UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78352 / July 18, 2016

Admin. Proc. File No. 3-17076

In the Matter of the Application of KENNY A. AKINDEMOWO For Review of Action Taken by FINRA	ORDER DENYING STAY

Kenny A. Akindemowo ("Akindemowo") has appealed from a FINRA order barring him from association with any FINRA member and directing him to pay $15,000 plus prejudgment interest as disgorgement and to pay costs for converting two investors' funds and inducing their investments by fraudulent means. After filing his application for review on January 29, 2016, and a brief in support of that application on April 20, 2016,[1] Akindemowo filed the instant motion on June 28, 2016, requesting a stay of the bar pending his appeal to the Commission. FINRA opposes his motion. Akindemowo's motion is denied.

I. Background

FINRA's Department of Enforcement ("Enforcement") filed a complaint against Akindemowo on February 1, 2013, alleging, among other things, that he converted investor funds by making fraudulent misrepresentations in connection with the purported sale of securities. Enforcement further alleged that Akindemowo engaged in securities transactions and outside business activities without providing written notice to his firm.

On January 23, 2014, a FINRA Hearing Panel (the "Hearing Panel") issued a decision finding that Akindemowo had committed the alleged violations. The Hearing Panel found that Akindemowo "preyed on two women with whom he was socially acquainted" and convinced them "to invest in purported securities transactions that he did not disclose to his firm." Instead of investing the money as promised, Akindemowo was found to have "converted it to his own

[1] Akindemowo's reply brief was due on June 1, 2016, but he has not filed a reply. *See Kenny Akindemowo*, Exchange Act Release No. 77513, 2016 WL 2621664, at *1 (Apr. 4, 2016).

use." The Hearing Panel barred Akindemowo for his fraud and conversion violations but, in light of those bars, imposed no further sanctions for Akindemowo's other violations.

Akindemowo appealed the Hearing Panel's decision to FINRA's National Adjudicatory Council (the "NAC"). On December 29, 2015, the NAC affirmed the Hearing Panel's finding that Akindemowo converted two investors' funds through fraudulent means. According to the NAC, the two defrauded investors (who gave Akindemowo a total of $15,000 to invest in an investment vehicle operated by Akindemowo's acquaintance) did not know each other but gave similar testimony at the hearing about Akindemowo's investment pitch, his evasiveness in providing them with documentation of their investments, and his refusal to remit their invested funds. The NAC further found that, instead of investing the investors' funds as he represented, Akindemowo used them to pay his personal expenses.

In determining sanctions, the NAC found several aggravating factors. The NAC found that Akindemowo acted intentionally when converting the investors' funds, that he exploited his personal relationships with the investors to induce their investments, that he used their money for his own pecuniary benefit, that he refused to remit their funds, and that he attempted to lull the investors into inactivity when they insisted that he repay them. The NAC concluded that this was "an egregious case," that Akindemowo presented "a substantial risk to the investing public," and that "[i]ndependently barring Akindemowo for his conversion and fraud are the only appropriate sanctions." The NAC further concluded that disgorgement was appropriate because Akindemowo converted $15,000 in investor funds for his own benefit and should not be permitted to retain these ill-gotten gains.

II. Analysis

In determining whether to grant a stay under Rule of Practice 401,[2] the Commission considers: (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.[3] The party seeking a stay has the burden of establishing that relief is warranted.[4] Akindemowo has failed to satisfy this burden, and his motion is denied.

Akindemowo does not address how likely he is to succeed on the merits other than to claim that, since affiliating with FINRA in 2000, he has "conducted [his] business with utmost integrity," that he has "never had a client complaint or any disciplinary action or admonishment from any . . . firm [he has been] affiliated with," and that he has "built a solid book of business of almost $50 million with more than 200 clients [to whom he has] provided . . . excellent service

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2 17 C.F.R. § 201.401.

3 *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).

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

and advice." The Commission, however, has repeatedly found that lack of a disciplinary history is not mitigating as to sanctions.[5] Although final resolution of Akindemowo's appeal must await the Commission's determination on the merits, Akindemowo's motion does not establish a strong likelihood that he will succeed.

Akindemowo has also failed to demonstrate that he will suffer irreparable harm absent a stay. To establish irreparable injury, Akindemowo must do more than show he is subject to a bar order.[6] Rather, he must show an injury that is "both certain and great" and "actual and not theoretical."[7] A stay "will not be granted [based on] something merely feared as liable to occur at some indefinite time."[8] Here, Akindemowo argues vaguely that "[his] family has suffered untold hardship since the disciplinary action was handed down by FINRA" and requests that his "license be reinstated pending the outcome of SEC decision so [he] can continue to provide for [his] family." Even assuming that loss of employment (or an employment opportunity) constitutes irreparable injury, rather than monetary harm,[9] Akindemowo does not specify how he or his family will be harmed by the bar pending the outcome of his appeal.[10] Further weighing against Akindemowo's concern that he will suffer irreparable harm is that he did not seek a stay

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5 *See, e.g.*, *Gary M. Kornman*, Exchange Act Release No. at *9 (Feb. 13, 2009) (imposing bar despite respondent's lack of disciplinary history); *Philippe N. Keyes*, Exchange Act Release No. 54723 (Nov. 8, 2006) ("[T]he lack of disciplinary history is not mitigating for the purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional."); *see also Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) ("Lack of a disciplinary history is not a mitigating factor; Mr. Rooms was required to comply with the NASD's high standards of conduct at all times.").

6 *See, e.g.*, *Dawson James Sec.*, 2015 WL 7074282, at *3 (finding that applicants failed to establish irreparable injury in motion to stay a 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).

7 *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).

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

9 *Cf. 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).

10 *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); *Michael A. Rooms*, 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").

until five months after he initiated this review proceeding and more than two months after he filed his brief in support of his application for review.[11]

Finally, Akindemowo has failed to address whether any person will suffer substantial harm because of a stay and whether a stay is likely to serve the public interest. Fraud is "especially serious and subject to the severest of sanctions."[12] And conversion is "generally among the most grave violations committed by a registered representative."[13] Akindemowo has not demonstrated a strong likelihood that he will overturn FINRA's findings that he committed this egregious misconduct. Instead, FINRA's findings highlight the risk of harm to investors that granting a stay—and thus allowing Akindemowo to continue participating in the industry—would pose to the investing public. We therefore find that the public interest favors denying his motion.

Accordingly, IT IS ORDERED that the Kenny A. Akindemowo's motion to stay the sanctions FINRA imposed pending Commission review of his appeal is denied.

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

Brent J. Fields
Secretary

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[11] *Cf. Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968 (2d Cir. 1995) ("[T]he failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury" (citation omitted)); *Miller v. Cal. Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993) (stating that, although "[d]elay by itself is not a determinative factor in whether the grant of interim relief is just and proper," that the movant "tarried so long before seeking this injunction is nonetheless relevant in determining whether relief is truly necessary" (citations and quotation marks omitted)).

[12] *Johnny Clifton*, Exchange Act Release No. 69982, 2013 WL 3487076, at *14 (July 12, 2013) (quoting *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *9 (July 25, 2003)).

[13] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *18 (Feb. 10, 2012) (affirming FINRA's imposition of a bar).