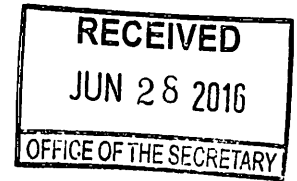


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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**



In the Matter of the Application of

Mitchell H. Fillet

For Review of

FINRA Disciplinary Action

File No. 3-15601r

FINRA'S MOTION TO DISMISS APPLICATION FOR REVIEW

Pursuant to SEC Rules of Practice 154 and 180(c), the Financial Industry Regulatory Authority ("FINRA") moves the Commission to dismiss this proceeding as abandoned. Applicant Mitchell H. Fillet ("Fillet" or "Applicant"), has not filed his brief in support of his application for review by the June 23, 2016 deadline established by the Commission in this proceeding. Accordingly, the Commission should dismiss Fillet's application for review.

On March 7, 2016, the National Adjudicatory Council ("NAC") issued its decision in this matter. (RP 1731-43.)¹ On remand from the Commission, the NAC suspended Fillet for 12 months and fined him \$10,000 in response to the Commission's findings that Fillet violated the antifraud provisions. (RP 1739-42.) The Commission specifically had found that Fillet, in a private placement of securities offering document, misrepresented material facts and failed to disclose the criminal history of the person integral to the success of the offering, in violation of NASD Rules 2120 and 2110 and NASD IM-2310-2. (RP 1670-73, 1736.) The Commission

¹ "RP" refers to the page numbers in the certified record of this case filed with the Commission.

further had found that Fillet's omission of the criminal history information violated Exchange Act Section 10(b) and Exchange Act Rules 10b-5(a) and (c). (RP 1673-74, 1736.) The NAC, after finding several aggravating factors, sanctioned Fillet for his fraud by suspending him in all capacities for 12 months and fining him \$10,000, which was consistent with the FINRA Sanction Guidelines. (RP 1739-42.)

On April 7, 2016, Fillet filed an application for review with the Commission. (RP 1747-50.) On May 24, 2016, the Commission issued its Order Scheduling Briefs (the "Scheduling Order"). The Scheduling Order directed Fillet to file a brief in support of his application for review by June 23 2016, and directed FINRA to file its brief in opposition by July 25, 2016. The Scheduling Order expressly provided that, "[p]ursuant 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."

As of the date of this motion, despite the deadlines established by the Scheduling Order, Fillet has neither filed a brief with the Commission nor served it on FINRA. Pursuant to SEC Rules of Practice 150 and 151, Fillet must serve counsel for FINRA with a copy of all papers that he files with the Commission. Fillet also has not requested an extension of the time in which to file a brief nor has FINRA consented to an extension of time.

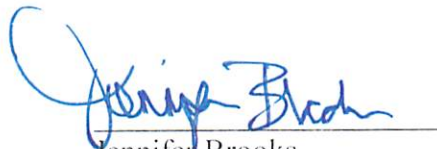
SEC Rule of Practice 180(c) provides that "[t]he Commission . . . may . . . dismiss the case . . . if a person fails: (1) to make a filing required under these Rules of Practice." Under the circumstances, the Commission should exercise its authority under Rule of Practice 180(c) and dismiss Applicant's appeal as abandoned because he has failed to file a brief by the deadline in the Scheduling Order. The Commission has correctly taken such action in similar cases in the past. *See, e.g., Robert D. Tucker*, Exchange Act Release No. 71972, 2014 SEC LEXIS 1370

(Apr. 18, 2014) (granting FINRA's motion to dismiss an application for review where applicant failed to file a brief in the time proscribed and later failed to cure a deficient filing); *Steven Neil Barbot*, Exchange Act Release No. 69263, 2013 SEC LEXIS 953 (Apr. 1, 2013) (granting FINRA's motion to dismiss an application for review where applicant never served a brief on FINRA and claimed to have mailed a brief to the Commission which was never received).

For all of these reasons, FINRA requests that the Commission:

1. After allowing Fillet five days to respond to this Motion to Dismiss under SEC Rule of Practice 154(b), the Commission should dismiss Fillet's application for review; and
2. Stay the briefing schedule in this matter pending any response from Fillet.

Respectfully submitted,



Jennifer Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

Dated: June 27, 2016

CERTIFICATE OF SERVICE

I, Jennifer Brooks, certify that on this 27th day of June 2016, I caused the original and three copies of the foregoing Motion to Dismiss Application for Review in the matter of the Application of Mitchell H. Fillet, File No. 3-15601r, to be served by messenger on:

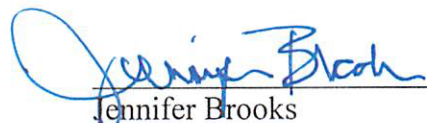
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

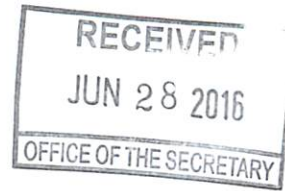
and via FedEx and Electronic Mail on:

Mitchell Fillet
[REDACTED]
New Haven, Connecticut [REDACTED]
[REDACTED]

Mitchell Fillet
[REDACTED]
Riverside, Connecticut [REDACTED]

Different methods of service were used because messenger service could not be provided to Mr. Fillet.


Jennifer Brooks
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Direct: (202) 728-8083
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June 27, 2016

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

RE: In the Matter of the Application for Review of Mitchell H. Fillet
Administrative Proceeding No. 3-15601r

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Motion to Dismiss Application for Review in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer Brooks

Enclosures

cc: Mitchell H. Fillet (via FedEx and email)