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TO: Tia Lucci

FROM: Applicant

Subject: In the Matter of Abigail Watkins

Date: July 24, 2018

You asked me to prepare an argument for your brief to assert (1) Ms. Watkins' conduct underlying the plea does not justify a finding of moral turpitude, and (2) Ms. Watkins' testimony at the hearing does not justify a finding of moral turpitude. Below I present key points I believe are of particular importance followed by a draft brief argument for your review.

Excuse for Act

While Ms. Watkins cooperated with the SEC this has been ruled to not hold on if the action at the time are excused. In *Chadwick v. State Bar* (Columbia Supreme Court, 1989) the high court ruled Chadwick's cooperation with the SEC did not excuse his insider trading activity. It was his earlier contact that was determinative and not what he did after the fact. In their finding for moral turpitude it was summarized as any crime or misconduct without excuse. They further held this test applicable whether the dishonest or immoral act is a felony, misdemeanor, or no crime at all. There, Chadwick's acquisition of material nonpublic information regarding a corporate merger from a third party led to Chadwick's purchasing stock options for himself. In the present case Watkins is not asserting present cooperation as an excuse as in Chadwick but rather a lack of intent due to absence of mental awareness due to a combination of pain and medication at the time. This contrasts Chadwick which asserted after the fact. Without a present intent at the time there could not have been moral turpitude. This speaks to issue (1) of underlying conduct not justifying a finding of moral turpitude

Assertion of Innocence

Here Ms. Watkins' cooperation does show candor on her part. Additionally, her

plea does not negate her assertion of not having an intent to violate SEC rules. Ms. Watkins has asserted public promotion of the stock she purchased and how it was upgraded publicly to a "strong buy". She has further asserted having missed out on stock opportunity before and had been intending to purchase due to this strong market prospects irregardless of Darmond's call. Futher Watkins being unfocused and inattentive, coupled with lack of memory from the time are feasible explanations as to a lack of intent. Watkins knew of J&H as a firm that would be in a likely position to represent Fort and has asserted the representation would be promising news for Fort. If acting on a belief of positive representation for Fort's future, even an erroneous belief or unwarranted but honest, Watkins would not have the prequise state of mind necessary to have committed moral turpitude. This is indluced in the Factual Basis for the Plea. This I beleive address Watkins' testimony at the hearing not justifying a finding of moral turpitude.

Burden of Proof

In Matter of Harold Salas (Review Department of the State Bar Court, 2001) the review court rejected the State Bar Court's determination of moral turpitude and asserted it was the State Bar who bears the burden to prove moral turpitude by clear and convincing evidence. An assertion of inccence does not ammount to a lack of candor when a previously entered plea agreement on the same subject is silent on the fact. The determination of witness lacks candor must likewise be shown by clear an convincing evidence in contract to an assertion of an honest mistaken belief. The standard of clear and convincing evidence must resolve reasonable doubts in favor of an accused attorney. If equally reasonable inferences may be drawn, the inference of incense must be chosen. It is on the Bar to refute Watkins' assertions to the required standard of proof in order to prove moral turpitude which speaks to both issues (1) and (2) as such is present regarding both Watkins underlying plea and testimony.

Draft Brief Argument

The court should find Abigail Watkins did not act with moral turpitude in the single act in which she plead guilty to regarding a SEC felony violation of insider trading. As Watkins has testified she did not have any memory of Darmond telling Watkins of a proposed merger due to medication Watkins was on at the time and pain she

was under causing the need for medication. She lacked intent to commit the offense as is supported by workers describing her as unfocused at the time in question. While *Chadwich v. State Bar* does support examining if moral turpitude is present even absent a crime, the negation of excuse presented there is contrasted from the claim here. There *Chadwich* asserted cooperation after the fact as an excuse, where as here *Watkins* asserts she did not possess the requisite state of mind. When reasonable inferences may be drawn on the same facts, it is up to the prosecution to prove by clear and convincing evidence as stated in *Matter of Harold Salas*. Here the prosecution claims a single phone call lead to *Watkins* purchase of the stock. *Watkins* has testified that she had been planning to buy stock when the market looked favorable after having lost out previously on an opportunity. Further, *Watkins* believed, although incorrectly, *Darmond* called because *J&H* was going to represent *Fort*, which would show positive prospects for *Fort*. Moreover, market analysts had moved *Fort* from a "Buy" to a "Strong Buy" recommendation. Even in *Watkins Plea*, *Watkins* stated at the time of purchase she was not aware of the planned merger. In order to find moral turpitude there must be a finding of intent. *Watkins* has presented multiple highly plausible reasons why she would have purchased the stock which have not been refuted by the prosecution. The prosecution's claim rests on a single act of which the underlying intent of the act itself is in question. There is no question *Watkins* purchased the stock, the question is why she did so. *Watkins* has a plausible excuse for not remembering *Darmond* telling her on the phone of the planned merger, has offered plausible reasons why she would have purchased the stock without knowing of the merger, as asserted a lack of intent to commit the crime, and the prosecution has not proven by clear and convincing evidence in light of all other possibilities it was the one phone call from *Darmond* is what *Watkins* acted on. Given this, the facts on record do not support a finding of moral turpitude on the part of *Watkins*.

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