

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

In the Matter of the Application Of

Sandeep Varma

For Review of Action Taken By

FINRA

File No. 3-20317

**MR. VARMA’S RESPONSE TO FINRA’S MOTION TO DISMISS APPLICATION FOR
REVIEW AND TO STAY BRIEFING**

I. INTRODUCTION

On Friday, May 28, 2021, FINRA’s Office of the General Counsel submitted a Motion to Dismiss the Application for Review and to Stay the Briefing. Counsel for the Applicant, Sandeep Varma (“Mr. Varma”) received a copy of this Motion on Friday, May 28, 2021. FINRA states that Mr. Varma’s Application for Review should be dismissed because “it is untimely and that he waived his rights to appeal.” As stated previously, the current action does not seek to overturn the Acceptance, Waiver and Consent Agreement (“AWC”), but rather to remand to enforcement for review as continued publication does not weigh in favor of serving the public interest, and serves only to perpetually harm Mr. Varma. Mr. Varma’s application was filed timely within the thirty days of the National Adjudicatory Council (“NAC”) decision regarding Mr. Varma’s AWC.

Consequently, the Commission should deny FINRA’s Motion to Dismiss the Application for Review and to Stay the Briefing Schedule.

II. FACTUAL BACKGROUND

The Appellant, Sandeep Varma ("Mr. Varma") (CRD #1926613), is a resident of Encinitas, California and has been a financial services professional since April of 1990 and is currently a registered representative and investment advisor representative with FSC Securities Corporation in San Diego, California.

At issue, FINRA claims that From September 2013 through February 2014, Mr. Varma used a seminar slide presentation promoting a complex estate planning strategy involving the use of a charitable remainder trust ("CRT"). FINRA claims that Mr. Varma failed to comply with FINRA Rule 2210(d)(1).

FINRA specifically claims that Mr. Varma conducted four seminars attended by approximately 70 prospective clients using the seminar presentation, which and claims that Mr. Varma failed to provide a sound basis for evaluating the CRT strategy; (ii) failed to provide a balanced discussion of the risks and rewards associated with the strategy; and (iii) contained claims that were exaggerated, promissory, and/or misleading. FINRA claims that as a result of the foregoing, Mr. Varma violated FINRA Rule 2210(d)(1)(A) and (B), as well as FINRA Rule 2010.

FINRA Rule 2210(d)(1)(A) provides that all member communications must be "based on principles of fair dealing and good faith," must be "fair and balanced," and must "provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." FINRA Rule 2210(d)(1)(8) further prohibits making any "false, exaggerated, unwarranted, promissory or misleading statement or claim" or publishing, circulating, or distributing a communication that the "member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading."

The entirety of the allegations contained in the Complaint are said to have occurred from September 2013 through February 2014. The DOE did not allege any Rule violations after February 2014. DOE claimed that the presentation depicted increased income and improved cash flow from employing the CRT strategy, as well as the increased amounts left to the customers' heirs due to securing the substantial life insurance policy. The DOE further claimed the presentation projected performance of assets held in the CRT in an exaggerated and promissory manner by projecting only positive performance and not clearly disclosing how negative investment performance could affect the strategy.

Mr. Varma was never made aware of his rights to appeal, therefore leading Mr. Varma to sign the Acceptance, Waiver, and Consent agreement. On January 29, 2021, Mr. Varma appealed the AWC to the NAC. On April 15, 2021, the NAC denied his appeal. Mr. Varma has since timely submitted his application for review to the Commission on May 14, 2021. FINRA has filed a Motion to Dismiss and Stay of Scheduling Brief on May 28, 2021. Counsel for Mr. Varma now submits his response.

III. ARGUMENT

The Commission should deny FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule because FINRA's assertion that AWC is not appealable to the Commission is not true and seeks to limit the Commissions' Authority, the Commission may remand to Enforcement as Enforcement has the Authority to hear this case on the merits and the Application for review is not untimely.

A. The Commission Has Jurisdiction Over Mr. Varma’s Appeal.

As Mr. Varma is unable to exhaust any administrative remedies due to the waiver, in this matter, the Commission is Mr. Varma’s last opportunity for review. FINRA argues that this action is not reviewable by the commission. Arguing essentially that there is no circumstance that Mr. Varma may seek review of his rights in this forum due to the waiver. However, even taking the Waiver under account, the Commission still has the authority to review this action.

The Commission has jurisdiction over this appeal and should proceed to the merits of Mr. Varma’s application. Section 19(d) of the Exchange Act authorizes the Commission to review an action taken by an “SRO that ‘prohibits or limits’ ‘access to services offered’ by the SRO to any person.” 15 U.S.C. § 78s(d); *see also*, SEC Release No. 72182. In determining whether the Commission has jurisdiction under the above standard, the Commission asks “whether the SRO prohibited or limited access to a service that the SRO offers and whether that service is fundamentally important.” *See*, Consolidated Matter, at 3. As FINRA has denied review of the claim in its decision, the Commission is only body that can review the matter at hand as the decision restricts access to a fundamentally important service. In this, Mr. Varma has a fundamental right to appeal.

The NAC itself had jurisdiction to review this case under 13413. Jurisdiction of Panel and Authority to Interpret the Code.

B. This is the only relief available to Mr. Varma.

The Commission should not dismiss Mr. Varma’s application for review. Rule 9216 states if the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement may prepare

and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. See FINRA Rule 9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEA Rule 19d-1(c)(2). However, in this FINRA had no reason believe such a violation occurred. At no point did Mr. Varma provide any guarantees nor did he exaggerate or provide misleading information to his clients. In fact, Mr. Varma provided a Disclaimer for his clients regarding his investment strategy.

FINRA made claims that the Mr. Varma failed to provide a sound basis for evaluating the CRT strategy; (ii) failed to provide a balanced discussion of the risks and rewards associated with the strategy; and (iii) contained claims that were exaggerated, promissory, and/or misleading. FINRA claims that as a result of the foregoing, Mr. Varma violated FINRA Rule 2210(d)(1)(A) and (B), as well as FINRA Rule 2010. FINRA was incorrect on this, while the presentation only depicted one scenario which was positive it also showed how negative performance (lower returns) could adversely affect income (e.g., on Slide 29 of the presentation in question demonstrated some of the negatives of a CRT investment strategy, including a potential high-income tax rate bracket of “35%”). Moreover, a clear disclaimer is given for this investment strategy for those interested pursuing a CRT.

As previously stated, the current action does not seek to overturn the AWC, but rather to remand to enforcement, because its publication does not weigh in favor of serving the public interest, and serves only to perpetually harm Petitioner. Equity requires review of this matter. The

AWC language which is disclosed publicly forbids Petitioner from denying allegations against him which were not fully investigated by an independent arbitration panel. The Petitioner has been significantly weakened in his ability to work in the financial industry. The publication of the Occurrence is causing, and will continue to cause, substantial harm to Petitioner by infringing on his privacy rights and inhibiting his ability to seek employment and engage in advantageous business relationships, and by injuring his professional reputation.

Generally, by the very terms of an AWC, an individual waives the right to further access administrative remedies or later contest the validity of the AWC. The underlying facts of Mr. Varma's case call for review and remand by the Commission. Mr. Varma was not properly represented or advised of the potential consequences. FINRA had direct knowledge that the claims against Mr. Varma lacked merit and the issue of an AWC was unwarranted. Mr. Varma, only now with the benefit of hindsight and finally retaining adequate counsel, has come to realize this fact. Nevertheless, Mr. Varma does not seek to reverse the fine he paid or seek anything at all other than removal of references to these Occurrence from his CRD and BrokerCheck records. The facts of his case, if reviewed by enforcement, would warrant such a result. Mr. Varma does not seek action against FINRA, but rather an opportunity to have enforcement determine whether the Occurrence should remain a matter of public record. Mr. Varma has no other adequate remedy available to him.

Further, there is no benefit to the public in maintaining these records because the allegations contained in the AWC were never adequately investigated.

C. Mr. Varma's Application is not Untimely

FINRA's assertion of and argument that the Application is untimely is false. 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). The argument that Mr. Varma "has made no attempt to establish 'extraordinary circumstances' sufficient to justify an extension of his time to submit an application for review" is an irrelevant argument. The Commission has held that "extraordinary circumstances" may arise when "the failure to timely file was beyond the control of the applicant." *PennMont*, 2010 WL 1638720, at *4. Mr. Varma did not seek an extension of his time to file as he filed his Application for Review within 30 days of receiving notice from NAC that his request for removal of the AWC was not eligible for review on April 15, 2021. As such, he made no argument to establish "extraordinary circumstances."

According to Comment (b) of Commission Rule of Practice 420, "a method of service that provides proof of delivery is not mandatory," but the applicant for review bears the burden of proving that a filing was made in a timely manner when such a fact comes into question. Mr. Varma has met his burden of proof in establishing that his Application for Review was filed within the 30-day time limit pursuant to *Commission Rules of Practice* 420 and 151. 17 C.F.R. §§ 202.420; 202.151. Mr. Varma's Application for Review was filed on May 14, 2021.

In the event that the Commission did make a determination that Varma's Application for Review was untimely because it was not received by the Commission within the 30-day time limit, Varma would then vehemently argue that he has experienced "extraordinary circumstances" which warrant an extension; as he made a best faith effort to file his Application for Review within the 30-day time limit by sending the required original plus 3 copies and Certificates of Service to both FINRA and the Commission via certified, mail on May 14, 2021.

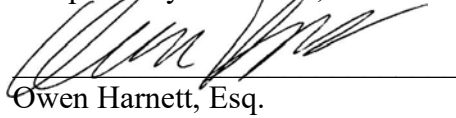
FINRA's motion to dismiss as untimely is a misguided attempt to persuade the Commission to overlook the principles of justice in their entirety. As outlined herein, the sole basis of FINRA's motion is not only littered with assumptions, but unequivocally excepted pursuant to *PennMont*.

II. CONCLUSION

The Commission is authorized to review an action of an SRO where the SRO prohibits or limits a person's access to services offered by the SRO and where that service is fundamentally important, which is the case here, as Mr. Varma has a right to a review of this appeal. Because Mr. Varma did not file untimely, there is no requirement for him to show "extraordinary circumstances" that warrant an extension. Consequently, the Commission should deny FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule.

Dated: June 2, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Owen Harnett", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, James Bellamy, certify that on this 2nd day of June 2021, I caused a copy of the foregoing Response to FINRA’s Motion to Dismiss Sandeep Varma’s Application for Review and to Stay Briefing, in the matter of the Application for Review of Sandeep Varma, Administrative Proceeding File No. 3-20317, to be filed through the SEC’s eFAP system and served by electronic mail on:

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

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[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

/s/James Bellamy
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