UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72828 / August 12, 2014

Admin. Proc. File No. 3-15990

In the Matter of the Application of NORTH WOODWARD FINANCIAL CORP. and DOUGLAS A. TROSZAK for Review of Action Taken by FINRA	ORDER DENYING STAY

North Woodward Financial Corp., a FINRA member firm, and Douglas A. Troszak, North Woodward's president, chief financial officer, chief compliance officer, financial and operations principal, and sole registered representative, appeal from a FINRA disciplinary action, which found that applicants failed to amend Troszak's Form U4 to disclose that he was subject to a federal tax lien and failed to respond completely to FINRA information requests. For the failure to respond, FINRA expelled North Woodward from membership and barred Troszak in all capacities. Applicants, proceeding pro se, now request that the Commission stay the imposition of these sanctions pending their appeal. For the reasons set forth below, applicants' motion is denied.

BACKGROUND

A. FINRA's Department of Enforcement filed a complaint against North Woodward and Troszak.

In May 2011, FINRA's Department of Enforcement filed a complaint against applicants alleging that they (i) failed to disclose a federal tax lien against Troszak on his Form U4 in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110, and (ii) failed to respond completely to requests for information and documents in violation of FINRA Rules 8210 and 2010. The complaint alleged that FINRA requested information from Troszak and his wholly-owned brokerage firm North Woodward pursuant to

FINRA Rule 8210 on four separate occasions but that applicants provided information in response to only the first request.[1] Based on that response, FINRA alleged that in February 2009 Troszak was unable to pay the mortgage on a commercial condominium unit he owned in Michigan. After the unit went into foreclosure, Troszak borrowed a total of $200,000 from ten of his customers to redeem his ownership in the property. Seven of these customers withdrew funds from individual retirement accounts to loan Troszak money. Troszak, individually and as president of Troszak Capital Corp., executed a promissory note for each loan that required repayment of the principal plus 10% annual interest over six consecutive quarterly installments. On December 8, 2009, Troszak redeemed the property using $188,689.52 of the loan proceeds.

FINRA alleged that applicants failed to provide information in response to the three other Rule 8210 requests, which asked applicants to provide, among other things, copies of customer new account forms, account amendments, and account statements for 2009 and 2010 for each customer who had loaned Troszak money; bank and brokerage statements for accounts in which Troszak had a beneficial interest for the period January 2009 to April 2010, including the account statements for Troszak Capital Corp.; and all correspondence between applicants and the IRS. The requests also asked applicants to produce evidence that the customers who loaned Troszak money were receiving payments as required by the terms of the promissory notes and to provide an accounting, with documentation, of the $11,310.48 difference between the amount Troszak borrowed from the customers and the amount he paid to redeem the property. In written responses to FINRA's requests, applicants refused to supply any of the requested documents and instead asserted that the information FINRA sought was "personal and confidential" to either the customers or Troszak Capital Corp. and was "irrelevant" to FINRA's investigation.

B. A FINRA hearing panel found violations and the NAC affirmed on appeal.

After a one-day hearing, a FINRA hearing panel found applicants liable for the two violations alleged in the complaint. Although applicants produced additional documents in October and November 2011— over a year after FINRA's requests and approximately five months after FINRA filed the complaint — the hearing panel found that applicants' belated document production was not fully responsive to FINRA's requests. The production did not provide an accounting of the $11,310.48 difference between the loan proceeds and the redemption amount, evidence of repayment to customers, or the 2009 and 2010 securities account statements for Troszak Capital Corp. For applicants' violations, the hearing panel barred

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[1] Troszak, a certified public accountant, owns and operates Troszak, C.P.A., an accounting business, and North Woodward, a general securities business. All of North Woodward's customers are also Troszak's accounting clients.

Troszak in all capacities and expelled North Woodward. On appeal, FINRA's National Adjudicatory Council ("NAC") affirmed the hearing panel's findings of violations. The NAC also affirmed the imposition of the bar and expulsion.[2] The NAC determined "that [applicants'] partial responses did not comply substantially with all aspects of the FINRA Rule 8210 requests and aggravating factors support barring Troszak and expelling North Woodward from FINRA membership." Applicants appeal the NAC's decision and ask for a stay of the sanctions imposed.

ANALYSIS

In determining whether to grant applicants' motion for a stay, the Commission considers (i) the likelihood that movants will succeed on the merits of their appeal; (ii) the likelihood that movants will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest.[3] Applicants have the burden of establishing that a stay is warranted.[4] For the reasons explained below, applicants have not met this burden, and thus we deny their motion.

A. Applicants have not shown that they are likely to succeed on the merits.

Final resolution of applicants' appeal must await the Commission's determination on the merits. But based on the briefs the parties have filed so far, there does not appear to be a strong likelihood that applicants will succeed.[5] Applicants' principal argument on the merits appears to

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[2] In additional to the bar and expulsion for the FINRA Rule 8210 violation, both the hearing panel and the NAC concluded that a $50,000 fine, for which applicants should be jointly and severally liable, was appropriate, but they declined to impose the fine in light of the bar and expulsion. Similarly, for the Form U4 violation, the hearing panel concluded that a $10,000 fine, with joint and several liability, and a 30-day suspension for both Troszak and North Woodward was appropriate, but declined to impose these sanctions in light of the bar and expulsion. The NAC slightly modified the sanctions for the Form U4 violation, increasing Troszak's suspension to 60 days and eliminating North Woodward's suspension, while keeping the $10,000 fine in place. But, like the hearing panel, the NAC declined to impose the sanctions for the Form U4 violation.

[3] *See, e.g.*, *Intelispan, Inc.*, Securities Exchange Act Release No. 42738, 54 SEC 629, 2000 WL 511471, at *2 (May 1, 2000).

[4] *See, e.g.*, *Millenia Hope, Inc.*, Exchange Act Release No. 42739, 2000 WL 511439, at *1 (May 1, 2000) ("The party requesting the stay has the burden of proof.").

[5] In addition to applicants' initial request for a stay and FINRA's brief in opposition, we have received applicants' "Response to FINRA's Brief in Opposition to Request for Stay," filed August 5, 2014, "Additional Information related to 'Request for Stay,'" filed August 7, 2014, and

be that FINRA was not entitled to the information it sought in its Rule 8210 requests. Applicants contend that the information was "private client tax data" and that "the requested documents cannot be disclosed under federal [tax] law." They argue further that FINRA does not have jurisdiction over a "private loan transaction" between Troszak and his customers because the "transaction does not involve securities, nor is it the type of non-securities case that FINRA may regulate." Consequently, applicants argue, "FINRA should not be allowed to hand out discipline for a failure to provide information related to that transaction, otherwise, FINRA will continue to request information on matters outside the scope of its regulatory authority."

FINRA responds that "the requests did not seek confidential tax information of customers" and that federal law does not preclude FINRA from seeking "information and documents related to *Troszak's* use and repayment of customer funds." FINRA further contends that its "rules contain requirements and prohibitions that reach business-related conduct, even if the activity does not involve a security" and Rule 8210 "confers upon FINRA broad discretion to inquire about any matter involved in a FINRA investigation, complaint, or proceeding." Accordingly, FINRA argues that its "efforts to investigate Troszak's loans with his and North Woodward's customers are squarely within FINRA's regulatory mandate."

Applicants have not shown that their challenge to FINRA's authority to seek the requested documents is likely to succeed. As the Commission has often stressed, Rule 8210 is vitally important in connection with "FINRA's 'obligation to police the activities of its members and associated persons.'"[6] Without subpoena power, FINRA "must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate."[7] Rule 8210 expressly requires members and associated persons to provide information "with respect to any matter involved in [a FINRA] investigation, complaint, or proceeding."

While the Commission has recognized that "the scope of Rule 8210 . . . does have limits,"[8] it appears that FINRA's investigation into Troszak's loans from customers of North

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their "Additional Response to FINRA's Brief in Opposition to Request for Stay and Merit," filed August 11, 2014.

6 *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *12 (Apr. 17, 2014) (quoting *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009)).

7 *CMG Institutional Trading*, 2009 WL 223617, at *5.

8 *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 WL 2482466, at *3 (Aug. 25, 2006).

Woodward, a FINRA member firm, was not beyond FINRA's jurisdiction and FINRA's requests for information were well within the scope of Rule 8210.[9] Indeed, we agree with FINRA that "borrowing [money] from customers is within FINRA's authority to investigate," regardless of whether applicants complied with FINRA Rule 3240, which prohibits an associated person from borrowing money from or lending money to a customer except in certain circumstances. And as Commission precedent establishes, those regulated by FINRA may not "'take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct,'" but instead "a member firm and its associated persons have an obligation to respond to [FINRA's] requests fully and promptly."[10]

Additionally, applicants' reliance on the Commission's decision in *Jay Alan Ochanpaugh*[11] appears misplaced. Citing *Ochanpaugh*, applicants argue that "FINRA Rule 8210 does not apply to documents of Troszak CPA Group." In *Ochanpaugh*, the Commission held that an associated person was not required to provide FINRA with documents of a third party when FINRA had not established that the documents were in the associated person's possession and control.[12] Here, the documents FINRA sought were within applicants' possession and control and concerned customers of a regulated firm rather than a third party. [13] As FINRA

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[9] *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *7 (June 14, 2013) ("It is well established that FINRA's disciplinary authority . . . 'is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'" (quoting *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *5 n.18 (Jan. 6, 2012))); *Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at *3 (Feb. 11, 2013) (noting in rejecting applicant's motion for a stay that FINRA's requests for information concerning a business entity with significant ties to a member firm and its associated person were "not even close" to the limits of Rule 8210's scope).

[10] *CMG Institutional Trading*, 2009 WL 223617, at *6 (quoting *Gen. Bond Share Co. v. SEC*, 39 F.3d 1451, 1461 (10th Cir. 1994)); *see also Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at *4 (Nov. 8, 2007) (stating that the question of whether a requested record is "with respect to any matter involved in" a FINRA investigation "is a determination made by the [FINRA] staff" and that Rule 8210 "does not require that [FINRA] explain its reasons for making the information request or justify the relevance of any particular request").

[11] Exchange Act Release No. 54363, 2006 WL 2482466 (Aug. 25, 2006).

[12] *Id.* at *6.

[13] *See Goldstein*, 2013 WL 503416, at *3 (rejecting applicants' reliance on *Ochanpaugh* when FINRA's information request sought information within the possession and control of an associated person and noting that "[a]s an associated person, Goldstein is thus 'required to

correctly notes, the Commission in *Ochanpaugh* "did not rule that documents related to an associated person's transactions with his and his broker-dealer's customers, such as those in this case, are outside of FINRA's reach."

Applicants' remaining arguments on the merits also are unlikely to succeed. Applicants contend that they are being "banned from the financial industry" for an "inadvertent" Form U4 "filing error." The bar and expulsion were not imposed for applicants' Form U4 violation but for their violation of Rule 8210 when they refused to provided requested information. Moreover, the NAC rejected the argument that the Form U4 violation was inadvertent, finding that applicants' failure "to amend Troszak's Form U4 to disclose a tax lien for three years after Troszak had notice of it" supported the conclusion that applicants' violation (even if initially an oversight) was intentional. Applicants also contend that they "substantially complied with FINRA's investigation." But the NAC found that applicants' "partial response fell far short of substantial compliance," and the evidence in the record appears to support this finding.

B. Applicants have not shown that they will likely suffer irreparable harm.

Applicants contend that FINRA's actions have prevented them from obtaining "cash to purchase legal representation" because Troszak has had difficulty accessing his own brokerage accounts at North Woodward's clearing firm after the NAC decision. It is not clear why Troszak would be unable to access his own funds in accounts at the clearing firm and applicants have supplied nothing to support their claim. But even if true, these allegations do not support a finding of irreparable harm. The Commission has held repeatedly that "'the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay.'"[14]

C. Consideration of the potential harm to other parties and the public interest does not support issuing a stay.

Applicants also allege that FINRA's action "has caused considerable harm to all North Woodward clients." Because of applicants' difficulty in accessing client accounts at the clearing

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provide [FINRA] with any documents that belong to him personally'" (quoting *CMG Institutional Trading*, 2009 WL 223617, at *7)).

[14] *Mitchell T. Toland*, Exchange Act Release No. 71875, 2014 WL 1338145, at *2 (Apr. 4, 2014) (quoting *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004)); *see also Michael A. Rooms*, Admin. Proc. File No. 3-11621, 2004 SEC LEXIS 3158, at *5 (Nov. 17, 2004) (denying stay by concluding that applicant's argument that "the bar imposed on him ha[d] resulted in severe financial loss and damages to his reputation . . . d[id] not rise to the level of irreparable injury").

firm, applicants represent that "[i]t is now more difficult for our clients to manage their treasury functions and obtain cash to make tax payments to the IRS and make withholding payments related to DOL retirement plans[;] in some cases payroll related liabilities have been in jeopardy of not getting paid." As FINRA notes and applicants appear to concede, applicants' customers should be able to obtain this tax information directly from the clearing firm. In any event, on balance, depriving their customers of applicants' brokerage-related services during the appeal does not support the issuance of a stay.[15]

Furthermore, the public interest supports denying the request for a stay. Failure to comply with an information request, the Commission has repeatedly noted, "is a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities."[16] In this context, the Commission has recognized that in many instances individuals who violate Rule 8210 "present too great a risk to the markets and investors to be permitted to remain in the securities industry."[17] For these reasons, we find that the public interest favors denial of applicants' motion.[18]

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[15] *Cf. Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 WL 1376365, at *5 (May 9, 2007) (rejecting applicant's argument that "allowing [him] to remain in the industry would serve the interest of investors"). We similarly reject applicants' suggestion that not having "one client complaint filed against the firm or Doug Troszak" supports issuance of a stay. *Cf. id.* (rejecting applicant's assertion that a lack of customer complaints meant that the public interest was served by his presence in the industry notwithstanding his violation of NASD rules, "which are intended to protect investors, [and] are rendered meaningless if aspects of them are, as here, disregarded").

[16] *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *6 (Sept. 10, 2010) (sustaining bar imposed by FINRA's predecessor, NASD, for failure to respond to an information request); *see also PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *4 (Apr. 11, 2008) ("The failure to respond to NASD information requests frustrates NASD's ability to detect misconduct, and such inability in turn threatens investors and markets."), *pet. denied*, 566 F.3d 1172 (D.C. Cir. 2009); *Elliot M. Hershberg*, Exchange Act Release No. 53145, 2006 WL 140646, at *3 (Jan. 19, 2006) (stating that "[f]ailure to comply [with an information request] is a serious violation justifying stringent sanctions because it subverts NASD's ability to execute its regulatory functions"), *pet. denied*, 210 F. App'x 125 (2d Cir. 2006).

[17] *PAZ Sec., Inc.*, 2008 WL 1697153, at *4.

[18] FINRA objects to applicants' inclusion of Exhibits 2 and 4 attached to their motion. Given that these exhibits were not part of the record before FINRA and applicants have failed to show "that there were reasonable grounds for failure to adduce such evidence previously" and

Accordingly, IT IS ORDERED that, pending Commission review of their appeal, applicants' motion to stay the sanctions FINRA imposed is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Lynn M. Powalski
Deputy Secretary

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have failed to "show with particularity that such additional evidence is material," Commission Rule of Practice 452, 17 C.F.R. § 201.452, we do not consider them.