SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 80635 / May 9, 2017

Admin. Proc. File No. 3-17852

In the Matter of the Application of

KALID MORGAN JONES

For Review of Action Taken by FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Registered securities association barred individual in an expedited proceeding for failing to respond to requests for information. *Held*, application for review is dismissed.

APPEARANCES:

Kalid Morgan Jones, pro se.

Alan Lawhead, *Colleen Durbin*, and *Celia L. Passaro* for FINRA.

Appeal filed: February 21, 2017
Last brief received: March 15, 2017

Kalid M. Jones, formerly associated with Joseph Gunnar & Co. ("JGC"), a FINRA member firm, seeks review of FINRA action barring him from association with any FINRA member for failing to respond to its requests for information. FINRA requests that we dismiss Jones's application for review because he failed to exhaust his administrative remedies before FINRA, and because it is time barred. Jones has not filed an opposition to FINRA's motion. For the reasons explained below, we grant FINRA's motion and dismiss Jones's application for review.

I. Background

A. FINRA requested information from Jones in connection with his termination.

Jones joined the industry when he registered with National Securities Corporation in April 2015. Jones left National Securities Corporation in February 2016, and registered with JGC on March 14, 2016. Three days later, JGC terminated him, and on March 18, 2016, JGC

filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") in connection with his termination. The Form U5 indicated that Jones had been "[t]erminated for failure to accurately disclose information on the Firm's pre-hire questionnaire." FINRA then commenced an inquiry to determine whether Jones had failed to disclose a criminal arrest on August 15, 2015, to either of the firms with which he had been associated.

On April 1, 2016, FINRA sent Jones a letter requesting, pursuant to FINRA Rule 8210, that he provide specified documents and information to FINRA by April 15, 2016.[1] The letter asked Jones whether he had disclosed the arrest to the two firms, to describe the circumstances or events that led to the arrest, and to provide copies of documents related to the arrest. The letter reminded Jones of his obligation to respond and warned that "[a]ny failure . . . to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry." FINRA sent the letter by certified and first-class mail to Jones's address of record in its Central Registration Depository ("CRD") system.[2] The certified mail receipt, dated April 4, 2016, was signed "D. Jones."[3] Jones did not respond to the letter or provide the requested information.

On April 26, 2016, FINRA sent Jones a second letter explaining that Jones had not yet responded even though he had already been "granted an extension to provide the information by April 22," reiterating the request for a response, and setting a new deadline of May 10, 2016.[4] The letter warned Jones that "[f]ailure to comply with this request may subject you to

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1 *See* FINRA Rule 8210(a) (requiring persons subject to FINRA's jurisdiction to provide testimony, information, or documents in connection with FINRA investigations); *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at *1 n.1 (Feb. 8, 2016) ("Rule 8210 authorizes FINRA staff to require a person associated with a FINRA member to provide information with respect to any matter involved in an investigation, complaint, examination, or procedure."); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *6 (Nov. 8, 2007) (stating that because FINRA lacks subpoena power Rule 8210 is "vitally important").

2 *See* Investor Publication, Protect Your Money: Check Out Brokers and Investment Advisers ("The Central Registration Depository (CRD) is a computerized database that contains information about most brokers, their representatives, and the firms they work for."), *available at* http://www.sec.gov/investor/brokers.htm.

3 According to New York City property tax records, "JONES DRAKE" is the property owner associated with the CRD address of record. We take official notice of search results for the New York City Department of Finance property tax database, *available at* http://nycserv.nyc.gov/NYCServWeb/PropertyTaxSearch.jsp. *See* 17 C.F.R. § 201.323 (rule pertaining to official notice); *cf. mPhase Technologies*, Exchange Act Release No. 74187, 2015 WL 412910, at *2 n.14 (Feb. 2, 2015) (taking official notice of materials posted on government website).

4 The communications that resulted in FINRA granting the extension are not in the record.

disciplinary action." FINRA served the letter on Jones by certified and first-class mail to Jones's CRD address. The certified mail receipt, dated April 28, 2016, was signed "D. Jones." Jones did not respond to the letter or provide the requested information.

On June 1, 2016, FINRA sent Jones a third letter again reiterating the request for a response, warning that failure to comply "may subject you to disciplinary action," and setting a new deadline of June 8, 2016. FINRA again served the letter on Jones by certified and first-class mail to Jones's CRD address. The certified mail receipt, dated June 3, 2016, was signed "D. Jones." Jones did not respond to the letter or provide the requested information.

B. FINRA barred Jones for failing to respond to its requests for information.

After Jones failed to respond to FINRA's repeated requests for information and documents, FINRA initiated proceedings under FINRA Rule 9552 to suspend Jones from association with any FINRA member.[5] In a letter dated June 22, 2016 (the "Pre-Suspension Notice"), FINRA notified Jones that his continued failure to respond would subject him to a suspension on July 18, 2016. The Pre-Suspension Notice enclosed copies of the three previous letters. It also explained that "the suspension will not take effect" if Jones complied fully with the earlier requests for information by July 18; that he could request a hearing to contest the suspension by July 18, which would "stay the effective date of any suspension";[6] and that if suspended he could file a written request to terminate the suspension "on the ground of full compliance."[7] The Pre-Suspension Notice further explained that if FINRA suspended Jones and he "fail[ed] to request termination of the suspension within three . . . months" of June 22, he would be barred from association with any FINRA member, effective September 26, 2016.[8]

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[5] *See* FINRA Rule 9552(a) (providing that "[i]f a . . . person . . . subject to FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or 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 [the] membership or of association of the person with any member").

[6] *See* FINRA Rule 9552(e) (stating that a "request for a hearing shall be made before the effective date of the notice," which is 21 days after service of the notice).

[7] *See* FINRA Rule 9552(f) (stating that the person "may file a written request for termination of the suspension on the ground of full compliance with the notice").

[8] *See* FINRA Rule 9552(h) (stating 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").

FINRA served the Pre-Suspension Notice on Jones at his CRD address by certified and first-class mail. Unlike the certified mail receipts for the previous letters, which were signed "D. Jones," the receipt for the Pre-Suspension Notice, dated June 25, 2016, was signed "K. Jones." Jones did not respond to the Pre-Suspension Notice or provide the requested information.

On July 18, 2016, FINRA conducted a public records search for Jones, which confirmed that the CRD address was his "current" address.[9] The public records search also listed a previous address for Jones in Alabama.

That same day, FINRA sent a letter (the "Suspension Notice") to Jones explaining that he was suspended, effective immediately, from association with any FINRA member firm in any capacity. The Suspension Notice advised that Jones could file a written request to terminate the suspension based on full compliance with the Pre-Suspension Notice, but reiterated that if Jones did not do so before September 26 he would be automatically barred pursuant to Rule 9552. FINRA sent duplicate copies of the Suspension Notice by certified and first-class mail to his CRD address. According to U.S. Postal Service tracking information, both certified mailings were "delivered left with individual" at the address on July 21, 2016. The electronic signature records for both certified mailings appear to bear the signature of "Drake Jones." The first class mailings were not returned to FINRA. Jones did not respond to the Suspension Notice and did not file a written request to terminate the suspension.

FINRA conducted another public records search on September 26, 2016. The search once again indicated that the CRD address was Jones's "current" address, and that the Alabama address was a previous address.

That same day, FINRA notified Jones in a letter (the "Bar Notice") that he was barred from association with any FINRA member effective immediately. FINRA served duplicate copies of the Bar Notice on Jones by certified and first-class mail to his CRD address. According to USPS tracking information, both certified mailings were "delivered left with individual" at the address. The electronic signature records for each certified mailing again appear to bear the signature of "Drake Jones." The first class mailings were not returned to FINRA.

C. Jones responded to the Bar Notice four months after FINRA sent it.

More than four months after his bar became effective, Jones sent FINRA a letter, dated February 7, 2017, requesting an "appeal [of] the bar." Jones wrote that his bar "was due to a lack of correspondence on my end, or an error in me sending information, as I sent [FINRA] a hand

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[9] The public records search listed a New York address that, we find, was materially identical to that reported in his CRD, with slight spelling differences. The certified mail receipts for the mailings sent to both addresses were signed around the same time and bear the same signature. There is, moreover, no suggestion that the two addresses reflect different residences. We refer to both addresses as the "CRD address."

written letter involving the case." He further explained that he wished to appeal because "I have no criminal record, and was punished for a silly miscommunication on my part." The letter bore Jones's CRD address as the return address.

FINRA responded to Jones by a letter dated February 17, 2017, requesting a copy of the handwritten letter referenced in Jones's February 7 letter. FINRA's letter also asked whether he had "responded to any of" the three initial requests for information that FINRA sent in April and June 2016. FINRA also explained that in its June 22, 2016 letter, it had told Jones he could "request a hearing" or "respond to FINRA's outstanding requests for information," but that after he took neither step he had been "suspended for three months and barred." FINRA sent its February 17, 2017 letter to the address listed as the return address on Jones's letter. The record contains no indication that Jones responded to FINRA's February 17, 2017 letter.

After Jones sent the Commission a copy of his February 7 letter to FINRA on February 9, the Commission's Office of the Secretary treated it as an application for review of FINRA's bar. FINRA subsequently moved to dismiss Jones's application for review.

II. Analysis

We dismiss Jones's application for review because Jones failed to exhaust his administrative remedies before FINRA and because it is untimely.

A. Jones failed to exhaust his administrative remedies before FINRA.

We have repeatedly held that we will not consider an application for review of FINRA action "'if [the] applicant failed to exhaust FINRA's procedures for contesting the sanction at issue.'"[10] An exhaustion requirement "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."[11] "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."[12] We have explained that it is "'clearly proper to require that a statutory right to

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[10] *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *2 (Sept. 19, 2014) (quoting *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at *3 (Apr. 10, 2014), and citing other authority).

[11] *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004); *see also id.* at 621 (finding "valid" the Commission's frequent application of "an exhaustion requirement in its review of disciplinary actions by SROs") (citing *Gary A. Fox*, Exchange Act Release No. 46511, 2002 WL 31084725, at *2 (Sept. 18, 2002) (dismissing application for review of bar imposed for failing to comply with Rule 8210 for failing to exhaust administrative remedies)).

[12] *Id.* at 621.

review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review.'"[13]

It is undisputed that Jones did not follow FINRA's procedural steps for challenging his suspension and avoiding a bar. Jones was given the opportunity to avail himself of FINRA's administrative process by: (1) "taking corrective action" by producing the information FINRA requested in a timely manner; (2) "requesting a hearing in response to the notice of suspension"; or (3) "filing for termination of the suspension" on the ground of full compliance with the requests for information.[14] By failing to take any of these steps, Jones failed to exhaust his administrative remedies and lost the ability to challenge FINRA's actions in this appeal.[15]

As we have said, we will grant a motion to dismiss an application for review of a bar imposed pursuant to a FINRA expedited proceeding where the applicant does not dispute that he knew about the requests for information and yet failed to respond until "after [his] bar was already effective" on the ground that he "failed to exhaust the[] FINRA requirements for challenging the suspension and bar."[16] We do so here too.

Jones had actual notice of FINRA's requests for information and of the proceeding against him. Jones appears to have signed the certified mail receipts for the Pre-Suspension Notice. A person sharing his last name appears to have signed all the other receipts for certified mail sent to the CRD address. None of the first class mailings was returned. Indeed, Jones put his CRD address as the return address on his application for review. In addition, in his February 7 letter, Jones acknowledged that he had "sent [FINRA] a hand written letter involving the case," indicating that he received at least some of the notices before he was barred. Jones also has not disputed that he received FINRA's requests for information or its notices.

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13 *Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 WL 5219504, at *2 (Sept. 21, 2016) (quoting *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *5 & n.29 (Apr. 3, 2003), *aff'd*, 380 F.3d 611 (2d Cir. 2004)).

14 *Id.* at *2 (quoting *Lenahan*, 2014 WL 4656403, at *2).

15 *See, e.g., Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013) (relying on "well-established precedent" and dismissing application for review in a FINRA Rule 9552 proceeding where applicant failed to request a hearing or take corrective action by complying with FINRA Rule 8210 requests).

16 *David Richard Kerr III*, Exchange Act Release No. 79744, 2017 WL 56621, at *4 (Jan. 5, 2017) (alteration in original) (quoting *Marcos A. Santana*, Exchange Act Release No. 74138, 2015 WL 327678, at *3 (Jan. 26, 2015)); *cf. Curtis Steven Culver*, Exchange Act Release No. 75774, 2015 WL 5047648, at *3 n.10 (Aug. 27, 2015) (finding applicant's response to Rule 8210 requests in his application for review filed with the Commission "irrelevant given his failure to exhaust the administrative remedies available under FINRA").

Despite having actual knowledge of FINRA's proceedings and of the consequences for not responding to its requests or seeking relief through its administrative process, Jones did not timely respond or take other steps to avoid being barred. And FINRA granted Jones an extension of time to respond to the first request.[17] Jones responded to FINRA's requests only after his bar became effective. Although Jones refers to a "hand written letter" he purportedly sent FINRA after receiving its requests, FINRA represents in its brief on appeal that despite requesting a copy of the letter it has never received such a letter. Jones's offhand reference to this handwritten letter in his February 7 letter does not preserve his ability to obtain review. Absent other evidence about what Jones sent FINRA, it does not establish that he sent a response to FINRA before the bar was effective.[18] And even if Jones sent such a letter to FINRA, there is no evidence that in the letter Jones produced the information FINRA requested, requested a hearing in response to the notice of suspension, or requested termination of a suspension on the ground of full compliance—as FINRA's administrative process required.[19]

Jones contends in his application for review that his bar should be lifted because he "ha[s] no criminal record." We do not consider this argument because it goes to the merits of the bar FINRA imposed. Jones cannot argue about the merits of the bar since he did not timely raise this issue in the first instance to FINRA through its administrative process by, for example, requesting a hearing in response to the Pre-Suspension Notice.[20]

Jones also contends that he should not be barred "for a silly miscommunication on [his] part." But there is no evidence that Jones's failure to respond to FINRA's requests for information is attributable to any "miscommunication." And we have long held that a failure to

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[17] The record is unclear as to the circumstances under which FINRA granted the extension.

[18] *Cf. Darren M. Smith*, Exchange Act Release No. 75705, 2015 WL 4863348, at *4 (Aug. 14, 2015) (dismissing for failing to exhaust administrative remedies where applicant had actual notice of the requests for information and purportedly sent a letter in response but knew that FINRA did not receive his letter and yet failed to take any subsequent action).

[19] *See id.* (stating that even if respondent had sent FINRA a letter as he claimed he had he still would have failed to exhaust his administrative remedies because the letter, "even as characterized by [applicant] in his application for review, . . . would not satisfy the procedural requirements for terminating a sanction" under FINRA's rules).

[20] *See Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 WL 1840609, at *3 (May 6, 2010) (dismissing for failure to exhaust administrative remedies and refusing to consider the applicant's assertions that he "'was not charged with anything'" and "'ha[s] no recollection of any conviction'" because the applicant "chose not to respond to FINRA's letters to raise these issues or request a hearing to challenge his impending sanction, and therefore cannot complain at this stage about the consequence of his choice").

respond to a self-regulatory organization's information requests is "serious" because it "undermines the SRO's ability to fulfill its oversight obligations."[21]

B. Jones's application for review is untimely.

Jones's untimely filing of his application for review provides an independent basis for dismissing Jones's appeal.[22] Section 19(d)(2) of the Securities Exchange Act of 1934 provides that appeals from actions of self-regulatory organizations must be filed by the aggrieved person "within thirty days after the date such notice was . . . received by [the] aggrieved person, or within such longer period as [the Commission] may determine."[23] Rule of Practice 420(b) provides that the Commission "will not extend this 30-day period, absent a showing of extraordinary circumstances."[24] The Bar Notice also informed Jones that if he wished to seek review by the Commission he "must file the application for review within thirty days of [his] receipt of [the] letter." Here, FINRA properly served the Bar Notice on Jones at his CRD address, and Jones received the Bar Notice no later than October 1, 2016, when it was delivered and signed for at his residence. Yet Jones filed his application for review with the Commission on February 9, 2017, more than three months after the deadline lapsed.

Jones never sought an extension of the filing deadline and provides no justification for his untimely filing. As we have repeatedly observed, "'strict compliance with filing deadlines

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21 *James Allen Schneider*, Exchange Act Release No. 37463, 1996 WL 408056, at *4 (July 22, 1996) (citing cases).

22 *See Manzella*, 2016 WL 489353, at *4 (granting FINRA's motion to dismiss because the application was untimely filed, as well as for the "independent" reason that the applicant failed to exhaust administrative remedies before FINRA).

23 15 U.S.C. § 78s(d)(2).

24 17 C.F.R. § 201.420(b).

facilitates finality and encourages parties to act timely in seeking relief.' Unmet deadlines may cut off substantive rights to review, but this is their function."[25] Jones has identified no reason to allow the untimely filing of his application for review.

An appropriate order will issue.[26]

By the Commission (Acting Chairman PIWOWAR and Commissioner STEIN).

Brent J. Fields
Secretary

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[25] *Manzella*, 2016 WL 489353, at *4 (quoting *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 (May 8, 2014) (citation omitted)).

[26] 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
Release No. 80635 / May 9, 2017

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In the Matter of the Application of

KALID MORGAN JONES

For Review of Action Taken by FINRA

ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the appeal filed by Kalid Morgan Jones be, and it hereby is, dismissed.

By the Commission.

Brent J. Fields
Secretary