

1 **APPEARING FOR APPELLANT:** JAMIE K.C. SCHER, pro se,
2 Woodbury, NY.
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4 **APPEARING FOR APPELLEES:** MICHAEL F. FLANAGAN (F. Joseph
5 Warin, Andrew S. Boutros, on the
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10 Appeal from the United States District Court for the
11 Southern District of New York (Mukasey, J.).
12

13 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
14 **AND DECREED** that the judgment of the district court be
15 **AFFIRMED.**
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17 In 1998, the National Association of Securities Dealers
18 ("NASD"), a self-regulatory organization ("SRO"), was
19 investigating Renaissance Financial Securities Corporation
20 ("Renaissance"), a member company of the NASD. Scher,
21 general counsel for Renaissance, was interviewed by NASD and
22 perjured herself; she was convicted of perjury in New York
23 State court. Scher v. NASD, 386 F. Supp. 2d 402, 405
24 (S.D.N.Y. 2005) (quoting People v. Cohen, No. 1474-2000,
25 2001 WL 1537669 (N.Y. Sup. Ct. Nov. 1, 2001)).
26

27 Scher has sued NASD and various NASD officials for
28 failing to warn her that false testimony during her
29 interview, under oath, could result in a perjury conviction.
30 The district court (Mukasey, J.) dismissed Scher's claims,
31 concluding that [1] NASD is absolutely immune from suit, [2]
32 NASD is not a state actor, and [3] Scher's claims were
33 without merit. We assume the parties' familiarity with the
34 underlying facts, the procedural history, and the issues
35 presented for review.
36

37 NASD, "as a SRO, stands in the shoes of the SEC in
38 interpreting the securities laws for its members and in
39 monitoring compliance with those laws. It follows that the
40 [NASD] should be entitled to the same immunity enjoyed by
41 the SEC when it is performing functions delegated to it
42 under the SEC's broad oversight authority." D'Alessio v.
43 NYSE, Inc., 258 F.3d 93, 105 (2d Cir. 2001). NASD's
44 interview of Scher, referral of the matter to state
45 authorities, and subsequent alleged cooperation with state
46 prosecutors are all actions within the scope of NASD's
47 delegated regulatory authority. See id. at 105-06.

1 Accordingly, NASD and its officers were entitled to absolute
2 immunity from Scher's claims.
3

4 Because we conclude that the defendants are entitled to
5 absolute immunity, we do not reach the merits of Scher's
6 claims or the question whether NASD's action constituted
7 state action. For the reasons set forth above, the judgment
8 of the district court is hereby **AFFIRMED**.
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10 FOR THE COURT:
11 THOMAS ASREEN, ACTING CLERK
12 By:
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15 _____
16 Lucille Carr, Deputy Clerk
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