

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 77510 / April 4, 2016

Admin. Proc. File No. 3-17128

In the Matter of the Application of

Christopher A. Parris

For Review of Action Taken by

FINRA

CORRECTED ORDER
DENYING STAY
AND SCHEDULING
BRIEFS

Christopher A. Parris (“Parris”) appeals from a FINRA order barring him from association with any FINRA member for failing to comply with requests that he provide documents pursuant to FINRA Rule 8210. Parris moves for a stay of that order pending his appeal to the Commission. FINRA opposes his motion. Because Parris fails to show that a stay is warranted under the applicable four-part standard, his motion is denied.

I. Background

This matter arises out of FINRA’s investigation of First American Securities (“FAS”), a FINRA member firm, and Parris, the 50% owner of its parent entity. FINRA states that it is investigating FAS and Parris with respect to their involvement with two potentially fraudulent private placements. FINRA Rule 8210(a)(1) authorizes FINRA “[f]or the purpose of an investigation” or other authorized proceeding to “require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically” or to testify.

On September 15, 2015, FINRA requested that Parris provide 16 categories of documents in connection with its investigation, including certain documents that FINRA requested from Parris during on-the-record testimony provided on September 10 and 11, 2015. FINRA reiterated its requests on September 23, 2015, and October 1, 2015.

On October 16, 2015, FINRA sent Parris a letter informing him he failed to respond completely to its requests. The letter stated that Parris had failed to respond to 12 of the 16

requests. FINRA also stated that although he had provided some documents responsive to them, it was unclear whether Parris had fully complied with two of the remaining four requests.¹ The letter informed Parris that unless he took corrective action by November 9, 2015 by complying with FINRA's requests, he would be suspended from associating with any FINRA member in any capacity.² The notice also stated that Parris could request a hearing in response to the letter, or file a written request for termination of the suspension with the Executive Vice President of FINRA's Department of Enforcement on the ground of full compliance with FINRA's requests. Under the heading "Default," the letter also informed Parris that if he failed to request termination of the suspension within three months, *i.e.*, by January 19, 2016, he would automatically be barred from associating with any FINRA member in any capacity pursuant to FINRA Rule 9552(h).³

On November 9, 2015, FINRA informed Parris that he had been suspended from associating with any FINRA member in any capacity.⁴ FINRA reiterated that Parris could file a written request for termination of the suspension on the ground of full compliance, and that, in the absence of such a request, he would be barred on January 19, 2016. On January 6, 2016, FINRA sent Parris a letter acknowledging that he had produced certain documents in response to its requests, including on December 2, 2015 and December 11, 2015. But FINRA also identified 12 of its requests for which responsive documents had not been produced or for which the document production was incomplete. Among other things, FINRA stated that, although Parris had produced redacted copies of bank statements responsive to its Request No. 5, he was required to produce unredacted copies of those documents to comply with the request. FINRA also stated that, although Parris had declined to produce requested documents responsive to its Request No. 15 on the ground that they related to transactions that "were not done through [FAS], or anyone associated with" it, Parris was required to produce the requested documents under FINRA rules because he was subject to FINRA's jurisdiction.

On January 19, 2016, Parris sent FINRA a letter that specifically addressed the categories of documents it believed he had not produced. Parris stated that he would produce certain additional documents the same day. Among other things, he also maintained previously stated

¹ FINRA did not raise any issues with respect to Parris's response to the final two requests.

² Under FINRA Rule 9552(a), if a "person associated with a member or person subject to FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested . . . pursuant to . . . FINRA rules, . . . FINRA staff may provide written notice to such . . . person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of . . . association of the person with any member."

³ See FINRA Rule 9552(h) ("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.").

⁴ FINRA Rule 9552(d) provides that a suspension notice under Rule 9552(a) "shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559."

objections to FINRA’s Requests Nos. 5 and 15 and rejected FINRA’s “conclusion that he [wa]s subject to Rule 8210 jurisdiction.” Also on January 19, 2016, Parris requested in a separate letter to FINRA’s Executive Vice President, Department of Enforcement, that “the suspension imposed upon him on November 9, 2015, be terminated on the grounds that he ha[d] fully complied with FINRA’s 8210 requests.” Parris supported that request with a copy of his other January 19, 2016 letter.

On January 21, 2016, the Executive Vice President in FINRA’s Department of Enforcement informed Parris by letter that, as head of the FINRA department that had issued the suspension notice to Parris, he had concluded that good cause did not exist to terminate Parris’s suspension.⁵ The letter also stated that FINRA staff had determined that Parris had “not responded to at least two request items,” *i.e.*, Requests Nos. 5 and 15, and that staff was “working to determine whether [Parris’s] last minute response dated January 19, 2016 [wa]s sufficient to satisfy” the other requests. On the same day, the Regional Chief Counsel in the FINRA office conducting the investigation of FAS and Parris sent Parris a separate letter informing him that he had been barred pursuant to Rule 9552(h).⁶ That letter did not otherwise explain the basis for the bar.

II. Analysis

The Commission considers the following factors in determining whether to grant a stay of FINRA action under Rule of Practice 401⁷: (i) whether there is a strong likelihood that the moving party will succeed on the merits of its appeal; (ii) whether the moving party will suffer irreparable harm without a stay; (iii) whether any person will suffer substantial harm as a result of a stay; and (iv) whether a stay is likely to serve the public interest.⁸ The party seeking a stay has the burden of establishing that relief is warranted.⁹ Because Parris has failed to satisfy this burden, his motion is denied.

First, Parris has failed to show a strong likelihood of success on the merits. Parris argues that he was not required to respond to FINRA’s Rule 8210 requests because he is not subject to its jurisdiction. Parris relies on an affidavit generally denying involvement in the securities

⁵ See FINRA Rule 9552(f) (generally providing that a request for termination of a suspension on the ground of full compliance must be “filed with the head of the FINRA department or office that issued the notice” and that such person “may grant relief for good cause shown”).

⁶ See *supra* note 3 (text of FINRA Rule 9552(h)).

⁷ 17 C.F.R. § 201.401.

⁸ *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *2 (Nov. 13, 2015) (citing *Harry W. Hunt*, Exchange Act Release No. 68755, 2013 WL 325333, at *3 (Jan. 29, 2013)); see also *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,772 (June 23, 1995) (prior comment to Rule of Practice 401).

⁹ *Dawson James Sec.*, 2015 WL 7074282, at *2 (citing *Hunt*, 2013 WL 325333, at *3).

industry. In response, FINRA argues that Parris is a “person associated with a member” who must comply with Rule 8210 because he is a “natural person engaged in the investment banking or securities business who is directly or indirectly controlling” a FINRA member.¹⁰ FINRA asserts that evidence that Parris was involved in FAS’s operations and hiring establishes that he is engaged in the securities business, and that Parris’s 50% indirect ownership of FAS provides him with control over it.¹¹ Parris argues that the evidence will disprove FINRA’s assertions and that certain of its statements are false.¹² Although final resolution of Parris’s appeal must await the Commission’s determination on the merits, there does not appear to be a strong likelihood that he will succeed based on the briefs the parties have filed.

Second, Parris also has failed to demonstrate that he will suffer irreparable harm absent a stay. To establish irreparable injury, Parris must do more than show he is subject to a bar order.¹³ Rather, he must show an injury that is “both certain and great” and “actual and not theoretical.”¹⁴ A stay “will not be granted [based on] something merely feared as liable to occur at some indefinite time.”¹⁵ Parris argues that the bar will cause him irreparable harm because it prevents him from pursuing employment in the securities industry and renders him statutorily disqualified.¹⁶ Even assuming that loss of employment (or an employment opportunity) constitutes irreparable injury, rather than monetary harm,¹⁷ the basis of Parris’s challenge to

¹⁰ FINRA By-Laws, Article I, Definitions, (rr).

¹¹ *Id.*, (h) (“A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary.”).

¹² Parris also disputes FINRA’s argument that Parris failed to exhaust his administrative remedies before FINRA because he did not request a hearing to raise his objections to its exercise of jurisdiction over him.

¹³ *See, e.g., Dawson James Sec.*, 2015 WL 7074282, at *3 (finding that applicants failed to establish irreparable injury where they moved to stay bar order); *North Woodward Fin. Corp.*, Exchange Act Release No. 72828, 2014 WL 3937496, at *4 (Aug. 12, 2014) (same); *The Dratel Grp., Inc.*, Exchange Act Release No. 72293, 2014 WL 2448896, at *5 (June 2, 2014) (same).

¹⁴ *Donald L. Koch*, Exchange Act Release No. 72443, 2014 WL 2800778, at *2 (June 20, 2014) (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)) (order denying in part request for stay of Commission action pending appeal to the Court of Appeals).

¹⁵ *Koch*, 2014 WL 2800778, at *2 (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d at 674).

¹⁶ Section 3(a)(39)(A) of the Securities Exchange Act of 1934 makes subject to “statutory disqualification” any person who “has been and is . . . barred or suspended from being associated with a member of, any self-regulatory organization.” 15 U.S.C. § 78c(a)(39)(A).

¹⁷ *But see Dawson James Sec.*, 2015 WL 7074282, at *3 (“[T]he Commission and courts have held, that ‘[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough’ to constitute irreparable harm.” (quoting *William Timpinaro*, Exchange Act Release No. 29927, 1991 WL 288326, at *3 (Nov. 12, 1991)); *see also Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

FINRA's jurisdiction over him is that he is not associated with any FINRA member, and he does not identify any employment opportunity that he has foregone because of the bar.¹⁸ Nor does Parris point to any specific injury flowing from statutory disqualification.¹⁹ Although he has been suspended since November 9, 2015, and barred since January 21, 2016, Parris has not identified any irreparable injury he will suffer in the absence of a stay.²⁰

Finally, Parris has failed to address the two remaining factors: whether any person will suffer substantial harm as a result of a stay and whether a stay is likely to serve the public interest. In the absence of any showing by Parris, these factors do not favor a stay in this case; for example, failure to comply with a Rule 8210 information request "is a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities."²¹

Accordingly, IT IS ORDERED that the motion by Christopher A. Parris to stay the effect of FINRA's decision is denied; and it is further

ORDERED that, pursuant to Rule 450(a) of the Commission's Rules of Practice,²² that a brief in support of the application for review shall be filed by May 2, 2016, a brief in opposition shall be filed by June 1, 2016, and any reply brief shall be filed by June 15, 2016;²³ and it is further

¹⁸ Cf. *Dratel Grp.*, 2014 WL 2448896, at *5 (finding that applicant's statement that he would be "barred from a business he has been a part of for over thirty-seven years and [that is] his only source of income," without greater elucidation, did not establish irreparable injury).

¹⁹ See *Koch*, 2014 WL 2800778, at *2 (explaining that "speculation about possible collateral proceedings does not satisfy the irreparable injury requirement"); cf. *Dratel Grp.*, 2014 WL 2448896, at *5 (finding that applicant's "vague reference" to his customers' losing access to his services did not demonstrate irreparable harm).

²⁰ Parris also asserts that "FINRA's summary declaration of jurisdiction and ejection of [him] constitutes irreparable harm." But this is merely another way of describing the action that he challenges; it does not identify any irreparable harm associated with it.

²¹ *North Woodward Fin.*, 2014 WL 3937496, at *4 (finding that public interest favored denial of applicants' motion to stay bar ordered for violation of FINRA Rule 8210 (quoting *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *6 (Sept. 10, 2010))); accord *Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at *5 (Feb. 11, 2013) (same).

²² 17 C.F.R. § 201.450(a).

²³ As provided by Rule 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rules of Practice 150-153, 17 C.F.R. § 201.150-153, with respect to form and service, and Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b) and (c), with respect to content and length limitations. Requests for extensions of time to file briefs will be disfavored. Pursuant to Rule of Practice 180(c), failure to file a brief in support of the application may result in dismissal of this review proceeding. 17 C.F.R. § 201.180(c).

ORDERED that, in addition to any matters that the parties choose to raise in their briefs, the parties shall address the following issues and explain the basis for their conclusions with respect to them:

1. FINRA maintains that Parris was required to request a hearing to object to its jurisdiction. Is this consistent with FINRA's rules and the process requirements of Exchange Act Section 15A(b)(8) and (h)(1), 15 U.S.C. § 78-o3(b)(8) and (h)(1)?
2. Parris requested that FINRA terminate his suspension under Rule 9552(f), which permits a person to "file a written request for termination of [a] suspension on the ground of full compliance" with the relevant Rule 8210 requests. Did Parris properly invoke this rule when he requested termination of his suspension on the ground of full compliance while he continued to object to certain requests?
3. FINRA Rule 9552(h), entitled "Defaults," provides 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." Does this rule authorize FINRA to bar an individual who timely requests termination of a suspension under Rule 9552(f) if FINRA declines to grant that request?
4. FINRA's Sanctions Guidelines, https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf, list several considerations relevant to FINRA adjudicators' determination of sanctions for a failure to provide documents or testimony under Rule 8210. These considerations include that "[w]here the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request." Are the considerations identified in the Sanctions Guidelines relevant where FINRA bars an individual under the default procedure provided in Rule 9552(h)?
5. Parris argues that FINRA barred him without explaining the basis for its determination that he was an associated person of FAS. Should the Commission remand this case to FINRA to explain in the first instance its determination with respect to Parris's status as an associated person and/or explain in more detail its reasons for imposing a bar on him?

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

Brent J. Fields
Secretary