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Securities and Exchange Commission Historical
Society
Oral Argument U.S. Court of Appeals for the District
of Columbia Circuit
March 24, 2006

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P R O C E E D I N G S

THE CLERK: Case number 05-0723. Juang Lou, petitioner versus the Securities and Exchange Commission. Mr. Uana for the petitioner and Mr. Summergrad for the respondent.

MR. UANA: Good day, Your Honor.

It's my honor -- I'm John Uana, I'm appearing pro bono today for my client, Juang Lou, who is seated here in the courtroom. And I am honored to appear today before this Court.

And I'm also honored that my old friend, Eric Summergrad, who is now a Deputy Solicitor at the Commission -- we began practicing law together at Arnold & Porter many years ago, and it's nice to see him.

May it please the Court. This is an appeal of a petition for review from the decision of the SEC which banned Juang Lou for life as a registered representative, and fined him about \$4,000. This was in connection with online trading for Dr. Who, who sought him out and asked for his help.

1 Unlike other cases that have been before
2 this Court, this case involves no allegation or
3 finding of fraud, and no pattern of dishonesty.
4 Juang Lou took no money from Dr. Who, and I am
5 asking this Court today to reverse the decision of
6 the Commission -- the Commission's decision -- the
7 holdings -- there are four separate holdings -- none
8 is supported by the substantial evidence, not one.
9 In fact, they're contradicted by the record evidence
10 in this case.

11 Now, Mr. Lou represented himself pro se in
12 the NASD proceeding.

13 First, this order is unconstitutional,
14 Your Honor. There is a fundamental due process
15 defect in the Commission's order. The government
16 itself, in its brief at page 26 concedes, quote,
17 "The NASD did not have a specific rule against
18 online trading without notice." That is a telling
19 admission by the government. As a matter of due
20 process law -- that's at page 26 of the Commission's
21 brief -- the Commission should comport with public
22 rulemaking process and public rules so that

1 everybody in the securities industry is properly
2 apprised of the NASD position, as to prohibitions as
3 to trading another person's account online. This is
4 a new area of law --

5 THE COURT: Do they have a prohibition
6 against unauthorized trading?

7 MR. UANA: Yes.

8 THE COURT: Why does it -- why isn't that
9 sufficient? Why do they have to specify, "We mean
10 this to apply to all kinds of trading," if it, on
11 its face, applies to all kinds of trading?

12 MR. UANA: Yes, the -- there's no holding,
13 here, of unauthorized trading, Your Honor. The NASD
14 found that he was authorized because of Dr. Who's
15 repeated emails authorizing him.

16 THE COURT: I thought this whole thing was
17 about unauthorized trading?

18 MR. UANA: No, sir.

19 THE COURT: But you just said it was. You
20 told me that they found that he had done
21 unauthorized trading online. Did you not, or was
22 that -- ?

1 MR. UANA: Well, it's true that Dr. Who
2 originally alleged that, but the NASD found against
3 the --

4 THE COURT: Then what is the
5 Constitutional defect?

6 MR. UANA: What I'm saying is that --

7 THE COURT: If they didn't find that they
8 had done -- you told us that the SEC held that he
9 had engaged in unauthorized trading online, did you
10 not? Or was I -- ?

11 MR. UANA: I didn't say unauthorized
12 trading online. There was an allegation -- a charge
13 brought against Juang --

14 THE COURT: So, what is the
15 unconstitutionality that you say occurred here?

16 MR. UANA: Their -- what is the charge is
17 that he --

18 THE COURT: What's the unconstitutionality
19 that you claim occurred?

20 MR. UANA: There is no rule -- there is
21 not a single NASD rule that prohibits any registered
22 representative, Your Honor, from trading another

1 person's online when you have the password.
2 Anybody, right now, if you're given the password to
3 someone's account, you can trade it. That's the way
4 things are.

5 Now, maybe the Commission --

6 THE COURT: You can't trade without
7 authorization, right?

8 MR. UANA: Sir?

9 THE COURT: You can't trade without
10 authorization, right?

11 MR. UANA: That's true. That's true.

12 THE COURT: And what the Commission says
13 he did wrong was not that he used online methods, is
14 it? But that he wasn't authorized to do it -- the
15 trades that he made.

16 MR. UANA: But that's not the holding of
17 either the NASD or the Commission. I'm going to get
18 to the four holdings, but that's not -- unauthorized
19 trading was dropped by the NASD. They dismissed
20 that claim.

21 THE COURT: All right, so what was he
22 found to have done wrong?

1 MR. UANA: He was found to have done four
2 things wrong. Putting her in unsuitable
3 transactions; number two, that he acted without
4 telling New York Life and Schwab what he was doing;
5 and number three, that he filed a U-4 Form Report
6 with the NASD that they claimed was false. Those
7 were the things -- only things that are before this
8 Court.

9 THE COURT: Then why are we talking about
10 online trading not being against the rules, then?

11 MR. UANA: Because --

12 THE COURT: You got up and started with
13 the proposition that they had no rule against online
14 trading. If you're saying that unauthorized trading
15 online, if that's not what he's being punished for,
16 why do we care whether they had a rule against
17 online trading?

18 MR. UANA: Because the whole case, Your
19 Honor, depends on his helping this woman trade
20 online. That's what this whole case is about. It's
21 a new area of the law, and my point is, if it's a
22 prohibition for Mr. Juang Lou -- he never thought he

1 was doing anything wrong -- there's no rule here, at
2 all, that barred him from trading online. She did
3 give him authority to do this, and if I could just
4 answer your question more fully -- the way this took
5 place is Juang Lou would be on the telephone, Dr.
6 Who would be on the telephone, they would both go to
7 Option Investor-dot-com, she gave him her password
8 to her Schwab account, and he would place
9 transactions based on the recommendations of Option
10 Investor-dot-com. It's a new area of the law.
11 There was no SEC or NASD rule --

12 THE COURT: Right. Just put a cap to
13 this, what conclusion of the NASD do you say is
14 unconstitutional because of lack of notice?

15 MR. UANA: What I'm saying is
16 unconstitutional is that the NASD -- Juang Lou was
17 banned for life. For what? For assisting Dr. Who
18 make trades online in her account for which he took
19 no compensation. I'm saying it's --

20 THE COURT: I haven't yet heard the answer
21 to my question. You got up talking about
22 unconstitutionality --

1 MR. UANA: Yes, sir.

2 THE COURT: -- because of a failure of
3 notice about something about online trading.

4 MR. UANA: I'm saying --

5 THE COURT: Now, when I tried to explore
6 that, what I get back from you is, "Well, that's not
7 what they found." If they didn't find it, then who
8 cares whether they gave notice of it or not? What
9 is it that's unconstitutional?

10 MR. UANA: I'm saying that, basically, the
11 fundamental charge against Juang Lou is that he
12 assisted this woman, Dr. Who, by trading her account
13 from his home computer online.

14 THE COURT: I don't think I'm going to get
15 an answer to my question.

16 THE COURT: But that's not the -- that's
17 not the charge. You itemized the charges.

18 MR. UANA: Right.

19 THE COURT: It was unsuitable
20 transactions, failure to tell New York Life and
21 Schwab --

22 THE COURT: Yep.

1 THE COURT: -- filing a false report, and
2 so on. Now, it may all have arisen out of what he -
3 - what you just described --

4 MR. UANA: That's what I'm saying.

5 THE COURT: -- but that's no more material
6 than the fact that he did it at home.

7 THE COURT: Or if he did it at the office.

8 THE COURT: Either he did or didn't
9 violate these regulations.

10 THE COURT: The online part seems to have
11 nothing to do with the case, and yet you began your
12 argument by saying it was unconstitutional.

13 MR. UANA: Well, respectfully, Your Honor,
14 this whole case is that he -- they did charge him
15 with unauthorized transactions, but the NASD found
16 that he was authorized, Your Honor.

17 Now, I wanted to point out that Juang Lou
18 --

19 THE COURT: He was authorized to act on
20 behalf of Dr. Who.

21 MR. UANA: Yes, that's what they held.

22 THE COURT: He was not authorized to

1 violate these rules, I mean, that's --

2 MR. UANA: Of course, no one is.

3 THE COURT: All right, so that's the
4 reason --

5 MR. UANA: But I want to -- I want to just
6 point out, first, that Juang Lou was terminated by
7 New York Life in October of 2000, and he remains
8 unemployed. And this is relevant, because under
9 Section 19(E)(2) of the Securities Exchange Act, the
10 Agency has authority to cancel, reduce, or require
11 the remission of such sanction if it finds the
12 sanction excessive or oppressive. The Commission
13 here abused its authority by making holdings
14 directly contrary to the record evidence.

15 Now, I remind the Court, also, that this
16 is a first offense charged against my client. He
17 had a good record before this, and his supervisor,
18 Mr. Atkins, said his record's been fine, Joint
19 Appendix 139.

20 Also, I point out that the NASD hearing
21 panel found Lou never took any money from Dr. Who.

22 THE COURT: Why does that matter?

1 MR. UANA: Because this goes to whether --
2 it's excessive punishment to ban him and disbar him
3 for life.

4 THE COURT: All right, all right.

5 MR. UANA: But that's how I'm making --

6 THE COURT: Assuming that the violations
7 are established.

8 MR. UANA: Right.

9 THE COURT: What is the standard that the
10 Commission should have applied in determining the
11 penalty, and what is the standard that we should
12 apply in reviewing it?

13 MR. UANA: The standard for the Commission
14 is 19(E)(2), Your Honor, of the Securities Exchange
15 Act of 1934.

16 THE COURT: Which says?

17 MR. UANA: Section 19(E)(2) states that
18 the Agency has authority, quote, "To cancel, reduce,
19 or require the remission of such sanction if it's
20 excessive or oppressive." That's the standard.

21 Now, this Court -- under the Supreme Court
22 decision in Steadman -- this Court looks at the

1 Commission's findings in terms of substantial --
2 whether they're supported by substantial evidence,
3 the normal --

4 THE COURT: But what did you tell us about
5 whether they were supported by substantial evidence,
6 or not, and --

7 MR. UANA: Not one.

8 THE COURT: I find a paragraph on this
9 subject in your brief, and I don't find any
10 reference that sets forth any standard the
11 Commission violated, or any references to what we
12 can review. You haven't shown us any comparison to
13 other penalties entered by the Commission, you
14 haven't shown us what alternative penalties were
15 available to the Commission, and you haven't really
16 told us what our standard of -- you haven't
17 mentioned what our standard of review is.

18 MR. UANA: Well, the standard of review is
19 set forth in the Supreme Court's decision in the
20 Steadman case, I believe, around 1982, Your Honor.

21 THE COURT: Where is that cited in your
22 brief?

1 MR. UANA: It's not cited in my brief, but
2 it is cited in the government's brief, and that is
3 the controlling decision on that specific question
4 that you asked.

5 If I could just, briefly, number one,
6 unsuitable transactions, the standard is in
7 2860(B)(19) of the NASD. And the problem with
8 unsuitability, the NASD, it found that -- rejected
9 that claim. It was reinstated by the National
10 Adjudicatory Council and the Commission adopted the
11 NAHC ruling.

12 But the problem is, the doctor filled out
13 -- Dr. Who filled out her own option applications at
14 Schwab and New York Life Securities -- they're in
15 the record -- and she lied about her experience.
16 It's not fair -- it's not fair to hold Juang Lou to
17 a holding that he put her in unsuitable transactions
18 when she had -- when it's clear in the record,
19 undisputed in the record, that she lied in her
20 options applications. And the rule, 2860(B)(19) is
21 that -- is the question is, whether he had
22 reasonable grounds to believe, upon the bases of

1 information furnished by the customer. He certainly
2 did, and there's no basis for suitability. The
3 hearing officer was right to throw that out.

4 The second claim is failure to give notice
5 to New York Life and Schwab. They argue that Juang
6 Lou exercised discretionary authority over Dr. Who's
7 Schwab account, but he clearly did not. The SEC --
8 Juang Lou did not exercise discretion in this
9 account. There's no definition in the rule itself,
10 which is 2510(B) on what a discretionary account is.

11 But that means -- and I've practiced in securities
12 for 30 years -- you manage someone's account.
13 That's not what Juang Lou was doing. She'd be on
14 the phone with him, they'd be looking at Option
15 Invested-dot-com, and he did exactly what she told
16 him to do. And he didn't charge her, there was no
17 remuneration here, whatsoever.

18 THE COURT: How about the record evidence
19 of her saying that she wanted him to stop, and he
20 wouldn't? Or didn't?

21 MR. UANA: I'm sorry, Your Honor?

22 THE COURT: There was, I mean, if every

1 transaction was accomplished by their both being on
2 the phone simultaneously --

3 MR. UANA: Not every transaction, but
4 typically, that's how it took place.

5 THE COURT: Typically, right. But then,
6 that leaves room for her, then, to say later on, as
7 she does, right? "I told him I wanted him to stop
8 this trading, and he didn't stop."

9 MR. UANA: That's correct, Your Honor.

10 THE COURT: Which would seem to be quite a
11 different scenario than the one that you were
12 portraying, and it would make the -- I'm not sure
13 that reflects on unsuitability, but it certainly
14 means this was not a joint venture by the two of
15 them. Or every transaction was not.

16 MR. UANA: That's correct, Your Honor.
17 But the NASD, I also point out, a critical finding
18 that Dr. Who was not credible. She gave
19 inconsistent testimony --

20 THE COURT: Did they not also find that he
21 changed the password and locked her out of her own
22 online account, at one point?

1 MR. UANA: They did say that with respect
2 to the New York Life Securities account, but she
3 changed their password on the Schwab account
4 herself. When she wanted to stop him, it was always
5 in her control, Your Honor, to do what she wanted
6 with this account.

7 THE COURT: Where is the finding that she
8 was not credible?

9 THE COURT: I don't remember that, either.

10 MR. UANA: Well, both the National -- the
11 NASD hearing panel found she was not credible, and
12 the NAC. It's in both of the orders, which are in
13 the record in this case.

14 THE COURT: Well, we'll give you a minute
15 on rebuttal, maybe you can show us where that is.

16 MR. UANA: Okay. Thank you, Judge.

17 MR. SUMMERGRAD: Good morning, I am Eric
18 Summergrad, representing the Securities and Exchange
19 Commission. Let me begin with what the violations
20 were, here.

21 First of all, the issue of suitability is
22 not before the Court, because the Commission said it

1 didn't have to reach the issue, and it didn't decide
2 anything on that.

3 Secondly, I would remind the Court that it
4 is the Commission's findings of violation that are
5 before the Court, the Commission reviewed --

6 THE COURT: I wonder if I could ask you to
7 try to get the microphone a little closer to you --

8 MR. SUMMERGRAD: Certainly.

9 THE COURT: The whole podium --

10 MR. SUMMERGRAD: If I lean forward, that
11 might help a little bit.

12 It is the Commission's findings that are
13 before the Court; the Commission reviews the issue
14 of liability, de novo.

15 There are three violations, here, and they
16 do not have to do with the simple question of
17 authorization by Dr. Who. In some informal sense,
18 she obviously did authorize Mr. Lou to trade in her
19 account. He took responsibility for that, it was
20 his determination what options to invest in, and
21 that -- under the definition in the Exchange Act --
22 is the sine qua non of discretion.

1 The first violation was, he was employed
2 by New York Life. He went and traded on a
3 discretionary basis in Dr. Who's account at Schwab.

4 In other words, he was trading away from his
5 employer, and he was obligated, under Rule 3050(c)
6 to give notice to Schwab, to give notice to New York
7 Life. He didn't do that.

8 He maintains he didn't do that because he
9 believes he wasn't acting as a securities
10 professional; he believes he was acting merely as a
11 friend, and that none of this was any business of
12 the NASD or of New York Life or of Schwab.

13 Secondly, after Dr. Who opened an account
14 at New York Life, on which Mr. Lou was the account
15 representative, he extensively traded in the account
16 on a discretionary basis. And there's ample
17 evidence in the record of that.

18 He probably engaged in some 50
19 transactions, and made about \$300 in commissions.
20 But the commissions are not part of the violation.

21 The violation, in that case, was when I
22 registered representative trades on a discretionary

1 basis, under Rule 2510, they have to, one, get
2 written authorization from the client, which he did
3 not do.

4 And secondly, and more importantly, here,
5 they have to get approval from the firm. New York
6 Life would not have given approval, because it did
7 not allow its registered representatives to trade on
8 a discretionary basis.

9 In fact, this is what New York Life fired
10 him for. This is the most -- they said this was the
11 most serious violation, that he engaged on a
12 discretionary basis, traded on a discretionary basis
13 on a client's account, and didn't bring it to their
14 attention. Had they brought it -- had he brought it
15 to their attention, they would have stopped him,
16 cold. Had he brought to their attention that he was
17 trading on a discretionary basis at Schwab, they
18 would have stopped him cold there, too. Dr. Who
19 wouldn't have lost \$80,000 in her account, and New
20 York Life wouldn't have had to pay \$40,000 in order
21 to settle the claim against them.

22 The third violation is very

1 straightforward. After he was fired from New York
2 Life, he was employed by another securities firm
3 called Global Link, and in connection with that, he
4 had to file a form called Form U-4 with the NASD.
5 The form asks, "Have you ever been discharged from
6 an employer after an investment-related complaint
7 was filed alleging violations of statutes, rules, or
8 standards of ethics?" He answered no, and that was
9 blatantly untrue, because he was fired after Dr. Who
10 complained to the Maryland authorities, the Maryland
11 authorities notified New York Life, New York Life
12 asked Dr. -- asked Mr. Lou about this, that he --
13 submitted two letters, giving his side of the
14 matter, and in those letters he admitted engaging in
15 discretionary trading. As a result of that, New
16 York Life let him go, and he blatantly lied about
17 it.

18 Now, let me just talk briefly about the
19 sanction, here. The complaint is that Mr. Lou is an
20 honorable person, that he wasn't acting out of venal
21 motives, that he wasn't acting to make money from
22 this -- all of that is true, and all of that was

1 noted by the NASD. They considered that as possible
2 mitigating factors. But they said, nonetheless, a
3 bar was appropriate. And the reason why a bar was
4 appropriate here was because Mr. Lou -- throughout
5 these proceedings, and before this Court, as well --
6 simply refuses to acknowledge, and refused to
7 acknowledge before the NASD, that he was under any
8 controls, that he was acting as a securities
9 professional, that he had to know what the rules
10 were, that he was under any obligation, at all.

11 He said, "I don't do anything wrong, I'm
12 under no obligation, you have no business dealing
13 with this," and the NASD reasonably concluded, and
14 the Commission concluded that it was reasonable for
15 the NASD to so conclude that it could not allow into
16 the securities profess -- to remain in the
17 securities profession -- somebody who has that
18 attitude.

19 THE COURT: What was the finding regarding
20 Ms. -- Dr. Who's credibility?

21 MR. SUMMERGRAD: The fining related to --
22 she -- there was a charge that Mr. Lou had caused

1 her to -- when she opened her account at New York
2 Life -- to misstate her experience and -- regarding
3 options, to misstate her assets, and --

4 THE COURT: That was her testimony?

5 MR. SUMMERGRAD: That was --

6 THE COURT: Or that was the charge?

7 MR. SUMMERGRAD: The charge -- that was
8 one of the charges. And the NASD concluded that
9 there were inconsistencies in her statements, and it
10 could not find her credible on that matter. It made
11 no finding of credibility -- and therefore it didn't
12 find, it threw out that charge. It didn't find that
13 she was not credible with respect to any other
14 matter.

15 THE COURT: That was the unsuitability
16 charge?

17 MR. SUMMERGRAD: No. That was the -- a
18 charge that, I believe, it's a false filing in
19 violation of another rule; I don't remember the
20 number offhand.

21 THE COURT: He was found not culpable on
22 that?

1 MR. SUMMERGRAD: He was found not culpable
2 on that, he was found not culpable on the charge
3 that he was not authorized by Dr. Who to trade, as I
4 said, in a sense, she gave oral authorization, at
5 least in part, until she started complaining about
6 his conduct, tried to get him stopped, couldn't even
7 get him to answer her emails, so there's no --

8 THE COURT: -- authorized to make
9 profitable transactions, right?

10 MR. SUMMERGRAD: Right.

11 THE COURT: When they're unprofitable, all
12 of a sudden they were unauthorized.

13 MR. SUMMERGRAD: That's what she was
14 looking for. And he represented himself as an
15 expert in options trading, she had no experience.

16 So, the sanction was certainly
17 appropriate, here. The purpose of a sanction isn't
18 to just punish somebody for being venal or dishonest
19 -- it's not a punishment at all, it's a remedial
20 sanction designed to protect the investing public.
21 And certainly, on this track record, given the
22 egregious nature of these violations and what

1 happened to Dr. Who, the investing public is much,
2 much better off by not having Dr. Lou engaged in
3 securities transactions.

4 Finally --

5 THE COURT: Is there a prohibition on a
6 punitive remedy?

7 MR. SUMMERGRAD: The remedy --

8 THE COURT: It has to be remedial?

9 MR. SUMMERGRAD: It has to be remedial in
10 nature.

11 THE COURT: Yeah.

12 MR. SUMMERGRAD: And these remedies are
13 all remedial. He was not fined, by the way, he was
14 assessed the costs, and the Commission found that
15 appropriate, also.

16 THE COURT: And this is a lifetime bar,
17 correct?

18 MR. SUMMERGRAD: It's a lifetime bar,
19 there is a possibility that he could re-apply --

20 THE COURT: And is a bar always a lifetime
21 matter, or is it sometimes a period of years?

22 MR. SUMMERGRAD: I think in recent years

1 there have been some bars that are a period of
2 years, but there's always the possibility of re-
3 entry if you reform yourself and if you can find
4 somebody to employ you, and if -- considering all of
5 the other factors -- the NASD would see fit to --

6 THE COURT: So, any bar -- lifetime or for
7 a term -- would presumably be a substantial
8 impediment to finding someone to employ you, right?

9 MR. SUMMERGRAD: Yes. It certainly would
10 be. We're going to downplay that, but given the
11 track record, here, the NASD found that a bar was
12 appropriate, and the Commission found that
13 reasonable.

14 There are a variety of supposedly due
15 process claims that Mr. Lou raises. I just want to
16 point to one thing. He complains repeatedly that no
17 translator was provided at the NASD hearing. I find
18 this inexplicable because -- and this is on pages 81
19 and 86 of the Joint Appendix -- the NASD went out of
20 its way to find somebody who would be a translator,
21 and she was present at the hearing. Mr. Lou never
22 sought to make use of her services. He never

1 claimed to have, during the hearing, to have any
2 difficulty in understanding what was going on. This
3 is someone who has a Ph.D. in ethnomusicology from
4 Kent State University, and everybody who has dealt
5 with him has said --

6 THE COURT: You're referring to Mr. Lou?

7 MR. SUMMERGRAD: Mr. Lou.

8 THE COURT: Oh.

9 MR. SUMMERGRAD: Yes.

10 THE COURT: Okay.

11 MR. SUMMERGRAD: He is sometimes referred
12 to as Dr. Lou.

13 Everybody who has dealt with him has said
14 that he has no difficulty communicating in English.

15 If the Court has no further questions, we
16 urge that the petition be dismissed.

17 THE COURT: Thank you, Mr. Summergrad.

18 Mr. Uana, I'll give you one minute.

19 MR. UANA: Thanks.

20 Thank you, Your Honor. I'd like to point
21 out that at page 205 of the Joint Appendix, the
22 National Adjudicatory Council states, "After a de

1 novo review of the record, we agree with the hearing
2 panel's finding that Dr. Who's testimony was
3 inconsistent, and therefore not credible." That's
4 at the top of page 205 in the Joint Appendix. And
5 if you're not credible, you're not credible. She
6 lied -- she lied to New York Life, she lied to
7 Schwab, she lied to Juang Lou --

8 THE COURT: That wouldn't reflect on the
9 false report to NASD, right? Mr. Lou's false
10 report, or the failure to tell New York Life --

11 MR. UANA: It came up in the context of
12 falsification of records, which was thrown out
13 against Juang Lou. She claimed that he had filled
14 out these option applications. That was false, Your
15 Honor.

16 THE COURT: But the counts to which it was
17 relevant is not what he was found culpable on, is
18 that incorrect?

19 MR. UANA: True. But if she is not
20 credible, she's not credible. If she lied, she
21 lied. And that's what the holding is, and I think
22 that cuts across the board, respectfully, Your

1 Honor.

2 THE COURT: Okay.

3 MR. UANA: And I just want to point out
4 that the main rule that Mr. Summergrad argued at
5 3050 of the rules of the NASD simply does not apply
6 to anything Juang Lou did. I really want to focus
7 the Court on this, 3050(c). This is the heart of
8 their case, this is what this is about.

9 "A person associated with a member prior
10 to opening an account or placing an initial order
11 for the purchase or sale of securities with another
12 member, shall notify both the employment member and
13 the executing member, in writing, of his or her
14 association with the other member." That rule, on
15 its face, does not apply to what Juang Lou did. He
16 didn't open up an account at Schwab for her, at
17 someplace else. These rules were written before
18 there was all of this internet trading, Your Honor,
19 and there's nothing in this rule that applies to
20 Juang Lou, here. It just doesn't cover this
21 situation. That's the problem that the Commission
22 has, here, and it violates due process to say, "You

1 should have read this rule, and knew you couldn't do
2 this. Knew that you had to give discretion -- that
3 you had to give notice to New York Life and you had
4 to give notice to Schwab." People do this all of
5 the time. They trade for their mothers, they trade
6 for their cousins. There is no prohibition -- my
7 client is -- if the Commission wants this to be
8 outlawed, it's very easy. They know how to publish
9 rules for comment. That's the way to do it. That
10 comports with due process. Juang Lou has been
11 railroaded, in this case.

12 Respectfully, Your Honor, I disagree with
13 the way the Commission has handled this case, I
14 think it's wrong, and on top of all of that, a
15 sanction to ban this man, who cannot support his
16 family for life, is a gross miscarriage of justice.
17 He is a good and honest man, he is sitting here
18 today in the court. It's wrong that the Commission
19 has thrown the book at him in this way.

20 The U-4, filing a false report, look at
21 the language, I respectfully say, of the question
22 23(J) that was asked on the U-4. It didn't say,

1 "Did someone bring a complaint against you before?"

2 If that had been the question, the answer should
3 have been yes. But he answered the question
4 correctly on October 20, 2000, precisely the way he
5 should have answered it. The critical fact on the
6 U-4, Your Honor, is that the NASD refused to give
7 him Dr. Who's complaint letter, until the following
8 year, that's when he got the complaint letter. So,
9 he didn't have it.

10 Whatever else this Court does, the U-4
11 claim that he filed a false report, that's --
12 respectfully, that's without any merit, it should be
13 tossed out.

14 THE COURT: Thank you, Mr. Uana.

15 MR. UANA: Thank you so much.

16 THE COURT: Thank you for your handling of
17 this matter pro bono.

18 MR. UANA: Thank you.

19 THE COURT: Thank you very much.

20 The case is submitted.

21 THE CLERK: Stand please. This Court is
22 hereby adjourned until Monday morning, at 9:30 a.m.

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[Whereupon, the Court was adjourned.]