

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 83994 / August 29, 2018

Admin. Proc. File No. 3-18617

In the Matter of the Application of  WILLIAM BURK ROSENTHAL  For Review of Action Taken by  FINRA
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ORDER SCHEDULING BRIEFS AND EXTENDING THE BRIEFING SCHEDULE

On July 27, 2018, William Burk Rosenthal filed an application with the Commission for review of a Financial Industry Regulatory Authority, Inc. (“FINRA”) decision denying his request to use the FINRA arbitration forum to determine whether to expunge his CRD record concerning two customer dispute disclosures. Pursuant to Commission Rule of Practice 420(e),<sup>1</sup> FINRA filed a copy of the index to the record on August 2, 2018, and then a revised index to the record on August 8, 2018. Also on August 8, 2018, FINRA filed a “Motion to Dismiss the Application for Review and to Stay the Briefing Schedule.” In its motion, FINRA requests that the Commission dismiss Rosenthal’s application as untimely. FINRA also “requests that the Commission stay issuance of a briefing schedule in this matter” while its motion to dismiss is pending.

Pursuant to Commission Rule of Practice 450(a),<sup>2</sup> a briefing schedule should be issued within 21 days after receipt of the index to the record of a FINRA determination. We construe FINRA’s request for a stay to be a request to issue a briefing schedule pursuant to Rule 450(a) and extend it pursuant to Commission Rule of Practice 161.<sup>3</sup> Under Rule 161(b), the factors the Commission must consider in determining whether to grant an extension of time as relevant here are: (i) the length of the proceeding to date, (ii) the number of postponements, adjournments, or

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<sup>1</sup> 17 C.F.R. § 201.420(e).

<sup>2</sup> 17 C.F.R. § 201.450(a).

<sup>3</sup> 17 C.F.R. § 201.161. Rule 161, which FINRA cited in support of its request for a stay, addresses extensions of time, postponements, and adjournments. *Id.*

extensions already granted, (iii) the stage of the proceedings at the time of the request, and (iv) any other such matters as justice may require.

FINRA filed its motion less than two weeks after Rosenthal filed his application for review, and no previous extensions of the briefing schedule have been granted. Extending the briefing schedule would promote administrative efficiency since briefing on the merits would be unnecessary were the Commission to grant FINRA's motion to dismiss as untimely. Conversely, the proceeding would not be unduly delayed if the Commission were to deny FINRA's motion.

Accordingly, IT IS ORDERED, pursuant to Commission Rules of Practice 161 and 450(a), that the time for filing the briefs in this matter is extended until such time as the Commission rules on the motion to dismiss and that if the Commission denies the motion to dismiss, Rosenthal shall file a brief in support of the application for review within 30 days after such determination; FINRA shall file an opposition brief within 30 days after the date the opening brief is due; and Rosenthal shall file any reply brief within 14 days after the date the opposition brief is due.<sup>4</sup> Pursuant to Rule 180(c) of the Rules of Practice, failure to file a brief in support of the application may result in dismissal of this review proceeding.<sup>5</sup>

For the Commission, by its Secretary and the Office of the General Counsel, pursuant to delegated authority.<sup>6</sup>

Brent J. Fields  
Secretary

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<sup>4</sup> 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.

<sup>5</sup> 17 C.F.R. § 201.180(c).

<sup>6</sup> 17 C.F.R. §§ 200.30-7(a)(4); 200.30-14(g)(1)(xiii).