UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF THE APPLICATION OF:	)	ADMIN. FILE NO. 3-19892
ROBERT L. BRYANT, III	)	**ROBERT L. BRYANT'S REPLY BRIEFING IN SUPPORT OF APPLICATION FOR REVIEW OF ACTION TAKEN BY FINRA AND TO SET ASIDE STATUTORY DISQUALIFICATION**
For Review of Action Taken by FINRA	)	

In its Supplemental Brief, FINRA does not—nor could it—dispute that it failed to file the subject notice of determination indicating that Mr. Bryant was subject to statutory disqualification (the "SD Notice") with the Commission. Indeed, FINRA admits that it "did not view the SD Notice as a final action requiring notice pursuant to Exchange Action Section 19(d)(1)." (FINRA Supplemental Brief at 2). Nevertheless, FINRA maintains that the provisions requiring an aggrieved individual to appeal 30 days "after notice of the determination was filed [by FINRA] with the Commission" (which FINRA failed to do) should still make Mr. Bryant's application for review untimely.

FINRA's arguments not only defy logic but they rely on a tortured construction of Exchange Act Section 19(d)(2) and Commission Rule of Practice 420(b) where "and" should be construed to mean "or" and where "[a] literal reading of each word and its dictionary definition … is not necessarily controlling." (FINRA Supplemental Brief at 4). According to FINRA, such rules, which provide for appeals to be filed "within thirty days after the date such notice was filed

with [the Commission] **and** received by such aggrieved person," should be read "in the disjunctive" to require appeals "within thirty days after the date such notice was filed with [the Commission] **or** received by such aggrieved person." None of the authority cited by FINRA, however, remotely supports such an argument. To the contrary, the cases relied on by FINRA involved the construction of statutes that contained broad categories of persons to whom the statutes at issue were applicable and only determined that an "and" within those listed categories of individuals was meant to be descriptive and not limiting. *Slodov v. United States*, 436 U.S. 238 (1978) ("the phrase "[a]ny person required to collect, truthfully account for, and pay over any tax imposed by this title" was … not [meant] to limit it to those persons in a position to perform all three of the enumerated duties with respect to the tax dollars in question."); *Peacock v. Lubbock Compress Co.,* 252 F.2d 892 (5th Cir. 1958) (language requiring employer to pay overtime for categories of employees who were engaged in the "ginning and compressing of cotton" was not meant to require both to be met). This is clearly not the situation here. A plain reading of Exchange Act Section 19(d)(2) and Commission Rule of Practice 420(b)—and their use of "and" therein—supports a two-step requirement for purposes of triggering the 30-day appeal time: FINRA's filing of the notice of determination with the Commission *and* notice to the aggrieved individual.

Counter to FINRA's suggestion, reliance on the literal language of the statute does not defeat the purpose of the statute in any way. To the contrary, if the purpose of the statute is to promote "strict compliance with filing deadlines" (FINRA's Supplemental Brief at 3-4), then FINRA must be held to the same standards. Similarly, FINRA's reliance on the proposition that "parties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed" or that they should "have notice and a fair opportunity

to appeal an action" (FINRA Supplemental Brief at 4) only further supports the need for FINRA to have filed the SD Notice with the Commission as it was required to do.

Here, had FINRA filed the SD Notice with the Commission as required by the plain language of Exchange Act Section 19(d)(2) and Commission Rule of Practice 420(b), Mr. Bryant would have received at least some modicum of notice that the SD Notice could be deemed to trigger the need for immediate appeal. Indeed, had FINRA filed the requisite SD Notice with the Commission, the Commission, itself, may have determined to review the sanction on its own motion. See *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 SEC LEXIS 641, at *9 n.10 (Mar. 1, 2013). Instead, the Commission was robbed of that option and the SD Notice that Mr. Bryant was merely copied on was utterly silent as to any right of relief or further appeal. Over and above these clear omissions, FINRA was at the same time repeatedly advising Mr. Bryant that he had no right to relief since the SD Notice was just an "initial action" unless and until an MC-400 application was submitted on his behalf, and subsequently denied. Indeed, FINRA does not dispute that it advised Mr. Bryant that he had no right to relief and admits that it maintained this position until the Commission's most recent decision in *Gregory Acosta,* Exchange Act Release No. 89121, 2020 SEC LEXIS 3589 (June 22, 2020).

Further, as previously briefed by Mr. Bryant, the *Orbixa* decision, and the decisions cited therein are unavailing because, unlike Mr. Bryant, the aggrieved parties in those cases were *fully put on notice* of their right to appeal and/or were otherwise aware of their rights such that they were pursuing remedies against the SRO. Significantly, in *none* of the cases relied on by FINRA is there any evidence that the SRO was affirmatively telling the aggrieved person/entity that it had no right of appeal like FINRA repeatedly did to Mr. Bryant here.

For FINRA to now claim, retroactively, that Mr. Bryant should have appealed within 30 days when FINRA itself maintained for years that there was no right to appeal, repeatedly advised Mr. Bryant he had no rights, *and* failed to file the SD Notice with the Commission as required by law is not only highly hypocritical but is unsupportable by the plain language of both Exchange Act Section 19(d)(2) and Commission Rule of Practice 420(b). For all these reasons, Mr. Bryant respectfully submits that FINRA's failure to have filed the SD Notice with the Commission must prevent his filing deadline from beginning to run. Alternatively, and even if the Commission were to find that the filing deadline should run despite FINRA's conduct and omissions, Mr. Bryant respectfully submits that this matter presents the precise type of extraordinary circumstances to warrant Commission review.[1]

Respectfully submitted,

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[1] It is important to note that, even on the merits of the application as partially addressed in FINRA's Supplemental Brief, FINRA continues to misrepresent the record below by stating that "The [Consent] Order expressly found that Bryant's misconduct violated Nebraska's statute prohibiting any device, scheme, or artifice to defraud in any act that operates as a fraud or deceit upon any person." (FINRA Supplemental Brief, at 1-2). To the contrary, the Consent Order made no mention of any fraud and merely cites to Nev. Rev. Stat. §8-1102(1), which –by its terms—is not limited to fraud but is entitled "fraudulent *and other prohibited practices*." Of course, the NE Department that reviewed Mr. Bryant's conduct also confirmed in writing on two separate occasions that Mr. Bryant's conduct was *not* fraudulent, manipulative or deceptive, a fact FINRA repeatedly ignores.

CERTIFICATE OF SERVICE

I, Jennifer A. Lesny Fleming, certify that on this 23rd day of June, 2021, I caused the foregoing Reply Briefing In Support of Application For Review of Action Taken By FINRA And To Set Aside Statutory Disqualification, in the matter of the Application for Review of Robert L. Bryant, III, Administrative Proceeding No. 3-19892, to be served by electronic service on:

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