



CLIENT ALERT

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FORM U-5 STATEMENTS TO FINRA ARE ABSOLUTELY PRIVILEGED UNDER CALIFORNIA LAW

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Last week, the United States Court of Appeals for the Ninth Circuit held that statements made in a Form U-5¹ are *absolutely* privileged under California law.²

Certain individuals in the securities or investment banking business are required to be registered with the Financial Industry Regulatory Authority (“FINRA”). When registered individuals separate from such employment, the company is required to file a termination notice, called a Form U-5, within 30 days to terminate the individual’s registration with FINRA. The filing includes notifying FINRA of the reason for the employee’s separation from the company. FINRA believes that the circumstances of a separation may be beneficial to the investing public and relevant to future hiring decisions within the industry.

Despite a company’s careful adherence to FINRA’s mandate that it provide accurate information on the Form U-5, companies have found themselves vulnerable to defamation claims from former employees who do not agree with the stated reason(s) for their termination. Whether these claims

have merit is determined by the law of the state where the individual worked, as the statements made in a Form U-5 are entitled to the level of privilege that state law affords.

Tony Adjian worked in California for JPMorgan Chase (“JPMC”) as a Personal Banker from 2010 until his termination in 2014. In August 2014, JPMC commenced an investigation into the circumstances surrounding Adjian’s ownership in a property that had been identified as part of an improper debt elimination scheme. Adjian failed to cooperate fully with the investigation. JPMC terminated his employment after it determined that Adjian’s ownership interest in this property created a serious integrity issue in violation of JPMC’s Code of Conduct. Upon the termination of Adjian’s employment, JPMC stated on the Form U-5 that Adjian “was terminated after he was unable to fully substantiate how real estate property was transferred to him in violation of the mortgage security instrument.”

¹ The Form U-5 is a short name for the Uniform Termination Notice for Securities Industry Registration.

² Adjian v. JPMorgan Chase Bank, No. 15-56677 (9th Cir. 2017).

Adjian filed a lawsuit,³ alleging several claims against JPMC, including defamation. Adjian argued that the Form U-5 filed with FINRA contained “opinion” that had harmed his professional reputation and deterred other banks from hiring him.

The United States District Court for the Central District of California ruled against Adjian on this issue, holding that the statements on the Form U-5 were privileged under Section 47 of the California Civil Code (“Section 47”), and thus exempt from a defamation claim. Section 47 states that, in defamation suits, a privilege protects, among other things: (i) statements made in job references; (ii) statements made to appropriate regulatory agencies [such as FINRA]; and (iii) statements made in response to a request by an interested party. The District Court reasoned that all three of these protections applied to Adjian’s case, and because no evidence of malice existed, the defamation claim failed.

On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the District Court’s ruling, holding that Section 47 was applicable to JPMC’s Form U-5 statement regarding Adjian’s termination. It also added that Section 47(b), which covers statements made to regulatory agencies like FINRA, provides for an *absolute* privilege that cannot be defeated even with a showing of employer malice. California now joins New York⁴ in providing an absolute privilege for Form U-5 statements.

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³ Adjian filed the lawsuit in the Los Angeles County Superior Court. JPMC removed the case to the United States District Court for the Central District of California.

⁴ Rosenberg v. MetLife, Inc., 866 N.E.2d 439, 444 (N.Y. 2007).

⁵ Gregory T. Laudadio, J.D. (Bar admissions pending) also contributed to this article.