

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

In the Matter of the Application of

Silver Leaf Partners, LLC

For Review of Disciplinary Action

Taken by

FINRA

File No. 3-19896

**FINRA'S OPPOSITION TO SILVER LEAF'S
SUPPLEMENT TO MOTIONS FOR STAY AND ADDITIONAL EVIDENCE**

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December 3, 2024

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On November 25, 2024, Silver Leaf Partners, LLC, filed a third Supplement to Motions for Stay and Additional Evidence. Silver Leaf’s latest filing submits for the Commission’s consideration the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Alpine Securities Corp. v. Financial Industry Regulatory Authority*, No. 23-5129, 2024 U.S. App. LEXIS 29728 (D.C. Cir. Nov. 22, 2024), and reaffirms Silver Leaf’s request to stay this proceeding until the *Alpine* litigation is concluded.

The D.C. Circuit’s “narrow and limited” opinion in *Alpine* is not relevant to this case. *See id.* at *31. *Alpine* involved the unique context of an expedited proceeding in which FINRA sought immediate expulsion of a specific FINRA member (not Silver Leaf). *See id.* at *16, 34. The D.C. Circuit’s opinion reversed, in a limited way, a district court’s denial of a preliminary injunction so that the plaintiff could receive “full review by the SEC” of any expulsion order in that expedited proceeding before it became effective. *Id.* at *4. The D.C. Circuit’s order is

limited, by its express terms, “to expulsion orders issued in FINRA expedited proceedings.” *Id.* at *32-33.

In distinct contrast, the sanctions that Silver Leaf challenges here were imposed after the completion of a FINRA disciplinary—not expedited—proceeding that *did not* result in FINRA expelling Silver Leaf from its membership. Under FINRA’s rules, the sanctions imposed in Silver Leaf’s disciplinary proceeding—a business-line suspension and a fine—cannot take effect until the Commission completes its plenary review of FINRA’s disciplinary decision. The D.C. Circuit’s opinion in *Alpine* therefore does not in any manner provide additional support for Silver Leaf’s August 31, 2023 Motions for Stay and Additional Evidence. FINRA accordingly continues to oppose the motion to stay because Silver Leaf provides no reason why the Commission’s review of its application should not continue.

I. BACKGROUND

In July 2020, Silver Leaf filed an application for review of a final disciplinary decision issued by FINRA’s National Adjudicatory Council (“NAC”). The NAC found that Silver Leaf violated FINRA rules by: (a) paying almost \$3 million in transaction-based compensation to an unregistered person and several nonmember entities; and (b) failing to reasonably supervise its business. *See* RP 6579.¹ For paying transaction-based compensation to an unregistered person and nonmember entities, the NAC fined Silver Leaf \$50,000. RP 6610-11. For failing to reasonably supervise its business, the NAC fined Silver Leaf \$50,000, ordered the firm to retain an independent consultant to review its policies and procedures, and suspended the firm from engaging in its “Corporate Advisory” line of business until it certifies its implementation of the independent consultant’s recommendations. RP 6611-14. Under FINRA Rule 9370, Silver

¹ “RP” refers to the page in the certified record FINRA filed with the Commission.

Leaf's application for review by the Commission stayed the effectiveness of these sanctions while the Commission considers Silver Leaf's appeal.² The parties completed briefing on the merits of Silver Leaf's application in November 2020.

On August 31, 2023, Silver Leaf filed a motion, titled "Motions for Stay and Additional Evidence," in which it asked that the Commission stay indefinitely its review of FINRA's final disciplinary decision until the court of appeals resolved the constitutional issues raised by the plaintiff in the *Alpine* litigation.³ In *Alpine*, the plaintiff contends that FINRA's expedited action against the firm violates either the private nondelegation doctrine or the Appointments Clause.⁴

FINRA opposed Silver Leaf's motion to stay because Silver Leaf did not provide good cause for a stay, as required under SEC Rule of Practice 161. Specifically, Silver Leaf did not show that it would be prejudiced in any way if a stay was not granted.

Silver Leaf has since made three additional filings, each titled "Supplement to Motions for Stay and Additional Evidence." In these filings, respectively, Silver Leaf reaffirms its request to stay this proceeding indefinitely and seeks to submit to the Commission (1) an amicus curiae brief that was filed with the court in the *Alpine* litigation, (2) the Supreme Court's decision in *SEC v. Jarkesy*, and (3) the court of appeals' decision in *Alpine*.⁵

² The sanctions never took effect because Silver Leaf timely filed an application for review.

³ Silver Leaf also asked the Commission to review "FINRA's business and enforcement practices," order FINRA to amend its Central Registration Depository disclosure regarding the NAC's decision, and "reserve a process for damages and restitution related thereto." FINRA opposed those requests, as well. See FINRA's Opposition to Motions for Stay and Additional Evidence, at 6-7.

⁴ See *Alpine*, 2024 U.S. App. LEXIS 29728, at *4.

⁵ FINRA filed oppositions to Silver Leaf's first two supplemental filings on December 14, 2023, and July 16, 2024, respectively.

II. ARGUMENT

The D.C. Circuit’s *Alpine* opinion does not support Silver Leaf’s motion to stay because, unlike the FINRA proceeding at issue in *Alpine*, Silver Leaf’s appeal concerns a final disciplinary decision rather than an expedited proceeding, expulsion from membership is not at issue, and the suspension and fine FINRA imposed on Silver Leaf are stayed by rule while the Commission reviews FINRA’s decision. As explained below, the Commission should deny the motion to stay because Silver Leaf has not shown that it will be prejudiced in any way if the stay is denied.

A. The Court’s Opinion in *Alpine* Does Not Support the Motion to Stay

In *Alpine*, the D.C. Circuit reversed, in a limited way, a district court’s denial of a preliminary injunction, and it instructed the district court on remand to enjoin FINRA, during the pendency of the litigation, from expelling the plaintiff until after the Commission has reviewed the merits of any expulsion order that may be issued in an expedited proceeding, or until the time for the plaintiff to seek Commission review has elapsed. *See id.* at *32, 50. The court held, as a “preliminary” matter on a “limited record,” that the plaintiff was “likely to succeed” in establishing that the private nondelegation doctrine prevents FINRA from expelling the plaintiff “with no opportunity for SEC review,” but it rejected the plaintiff’s broader attempt to halt the expedited proceeding. *See id.* at *4-5. The court expressly limited the scope of its order and findings to its consideration of the plaintiff’s motion for a preliminary injunction and “to expulsion orders issued in expedited proceedings.” *Id.* at *32-33. The court emphasized that its opinion “is narrow and limited to expedited expulsion proceedings, where the irreversible nature of the underlying sanctions prevents review on the merits by the SEC.” *Id.* at *31. The court explicitly noted any sanctions that FINRA may impose short of expulsion in expedited

proceedings were not implicated by the court’s opinion, as the Commission’s review of any final FINRA decision that imposed such sanctions was “unlikely to violate the Constitution.” *Id.* at *33.

Here, Silver Leaf’s application for review concerns a final disciplinary decision issued after the completion of a FINRA disciplinary proceeding brought against the firm, and that disciplinary decision did not result in FINRA expelling Silver Leaf from its membership. Rather, FINRA fined Silver Leaf and suspended the firm from engaging in its “Corporate Advisory” line of business until it certifies its implementation of the independent consultant’s recommendations. In addition, these sanctions never became effective because Silver Leaf timely filed an application for review, and the sanctions are stayed while the Commission reviews the merits of FINRA’s final disciplinary action. *See* FINRA Rule 9370. Silver Leaf will receive plenary review by the Commission of the sanctions imposed before they can become effective. *Alpine* casts no doubt on the constitutionality of the Exchange Act’s review scheme to the extent the Commission has the opportunity to “conduct[] its own review of any final decision or sanction” imposed by FINRA and “approve, disapprove, or modify FINRA’s actions.” *See id.* at *20-21 (distinguishing “typical[]” Commission oversight of FINRA disciplinary actions” from Commission “review of expulsions imposed through FINRA’s expedited proceedings”). Accordingly, the *Alpine* decision is not relevant to Silver Leaf’s appeal and does not support its motion to stay.

B. The Commission Should Deny Silver Leaf’s Request for a Stay

As FINRA explained in its September 8, 2023 opposition to Silver Leaf’s motion to stay, the Commission should deny Silver Leaf’s motion to stay because Silver Leaf has failed to demonstrate that an indefinite stay is warranted. Silver Leaf seeks an indefinite stay of this

proceeding until the *Alpine* litigation is concluded, and therefore its motion to stay is governed by SEC Rule of Practice 161. *See John Roger Faherty*, Exchange Act Release No. 41454, 1999 SEC LEXIS 1067, at *1-2 (May 26, 1999) (“Faherty seeks an indefinite postponement of this review proceeding. Such requests are governed by Rule of Practice 161.”). Under the rule, the Commission may stay a review proceeding for “good cause.” *Id.* at *2. In considering such a request, the Commission “should adhere to a policy strongly disfavoring” delays “except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” SEC Rule of Practice 161(b), 17 C.F.R. § 201.161(b). The Commission also must consider the length of the proceeding to date, the number of postponements, adjournments or extensions already granted, the stage of the proceedings at the time of the request, and any other matters as justice may require. *Id.* A stay of proceedings may not exceed 21 days unless the Commission finds that a longer period is necessary. SEC Rule of Practice 161(c)(1), 17 C.F.R. § 201.161(c)(1).

Silver Leaf has not made the required “strong showing” that it will be “substantially prejudice[d]” if the Commission does not stay this review proceeding. Indeed, Silver Leaf has not shown—in its motion to stay or in any of its supplemental filings—that it will be prejudiced in any way if its motion to stay this appeal is denied. Other relevant factors also weigh against staying this proceeding: Silver Leaf’s application for review has been pending for more than four years, and the parties have fully briefed the issues on appeal.

Because Silver Leaf has not shown that it will be substantially prejudiced if this proceeding is not stayed, and the other relevant factors weigh against a stay, the Commission should deny Silver Leaf’s motion to stay this proceeding.

IV. CONCLUSION

The Commission should deny Silver Leaf's motion to stay because Silver Leaf has failed to demonstrate good cause for an indefinite stay of this review proceeding.

Respectfully submitted,

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December 3, 2024

CERTIFICATE OF COMPLIANCE

I, Michael M. Smith, certify that I have complied with the Commission's Rules of Practice by filing an opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ Michael M. Smith

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Dated: December 3, 2024

CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 3rd day of December 2024, I caused a copy of the foregoing Opposition to Supplement to Motions for Stay and Additional Evidence, *In the Matter of the Application of Silver Leaf Partners, LLC*, Administrative Proceeding File No. 3-19896, to be served through the SEC's eFAP system on:

Vanessa A. Countryman
The Office of the Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, D.C. 20549-1090

I further certify that, on this date, I caused a copy of FINRA's opposition in the foregoing matter to be served by electronic service on:

M. Fyzul Khan, Esq.
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Respectfully submitted,

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