

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

In the Matter of the Application of

Sandeep Varma

For Review of Action Taken by

Financial Industry Regulatory Authority

File No. 3-20317

**FINRA'S MOTION TO DISMISS SANDEEP VARMA'S
APPLICATION FOR REVIEW AND TO STAY BRIEFING**

Alan Lawhead
Vice President and
Director – Appellate Group

Gary Dernelle
Associate General Counsel

FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255
gary.dernelle@finra.org
nac.casefilings@finra.org

May 28, 2021

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
II.	FACTS	2
	A. Background	2
	B. Varma Accepts an AWC to Settle Alleged FINRA Rule Violations.....	3
	C. Varma Appeals to the NAC and Then to the Commission.....	4
III.	ARGUMENT	4
	A. Varma Waived His Right to Appeal to the Commission.....	4
	B. The Sole Relief Varma Requests is Not Available to Him.....	6
	C. Varma’s Application for Review Is Untimely	9
IV.	CONCLUSION.....	10

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL DECISIONS

Buscetto v. FINRA, No. 11-6308 (JAP),6
2012 U.S. Dist. LEXIS 65116 (D.N.J. May 9, 2012)

United States v. Coaxum, No. 18-4589,5
2019 U.S. App. LEXIS 4038 (4th Cir. Feb. 8, 2019)

United States v. Han Lee, 888 F.3d 503 (D.C. Cir. 2018)5, 6

United States v. Harris, 628 F.3d 1203 (9th Cir. 2011).....6

United States v. Toth, 668 F.3d 374 (6th Cir. 2012).....5

COMMISSION DECISIONS AND RELEASES

Richard D. Feldmann, Exchange Act Release No. 77803,7, 8, 9
2016 SEC LEXIS 1734 (May 10, 2016)

Kenneth W. Haver, Exchange Act Release No. 54824,8
2006 SEC LEXIS 2735 (Nov. 28, 2006)

Michael H. Johnson, Exchange Act Release No. 75894,7, 8
2015 SEC LEXIS 3794 (Sept. 10, 2015)

Notice of Filing of Proposed Rule Change to Propose Changes7
in Membership Application Procedures, Disciplinary Proceedings,
and Other Proceedings, Exchange Act Release No. 38545,
1997 SEC LEXIS 959 (Apr. 24, 1997) (SR-NASD-97-28)

Order Approving Proposed Rule Change5, 7
Regarding Membership Application
Procedures, Disciplinary Proceedings, Investigations and
Sanctions Procedures, and Other Conforming Changes,
Exchange Act Release No. 38908,
1997 SEC LEXIS 1617 (Aug. 7, 1997) (SR-NASD-97-28)

Matthew Brian Proman, Exchange Act Release No. 57740,7
2008 SEC LEXIS 956 (Apr. 30, 2008)

Arthur H. Ross, 50 S.E.C 1082 (1992)8

Bruce Zipper, Exchange Act Release No. 81788,5, 6, 10
2017 SEC LEXIS 3107 (Sept. 29, 2017)

Bruce Zipper, Exchange Act Release No. 84324,10
2018 SEC LEXIS 2703 (Oct. 1, 2018)

FEDERAL STATUTES AND RULES

15 U.S.C. §78s(d)(2).....9

17 C.F.R. § 201.1612

17 C.F.R. §201.420(b)9

FINRA RULES

FINRA Rule 8312(c)(1).....7

FINRA 9216(a)3, 5, 7

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

In the Matter of the Application of

Sandeep Varma

For Review of Action Taken by

Financial Industry Regulatory Authority

File No. 3-20317

**FINRA’S MOTION TO DISMISS SANDEEP VARMA’S
APPLICATION FOR REVIEW AND TO STAY BRIEFING**

I. INTRODUCTION

On May 14, 2021, Sandeep Varma (“Varma”) filed an application requesting that the Securities and Exchange Commission (“Commission”) review a more than three-year-old settlement with FINRA that Varma agreed to. RP 67-71.¹ Specifically, Varma attempts to appeal a Letter of Acceptance, Waiver and Consent (“AWC”) that he knowingly and voluntarily accepted in late 2017 to settle allegations that he violated FINRA rules, and he asks that the Commission remand this matter to FINRA for a decision “on the merits.” RP 1-2.

The Commission should dismiss Varma’s appeal. First, under the express terms of the AWC he accepted, Varma “specifically and voluntarily” waived his right to appeal FINRA’s action to a higher jurisdictional authority, including the Commission. Varma’s AWC is valid and

¹ “RP __” refers to the page numbers in the certified record that FINRA filed with the Commission on May 28, 2021.

binding, and it includes an explicit appeal waiver provision. The Commission should therefore decline to consider his application for review.

Second, Varma also “specifically and voluntarily” waived his right to contest the allegations that inform the AWC in a FINRA disciplinary proceeding. The sole relief that Varma requests from the Commission, a remand to FINRA to determine the AWC’s merits, is accordingly foreclosed to him.

Finally, although the statutory period to appeal a final FINRA action does not apply to an AWC containing a binding appeal waiver, Varma’s application for review is plainly late. The time for Varma to attempt an appeal of the AWC passed more than three years ago, and he has not shown that extraordinary circumstances exist to excuse his delay.

For these reasons, the Commission should dismiss Varma’s application for review.²

II. FACTS

A. Background

Varma first registered with a FINRA member in 1990. RP 1. From March 1995 through October 2015, he was registered as a general securities representative of LPL Financial LLC. RP 1. Since October 2015, he has been registered as a general securities representative of FSC Securities Corporation.³ RP 67.

² FINRA requests, pursuant to Rule 161 of the Commission’s Rules of Practice, that the Commission stay the issuance of a briefing schedule in this matter. *See* 17 C.F.R. § 201.161. The Commission should evaluate first FINRA’s dispositive motion before it considers the merits, if any, of Varma’s application for review.

³ Varma is currently also a registered investment adviser representative of ATS Wealth Management. RP 79.

B. Varma Accepts an AWC to Settle Alleged FINRA Rule Violations

On December 20, 2017, pursuant to FINRA Rule 9216, Varma accepted and submitted to FINRA the AWC that is the subject of his application for review.⁴ RP 1-7. Varma’s attorney reviewed and also signed the AWC. RP 5.

Varma submitted the AWC for the purpose of proposing a settlement of allegations that he violated FINRA rules. RP 1. By so doing, he consented to the entry of findings that he violated FINRA Rules 2210 and 2010 by conducting four seminars attended by about 70 prospective clients using a seminar slide presentation promoting a complex estate planning strategy that failed to conform to the content standards that apply to all communications by FINRA members and their associated persons with the public. RP 1-3. To settle this matter, Varma agreed to the imposition of sanctions—a \$15,000 fine and a 10-business-day suspension from associating with any FINRA member in any capacity. RP 3.

When Varma accepted the AWC, he “specifically and voluntarily” waived several rights otherwise granted to respondents under FINRA’s Code of Procedure. RP 4. This waiver included the unambiguous relinquishment of his rights to have a complaint issued specifying the allegations against him, answer a complaint and its allegations in writing, defend against the allegations in a disciplinary hearing before FINRA adjudicators, and appeal to FINRA’s National Adjudicatory Council (“NAC”), the Commission, and the courts. RP 4.

⁴ FINRA accepted the AWC on January 18, 2018, and it became final on that date. RP 6; *see also* FINRA Rule 9216(a)(4) (stating that an AWC is “final” when accepted by FINRA).

C. Varma Appeals to the NAC and Then to the Commission

On January 29, 2021, Varma nevertheless filed a “notice of appeal” pursuant to FINRA Rule 9311(a) which requested that the NAC conduct a “hearing” concerning his AWC.⁵ RP 9-20. After considering briefs the parties filed to address whether the NAC should consider Varma’s request, a Review Subcommittee concluded that Varma unequivocally waived his right to appeal the AWC, and it accordingly dismissed his appeal. RP 21-34, 35-56, 57-61, 63-65.

Thereafter, on May 14, 2021, more than three years after his AWC became final, Varma filed his application for review with the Commission. RP 67-69. In his application, Varma requests solely that the Commission remand this matter to FINRA for proceedings to decide the merits of the AWC. RP 68.

III. ARGUMENT

Three independent grounds warrant that the Commission dismiss Varma’s application for review. First, the AWC is not appealable to the Commission. Second, the sole relief that Varma requests from the Commission is not available to him. And finally, his application for review is untimely.

A. Varma Waived His Right to Appeal to the Commission

The Commission is without grounds to consider Varma’s application for review. The AWC that is the subject of Varma’s application is valid and enforceable, and its appeal waiver

⁵ FINRA Rule 9311(a) permits a respondent or FINRA’s Department of Enforcement to file a written notice of appeal to the NAC within 25 days after service of a decision issued pursuant to FINRA Rules 9268 or 9269. An AWC is not a decision that may be appealed to the NAC under either of these rules.

provision is binding.⁶ See *Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at *8 (Sept. 29, 2017) (“We conclude . . . that an appeal waiver in an otherwise valid AWC is presumptively enforceable.”).

Although Varma claims that he executed the AWC “without full knowledge of the effect that signing the AWC would have on his career,” Application at 1, the record establishes indisputably that he accepted the AWC, and all of its terms, knowingly and voluntarily. See *United States v. Toth*, 668 F.3d 374, 378 (6th Cir. 2012) (“[A]n appeal waiver is enforceable if the defendant’s waiver of his appellate rights was knowing and voluntary.”); cf. *United States v. Han Lee*, 888 F.3d 503, 506 (D.C. Cir. 2018) (“We have held that a waiver of the right to appeal a sentence is presumptively valid and is enforceable if the defendant’s decision is knowing, intelligent, and voluntary.”). Varma signed the AWC, as did his attorney. RP 5. When he executed the AWC, Varma explicitly certified that he read and understood all of its provisions, was given a full opportunity to ask questions about it, agreed to its provisions voluntarily, and submitted it with no offer, threat, inducement, or promise of any kind. RP 5. And the AWC provided, in clear and unambiguous terms, that Varma “specifically and voluntarily” waived his right to appeal to the NAC, “and then to the [Commission] and a U.S. Court of Appeals.” RP 5. Varma’s assertion that he did not understand the AWC rings hollow given these unquestionable facts. See, e.g., *United States v. Coaxum*, No. 18-4589, 2019 U.S. App. LEXIS 4038, at *3 (4th

⁶ Varma’s AWC is consistent fully with FINRA rules, which state that a member or associated person who executes an AWC waives the right to any further judicial review or to otherwise challenge the AWC’s validity. See FINRA Rule 9216(a). When approving these rules, the Commission stated that “[a] respondent may not ‘appeal’ any final action contained in an AWC . . . that has been accepted by [FINRA].” *Order Approving Proposed Rule Change Regarding Membership Application Procedures, Disciplinary Proceedings, Investigations and Sanctions Procedures*, Exchange Act Release No. 38908, 1997 SEC LEXIS 1617, at *139 n.198 (Aug. 7, 1997) (SR-NASD-97-28).

Cir. Feb. 8, 2019) (“[T]he totality of the circumstances demonstrates that Coaxum knowingly and intelligently waived his appeal rights. Coaxum signed the plea agreement, confirming he understood its contents and had reviewed it with his attorney.”); *Han Lee*, 888 F.3d at 507 (finding that a written plea agreement in which a defendant waives the right of appeal is “strong evidence” that the defendant knowingly, intelligently, and voluntarily waived the right to appeal, but explaining that the court examines also, among other things, “the clarity of the written plea agreement, the defendant’s signature on the agreement, [and] defense counsel’s signature on the agreement”).

For these reasons, the Commission should decline to consider Varma’s application for review and dismiss it. *See Zipper*, 2017 SEC LEXIS 3107, at *10 (“We find that Zipper’s AWC is binding and that he waived his right to appeal to the Commission.”); *see also United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (“Where an appeal raises issues encompassed by a valid, enforceable appellate waiver, the appeal generally must be dismissed.”).

B. The Sole Relief Varma Requests is Not Available to Him

The Commission should also dismiss Varma’s application for review because, in addition to waiving his appeal rights, he waived his rights to contest the allegations that inform his AWC in a FINRA disciplinary proceeding. The sole relief that Varma requests from the Commission, a remand to FINRA to determine the AWC’s merits, is accordingly foreclosed to him.⁷

⁷ Varma’s application states that he seeks a remand not to “overturn” the AWC,” but rather to “expunge” it from “the CRD and BrokerCheck.” Application at 2. FINRA, however, is statutorily required to maintain and make public the information that Varma seeks to expunge. *See Buscetto v. FINRA*, No. 11-6308 (JAP), 2012 U.S. Dist. LEXIS 65116, at *8 (D.N.J. May 9, 2012) (citing 15 U.S.C. §§ 78o-3(i)(1)(A)-(B)). In addition, FINRA Rule 8312 requires FINRA to permanently publish “final regulatory actions,” such as Varma’s AWC. *See* FINRA Rule 8312(c)(1). Varma expressly acknowledged these duties and their consequences. The AWC he executed stated that he understood it would become part of his permanent disciplinary record and

[Footnote continued on next page]

An AWC is a letter that a FINRA member or associated person executes to resolve alleged violations of FINRA rules prior to the issuance of a disciplinary complaint. *See Order Approving Proposed Rule Change Regarding Membership Application Procedures, Disciplinary Proceedings, Investigations and Sanctions Procedures*, 1997 SEC LEXIS 1617, at *137. It is a voluntary, negotiated resolution of a disputed matter. *See Notice of Filing of Proposed Rule Change to Propose Changes in Membership Application Procedures, Disciplinary Proceedings, and Other Proceedings*, Exchange Act Release No. 38545, 1997 SEC LEXIS 959, at *24 (Apr. 24, 1997) (SR-NASD-97-28). It constitutes, upon FINRA’s acceptance, “the complaint, answer, and decision in the matter.” FINRA Rule 9216(a)(4).

Varma had an opportunity more than three years ago to challenge his alleged violations of FINRA rules. He declined to do so. Instead, to obtain the certainty of a result and avoid the cost and uncertainty of litigation, Varma knowingly and voluntarily accepted his AWC and waived his right to contest the allegations in a FINRA disciplinary proceeding. *See Richard D. Feldmann*, Exchange Act Release No. 77803, 2016 SEC LEXIS 1734, at *8 (May 10, 2016) (“[I]n all settlements, a party—by forgoing a trial on the merits—relinquishes any possibility of a

[cont’d]

published through FINRA’s public disclosure program. RP 5. Although Varma complains now that public disclosure of the AWC has “significantly weakened . . . his ability to work in the financial industry,” Application at 2, any stigma that he has or might suffer as a result of the AWC is the natural and foreseeable consequence of his voluntary decision to accept it. *See, e.g., Michael H. Johnson*, Exchange Act Release No. 75894, 2015 SEC LEXIS 3794, at *11 n.20 (Sept. 10, 2015) (“Johnson’s stated difficulties do not render the settled order inequitable. Rather, they are among a range of natural and foreseeable consequences that flow . . . as a result of the settled order.”). Varma’s AWC is not reviewable by the Commission, and his desire to expunge it does not justify his request for a remand. *See Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at *10 (Apr. 30, 2008) (“As we have stated previously, SRO action is not reviewable merely because it adversely affects the applicant.”).

more favorable outcome. However, settling parties achieve the certainty of avoiding a potentially worse outcome, while avoiding the time and expense of additional litigation.”). In addition to waiving his appeal rights, Varma “specifically and knowingly” waived his rights to have a complaint issued specifying the allegations against him, to answer that complaint in writing, and to appear before FINRA adjudicators to confront the allegations in a disciplinary hearing.⁸ RP 4.

Varma’s request that the Commission remand this matter to FINRA to determine the merits of his AWC thus embodies a remedy to which he simply is not entitled. *See Feldmann*, 2016 SEC LEXIS 1734, at *13 (“Feldmann’s request to modify the ordered disgorgement fails for the separate and independent reason that he gave up the right to further proceedings when he settled.”); *Kenneth W. Haver*, Exchange Act Release No. 54824, 2006 SEC LEXIS 2735, at *12-13 (Nov. 28, 2006) (“Haver . . . forfeited his right to adduce his evidence, which would require evaluation at the hearing before an administrative law judge that Haver waived. Haver may not now complain that the record is inaccurate or incomplete.”).

Because the sole relief that Varma requests from the Commission is unavailable to him, the Commission should dismiss his application for review.⁹

⁸ These facts distinguish Varma’s case from that of *Arthur H. Ross*, which concerned a remand to NASD for further proceedings after the Commission’s review of a litigated NASD decision denying a statutory disqualification application. *See Arthur H. Ross*, 50 S.E.C. 1082, 1085 (1992). Varma’s citation to *Ross*, Application at 2, is hence inapposite. FINRA rules contemplate only finality with respect to an AWC.

⁹ Varma claims in his application that his AWC leaves him with “no genuine opportunity for adequate relief.” Application at 1. As the Commission has held, however, public policy favors the expedient disposition of litigation, and a respondent, like Varma, may not agree to a settlement and later seek to contest the allegations on which the settlement is premised because he deems it unfavorable. *See Johnson*, 2015 SEC LEXIS 3794, at *15 (Sept. 20, 2015) (quoting *David T. Fleischman*, 43 S.E.C. 518, 522 (1967)). Remanding this matter to FINRA to

[Footnote continued on next page]

C. Varma's Application for Review Is Untimely

Even in the event Varma could appeal his AWC, the Commission should dismiss Varma's application for review because his attempted appeal is untimely. Section 19(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act") provides that a person aggrieved by a final FINRA action imposing a disciplinary sanction must file an application for review with the Commission "within thirty days after the date such notice [of action] was . . . received by such aggrieved person, or within such longer period as [the Commission] may determine." 15 U.S.C. §78s(d)(2). Rule 420(b) of the Commission's Rules of Practice further provides that the Commission "will not extend this 30-day period, absent a showing of extraordinary circumstances."¹⁰ *Id.*

There is no dispute that Varma did not file his application for review within the statutory appeal period. FINRA accepted Varma's AWC, and it became final, on January 18, 2018. RP 6. Varma, however, did not file his application with the Commission until May 14, 2021, more than three years after the deadline to appeal the AWC ostensibly lapsed. RP 71. Varma did not seek an extension of the appeal deadline, and he has provided no justification for the late filing of his application for review.

As the Commission has held, strict compliance with the filing deadlines established by the Exchange Act and the Commission's Rules of Practice facilitates finality and encourages

[cont'd]

determine the merits of Varma's AWC would undermine deeply the "strong interest" in finality that FINRA and the parties to any AWC are entitled. *See Feldmann*, 2016 SEC LEXIS 1734, at *8.

¹⁰ Rule of Practice 420 is the exclusive remedy for seeking an extension of the 30-day appeal period. 17 C.F.R. §201.420(b).

parties to seek relief from FINRA action in a timely manner. *Zipper*, 2017 SEC LEXIS 3107, at *16. Although the statutory appeal period does not apply to an AWC containing an appeal waiver provision, Varma’s attempted appeal is clearly untimely under that standard. *See Bruce Zipper*, Exchange Act Release No. 84324, 2018 SEC LEXIS 2703, at *19 (Oct. 1, 2018). Because Varma has not shown that extraordinary circumstances exist to excuse his delay, his application for review should be dismissed. *See Zipper*, 2017 SEC LEXIS 3107, at *16.

IV. CONCLUSION

Varma knowingly and voluntarily accepted an AWC to settle allegations that he violated FINRA rules. By so doing, he “specifically and voluntarily” waived his rights to appeal to the Commission and challenge the alleged violations of FINRA rules in a FINRA disciplinary proceeding. Varma’s appeal waiver is binding, and the relief he requests from the Commission, a remand to FINRA to determine the AWC’s merits, is not available to him. For these reasons, and given the additional reason that his appeal untimely, the Commission should dismiss Varma’s application for review.

Respectfully submitted,

/s/ Gary Dernelle

Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255
gary.dernelle@finra.org
nac.casefilings@finra.org

May 28, 2021

CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that this Motion to Dismiss Sandeep Varma's Application for Review and to Stay Briefing complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,

/s/ Gary Dernelle

Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
gary.dernelle@finra.org
nac.casefilings@finra.org

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 28th day of May 2021, I caused a copy of FINRA's Motion to Dismiss Sandeep Varma's Application for Review and to Stay Briefing, in the matter of Application for Review of Sandeep Varma, Administrative Proceeding No. 3-20317, to be filed through the SEC's eFAP system and served by electronic service on:

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090
apfilings@sec.gov

I further certify that, on this date, I caused a copy to be served by electronic service on:

Owen Harnett, Esq.
HLBS Law, LLC
9737 Wadsworth Parkway Suite G-100
Westminster, CO 80021
owen.harnett@hlbslaw.com

Respectfully submitted,

/s/ Gary Dernelle

Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
gary.dernelle@finra.org
nac.casefilings@finra.org