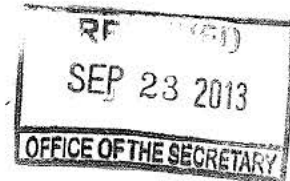


**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of the Application of

Mark Steven Steckler

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-15466

**FINRA'S MOTION TO DISMISS STECKLER'S APPLICATION FOR REVIEW AND
TO STAY BRIEFING SCHEDULE**

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September 23, 2013

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I. INTRODUCTION

Steckler's application for review should be dismissed because he failed to avail himself of FINRA procedures. Steckler's request for an appeal to the Commission is his first communication with FINRA regarding FINRA's investigation and expedited proceeding to bar him from associating with any FINRA member firm. Steckler failed to respond to two FINRA requests for information concerning his resignation from his firm for allegations that he borrowed \$800 from a customer and his failure to timely disclose two events on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). FINRA notified Steckler that he would be suspended unless he complied with the requests for information. FINRA also notified Steckler that he had the opportunity to provide the requested information, and to state why he should not be suspended and eventually barred. Steckler ignored FINRA's numerous notices, and did not take any action required by FINRA rules to contest FINRA's impending bar.

The Commission has consistently held that a party is required to exhaust his administrative remedies before resorting to an appeal, and those who fail to exercise their rights to review under FINRA rules cannot claim that they have exhausted their administrative remedies. Steckler failed to avail himself of the remedies available to him to contest his suspension and bar, and thus failed to exhaust his administrative remedies. Steckler did not explain his silence, raised no defense, and offered no evidence before FINRA. This appeal lacks the usual bases for appellate review: there was no fact finding as to the substance of Steckler's conduct by an adjudicator, and there were no arguments offered by Steckler and considered by FINRA. The Commission therefore should dismiss his application for review.¹

II. FACTUAL BACKGROUND

Steckler was associated with Royal Alliance Associates, Inc. ("Royal Alliance" or the "Firm") from November 18, 2005 to October 10, 2012. (RP 38.)² Royal Alliance determined that Steckler had borrowed \$800 from a Firm customer, which was a violation of firm policy. (RP 38.) As a result of Steckler's violation of firm policy, Royal Alliance permitted Steckler to resign and filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for him. (RP 38.) FINRA subsequently initiated an investigation to determine whether Steckler had violated federal securities laws or FINRA rules. (RP 1-2.)

¹ FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. The Commission should first evaluate the dispositive argument that Steckler's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

² "RP ____" refers to the page numbers in the certified record filed by FINRA on September 23, 2013.

A. The November 20, 2012 Request for Information

As part of FINRA's investigation, on November 20, 2012, Jeannie M. Gray, a FINRA investigator, sent Steckler a letter requesting information pursuant to FINRA Rule 8210.³ (RP 1-4.) The letter sought information concerning the filing of the Form U5 by Royal Alliance, in which the Firm reported that Steckler was permitted to resign due to allegations that he borrowed \$800 from a Firm customer.⁴ (RP 1.) The letter also requested that Steckler explain the reasons for two late disclosures on his Form U4. (RP 1.) The letter asked Steckler to respond no later than December 4, 2012. It warned Steckler that "any failure on [Steckler's] part to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry." (RP 1-2.)

FINRA sent the letter by certified and first-class mail to Steckler's address of record contained in the Central Registration Depository ("CRD"®), [REDACTED] (the "CRD Address"). (RP 3-4, 37.) The certified mail return receipt was signed by "Karen Steckler" on November 27, 2012, and the letter that was sent by first-class mail was not returned. (RP 4.) Steckler did not respond to the Rule 8210 request.

³ FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide documents and written information to FINRA with respect to any matter involved in an investigation. The rule "provides a means, in the absence of subpoena power, for the [association] to obtain from its members information necessary to conduct investigations." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009), *cert. denied*, 130 S. Ct. 2380 (2010). A person that fails to respond to a request issued under FINRA Rule 8210 impedes FINRA's ability to detect misconduct and protect the investing public. *Id.* at *13-14.

⁴ FINRA Rule 3240 generally prohibits associated persons from borrowing money from customers of FINRA members subject to some exceptions. *See* FINRA Rule 3240.

B. The December 6, 2012 Request for Information

On December 6, 2012, FINRA investigator Gray made a second written request pursuant to Rule 8210 for the information. (RP 5-9.) The second request instructed Steckler to answer FINRA's questions and included a copy of the November 20, 2012 Rule 8210 request. (RP 5-7.) Gray sent the letter to Steckler by certified and first-class mail to the CRD Address, and set a response deadline of December 22, 2012. (RP 5, 8-9, 37.) The certified mail return receipt was signed by "Mark Steckler" on December 12, 2012, and the letter that was sent by first-class mail was not returned. (RP 9.) Again, Steckler did not respond to the Rule 8210 request.

C. The May 17, 2013 Pre-Suspension Notice

Given Steckler's silence, FINRA's Department of Enforcement ("Enforcement") initiated efforts to suspend Steckler. Enforcement sought to elicit a response from Steckler by starting an expedited proceeding that could result in FINRA suspending him from associating with any FINRA member firm. (RP 11); *see* FINRA Rule 9552.⁵ On May 17, 2013, Sandra Harris, Senior Director, Policy and Expedited Proceedings, warned Steckler in a letter (the "Pre-Suspension Notice") that FINRA planned to suspend him on June 10, 2013 for his failure to respond to the requests for information. (RP 11-17.)

The Pre-Suspension Notice stated that Steckler could avoid imposition of the suspension if he took corrective action by complying with the Rule 8210 information requests by June 10,

⁵ FINRA Rule 9552(a) states that "[i]f a member, person associated with a member or 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, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or 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 membership or of association of the person with any member."

2013. (RP 11.) The Pre-Suspension Notice further explained that Steckler had the opportunity to request a hearing to contest the imposition of the suspension, and to seek termination of the suspension if he complied fully with the original information requests. (RP 11-12.) The Pre-Suspension Notice stressed not only that Steckler could seek reinstatement during his suspension, but also that if he failed to request termination of the suspension within three months, he would be in default, and barred, on August 20, 2013. (RP 12.)

FINRA sent the Pre-Suspension Notice to the CRD Address by Federal Express Overnight Delivery and first-class mail. (RP 11, 13-14, 37.) Neither mailing was returned. The Federal Express shipment detail for the mailing indicates that the package was delivered on May 20, 2013. (RP 13-14.) Steckler did not respond to the Pre-Suspension Notice or answer FINRA's outstanding Rule 8210 information requests concerning his borrowing from a customer and failures to timely disclose.

D. The June 10, 2013 Suspension Notice

Because Steckler failed to take any action in response to the Pre-Suspension Notice, on June 10, 2013, Sandra Harris notified Steckler in a letter (the "Suspension Notice") that he was suspended, effective immediately, from association with any FINRA member firm in any capacity. (RP 21-26.) The Suspension Notice advised Steckler that he could file a written request to terminate the suspension based on fully providing the information and documents FINRA requested, and reiterated the warning that Steckler's failure to seek relief from the

suspension by August 20, 2013 would result in a default and an automatic bar pursuant to FINRA Rule 9552. (RP 21); *see also* FINRA Rule 9552(h).⁶

Prior to mailing the Suspension Notice, FINRA staff searched a comprehensive public records database in LexisNexis. (RP 19-20.) FINRA sent the Suspension Notice by Federal Express Overnight Delivery and first-class mail to two addresses associated with Steckler: the CRD Address and an additional address which the public records database listed as his current address beginning in January 2013.⁷ (RP 19, 21, 23-26, 37.) Neither mailing was returned. The Federal Express shipment details for the mailings indicate that the packages were delivered on June 11, 2013. (RP 23-26.) Steckler did not respond to the Suspension Notice.

E. The August 20, 2013 Bar Notice

In the three months following the Pre-Suspension Notice, Steckler did not communicate with FINRA or challenge his suspension. Accordingly, on August 20, 2013, Sandra Harris notified Steckler that he was in default, and barred, effective immediately (the “Bar Notice”). (RP 29-34.)

Before sending the Bar Notice, FINRA staff searched a comprehensive public records database in LexisNexis. (RP 27-28.) FINRA sent the Bar Notice by Federal Express Overnight Delivery and first-class mail to two addresses associated with Steckler: the CRD Address and a variation of the CRD Address, which the public records database listed as Steckler’s current

⁶ Rule 9552(h) states, “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.”

⁷ The public records database provided that Steckler’s new address and CRD address overlapped. The database listed the CRD Address as Steckler’s address from November 2004 to May 2013, and the new address as his address beginning January 2013. (RP 19-20, 37.)

address beginning in July 2013.⁸ (RP 27, 29, 31-34, 37.) Neither mailing was returned. The Federal Express shipment details for the mailings indicate that the packages were delivered on August 21, 2013. (RP 31-34.)

Approximately three weeks after FINRA mailed the Bar Notice, on or about September 9, 2013, Steckler submitted an application for review of this matter to the Commission. (RP 35.)

III. ARGUMENT

The Commission should dismiss Steckler's application for review because Steckler failed to exhaust his administrative remedies by providing the requested information or requesting a hearing. Despite receiving notice of these proceedings in accordance with FINRA rules, Steckler ignored numerous letters and notices from FINRA, failed to follow FINRA procedures to challenge his suspension, and defaulted. Steckler thus failed to exhaust his administrative remedies, and the Commission should dismiss this appeal.

A. Steckler Failed to Exhaust His Administrative Remedies

The Commission is precluded from considering Steckler's application for review because he failed to follow FINRA procedures to challenge his suspension, and consequently, failed to exhaust his administrative remedies. The precedent in this area is well-settled. For example, in *Gilbert Torres Martinez*, the Commission dismissed the application for review when the applicant received FINRA information requests and suspension and bar notices pursuant to FINRA Rule 9552, and failed to avail himself of FINRA procedures. Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *11-15 (Apr. 18, 2013); *see also Norman S. Chen*, Exchange

⁸ The public records database listed the CRD Address as Steckler's address from November 2004 to July 2013, which includes the period in which FINRA mailed the Rule 8210 requests, Pre-Suspension Notice, and Suspension Notice. (RP 1, 5, 11, 21, 27, 37.)

Act Release No. 65345, 2011 SEC LEXIS 3224, at *6, 11 (Sept. 16, 2011) (dismissing applicant's appeal for failure to exhaust administrative remedies when FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 information requests); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5, 8 (May 6, 2010) (same); *Jeffrey A. King*, Exchange Act Release No. 52571, 2005 SEC LEXIS 2516, at *8-10 (Oct. 7, 2005) (same); *David I. Cassuto*, Exchange Act Release No. 48087, 2003 SEC LEXIS 1496, at *10-14 (June 25, 2003) (same); *Gary A. Fox*, Exchange Act Release No. 46511, 2002 SEC LEXIS 2381, at *3-6 (Sept. 18, 2002) (same).

An aggrieved party—such as Steckler—is required to exhaust his administrative remedies before resorting to an appeal, and those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Secs. Corp.*, 36 S.E.C. 275, 277 n.3 (1955). This doctrine applies with equal force to FINRA proceedings. *See Lang v. French*, 154 F.3d 217, 220 (5th Cir. 1998) (holding that “[NASD] disciplinary orders are reviewable by the [Commission] after administrative remedies within NASD are exhausted”); *Swirsky v. NASD*, 124 F.3d 59, 62 (1st Cir. 1997) (noting that the court “agree[s] with other circuits that have considered the question,” and concluded that the doctrine of exhaustion of administrative remedies applies in NASD disciplinary actions).

Steckler failed repeatedly to pursue his administrative remedies to prevent or challenge his suspension. Steckler chose not to respond to two Rule 8210 requests, in which he was informed that a failure to respond could result in serious sanctions, including a bar. (RP 2, 5-7.) After issuance of the Pre-Suspension Notice, Steckler had the opportunity to take corrective action by complying with the Rule 8210 requests or, alternatively, to request a hearing and set forth the reasons why he believed his suspension should be set aside. (RP 11-12.) But Steckler

did not take corrective action or request a hearing. After issuance of the Suspension Notice, Steckler had the opportunity to move for reinstatement. (RP 21.) Again, Steckler did nothing. Accordingly, pursuant to FINRA Rule 9552(h), Steckler was barred. (RP 29-30); *see also* FINRA Rule 9552(h).

By failing to take any action in accordance with FINRA rules and as directed by the Pre-Suspension and Suspension Notices, Steckler defaulted, and forfeited his ability to challenge the actions of FINRA before the Commission. *See Martinez*, 2013 SEC LEXIS 1147, at *15 (relying on “well-established precedent” and dismissing application for review in a Rule 9552 proceeding where applicant failed to request a hearing or take corrective action by complying with Rule 8210 requests); *Chen*, 2011 SEC LEXIS 3224, at *10 (finding that applicant’s conduct “amounted to a complete failure to respond and [FINRA] acted consistently with the purposes of the Exchange Act in imposing the bar”); *Profeta*, 2010 SEC LEXIS 1563, at *6 (finding in a Rule 9552 proceeding that “FINRA’s actions were in accordance with its rules and the purposes of the Exchange Act [when] rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action”).

Steckler could have (1) provided the information at issue, (2) requested a hearing, (3) or contested the suspension during the three-month suspension period, as detailed in the Pre-Suspension Notice and provided by FINRA rules. (RP 11-12.) He took none of these steps. Instead, Steckler filed this appeal three months after he received the Suspension Notice, and three weeks after FINRA notified him that, consistent with the explicit language of FINRA Rule 9552 (as well as the Pre-Suspension, Suspension, and Bar Notices), his suspension had converted to a bar. (RP 21-26, 29-35.)

Steckler's failure to participate in FINRA procedures means that he does not qualify for appellate review by the Commission. *See Cassuto*, 2003 SEC LEXIS 1496, at *10-14. "It 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 the review." *Fox*, 2002 SEC LEXIS 2381, at *3 (internal citation omitted). It is undisputed that Steckler did not follow the required procedural steps as a condition of applying for review. Accordingly, the Commission should dismiss this appeal.

B. FINRA Provided Steckler with Proper Notice of These Proceedings

FINRA properly served Steckler with the two Rule 8210 requests, the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice. (RP 1-4, 5-9, 11-17, 21-26, 29-34, 37.) Moreover, Steckler was deemed to have received all FINRA correspondence sent to the "last known residential address," as reflected in FINRA records. *See* Rule 8210(d) (providing that any request for information "shall be deemed received" when it is transmitted to the "last known residential address as reflected in the Central Registration Depository"). Similarly, Rule 9134(b)(1) provides that, "Papers served on a natural person may be served at the natural person's residential address, as reflected in the [CRD], if applicable." The record demonstrates that FINRA complied with these rules and sent all correspondence to the CRD Address.⁹ (RP 1-4, 5-9, 11-17, 21-26, 29-34, 37.) In addition, FINRA diligently searched for alternate addresses for Steckler prior to sending the Suspension and Bar Notices, and sent those notices to both his

⁹ Moreover, the record indicates that Steckler had actual notice of the Rule 8210 requests because the certified mail return receipts were signed by "Karen Steckler" and "Mark Steckler," respectively. (RP 4, 9.)

CRD Address and to the address that the public records database indicated was Steckler's current address at the time.¹⁰ (RP 19-20, 27-28.)

To the extent that Steckler would argue on the merits that he did not receive certain FINRA correspondence because he no longer received correspondence at the CRD Address, this argument is unavailing. It is well settled that all registered representatives are required to sign and file a Form U4, "which obligates them to keep a current address on file with the NASD at all times." *Nazmi C. Hassanieh*, 52 S.E.C. 87, 90 (1994). Because registered persons are subject to FINRA jurisdiction for at least two years after leaving the securities industry, they are obliged to keep their addresses current with FINRA, even after they leave the industry. *Warren B. Minton, Jr.*, Exchange Act Release No. 46709, 2002 SEC LEXIS 2712, at *13 n.16 (Oct. 23, 2002). Ignorance of this requirement does not excuse a registered person's noncompliance. *Id.* (citing *Richard J. Lanigan*, 52 S.E.C. 375, 378 (1995) (rejecting claim that applicant was unaware of duty to update Form U4)). Thus, any failure by Steckler to keep his address current does not excuse his failure to exhaust his administrative remedies. *See, e.g., Martinez*, 2013 SEC LEXIS 1147, at *15 (dismissing application for review and rejecting applicant's argument that his failure to challenge FINRA's disciplinary sanction through FINRA appeal procedures was excused because FINRA used an old mailing address).

¹⁰ As of the filing of this brief, CRD still reflects that Steckler's current address is the CRD Address, 19 Court Knolle, New Hartford, NY, 13413, to which all correspondence was mailed in this matter. (RP 37.)

* * * * *

The Commission should follow established precedent and dismiss Steckler's application for review because he failed to exhaust the FINRA administrative remedies that were available to him.

IV. CONCLUSION

Steckler failed to respond to FINRA requests for information, and consequently, was suspended. Steckler then ignored numerous FINRA notices, and failed to avail himself of FINRA administrative procedures to terminate the suspension. As a result, Steckler defaulted, and was barred, in accordance with FINRA procedures. Steckler received notice of these proceedings, but chose to do nothing. Steckler failed to exhaust his administrative remedies. Accordingly, the Commission should dismiss Steckler's application for review.

Respectfully submitted,

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