

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 73748 / December 4, 2014

Admin. Proc. File No. 3-16131

In the Matter of the Application of

Gerald J. Lodovico

For Review of Disciplinary Action Taken by
FINRA

**ORDER GRANTING
MOTION TO DISMISS
APPLICATION FOR REVIEW**

Gerald J. Lodovico, formerly a registered representative associated with Trustmont Financial Group, Inc. ("Trustmont"), seeks review of FINRA disciplinary action. FINRA barred Lodovico from associating with any FINRA member in any capacity as a result of his failure to comply with requests for information, made pursuant to FINRA Rule 8210, regarding his outside business activities and tax liens filed against him.¹ FINRA filed a motion to dismiss Lodovico's application for review, to which Lodovico has not responded. For the reasons set forth below, we have determined to grant FINRA's motion and dismiss this appeal, finding that Lodovico failed to exhaust his administrative remedies.

I. Background

A. Lodovico failed to respond to FINRA's requests for information.

Lodovico was associated with Trustmont from March 2010 to December 2012. The Central Registration Depository ("CRD") record reflects that, while associated with Trustmont, Lodovico worked as the Chief Executive Officer of Sinclair Hathaway Holdings, LLC ("Sinclair Hathaway"), a "private investment company which may trade options and or futures."²

¹ FINRA Rule 8210(a)(1) states, in relevant part, that "FINRA staff shall have the right to: require a . . . person associated with a member . . . to provide information . . . in writing . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding" authorized by the FINRA By-Laws or rules.

² FINRA represents that Lodovico provided this information in response to Section 13 of the Uniform Application for Securities Industry Registration or Transfer ("Form U4"), which asks, "Are you *currently* engaged in any other business either as a proprietor, partner, officer, director, (continued...)"

On June 11, 2013, pursuant to Rule 8210, FINRA sent Lodovico a letter (the "First Letter"), by both certified and first-class mail, to his address of record in the CRD.³ The letter requested that Lodovico provide FINRA with certain financial documents concerning Sinclair Hathaway and information about three tax liens that were filed against him while he was associated with Trustmont.⁴ It also informed Lodovico that, although he was no longer associated with a FINRA member firm, he remained subject to FINRA's jurisdiction.⁵ The letter further warned Lodovico that sanctions could be imposed against him if he did not respond to FINRA's Rule 8210 request. FINRA requested that Lodovico provide a response by June 24, 2013.⁶ Lodovico did not respond to FINRA's Rule 8210 request.

On July 1, 2013, FINRA sent Lodovico a second letter (the "Second Letter"), by certified and first-class mail, requesting that Lodovico provide the information requested in its First Letter. The Second Letter set a July 10, 2013 response deadline and again warned Lodovico that he could be subject to sanctions, including a bar, if he did not deliver the requested information.⁷ Once more, Lodovico did not respond to FINRA's Rule 8210 request.

(...continued)

employee, trustee, agent or otherwise?" (emphasis added) and requests the associated person to provide details for an affirmative answer. The Form U4 is not included in the record.

³ A notice issued pursuant to Rule 8210 is deemed received by such person when mailed to his last known residential address as reflected in the CRD. FINRA Rule 8210(d). Formerly registered persons have a "continuing duty" to keep FINRA apprised of their current address. *Warren B. Minton, Jr.*, Exchange Act Release No. 46709, 2002 WL 32140276, at *4 n.15 (Oct. 23, 2002); *see* NASD Notice to Members 97-31, 1997 WL 1909798, at *1-2 (May 1997) (reminding registered persons to keep a current mailing address with NASD "[f]or at least two years *after* an individual registration has been terminated by the filing of . . . [a] Form U5") (emphasis in original). In its motion to dismiss, FINRA states that it mailed all correspondence in this matter to the CRD address of record. In his application for review, Lodovico provides an address that matches the same CRD address.

⁴ The letter indicated that a search of Allegheny County, Pennsylvania court records revealed that a federal tax lien of \$35,251, and two state tax liens, one for \$135 and the other for \$11,035, had been filed against Lodovico in 2012.

⁵ Pursuant to Article V, Section 4(c) of the FINRA By-Laws, FINRA retained jurisdiction over Lodovico for two years after he ceased to be associated with Trustmont.

⁶ The certified letter was returned as unclaimed, but the first-class letter was not returned.

⁷ Again, the certified letter was returned as unclaimed, but the first-class letter was not returned.

B. FINRA suspended and then barred Lodovico for his failure to respond.

After Lodovico failed to respond, FINRA's Department of Enforcement ("Enforcement") initiated efforts to suspend him. On May 14, 2014, Enforcement sent Lodovico a letter (the "Pre-Suspension Notice"), notifying him that he would be suspended from associating with any FINRA member in any capacity, effective June 9, 2014, for his failure to respond to the prior Rule 8210 requests for information.⁸ The Pre-Suspension Notice informed Lodovico that he could take corrective action to prevent the suspension, request a hearing in response to the notice, or, if suspended, request termination of the suspension on the ground of full compliance. The Pre-Suspension Notice warned Lodovico that if he did not request termination of the suspension within three months, he would be barred automatically on August 18, 2014. Lodovico never responded to the notice; nor did he answer the outstanding request for information.

Because Lodovico did not take any action in response to the Pre-Suspension Notice, FINRA sent Lodovico a letter (the "Suspension Notice") on June 9, 2014, notifying him that he was suspended, effective immediately, from association with any FINRA member in any capacity.⁹ The Suspension Notice advised Lodovico that he could file a written request to terminate the suspension on the ground of full compliance with the prior requests for information and documents from FINRA. The Suspension Notice also reiterated the warning that Lodovico's failure to seek relief from the suspension by August 18, 2014 would result in an automatic bar pursuant to FINRA Rule 9552(h).¹⁰ Lodovico did not respond.

On August 18, 2014, FINRA notified Lodovico that, effective immediately, he was barred (the "Bar Notice").¹¹ It also informed Lodovico that any appeal to the Commission had to be filed within thirty days of his receipt of the Bar Notice. On September 16, 2014, Lodovico submitted this timely application for review.

⁸ FINRA sent the Pre-Suspension Notice by Federal Express ("FedEx") Overnight Delivery and first-class mail to Lodovico's CRD address. Neither mailing was returned. The FedEx shipment detail for the mailing indicates that it was delivered on May 15, 2014.

⁹ FINRA sent the Suspension Notice by FedEx Overnight Delivery and first-class mail to Lodovico's CRD address, and, as with the Pre-Suspension Notice, neither mailing was returned. The FedEx shipment detail for the mailing indicates that it was delivered on June 10, 2014.

¹⁰ FINRA Rule 9552(h) states, in relevant part, that "a member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred."

¹¹ FINRA sent the Bar Notice by certified and first-class mail to Lodovico's CRD address. The certified letter was returned as unclaimed, but the first-class letter was not returned.

II. Analysis

We dismiss Lodovico's application for review because he failed to exhaust FINRA administrative remedies before seeking relief from the Commission. Lodovico had the opportunity to avail himself of FINRA's administrative process by taking corrective action, requesting a hearing in response to the notice of suspension, or seeking termination of the suspension on the basis of his full compliance with the information request. But Lodovico did not exercise his rights at any stage of the process before FINRA and thus failed to exhaust his administrative remedies.

We emphasize that "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review."¹² Consequently, we will not consider an application for review if the applicant failed to exhaust FINRA's procedures.¹³ As the Second Circuit has reasoned:

Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. Moreover, like other administrative exhaustion requirements, the SEC's promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review. It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.¹⁴

In his application for review, Lodovico states that he informed Trustmont in October 2013 that he was "voluntarily relinquishing" his licenses "for life"; that he reported to Trustmont two of the three tax liens against him but was "completely unaware" of the third lien; and that he did not respond to FINRA's Rule 8210 requests because he "assumed" that since he was "voluntarily relinquishing" his licenses, "the point was moot (a regrettable mistake on my part)."

¹² *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *29 (Apr. 3, 2003) (citing *Royal Sec. Corp.*, Exchange Act Release No. 5171, 1955 WL 43159, at *277 (May 20, 1955)), *aff'd*, 380 F.3d 611 (2d Cir. 2004).

¹³ *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *2 n.5 (Sept. 19, 2014) (dismissing applicant's appeal for failure to exhaust administrative remedies) (quoting *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at *3 (Apr. 10, 2014)) (same).

¹⁴ *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

Even if we were to accept Lodovico's allegations as true, they do not excuse him from following FINRA's rules, which require compliance with Rule 8210 requests.¹⁵ Lodovico also states that he has "no plans to seek reinstatement [of his licenses]; however, a lifetime ban, especially in light of the internet and today's informational access would tarnish [his] reputation irreparably." Again, this allegation does not excuse Lodovico's failure to respond, because he was responsible for familiarizing himself with the collateral consequences of a bar.¹⁶ Lodovico's application for review must be dismissed because he failed to exhaust his administrative remedies.

Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Gerald J. Lodovico is GRANTED.

By the Commission.

Brent J. Fields
Secretary

¹⁵ See FINRA Rule 8210(c) (stating that "[n]o member or person shall fail to provide information . . . pursuant to this Rule"); *Lenahan*, 2014 WL 4656403, at *3 (rejecting reasons given by applicant to justify her failure to respond to FINRA's rules, which require compliance with Rule 8210 requests).

¹⁶ See *Lenahan*, 2014 WL 4656403, at *3 n.10.