

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 59326 / January 30, 2009

Admin. Proc. File No. 3-13001

In the Matter of the Application of

MICHAEL STEGAWSKI
Capstone Partners, L.C.
3475 Lenox Road, Suite 400
Atlanta, GA 30326

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF ASSOCIATION
ACTION DENYING WAIVER OF EXAMINATION REQUIREMENTS

Registered securities association denied a request by a member firm, on behalf of a former registered representative whose registration had lapsed, that the applicable qualification examination be waived and the representative be permitted to resume his license without requalifying by examination. Held, review proceeding dismissed.

APPEARANCES:

Michael Stegawski, pro se.

Marc Menchel, Alan B. Lawhead, and Jennifer C. Brooks, for Financial Industry Regulatory Authority, Inc.

Appeal filed: March 13, 2008
Last brief received: August 19, 2008

I.

Michael Stegawski (“Stegawski”), a former registered representative, seeks review of FINRA action. ^{1/} FINRA denied a request by member firm Capstone Partners, L.C. (“Capstone”), on behalf of Stegawski, for waiver of the qualification examination required by NASD Membership and Registration Rule 1031(c) and for reinstatement of his Series 7 (general securities representative) license, which had lapsed. We base our findings on an independent review of the record.

II.

In January 2004, Stegawski began working as a trainee for Morgan Stanley DW Inc. (“Morgan Stanley”). On March 26, 2004, he passed the Series 7 Examination and became registered as a general securities representative with Morgan Stanley. At or around the same time, Stegawski also passed the Series 31 (futures managed funds) Examination and the Series 66 (uniform combined state law) Examination. On July 20, 2004, Stegawski left Morgan Stanley and the firm terminated his registration. Under NASD Rule 1031(c), Stegawski had two years from his termination to reinstate his registration. ^{2/}

In September 2004, Stegawski enrolled at Georgia State College of Law. During law school, Stegawski participated in an externship program with the Commission’s Atlanta Regional Office from September through December 2005. In December 2005, Stegawski passed Level I of the Chartered Financial Analyst (“CFA”) Program. On July 20, 2006, the applicable two-year period for the reinstatement of Stegawski’s registration as a general securities representative expired without reactivation.

A. The 2006 Waiver Request

In October 2006, Stegawski became a legal assistant with Capstone and the Law Office of Gregory Bartko. Bartko is Capstone’s chief executive officer. On November 7, 2006, Capstone filed a Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to

^{1/} On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. (“FINRA”), in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007). Because the action here was taken after that date, we use the designation FINRA in this proceeding, except for certain events involving NASD that took place before the consolidation.

^{2/} See NASD Membership and Registration Rule 1031(c), NASD Manual at 3142 (2006 ed.) discussed, infra, at note 10 and accompanying text.

register Stegawski as a general securities representative with NASD. ^{3/} On December 6, 2006, Capstone applied, on Stegawski's behalf, for a waiver of the Series 7 Examination based on Stegawski's educational achievement, prior registration and experience in the securities industry, and regulatory experience with the Commission (the "2006 Waiver Request"). NASD's Department of Testing and Continuing Education (the "Department") denied the 2006 Waiver Request, concluding that a waiver was not warranted. In April 2007, the Waiver Subcommittee of the National Adjudicatory Council (the "Waiver Subcommittee") affirmed the Department's denial. Neither Capstone nor Stegawski appealed that decision to the Commission.

B. The 2007 Waiver Request

In November 2007, Stegawski passed the Series 24 (general securities principal) Examination. Stegawski states that he graduated from law school in December 2007 and, since that time, passed the Florida Bar Examination. On December 18, 2007, Capstone filed a second request, on Stegawski's behalf, for a waiver of the Series 7 Examination with FINRA (the "2007 Waiver Request"). The 2007 Waiver Request asserted claims similar to those in the 2006 Waiver Request, i.e., that Stegawski qualified for a waiver based on his Commission externship (which, he represented, involved investigations of alleged investment fraud and securities laws violations), completion of the Series 7, 66, and 31 qualification examinations in 2004, association with a FINRA member firm, bachelor's degree in finance, and completion of Level I of the CFA Program. The 2007 Waiver Request represented additionally that, since the filing of the 2006 Waiver Request, Stegawski has passed the Series 24 Examination; completed all law school course work (including "securities regulation, bankruptcy, federal taxation, security interests, corporations, agency and partnership, wills and trusts, and contracts") and would soon receive his law degree; and maintained employment with Capstone and the Law Office of Gregory Bartko. Capstone did not file a Form U4 on Stegawski's behalf, as required by FINRA's Qualification Examination Waiver Guidelines (the "Waiver Guidelines"), in connection with the 2007 Waiver Request. ^{4/} FINRA did not immediately rule on the 2007 Waiver Request.

On March 7, 2008, Stegawski filed an application for review with the Commission, claiming that FINRA staff had effectively denied his 2007 Waiver Request during phone conversations with him. Stegawski asserted that FINRA staff told him that they previously had decided the matter when FINRA denied his 2006 Waiver Request. In a letter dated March 17, 2008, FINRA informed Stegawski that its Waiver Guidelines require a Form U4 to be filed with any waiver request. The next day, Capstone submitted a Form U4 on Stegawski's behalf to the Central Registration Depository ("CRD"). On April 4, 2008, the Department denied the 2007 Waiver request, concluding that the application presented no basis for a waiver of the Series 7

^{3/} See supra note 1.

^{4/} FINRA Qualification Examination Waiver Guidelines, available at <http://www.finra.org/RegistrationQualifications/BrokerGuidanceResponsibility/Qualifications/p010600> (last visited on Oct. 15, 2008).

Examination. On April 8, 2008, Stegawski appealed that decision to the Waiver Subcommittee, and on April 17, 2008, he submitted a statement to the Waiver Subcommittee in support of his appeal.

On May 12, 2008, the Waiver Subcommittee affirmed the Department's denial of the 2007 Waiver Request, determining the request did not meet the standards set forth in FINRA's Waiver Guidelines for a waiver of a qualification examination. The Waiver Subcommittee found that Stegawski's law degree lacked a "substantial emphasis on finance and investments" and he failed to submit a final transcript reflecting his graduation; that his Commission externship was not his "most recent employment" and lacked the "breadth of experience necessary" for an examination waiver; and that his "prior experience as a general securities representative was not substantial, [lasting] approximately four months." The Waiver Subcommittee also found that Stegawski's completion of the Series 24 Examination and Level I of the CFA Program did not "ensure the same breadth of knowledge of the securities laws and regulations as does completing the Series 7 Examination." In concluding, the Waiver Subcommittee stated that Stegawski should "re-familiarize [himself] with FINRA rules through the examination process and become familiar with the changes to the securities laws that have occurred since [he] last registered."

On May 28, 2008, Stegawski amended his March 7 application for Commission review to include the Department's decision to deny the 2007 Waiver Request and the Waiver Subcommittee's affirmance of that decision.

III.

We lacked jurisdiction to review Stegawski's original March 7 application because FINRA had not yet acted on the 2007 Waiver Request. ^{5/} However, we will consider Stegawski's amended petition to review the Waiver Subcommittee's decision, which constitutes FINRA's final action. We previously held that we have jurisdiction to review a denial of a waiver of a license examination because it, "in effect, constitutes a bar from . . . associating with any [FINRA] member." ^{6/}

^{5/} See, e.g., Florence Sarah Pollard, Exchange Act Rel. No. 55978 (June 28, 2007), 90 SEC Docket 2909, 2910 (dismissing application for review for applicant's failure to exhaust administrative remedies); Jeffrey A. King, Exchange Act Rel. No 52571 (Oct. 7, 2005), 86 SEC Docket 1439, 1443 (emphasizing that we "will not consider an application for review if the applicant failed to follow NASD procedures").

^{6/} Gina M. Guzzone, 57 S.E.C. 592, 596 (2004).

Our review of FINRA's denial of a waiver request is governed by Section 19(f) of the Securities Exchange Act of 1934. ^{7/} Pursuant to that Section, we must dismiss Applicant's appeal if we find that the specific grounds on which FINRA based its action "exist in fact," the action is in accordance with FINRA rules, FINRA applied those rules in a manner consistent with the purposes of the Exchange Act, and the action does not impose an undue burden on competition. ^{8/}

A. Specific Grounds Existed in Fact

An applicant seeking to register as a general securities representative generally must take and pass the Series 7 qualification examination. ^{9/} NASD Rule 1031(c) further requires that an individual, such as Stegawski, whose most recent registration as a representative or principal has been terminated for a period of two or more years immediately preceding the date of receipt by FINRA of a new application, must retake and pass the appropriate qualification examination. ^{10/} Under NASD Rule 1070(d), FINRA may waive the appropriate qualification examination requirement and accept other evidence of qualifications for registration "in exceptional cases and where good cause is shown." ^{11/}

FINRA examines the merits of any waiver request based on its Waiver Guidelines, which list five categories of waiver requests. ^{12/} Capstone based its 2007 Waiver Request on four of these categories: educational achievement, continuing registration, regulatory experience, and overall securities industry experience. For each of the four bases upon which Capstone relied in seeking an examination waiver, FINRA applied the pertinent Waiver Guideline to the facts

^{7/} 15 U.S.C. § 78s(f).

^{8/} Elliot M. Hershberg, Exchange Act Rel. No. 53145 (Jan. 18, 2006), 87 S.E.C. Docket 494, 497, aff'd, 210 F. App'x 125 (2d Cir. 2006) (unpublished). Stegawski does not claim, nor does the record show, that FINRA's action imposes an unnecessary or inappropriate burden on competition.

^{9/} NASD Membership and Registration Rule 1031(a); NASD Manual at 3142 (2006 ed.).

^{10/} NASD Membership and Registration Rule 1031(c); NASD Manual at 3142.

^{11/} NASD Membership and Registration Rule 1070(d), NASD Manual at 3151.

^{12/} NASD Notice to Members 04-59 (Aug. 2004), available at www.finra.org. Although the Waiver Guidelines are not FINRA rules approved by the Commission, they are issued by FINRA to "to assist member firms in recognizing situations where a solid basis exists for requesting a waiver." Waiver Guidelines, supra, note 4. We will treat them as relevant factors to consider and have previously reviewed NASD's application of its Waiver Guidelines with respect to an alleged filing error made by a member firm. Guzzone, 57 S.E.C. at 597.

presented by Capstone and contained in the CRD. ^{13/} Stegawski does not deny the existence of the facts FINRA used in reaching its decision to deny the 2007 Waiver Request; rather he disagrees with the conclusions FINRA drew from those facts. We conclude from our review of the record that the grounds on which FINRA based its decision to deny the waiver request exist in fact.

The Waiver Guidelines authorize granting waiver requests based on educational achievement to “persons who terminate their registrations and enroll in a master’s program with a substantial emphasis on Finance and Investments.” ^{14/} In order to qualify for a waiver under this provision of the Waiver Guidelines “[an] applicant must return to a member firm promptly after completing the course of study and furnish a copy of the course transcript with the waiver request.” ^{15/}

Stegawski contends that his legal studies and bachelor’s degree demonstrate his “broad exposure” to the securities industry and qualify him for a waiver based on educational achievement. Stegawski states that he received a law degree and studied courses in “securities regulation, bankruptcy, federal taxation, security interests, corporations, agency and partnership, wills and trusts, and contracts.” He also states that he earned a bachelor’s degree in finance and completed Level I of the CFA Program.

As an initial matter, the degree programs and examinations Stegawski relies on do not meet the Guidelines’ requirements because they are not master’s degree programs. He has a bachelor’s degree -- not a master’s degree -- in finance. His law degree, while including some relevant subjects, does not appear to have a “substantial emphasis on Finance and Investments.” Capstone further failed to provide a copy of Stegawski’s law school transcript, as required by the Waiver Guidelines, showing completion of the courses he had taken and verification of his graduation. ^{16/}

Capstone also based its 2007 Waiver Request on Stegawski’s continuing registration with other regulatory authorities, citing Stegawski’s externship with the Commission’s Atlanta Regional Office from September 2005 until December 2005. The Waiver Guidelines permit

^{13/} Since the Waiver Subcommittee issued its decision, FINRA has made minor changes to the Waiver Guidelines to accommodate the consolidation of regulatory functions of NASD and NYSE. See *supra* note 1. None of those changes are at issue here.

^{14/} Waiver Guidelines, *supra*, note 4.

^{15/} *Id.*

^{16/} Stegawski’s assertion in his reply brief that FINRA never asked for a full transcript is without merit because he may not place the burden of complying with the Waiver Guidelines’ requirements on FINRA.

FINRA to waive the examination requirement where an applicant's registration remained active with another regulatory authority during the time of inactivity with FINRA. As the Waiver Guidelines explain, "[i]f an individual becomes associated with a broker/dealer that is not a FINRA member, the CRD system is incapable of recognizing the continuance. These situations normally arise when a person transfers to a non-member broker/dealer that is a member of a national securities exchange, a bank municipal securities dealer, or intra-state securities firm." 17/ However, the record reflects that since July 20, 2004 (when his previous Series 7 license became inactive), Stegawski has not been registered with any other regulatory authority, and thus he does not qualify for this exception to the examination requirements. We find no basis for Stegawski's assertion that his Commission externship is relevant to this exception.

Stegawski also contends that he qualifies for a waiver based on the regulatory experience he obtained from his four-month Commission externship. The Waiver Guidelines permit FINRA to waive the examination requirement when an applicant's "most recent employment has been with a securities regulatory agency" and the applicant "was previously registered with a member firm." 18/ However, Stegawski's most recent employment was not with the Commission or another regulatory agency, as the Waiver Guidelines require, but with Capstone and the Law Office of Gregory Bartko. The Waiver Guidelines also instruct FINRA to "consider the scope of the regulatory experience in deciding the waiver request." 19/ Stegawski's experience with the Commission lasted four months, during which he states that he was a research assistant for the trial unit and "aided the Enforcement Division in the investigation of Securities Act violations." Based on the limited nature of Stegawski's duties and the short duration of his experience, we agree with FINRA's conclusion that Stegawski's regulatory experience did not "evidence the breadth of experience necessary to warrant a waiver" of the examination requirements. 20/

Capstone further based its waiver request on Stegawski's overall securities industry experience. The Guideline for a waiver of the qualification examination based on an applicant's overall securities industry experience lists six factors to be considered, four of which are applicable here: the length and quality of such experience; the specific registration requested and

17/ Waiver Guidelines, supra, note 4.

18/ Id.

19/ Id.

20/ See Exch. Servs. Inc., 48 S.E.C. 210, 213 (1985) (stating that the Commission will not overturn an NASD decision to deny a waiver of the examination requirements unless it is arbitrary or capricious), aff'd, 797 F.2d 188 (4th Cir. 1986); Investors Disc. Corp., 48 S.E.C. 182, 189 (1985) (same).

the type of business applicant will conduct; previous registration history; and “other examinations taken by the applicant,” such as those for the CFA Program. 21/

In making its determination, the Waiver Subcommittee specifically considered Stegawski’s experience in the securities industry: his six months with Morgan Stanley (four of which were as a registered general securities representative); his four-month externship with the Commission; and his experience as a legal assistant for Capstone and the Law Office of Gregory Bartko. We agree with FINRA that Stegawski’s four months of experience as a registered representative four years ago, his four-month Commission externship three years ago, and his current position as a legal assistant do not provide adequate assurance that he currently possesses the knowledge of FINRA’s rules required to act as a general securities representative. 22/ The Waiver Subcommittee also considered that Stegawski passed Level I examination of the CFA Program, the Series 24 Examination, and the Florida Bar Examination, in addition to his legal studies. However, the Waiver Subcommittee concluded that the fact that Stegawski passed these examinations and earned a law degree “does not ensure the same breadth of knowledge of the securities laws and regulations as does completing the Series 7 examination.”

Stegawski argues that his experience demonstrates “knowledge far in excess of the minimum competency requirements of the Series 7 examination.” However, none of the evidence Capstone proffered demonstrates that Stegawski has current knowledge of, and experience with, the wide range of products that the Series 7 Examination qualifies an individual to sell. For example, a Series 7 license allows individuals to sell “corporate securities, municipal securities, municipal fund securities, options, direct participation programs, investment company products, and variable contracts.” 23/ FINRA may accept other evidence of an individual’s knowledge of these product areas, besides a passing grade on the Series 7 Examination, but Stegawski has not made such a showing here.

Stegawski asserts that, because he passed the Series 24 Examination qualifying him to supervise general securities representatives, he also is competent to act as a general securities representative without reexamination. Contrary to Stegawski’s assertions, the Series 24 Examination is not a substitute for the Series 7 Examination. The Series 24 Examination serves a separate regulatory purpose emphasizing a principal’s obligations to supervise the operations of a general securities broker-dealer and its employees. As FINRA states, moreover, the Series 24

21/ Waiver Guidelines, supra, note 4.

22/ Although Stegawski also relies on his experience with Capstone and the Law Office of Gregory Bartko to support his waiver request, the information contained in his most recent Form U4 does not establish that his current employment is investment related.

23/ FINRA Registration and Examination Requirements, available at <http://www.finra.org/RegistrationQualifications/BrokerGuidanceResponsibility/Qualifications/p011051> (last visited on Oct. 15, 2008).

Examination does not cover all the product areas tested on the Series 7 Examination. To the extent that Stegawski argues, relying on a discussion in Jon G. Symon, ^{24/} that NASD commonly grants a conditional waivers of the representative examination to individuals who pass the principal's examination, his argument is misplaced. Unlike Symon, where the individual seeking a waiver had thirty-one years of investment-related experience, Stegawski has not demonstrated substantial investment-related experience.

Accordingly, we find that specific grounds on which FINRA based its denial of the 2007 Waiver Request exist in fact.

B. Waiver Denial was in Accordance with FINRA Rules

The procedures FINRA followed in conducting its review of the 2007 Waiver Request were in accordance with its rules. The 9600 Series of NASD's Procedural Rules set forth the process for applicants to request an exemption from FINRA examination requirements. ^{25/} In connection with those rules, the Waiver Guidelines provide direction to member firms regarding the appropriate steps to follow when requesting an examination waiver.

Before submitting the 2007 Waiver Request, Capstone failed to "submit a [Form U4] electronically via the CRD system," as required by the Waiver Guidelines. ^{26/} After Capstone filed the requisite Form U4, the Department rendered a written decision on April 4, 2008, in accordance with NASD Procedural Rule 9620. On April 8, 2008, Stegawski filed a timely appeal of the Department's decision to the Waiver Subcommittee. The Waiver Subcommittee gave Stegawski an opportunity to provide a detailed explanation for the basis of his appeal, including a statement as to which of the Department's findings and conclusions he took exception. On April 17, 2008, Stegawski submitted what he described as "a detailed explanation for the basis of [his] appeal" to the Waiver Subcommittee. On May 12, 2008, the Waiver Subcommittee issued a

^{24/} 54 S.E.C. 102, 110 (1999) (stating, in affirming NASD's denial of an unconditional waiver of the principal's examination, that "[w]hile he might be eligible for a conditional waiver that would exempt him from the requirement that he take the representative examination, he is not seeking such relief").

^{25/} NASD Procedural Rules 9610-9630; NASD Manual at 7399-7400. As of December 15, 2008, FINRA renamed NASD Rules 9610-9630 to FINRA Rules 9610-9630 without substantive change. See Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 FR 57174 (Oct. 1, 2008).

^{26/} Waiver Guidelines, supra , note 4.

written decision denying the 2007 Waiver Request. ^{27/} We find FINRA’s review of Stegawski’s request for an examination waiver complied with NASD’s Rules.

C. Rules Applied were Consistent with Exchange Act’s Purposes

FINRA also applied its rules in a manner consistent with the purposes of the Exchange Act. Exchange Act Section 15(b)(7) authorizes the Commission to regulate persons associated with broker-dealers by establishing qualification standards. ^{28/} Among such standards, Exchange Act Rule 15b7-1 requires associated persons to “pass[] any required examinations” established by the rules of the self-regulatory organizations.” ^{29/} In adopting Rule 15b7-1, we stated that “[self-regulatory organization] qualification of associated persons of broker-dealers is of substantial importance in promoting compliance with the substantive requirements of the federal securities laws” and that the Commission principally relies on self-regulatory organizations “in the formulation and administration of qualification standards subject to [our] review and oversight.” ^{30/}

As discussed above, NASD Rule 1031(c) requires persons whose registrations have expired without reactivation for a period of two or more years to retake the appropriate qualifying examinations in order to reinstate their licenses. Stegawski has not functioned in the capacity of a general securities representative for over four years, when he did so for only a few months. We believe it is consistent with the policies of the Exchange Act to conclude that, in that time, there have been changes to the securities laws and regulations with which Stegawski should become familiar. As we have previously observed, requiring Stegawski to retake the qualification examination for the Series 7 license is fully consistent with the Exchange Act’s statutory goal of ensuring the requisite levels of knowledge and competency of associated persons. ^{31/}

^{27/} In August 2004, we approved FINRA’s decision to create the Waiver Subcommittee to preside over appeals of examination waiver requests as a means of providing expedited review. Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend the Rule 9600 Series, Exchange Act Rel. No. 50099 (Aug. 3, 2004), 83 SEC Docket 1474.

^{28/} 15 U.S.C. § 78 o(b)(7).

^{29/} 17 C.F.R. § 240.15b7-1.

^{30/} Requirement of Broker-Dealers to Comply with SRO Qualification Standards, Exchange Act Rel. No. 32261 (May 4, 1993), 54 SEC Docket 39, 40.

^{31/} Guzzone, 57 S.E.C. at 599 & n.17 (citing Symon, 54 S.E.C. at 110).

Stegawski asserts that FINRA, in denying the 2007 Waiver Request, is unfairly penalizing him for attending law school and attempting to “expand[] his knowledge of the securities industry.” We disagree. Requiring requalification by examination is not punitive, but rather a safeguard to ensure that a representative possesses the requisite levels of knowledge and competency after a prior registration has expired. 32/ Four years have passed since Stegawski last served as a general securities representative. Given the public interest in ensuring that registered representatives are knowledgeable and competent in the products they sell, we find that, in requiring Stegawski to retake and pass the Series 7 Examination, FINRA applied its registration and waiver rules in a manner that was consistent with and advanced the purposes of the Exchange Act.

We, therefore, find that FINRA properly denied the 2007 Waiver Request. Accordingly, based on the foregoing, we dismiss this appeal.

An appropriate order will issue. 33/

By the Commission (Commissioners CASEY, AGUILAR and PAREDES); Chairman SCHAPIRO and Commissioner WALTER not participating.

Elizabeth M. Murphy
Secretary

32/ See Hans N. Beerbaum, Exchange Act Rel. No. 55731 (May 9, 2007), 90 SEC Docket 1863, 1869 n.17 (stating that “NASD’s registration requirement provides an important safeguard in protecting public investors, and strict adherence to that requirement is essential because it serves a significant purpose in policing of the securities markets and in protection of the public interest”) (internal punctuation omitted) (quoting Michael F. Flannigan, 56 S.E.C. 8, 17 (2003)).

33/ We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
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In the Matter of the Application of

MICHAEL STEGAWSKI
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ORDER DISMISSING REVIEW PROCEEDING

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Michael Stegawski, be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary