

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE
COMMISSION



In the Matter of the Application of
GREGORY ACOSTA, CRD #816526.

For Review of Action Taken by FINRA,

Admin. Proc. File No. 3-18637

BRIEF IN SUPPORT OF EXPEDITED
REVIEW

PROCEDURAL BACKGROUND

1. By letter, dated July 13, 2018, FINRA notified Kestra Investment Services, LLC (“Kestra”) of its determination that one of Kestra’s registered representatives, Gregory Acosta (“Acosta”), was subject to statutory disqualification, pursuant to Section 3(a)(39) of the Securities Exchange Act of 1934 (the “Letter”). Because Kestra did not want to proceed with the MC-400 application process, it terminated Acosta’s association with the firm in accordance with the Letter’s instruction.
2. On August 10, 2018, Acosta filed his Application for Review of Action taken by the Financial Industry Regulatory Authority (“FINRA”) with the Securities and Exchange Commission (the “Commission”) contesting FINRA’s determination that he is subject to statutory disqualification (herein referred to as the “Application”).
3. On August 24, 2018, Acosta filed a Motion for Preliminary Injunctive and Declaratory Relief in the federal court, Central District of California (the “Court”). This action was subsequently stayed, pending the Commission’s determination of jurisdiction.
4. On September 20, 2018, the Commission issued its Order Scheduling Briefs, asking the parties to address the issue of the Commission’s jurisdiction to review Acosta’s Application.

Acosta filed his brief on October 16, 2018. FINRA filed its response brief on November 16, 2018, and Acosta filed his reply on November 19, 2018.

5. On March 12, 2019, the Commission issued its Order Requesting Additional Briefing, asking the parties to address issues related to jurisdiction as well as certain substantive issues. Acosta filed his brief on March 22, 2019. FINRA filed its response brief on May 6, 2019, and Acosta filed his reply on May 20, 2019.

6. Approximately six months later, on November 1, 2019, Acosta sent a letter to the SEC, requesting that it expedite its consideration of his appeal and attaching his “Draft Writ of Mandamus.”

ARGUMENT

Acosta’s right to due process is at the heart of the instant matter. FINRA’s erroneous determination that Acosta is subject to statutory disqualification has had the effect of depriving Acosta of his livelihood. More than a year has passed since the initial determination was made by FINRA, and Acosta has been unable to obtain any review of FINRA’s erroneous determination, prolonging the length of this deprivation and compounding the harm he has suffered. Acosta has actively sought review of FINRA’s action—filing an Application for review with the Commission and a complaint with the United States District Court. The Court has made clear that it will not consider judicial review until the Commission issues a jurisdictional determination.¹ Thus, the Commission’s continued delay on a jurisdictional determination has the direct effect of prolonging the period Acosta must go without review, exacerbating the harm he has suffered as a result of

¹ In its Order Denying Plaintiff’s Motion to Lift Stay, the Court notes that “the Court will consider the parties’ jurisdictional arguments and Plaintiff’s request for a preliminary injunction once the issue of the SEC’s jurisdiction (and, consequently, Plaintiff’s access to administrative review processes) has been decided.”

FINRA's erroneous determination. As such, expedition of the Commission's determination is both necessary and appropriate under the circumstances.

Acosta's ability to obtain review hinges entirely on the Commission's jurisdictional determination. On the one hand, if the Commission determines that it has jurisdiction over Acosta's Application pursuant to 15 U.S.C. § 78s, then Acosta is statutorily entitled to Commission review. *See* 15 U.S.C. § 78s(d)(2) (providing that a self-regulatory organization's imposition of any final disciplinary sanction on a member "*shall be subject to review* by the appropriate regulatory agency") (emphasis added). On the other hand, the Court will not lift its stay until the Commission determines that it lacks jurisdiction. As such, the protection of Acosta's due process rights lies squarely in the hands of the Commission.²

Expedition is necessary, under the circumstances, for the protection of Acosta's rights. Acosta currently has no avenue by which to appeal FINRA's determination that he is statutorily disqualified. Expedition of the Commission's jurisdictional determination will enable Acosta to either: obtain Commission review of FINRA's determination or, in the event the Commission determines that it lacks jurisdiction, seek relief in the District Court.³ Until this occurs, Acosta is left without means by which to contest FINRA's determination, and, consequently, is deprived of due process. Acosta has been harmed by, among other things, being prevented from engaging in his livelihood, which is—needless to say—an important interest. As such, due process necessitates that Acosta receive timely review of FINRA's determination. As noted, Acosta has already gone

² As the Court aptly notes in its Order, if the Commission determines that it lacks jurisdiction, Acosta "will effectively be left with no administrative remedies."

³ In its Order, dated November 12, 2019, the Commission indicates that Acosta has failed to explain why the existence of this action "would require or justify expedited consideration." As of yet, the Commission has not asserted jurisdiction over Acosta's application, and thus Acosta has no guarantee that the Commission will review his Application. In the event the Commission eventually determines that jurisdiction is lacking, Acosta will only then be able to seek relief in Federal Court. Thus, as of now, Acosta still lacks a means to appeal FINRA's determination, and he will continue to be left without a remedy until the Commission issues a determination.

more than a year without means to appeal FINRA's determination, and, indeed more than a year has passed since the parties submitted their initial briefs regarding the issue of the Commission's jurisdiction. With each day that passes, the harm Acosta must suffer as a result of FINRA's initial determination increases.

In view of the foregoing, Acosta respectfully requests that the Commission expedite its jurisdictional determination.

DATED: November 26, 2019

By:



RICHARD D'AMURA

CORRECTED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 26, 2019, a true and correct copy of the foregoing was emailed and mailed certified mail to: Michael M. Smith, Esq. Counsel for FINRA, Assistant General Counsel FINRA Office of General Counsel 1735 K Street, N.W., Washington, D.C. 20006; by facsimile and U.S. Certified Mail to: Robert Stebbins at fax number 202-772-9373, General Counsel, Office of General Counsel, Securities and Exchange Commission, 100 F Street, N.E. Washington, D.C. 20549-1090 and by fax and certified U.S. Mail to: Vanessa Countryman, Director, at fax number 202-772-9324, Office of the Secretary Securities and Exchange Commission, 100 F Street, N.E., Mailstop 1090, Washington, D.C. 20549-1090.



Richard D'Amura

*** RX REPORT ***

RECEPTION OK

TX/RX NO	9748
RECIPIENT ADDRESS	+12174039616
DESTINATION ID	
ST. TIME	11/26 18:13
TIME USE	01'41
PGS.	6
RESULT	OK

Fax

2019-11-26 23:12:55 UTC

6 pages
(including cover)

TO

Name: Vanessa Countryman

Number: +1 202-772-9324



SUBJECT

Office of the Secretary