

**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 REPLY IN SUPPORT OF ITS MOTION TO DISMISS  
SANDEEP VARMA’S APPLICATION FOR REVIEW**

**I. INTRODUCTION**

On December 20, 2017, Sandeep Varma (“Varma”) executed and submitted a Letter of Acceptance, Waiver and Consent (“AWC”) to resolve allegations that he violated FINRA rules. When Varma accepted the AWC, which is a valid and binding settlement agreement, he “specifically and voluntarily” waived his rights to contest the allegations that inform the AWC in a FINRA disciplinary proceeding or to appeal the AWC to a higher jurisdictional authority, including the Securities and Exchange Commission (“Commission”).

Although it is more than three years old, Varma now requests that the Commission accept his application for review and remand this matter to FINRA for proceedings to examine the merits of the AWC that he knowingly and voluntarily agreed to. As FINRA argued in its May 28, 2021 motion to dismiss Varma’s application, the Commission should decline to consider Varma’s appeal and, instead, dismiss it.

Varma's application for review remains ripe for dismissal for three, independent reasons. First, the AWC that is the subject of his application contains a clear and unambiguous appeal waiver provision that renders the AWC unappealable. Second, the relief that Varma requests that the Commission grant him, a remand to FINRA to determine the merits of the AWC, is not possible because he expressly waived his rights to challenge its allegations in a FINRA disciplinary proceeding. And finally, although the statutory period to appeal a final FINRA action does not apply to an AWC that contains a binding appeal waiver, Varma's application for review is plainly late because it was filed more than three years after FINRA accepted the AWC and it became final.

Varma's response to FINRA's motion to dismiss ("Response") is without merit and simply ignores the import of the settlement to which he unequivocally agreed. Varma does not dispute the validity of the appeal waiver that he "specifically and voluntarily" accepted when he executed the AWC. His appeal waiver is binding, and he is thus left with no basis to pursue an appeal to the Commission. Varma also does not dispute that he "specifically and voluntarily" waived his rights to challenge the merits of the AWC in a FINRA disciplinary proceeding. His request that the Commission remand this matter to FINRA for further examination of those merits is thus pointless. Finally, Varma does not dispute that he did not file his application for review until more than three years after it became final, well past the 30-day statutory period in which he could have ostensibly challenged the AWC by filing an appeal with the Commission. His attempt to manufacture a timely appeal by first interjecting a fruitless appeal to FINRA's National Adjudicatory Council is without merit. Varma's application for review is late.

For these reasons, and those set forth in FINRA's May 28, 2021 motion, the Commission should dismiss Varma's application for review.

## **II. BACKGROUND**

Varma accepted and submitted to FINRA the AWC that is the subject of his application for review on December 20, 2017. RP 1-7.<sup>1</sup> Varma submitted the AWC to settle allegations that he violated FINRA Rules 2210 and 2010, and by so doing, he agreed to pay a \$15,000 fine and serve a 10-business-day suspension from associating with any FINRA member in any capacity. RP 1-3. When Varma executed the AWC, which was reviewed and signed also by his attorney, he “specifically and voluntarily” waived his rights to contest the allegations that inform the AWC in a FINRA disciplinary proceeding and to appeal FINRA’s action to the NAC, the Commission, and the courts. RP 4.

In January 2021, despite the AWC’s clear and unambiguous terms, Varma sought an appeal to the NAC. RP 9-20. The NAC dismissed Varma’s appeal, correctly, after it concluded that he unequivocally had waived his appeal rights when he accepted the AWC. RP 63-65.

Thereafter, more than three years after it became final, Varma filed his application for review with the Commission, which requested solely that the Commission remand this matter to FINRA for proceedings to determine the AWC’s merits.<sup>2</sup> RP 67-69.

## **III. ARGUMENT**

Varma’s appeal remains ripe for dismissal for three, independent reasons. First, the AWC that he agreed to is not appealable to the Commission. Second, he is not entitled to a

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<sup>1</sup> “RP \_\_” refers to the page numbers in the certified record that FINRA filed with the Commission on May 28, 2021.

<sup>2</sup> 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).

remand to FINRA to examine the merits of the AWC. And finally, his attempted appeal is in any event untimely. Varma's response to FINRA's motion to dismiss his application for review does not raise any meritorious fact or legal argument that supports an alternate conclusion to this proceeding.

**A. Varma Waived His Right to Appeal to the Commission**

Varma does not dispute that he expressly waived his right to appeal to the Commission when, in December 2017, he executed the AWC that is the subject of his application for review. Response at 4 (“Mr. Varma is unable to exhaust any administrative remedies due to the waiver.”). The AWC is valid and enforceable, and Varma is bound by its appeal waiver provision. *See Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at \*8 (Sept. 29, 2017) (“We conclude . . . that an appellate waiver in an otherwise valid AWC is presumptively enforceable.”). The Commission should therefore decline to consider Varma's application for review and ought instead to dismiss it.<sup>3</sup>

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<sup>3</sup> Despite the express terms of the AWC he executed, Varma claims that the Commission should consider his application for review for no reason other than that the Commission possesses the statutory authority to do so. Response at 4. This case, however, does not present any questions concerning whether the Commission has the authority under the Securities Exchange Act of 1934 (“Exchange Act”) to review a final FINRA action. It concerns instead the straightforward question of whether Varma may pursue an appeal after he expressly waived his rights to do so. As the Commission has held, he may not. *See Zipper*, 2017 SEC LEXIS 3107, at \*10 n.11 (assuming that an AWC is a “final disciplinary sanction” under Exchange Act Section 19(d) but concluding that the applicant waived his rights to appeal to the Commission); *see also Sky Capital LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at \*11 (May 30, 2007) (“[T]he only final disciplinary sanctions cited are a Minor Rule Violation Letter . . . and [AWC]. Sky Capital and Mandell consented to those sanctions and waived their rights to appeal to the Commission.”).

## **B. Varma is Not Entitled to a Remand**

Varma also does not dispute that, consistent with FINRA Rule 9216, he explicitly waived his rights to challenge in a FINRA disciplinary proceeding the merits of the AWC that he accepted.<sup>4</sup> Response at 6 (“[B]y the very terms of an AWC, an individual waives the right to further access administrative remedies or later contest the validity of the AWC.”). His request that the Commission remand this matter to FINRA because “FINRA had no reason to believe such . . . violation[s] occurred,” Response at 5, is thus meaningless. *See Brett Thomas Graham*, Exchange Act Release No. 84106, 2018 SEC LEXIS 2266, at \*26 (Sept. 12, 2018) (“[A] settling respondent necessarily operates with imperfect information because settling cuts short the development of the record.”). Having expressly waived his rights to appear before FINRA adjudicators and challenge the allegations that inform the AWC, Varma may not now justify his appeal by complaining that the record on which the AWC was premised was not developed fully.<sup>5</sup> *See Richard D. Feldman*, Exchange Act Release No. 77803, 2016 SEC LEXIS 1734, at \*12 (May 10, 2016) (“Feldmann waived a hearing and other proceedings before the law judge . . . That waiver precludes him from challenging his settlement.”); *Michael H. Johnson*, Exchange

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<sup>4</sup> FINRA Rule 9216 provides 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 in a FINRA disciplinary proceeding. *See* FINRA Rule 9216(a).

<sup>5</sup> Varma’s repeated assertion that he seeks a remand to FINRA not to “overturn” the AWC but rather for a determination as to whether the AWC should “remain a matter of public record,” Response at 5-6, is a distinction without a difference. His application for review is, at its core, an effort by him to challenge the allegations that inform his AWC. Response at 6 (“[T]here is no benefit to the public in maintaining these records because the allegations contained in the AWC were never fully investigated.”).

Act Release No. 75894, 2015 SEC LEXIS 3794, at \*16 (Sept. 10, 2015) (“Johnson admits that he elected to settle the matter and did not develop the matter further.”); *Kenneth W. Haver*, Exchange Act Release No. 54824, 2006 SEC LEXIS 2735, at \*12-13 (Nov. 28, 2006) (“Haver . . . forfeited his opportunity to adduce his evidence . . . . Haver may not now complain that the record is inaccurate or incomplete.”). A remand to FINRA to determine the merits of the AWC he agreed to, which is the sole relief that Varma requests the Commission grant him, is foreclosed to him.

Varma’s assertion that he was not advised of the “consequences” that would spring from accepting the AWC, Response at 6, is counterfactual. Varma explicitly accepted and consented to the entry of findings that he violated FINRA rules, and to settle the matter, he accepted and agreed to the imposition of sanctions, including a fine and suspension. RP 1-3. The AWC, which both Varma and his attorney reviewed and signed, stated expressly, in clear and unambiguous terms, that those findings and sanctions would become part of his permanent disciplinary record and that the AWC would be published through FINRA’s public disclosure program.<sup>6</sup> RP 5. Varma’s invoking of notions of “equity,” Response at 5, does not entitle him to a FINRA proceeding to review the merits of his AWC. *See Johnson*, 2015 SEC LEXIS 3794, at \*11 n.20 (“Johnson’s stated difficulties do not render the settled order inequitable.”). Any difficulties that he has encountered since accepting the AWC are the natural consequence of his knowing and voluntary actions and thus his responsibility. *See id.* (“[T]hey are among a range of

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<sup>6</sup> Varma’s suggestion that he was not “properly represented” by counsel, Response at 6, is meritless. Ineffective assistance of counsel does not provide Varma grounds to collaterally attack the merits of the AWC to which he knowingly and voluntarily agreed. *See Graham*, 2018 SEC LEXIS 2266, at \*27 (“This argument fails because ineffective assistance of counsel is not a defense in civil proceedings, and it does not provide a basis for a collateral attack on the Order.”).

natural and foreseeable consequences that flow from [sanctions imposed] as a result of the settled order.”). Varma unquestionably knew of the AWC’s terms and he cannot claim its effects were unanticipated. *See Graham*, 2018 SEC LEXIS 2266, at \*21. The Commission should accordingly dismiss his application for review.

**C. Varma’s Attempted Appeal is Late**

Varma’s untimely filing of his application for review provides a final basis for dismissing his appeal. Section 19(d)(2) of the 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). Varma does not dispute that he failed to file his application for review within 30 days after receiving notice that FINRA had accepted his AWC. He instead filed his application with the Commission on May 14, 2021, more than three years after the deadline to appeal the AWC ostensibly lapsed. RP 71.

Although Varma claims that his application for review is timely because he filed it within 30 days of the NAC’s decision dismissing his “appeal” of the AWC, Response at 7, this argument fails him. Varma’s application does not request that the Commission review the NAC’s decision. It instead seeks to appeal the AWC that he executed several years ago. *See* RP 67-69. Under Exchange Act Section 19(d)(2), the operative deadline for Varma’s application for review was therefore 30 days after he received notice that FINRA accepted the AWC. *See Zipper*, 2017 SEC LEXIS 3107, at \*15 (“Zipper did not file his application for review within thirty days after receiving notice that FINRA had accepted the AWC.”). The NAC’s decision, which dismissed Varma’s appeal without reaching the merits of Varma’s AWC and accordingly

did not impose a “final disciplinary sanction,” may not be used in this case to manufacture a timely appeal when one does not otherwise exist. *Cf. Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 SEC LEXIS 956, at \*5 (Apr. 30, 2008) (“NASD did not invoke its disciplinary procedures, did not determine that Proman had violated a statute or rule, and did not impose a final disciplinary sanction on him.”). The Commission should accordingly dismiss Varma’s appeal because, even in the event he had not waived his right to pursue it, his application for review is undeniably late.<sup>7</sup>

#### IV. CONCLUSION

Varma’s application for review remains ripe for dismissal by the Commission. He does not dispute that he “specifically and voluntarily” waived his appeal rights and his rights to challenge the merits of his AWC when he agreed to it. The Commission is therefore left with no basis to accept his application for review or to remand the AWC to FINRA as Varma requests.

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<sup>7</sup> Although Rule 420(b) of the Commission’s Rules of Practice grants the Commission discretion to hear an otherwise untimely application for review if “extraordinary circumstances” are present, this exception to enforcement of the appeal period established by Section 19(d)(2) of the Exchange Act is read narrowly and has limited application. *See* 17 C.F.R. § 201.420(b); *see also PennMont Sec.*, Exchange Act Release No. 61967, 2010 SEC LEXIS 1353, at \*16 (Apr. 23, 2010) (“[T]he ‘extraordinary circumstances’ exception is to be narrowly construed and applied in only limited circumstances.”). To establish a claim of extraordinary circumstances, Varma must show that the reasons for his late-filed application for review were beyond his control. *See PennMont Sec.*, 2010 SEC LEXIS 1353, at \*18. Despite his bald assertions to the contrary, Response at 7-8, Varma has not met this burden and his appeal should consequently be dismissed. *See, e.g., John Vincent Ballard*, Exchange Act Release No. 77452, 2016 SEC LEXIS 1151, at \*9 (Mar. 25, 2016) (“Ballard has failed to identify extraordinary circumstances sufficient to extend the deadline for his filing.”); *Edward J. Jakubik*, Exchange Act Release No. 61541, 2010 SEC LEXIS 1014, at \*16 (Feb. 18, 2010) (“We thus agree with NASD that Jakubik’s appeal is untimely. Nowhere does he explain why he waited nearly five years to file his application despite the fact that he received timely notice of the NASD action.”).



For these reasons, and because his attempted appeal is in any event late, the Commission should dismiss Varma's application.

Respectfully submitted,

/s/ Gary Dernelle

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June 7, 2021

**CERTIFICATE OF COMPLIANCE**

I, Gary Dernelle, certify that FINRA's Reply in Support of Its Motion to Dismiss Sandeep Varma's Application for Review 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,

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**CERTIFICATE OF SERVICE**

I, Gary Dernelle, certify that on this 7th day of June 2021, I caused a copy of FINRA's Reply in Support of Its Motion to Dismiss Sandeep Varma's Application for Review, 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:

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