulation presented at the statutory disqualification hearing.

Before the Hearing Panel at present is Lee's motion for summary disposition. Lee moves to dismiss this action under the doctrine of collateral estoppel[4] because FINRA already litigated the statutory disqualification proceeding that raised the identical issues presented in this case. We agree that the NAC's decision in the former litigation precludes this disciplinary proceeding; thus, Enforcement's Complaint must be dismissed.

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[2] The hearing was held on February 27, 2014. Following the hearing, the firm changed Lee's proposed supervisor. Thus, the Statutory Disqualification Committee held a supplemental hearing on December 4, 2014, to address the new supervisor's qualifications.

[3] *Continued Ass'n of Candace J. Lee*, Decision No. SD1962 (NAC Apr. 22, 2015), http://www.finra.org/sites/default/files/SD-1962_Lee.pdf.

[4] The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as res judicata. *See Brewer v. District of Columbia*, 2015 U.S. Dist. LEXIS 66848, at *21 (May 22, 2015). These terms replace the more confusing lexicon of "merger" and "bar" for claim preclusion and the doctrines once known as "collateral estoppel" and "direct estoppel" for issue preclusion. *Taylor v. Sturgell*, 553 U.S. 880, 892 n.5 (2008). For clarity, we use the terms claim preclusion and issue preclusion in this decision.

I. Background

A. Lee[5]

Lee has worked in the securities industry for nearly 30 years. In 1995, she founded FSIC. Just before the Suspension Period began, Lee served as FSIC's president, chief executive officer, chief compliance officer, and sales supervisor. Most of Lee's business at the firm was on the advisory side; she had only three brokerage accounts in 2014, as she testified at the statutory disqualification hearings.[6]

Currently, Lee is associated with FSIC as a general securities representative.[7] Other than the Washington Order, Lee has no prior disciplinary history.[8]

B. Origin of this Disciplinary Proceeding

In March 2014, in connection with FSIC's 2013 cycle examination, Member Regulation discovered facts that indicated that Lee may have continued to function as a principal and supervisor during the Suspension Period. Member Regulation referred the matter to Enforcement, which issued a Wells Letter to Lee in November 2014. In late March 2015, Enforcement filed the Complaint initiating this disciplinary proceeding.[9]

II. Prior Litigation

Member Regulation recommended that FSIC's Application be denied on five grounds, one of which is relevant to this proceeding. Member Regulation contended that Lee had engaged in numerous activities that required registration as a principal, as well as certain supervisory activities, in violation of the terms of the Washington Order.[10] Lee and FSIC disputed Member Regulation's characterization of her activities. They further argued that they had made reasonable efforts to comply with the terms of the Washington Order, including consulting with counsel and their compliance consultant regarding the limits imposed by the Washington Order.

At the February 2014 statutory disqualification hearing, Member Regulation presented evidence of the various ways that it claimed Lee had acted in a principal or supervisory capacity

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[5] Many of the facts related in this decision are taken from the NAC's decision granting FSIC's Application to permit Lee to remain associated with the firm.

[6] *Ass'n of Lee*, slip op. at 4.

[7] Mot. for Summary Disposition at 3 (Statement of Undisputed Facts ¶ 2).

[8] *Ass'n of Lee*, slip op. at 5.

[9] *Id.*

[10] *Id.* at 8.

during the Suspension Period. Following a detailed review of the record, the NAC concluded that Lee and FSIC had "attempted in good faith to comply with the Washington Order and in fact [had] substantially complied with the Washington Order."[11] The NAC further concluded that Lee and the Firm had not intentionally violated or flouted the terms of the order as Member Regulation contended.[12]

The NAC applied the definition of "principal" under FINRA's rules in evaluating Lee's conduct during the Suspension Period. As the NAC noted, NASD Rule 1021(b) defines a "principal" as an individual in certain listed capacities who is "*actively* engaged in the management of the member's … securities business, including supervision, solicitation, conduct of business or the training of [associated] persons."[13] Individuals who do not fall into one of the listed categories in Rule 1021 are nonetheless principals "where … the requirement of *active* engagement in the management of the member's … securities business is satisfied."[14]

The NAC cited the various factors and activities adjudicators consider in determining whether an individual is *actively* engaged in a firm's securities business, and thus acting in a principal capacity. They include whether the individual:

- had authority over hiring, firing, and recruiting at the firm;
- negotiated or executed contracts and agreements with third parties on behalf of the firm;
- directed firm activities and participated in developing or implementing firm policies and procedures;
- controlled the firm's bank accounts or authorized or directed issuance of checks and disbursements;
- held herself out to the public as having authority to communicate for, and make commitments on behalf of, the firm; and
- supervised firm employees, others at the firm followed her orders, or individuals at the firm answered to her.[15]

And in determining whether an associated person is a supervisor, adjudicators analyze the person's assigned responsibilities and the activities the person *actually* performed.[16]

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[11] *Id.* at 11.

[12] *Id.*

[13] NASD Rule 1021(b) (emphasis added).

[14] *Ass'n of Lee*, slip op. at 9 (emphasis added) (citing *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *25 n.31 (Apr. 11, 2008)).

[15] *Ass'n of Lee*, slip op. at 9 (citations omitted).

The NAC then looked at prior cases where adjudicators have concluded that an individual acted in a principal capacity and observed that in those cases "the individual in question actively engaged in multiple activities that supported a finding that he was acting as a principal."[17] Also, the NAC observed that in many of these cases "the individual's actions appear to have been in flagrant disregard of FINRA's registration rules or mandated prohibitions from acting as a principal."[18] Next, the NAC discussed the legal standard applicable to its analysis of the evidence Member Regulation presented concerning Lee's activities during the Suspension Period.

A. Lee's Service on the Firm's Board of Directors

Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that Lee's service on FSIC's board of directors demonstrates that she acted as a principal and violated the Washington Order.[19] The NAC found otherwise.

The NAC first observed that an inside director who sits on a member firm's board of directors is presumed to be involved in the firm's day-to-day management and is therefore required to be registered as a principal.[20] But here the NAC determined that Lee had rebutted this presumption.[21] FSIC's board met only once after the date of the Washington Order. It met on September 4, 2012, to approve actions to comply with the Washington Order and Lee's suspension, including acknowledging Lee's resignation as president, chief executive officer, chief compliance officer, and sales supervisor of the firm effective as of August 1, 2012, and the appointment of a replacement to the position of president and chief executive officer.[22] The only other board member acknowledged Lee's resignation from the firm's board of directors in May 2013. The NAC found that Lee did not vote on any matters as a board member during the Suspension Period other than her resignation. Under these facts and circumstances, the NAC concluded that "Lee's participation in a single board meeting to effectuate her resignations of various firm management positions" did not violate the terms of the Washington Order because she had not been actively engaged in the firm's day-to-day management.[23]

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[16] *Id.* at 10 (quoting *Gordon Kerr*, 54 S.E.C. 930, 935 (2000)).

[17] *Ass'n of Lee*, slip op. at 10.

[18] *Id.*

[19] Compl. ¶ 9.

[20] *Ass'n of Lee*, slip op. at 11.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 12.

B. Lee Signed Checks and Reviewed Account Reconciliations

Second, Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that during the Suspension Period Lee continued to authorize and sign checks on FSIC's behalf and review the firm's monthly account statements.[24] Enforcement reasserts Member Regulation's argument that these activities violated the terms of the Washington Order because such activities generally evidence an individual's control of, and authority over, a firm's finances.[25]

The NAC found that Lee continued to physically sign checks on behalf of the firm after August 1, 2012, but she did not exercise actual control over the firm's checking account.[26] The NAC found that Brenda Pingree, FSIC's co-founder and a registered financial and operations principal, determined what bills were paid and when they were to be paid.[27] Pingree also had authority to sign checks and authorize disbursements even if Lee refused to do so. And Lee never refused to sign a check Pingree presented or questioned a check or payment Pingree authorized.[28]

Although Lee did not exercise actual control over the firm's checking account during the Suspension Period, the NAC noted that she had the ability to do so.[29] But the NAC distinguished Lee's conduct from that described in many of the cases in which adjudicators had found that an individual exercised actual authority over a firm's finances and thus acted in a principal capacity.[30]

In sum, the NAC concluded that Lee's actions in signing checks and reconciling the firm's checking account did not violate the terms of the Washington Order because she did not in fact exercise actual control over FSIC's checking account during the Suspension Period.

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[24] Compl. ¶ 10.

[25] *See Dep't of Enforcement v. Harvest Capital Invs., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *16, *27 (NAC Oct. 6, 2008) (finding that an individual acted as a principal where, among other things, he was the sole authorized signatory on the firm's checking account and he authorized or directed issuance of all firm checks and disbursements).

[26] *Ass'n of Lee*, slip op. at 13.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* n.18 (citing cases).

C. Lee's Communications with Vendors

Third, Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that Lee's leadership role in the negotiation and formation of contracts between the firm and third parties evidenced principal activity.[31] The NAC rejected Member Regulation's contentions.

In reaching its conclusion that Lee did not actively negotiate contracts during the Suspension Period, the NAC thoroughly reviewed Member Regulation's evidence, which primarily consisted of emails between Lee and third parties and the several contracts Pingree signed during the Suspension Period. The NAC found that Pingree and the firm's chief compliance officer circumscribed Lee's activity. Lee spoke to third parties at Pingree's and the firm's chief compliance officer's direction to obtain contract terms within parameters they set. Pingree and the firm's chief compliance officer were "fully involved with, and aware of, Lee's discussions with third party vendors."[32] Under the circumstances, the NAC could not find that Lee acted as a principal with respect to her communications with third party vendors.[33]

D. Lee's Involvement with the Recruitment and Hiring of Employees

Fourth, Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that Lee continued to participate in recruiting and hiring firm personnel during the Suspension Period.[34] Here again, the NAC rejected Member Regulation's contention.[35] The NAC concluded that Lee had not actively engaged in hiring, firing, or recruiting activities such that she acted in a principal capacity in violation of the Washington Order. The NAC based its conclusion on the following facts.

- The record did not show that Lee hired or fired any firm employees during the Suspension Period.
- Similar to Lee's activities concerning third party vendors, Pingree authorized and directed her to engage in preliminary discussions with potential recruits.
- Pingree was aware of Lee's activities.
- Lee handed off potential recruits who expressed an interest in the firm.
- Lee did not make any recommendations concerning potential recruits.

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[31] *Id.* at 13; Compl. ¶ 12.

[32] *Ass'n of Lee*, slip op. at 15.

[33] *Id.*

[34] *Id.*; Compl. ¶ 11.

[35] *Ass'n of Lee*, slip op. at 17.

Considering all of these factors, the NAC concluded that her activities "simply did not rise to the level of the recruiting, hiring, and firing activities that adjudicators have previously found to be acting as a principal."[36]

E. Lee Held Herself Out as Having Authority to Speak for the Firm

Fifth, Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that Lee continued to hold herself out as having authority to speak on the firm's behalf during the Suspension Period.[37] The NAC found that there appeared to have been some discrete instances where Lee held herself out as speaking on behalf of the firm.[38] But the NAC also noted that the evidence reflected other instances where Lee corrected (or attempted to correct) the perception that she had authority to act of the firm's behalf during the Suspension Period.[39]

Overall, the NAC concluded that the limited instances where Lee arguably held herself out as speaking for the firm did not rise to the level of active engagement in the day-to-day management of the firm. As the NAC pointed out, the controlling standard is whether all of the relevant facts and circumstances show such a degree of active management.[40] Here, the evidence failed to show that level of engagement.

F. Lee's Management and Supervisory Authority

Finally, Enforcement contends (as did Member Regulation at the statutory disqualification hearing) that Lee continued to act in a supervisory capacity over individuals at the firm.[41] At the statutory disqualification hearing, Lee disputed Member Regulation's characterization of her activities. She contended that she acted only in a clerical capacity. The NAC credited her testimony and concluded that Lee believed that she was purely acting in a clerical capacity.

Despite the NAC's conclusion that Lee took no intentional action to exercise supervisory authority over others at the firm, it nonetheless found that Pingree and the firm's chief compliance officer could have reasonably believed at times during the Suspension Period that Lee, as the firm's majority owner and former president and chief executive officer, continued to exercise supervisory authority over their activities. For example, the NAC pointed out that on

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[36] *Id.*

[37] *Ass'n of Lee*, slip op. at 17; Compl. ¶ 13.

[38] *See Ass'n of Lee*, slip op. at 17.

[39] *Id.* at 17-18.

[40] *Id.* at 10. *See also Gordon*, 2008 SEC LEXIS 819, at *32.

[41] Compl. ¶ 14.

several occasions Lee appeared to have directed Pingree and the firm's chief compliance officer to correct items, or reminded them to do certain things. In the NAC's words, these actions "appear to have exceeded the scope of her permissible activities under the Washington Order."[42] But, in summary, the NAC concluded that during the entire Suspension Period Lee acted in good faith in attempting to comply with the terms of her suspension and that she did substantially comply with the terms of the Washington Order.[43]

G. Lee's Efforts to Comply with the Terms of the Washington Order

We give great weight to the NAC's conclusions regarding Lee's efforts to comply with the terms of the Washington Order. Member Regulation had argued that Lee and FSIC had "flouted" the Washington Order and the terms of her suspension under that order. The NAC disagreed. Specifically, the NAC found that "Lee and the Firm made reasonable, good faith efforts to understand the parameters of the Washington Order and to comply with the order."[44]

In setting forth its conclusion that Lee acted in good faith, the NAC pointed to several significant factors. First, the NAC noted that she and the firm initially consulted with the attorney who helped negotiate the Washington Order. Lee and the firm sought guidance on the limits the order imposed on Lee's activities. This attorney advised them that Lee could remain as the firm's president and chief executive officer. The attorney cautioned however that she should not be too involved in the firm's day-to-day management. As the attorney put it, she should "just stay at the 5,000 foot level."[45] But soon after the Washington Order was entered, they learned that the order rendered Lee statutorily disqualified.[46] At this point, their first attorney referred them to a second attorney.

The second attorney informed Lee that she could not continue to serve as the president and chief executive officer during the Suspension Period. The second attorney advised:

- Lee could continue to serve on the firm's board of directors at a "5,000-foot" level, provided that she did not engage in any day-to-day management of the firm.
- Lee could perform administrative duties, including drafting documents in an administrative or secretarial role.

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[42] *Ass'n of Lee*, slip op. at 19.

[43] *Id*. at 20. The NAC specifically noted that Lee testified that she was advised that she could continue to function in a clerical capacity during the Suspension Period. *Id*. at 19 n.24.

[44] *Id*. at 21.

[45] *Id*.

[46] The Washington Order did not notify Lee that the order would result in her statutory disqualification.

- Lee could engage in recruiting activities provided that she limited her activity to providing potential recruits with information concerning the Firm and performing research on behalf of recruits, and she did not engage in negotiations.
- Lee could perform research on vendors and potential vendors.
- Lee could sign checks.[47]

To comply with the Washington Order and accommodate the restrictions on Lee's activities, the firm reassigned some of Lee's responsibilities to others. Also, Lee notified all registered representatives at the firm that another person would be assuming the role of "Rep Supervisor and Chief Compliance Officer."[48]

The NAC concluded that Lee and the firm had "made numerous, good faith attempts to comply with the Washington Order." And while the NAC noted that those efforts did not exonerate the instances in which Lee acted in a principal or supervisory capacity, the NAC considered their good-faith efforts in concluding that they did not intentionally violate the terms of the Washington Order. Further, the NAC specifically cited their efforts to comply with the Washington Order as distinguishing this case from many of the other cases in which individuals inappropriately, and intentionally, acted as a principal.[49]

III. Legal Standards

A. Motion for Summary Disposition

A hearing panel may grant a motion for summary disposition under FINRA Rule 9264(e) if there is no genuine issue with regard to any material fact and the party that files the motion is entitled to summary disposition as a matter of law.[50] "The movant bears the burden of demonstrating the absence of a genuine issue of material fact and, once that burden is met, the non-moving party must then demonstrate the existence of any material, disputed facts."[51]

B. Issue Preclusion

The doctrine of issue preclusion bars "'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,'

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[47] *Ass'n of Lee*, slip op. at 21.

[48] *Id.* at 22.

[49] *Id.*

[50] *Dep't of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *2 (NAC Feb. 25, 2014).

[51] *Id.* at *3.

even if the issue recurs in the context of a different claim."[52] "Under the doctrine of issue preclusion, a right, question, or fact distinctly put in issue, and directly determined by a court of competent jurisdiction" cannot be again litigated in a subsequent proceeding.[53] This doctrine along with the doctrine of claim preclusion protect against "the expense and vexation attending multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on judicial action by minimizing the possibility of inconsistent decisions."[54]

Generally, courts prohibit relitigation of facts and issues "where (1) the issue was actually litigated; (2) was determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the party; (4) under circumstances where the determination was essential to the judgment."[55]

IV. Analysis

We conclude that each of the prerequisites for issue preclusion is present in this case and that therefore the Complaint must be dismissed. Member Regulation raised and litigated each of the factual allegations asserted in the Complaint, and the NAC made detailed findings as to each. Contrary to Enforcement's argument in this proceeding, the issue of whether Lee violated the terms of the Washington Order was a principal focus of the prior proceeding. Member Regulation hinged its opposition to the Application in large measure on its contention that Lee violated the order thereby making the determination of this issue essential to the NAC's final decision. Nonetheless, Enforcement argues that it should be entitled to relitigate the identical facts and issue because the NAC's decision granting the Application in the statutory disqualification proceeding was "premised on an entirely different burden of proof than that applicable in this disciplinary proceeding."[56] Enforcement's argument is unpersuasive.

Enforcement's argument that the prior statutory disqualification proceeding was premised on a different burden of proof is mistaken. In the earlier case, as in the present case, the standard of burden of proof is preponderance of the evidence. Member Regulation was not required to meet a higher standard on its affirmative claim that Lee had violated the Washington Order during the Suspension Period. Also contrary to Enforcement's argument, there has not been a

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[52] *Taylor*, 553 U.S. at 892 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001)). In contrast, the doctrine of "claim preclusion" bars "successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit." *Id.* (quoting *New Hampshire v. Maine*, 532 U.S. at 748).

[53] 18 James Wm. Moore et al., Moore's Federal Practice ¶ 132.02[2][a] (3d ed. 2014).

[54] *Taylor*, 553 U.S. at 892 (quoting *Montana v. United States*, 440 U.S. 147, 153-54 (1979)).

[55] *See, e.g., Brewer*, 2015 U.S. Dist. LEXIS 66848, at *23-24.

[56] Opp'n at 2.

material shift in the burden of persuasion. In both cases, FINRA had or has the burden—not Lee—to establish that she violated the Washington Order. In the first case, FINRA assumed this burden when it placed her conduct in issue. In the present proceeding, FINRA bears this burden under the Code of Procedure. Moreover, Member Regulation had the opportunity and incentive to litigate the issue zealously. The NAC's decision makes clear that Member Regulation tenaciously pursued the issue of her violation of the Washington Order. And ultimately, FINRA's core concern in each proceeding is the same—protection of the investing public. Thus, there is no prejudice to FINRA if Enforcement is precluded from relitigating the same facts and issues in this disciplinary proceeding.[57]

The real issue before us—which Enforcement fails to address—is whether as a matter of law Lee can be found to have acted unethically under the unique facts and circumstances of this case. We conclude that she cannot—the NAC's findings unambiguously prevent such an outcome.

The NAC carefully and exhaustively reviewed her conduct during the Suspension Period and conclusively found

- Lee acted in good faith during the Suspension Period.
- Lee took reasonable measures to comply with the Washington Order.
- Lee substantially complied with the Washington Order.

Despite these explicit findings, Enforcement maintains that Lee violated FINRA's ethical standards rule and therefore it is fair and necessary to sanction her for mistakenly exceeding the scope of the permitted activities under the Washington Order. We disagree.

FINRA Rule 2010 is FINRA's ethical standards rule. The Rule states a broad ethical principle that requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.[58] This requirement "sets forth a standard intended to encompass a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace."[59] An associated person may be found liable under this rule for either engaging in unethical conduct or acting in bad faith.[60] Unethical conduct is defined as conduct that is "[n]ot

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[57] We note that Enforcement did not point to any newly obtained evidence that Member Regulation lacked during the statutory disqualification hearing.

[58] *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *39 (NAC July 18, 2014) (citing *Timothy L. Burkes*, 51 S.E.C. 356, 360 n.21 (1993)), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

[59] *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995), *aff'd*, 104 F.3d 285 (9th Cir 1997).

[60] *Robert E. Kauffman*, 51 S.E.C. 838, 840 n.5 (1993). Scienter is not an element of a Rule 2010 violation. *See Louis Feldman*, 52 S.E.C. 19, 21 (1994).

in conformity with moral norms or standards of professional conduct."[61] In application, the principal consideration is whether the conduct at issue "reflects on the associated person's ability to comply with the regulatory requirements of the securities business."[62]

Here, the undisputable facts establish that Lee conducted herself in conformity with the moral norms and standards of professional conduct required of persons associated with FINRA member firms. In addressing the consequences of her suspension, she undertook the very steps required under the circumstances. As the NAC found, she retained legal counsel to advise her on how to comply with the order. She also met with the other principals at the firm to discuss the continued scope of her authority and responsibilities, and she resigned from those positions she could no longer hold upon being properly advised that such action was required. For the most part, her efforts were entirely appropriate and successful. As the NAC found, she did in fact substantially comply with the Washington Order. That her good-faith efforts at compliance fell short of perfection does not inexorably lead to the conclusion that she acted unethically. And holding a person liable for even the most minor mistakes regardless of the ethical implications of the person's actions would not serve to enhance the ethical standards of FINRA members.

V. Conclusion

The NAC's decision in the statutory disqualification proceeding precludes Enforcement from relitigating the facts and issues it raises in the Complaint. Moreover, Enforcement points to no other facts at issue upon which we could base a finding that Lee acted unethically and thereby violated Rule 2010. Thus, the Complaint must be dismissed as a matter of law.

VI. Order

The Complaint is DISMISSED.

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Andrew H. Perkins
Hearing Officer
For the Hearing Panel

[61] *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013) (quoting Black's Law Dictionary (9th ed. 2009)).

[62] *Mielke*, 2014 FINRA Discip. LEXIS 24, at *39 (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002)).