

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

In the Matter of the Application of

Paul H. Giles for Review of

FINRA Action

File No. 3-20634

**FINRA’S OPPOSITION TO MOTION TO CONSOLIDATE
APPLICATIONS FOR REVIEW**

I. INTRODUCTION

Paul Giles has filed a motion to consolidate two appeals currently pending before the Commission. The first appeal, filed with the Commission in April 2021 (Admin. Pro. No. 3-20267), involves FINRA’s March 24, 2021 determination that Giles is statutorily disqualified because California revoked two insurance licenses held by Giles (the “First Appeal”). Although California subsequently reinstated one of Giles’ revoked insurance licenses, Giles has not obtained his second revoked insurance license and he is thus prohibited from engaging in the business and activities covered by that revoked license. Consequently, the sanctions imposed by California remain in effect and Giles is effectively barred from engaging in specified insurance activities, which renders Giles statutorily disqualified under the Securities Exchange Act of 1934 (the “Exchange Act”).

The second appeal, filed by Giles in late October 2021 (Admin. Pro. No. 3-20634), involves FINRA’s May 2021 determination that he is statutorily disqualified because Washington and Kentucky revoked insurance licenses held by Giles (the “Second Appeal”). Although Giles has obtained the insurance license previously revoked by Washington, Giles has

obtained only one of the two licenses revoked by Kentucky. Consequently, Giles is prohibited from engaging in the activities covered by that revoked license, Kentucky's sanctions against Giles remain in effect, and Giles is thus disqualified based upon Kentucky's revocation. In contrast to Giles' ability to have California consider a request to reinstate his revoked insurance license by filing an application, Giles asserts that Kentucky will not consider an application to reinstate his revoked insurance license unless and until Giles is actively registered with a broker-dealer.

The Commission should reject Giles' pending motion to consolidate the First Appeal and the Second Appeal. The two appeals are factually distinct and the Second Appeal raises several unique issues unrelated to the First Appeal. Further, contrary to Giles' assertion, FINRA has not briefed the issues raised by Kentucky's revocation of Giles' insurance licenses and his resulting statutory disqualification, which undercuts his claim that consolidation will promote efficiency. For all of these reasons, FINRA urges the Commission to deny Giles' motion to consolidate his appeals.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The First SD Notice Involving California's Revocation of Giles' Insurance Licenses

FINRA issued Giles' employing firm a notice dated March 24, 2021, informing it that Giles was statutorily disqualified because of a September 2009 order entered by the California

¹ Should the Commission grant Giles' motion to consolidate, FINRA requests that it be permitted to file a brief addressing the unique issues raised by the Second Appeal, which it has not previously done in connection with the First Appeal where the parties' briefing is complete.

Department of Insurance (the “First SD Notice”).² California’s order revoked two insurance licenses held by Giles that permitted him to engage in specified and distinct insurance activities. Specifically, California’s order revoked Giles’ licenses: (1) as a life-only agent; and (2) as an accident-and-health agent. California revoked Giles’ insurance licenses because he failed to respond to its requests for information.

FINRA based its disqualification determination set forth in the First SD Notice on the undisputed fact that, as a result of California’s license revocations, Giles was prohibited from transacting insurance business in the state and California’s revocation order had the practical effect of barring him from acting in the capacities for which he was previously licensed. Consequently, FINRA determined that the California order rendered Giles statutorily disqualified under the Exchange Act and FINRA’s By-Laws.

B. The First Appeal

On April 21, 2021, Giles timely appealed the First SD Notice and FINRA’s determination that he is statutorily disqualified pursuant to California’s revocation order, and he sought to stay the effectiveness of the First SD Notice. The Commission denied Giles’ request to stay the First SD Notice on June 14, 2021, and Giles’ association with his employing firm ended shortly thereafter. (RP 039.)³

² As set forth in FINRA’s briefs filed in the First Appeal, Giles failed to timely disclose the September 2009 California order. Indeed, Giles waited more than 11 years to disclose California’s order on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”).

³ References to the record correspond to the record filed in the Second Appeal on November 4, 2021.

C. The Second SD Notice Involving Washington’s and Kentucky’s Revocations of Giles’ Insurance Licenses

On May 6, 2021, FINRA issued Giles’ employing firm another notice, which notified it that Giles was also disqualified based upon additional license revocations by two other state regulators (the “Second SD Notice”). (RP 009.) Specifically, FINRA based the Second SD Notice on: (1) a January 2010 order entered by Kentucky’s Department of Insurance that revoked Giles’ insurance licenses for failing to answer or respond to requests for information from its Department of Insurance concerning California’s order; and (2) an August 2010 order entered by the State of Washington that revoked Giles’ insurance license because he failed to respond to two letters it sent to him requesting documentation concerning Kentucky’s revocation.⁴ *See* RP 001-007. The Second SD Notice provided that the deadline for Giles’ firm to either initiate a FINRA eligibility proceeding on Giles’ behalf or terminate him was extended until no later than 13 days after the Commission ruled upon Giles’ request to stay the First SD Notice. (RP 009.)

D. The Parties File Briefs in the First Appeal and Giles Re-Obtains Some—But Not All—of his Revoked Licenses

Giles filed an opening brief in late June 2021 in connection with the First Appeal and California’s revocation order, although he also referenced in that brief the additional revocations by Washington and Kentucky. In late July 2021, FINRA filed an opposition brief. FINRA’s opposition discussed the Washington and Kentucky revocations, but explicitly stated that these revocations were not the subject of the First Appeal. *See* FINRA’s Opposition to Application for Review dated July 26, 2021, at 6, filed in First Appeal. In Giles’ reply brief, he informed the Commission that “the California Department of Insurance approved Mr. Giles’ insurance license

⁴ Giles did not promptly disclose on his Form U4 Washington’s or Kentucky’s revocations as required by FINRA’s rules. Instead, he waited until April 2021 to do so.

application. Mr. Giles is now permitted to conduct insurance business in California.” *See* Reply Brief dated August 9, 2021, at 4, filed in the First Appeal.

Based on this statement, the Commission requested additional briefing from the parties to address whether Giles’ appeal was moot. *See* Commission’s Order Requesting Additional Briefing, dated August 27, 2021, issued in the First Appeal. The Commission’s scheduling order explicitly stated that the Second SD Notice was not currently before it on appeal. Consequently, FINRA did not address any issues raised by the Second SD Notice in its brief filed in response to the Commission’s scheduling order.

At various points during the Summer of 2021, Giles obtained some—but not all—of his insurance licenses that had been revoked. California granted Giles a life-only agent license and a variable contract license, but has not reinstated his license as an accident-and-health agent. Washington granted Giles the license that it had previously revoked, and Kentucky reinstated Giles’ license as a non-resident agent for health and life insurance. Kentucky, however, has not reinstated his variable life and variable annuity insurance license. *See* RP 019-21. In sum, Giles does not currently hold all of the licenses that California revoked pursuant to its 2009 order and he remains prohibited from engaging in any insurance activities as an accident-and-health agent. Similarly, Giles does not currently hold all of the licenses that Kentucky revoked pursuant to its 2010 order and he remains prohibited from engaging in any insurance activities as a variable life and variable annuity insurance agent.

E. The Second Appeal

On October 21, 2021, Giles filed the Second Appeal to challenge FINRA’s issuance of the May 2021 Second SD Notice. FINRA filed a record with the Commission in connection

with the Second Appeal, and the Commission has established a briefing schedule for the parties. Giles filed the subject motion to consolidate on December 15, 2021.

III. ARGUMENT

The Commission should deny Giles' motion to consolidate the First Appeal and the Second Appeal. Rule 201 of the Commission's Rules of Practice provides that, to avoid unnecessary cost or delay, the Commission may consolidate proceedings involving a common question of law or fact. *See* 17 C.F.R. § 201.201(a). Consolidation of the First Appeal and the Second Appeal is inappropriate for several reasons.

First, although the two appeals share a legal issue—whether Giles is statutorily disqualified because he remains prohibited from engaging in certain insurance activities pursuant to state insurance regulators' orders, and thus is effectively barred—there are important differences between the appeals. Whereas Giles can seek to obtain from California his revoked accident-and-health agent insurance license by filing an application with the state for its consideration, Giles asserts that he cannot obtain from Kentucky his revoked variable life and variable annuity insurance license unless and until he is actively registered with a broker-dealer. Giles argues that this presents a “catch-22” situation that “prevents Mr. Giles from removing the statutory disqualification” because “FINRA will not allow Mr. Giles to have an active broker registration until he holds a Variable Annuity line of authority in Kentucky.” *See* Giles' Additional Briefing in Support of Application for Review, at 8, filed on Sept. 27, 2021 in the First Appeal. While FINRA disagrees with Giles' characterization, these facts distinguish the two revocation orders that underlie the First Appeal and the Second Appeal.

Second, notwithstanding Giles' previous efforts to shoehorn into the First Appeal the issues raised by Kentucky's revocation and the Second SD Notice issued by FINRA in May 2021, without actually filing a timely application for review with the Commission in connection with the separate Second SD Notice, he will need to demonstrate that extraordinary circumstances exist that warrant the Commission accepting the Second Appeal despite the fact that it was filed several months late. *See* 17 C.F.R. § 201.420(b). These facts further distinguish the Second Appeal from the First Appeal, which was timely filed.

Third, consolidation of the First Appeal and Second Appeal will not prevent unnecessary cost or delay. Contrary to Giles' assertion, FINRA has not addressed all of the issues raised by the Second SD Notice and the Second Appeal, and additional briefing on these issues is appropriate.⁵ And, pursuant to the Commission's scheduling order in the Second Appeal, briefing will be completed by early February 2022. This additional time to fully brief the unique issues raised by Kentucky's revocation and the Second SD Notice will not unduly delay resolution of either the First Appeal or Second Appeal.

⁵ Indeed, and based upon the Commission's statement in its August 27, 2021 scheduling order issued in the First Appeal that the Second SD Notice was not currently before it on appeal, FINRA did not address the unique issues raised by Kentucky's revocation of Giles' insurance licenses when it filed in the First Appeal its brief addressing mootness on October 12, 2021. Further, as set forth above, although FINRA discussed the Kentucky revocation in its July 2021 opposition brief filed in the First Appeal, it explicitly stated that that order was not before the Commission on appeal (and FINRA discussed the Kentucky and Washington orders to refute Giles' assertion that he had never shown an unwillingness to comply with regulators' directives).

IV. CONCLUSION

FINRA urges the Commission to deny Giles' request to consolidate his two pending appeals. Important differences between the appeals, and the need for further briefing on issues raised by the Second SD Notice and the Second Appeal, weigh against consolidation.

Respectfully submitted,

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org

December 21, 2021

CERTIFICATE OF COMPLIANCE

I, Andrew Love, certify that this brief complies with the Commission's Rules of Practice by filing a brief that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org

Dated: December 21, 2021

CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 21st day of December 2021, I caused a copy of the foregoing Opposition to Consolidate Applications for Review, Administrative Proceeding File No. 3-20634, to be filed through the SEC's eFAP system and to be served by electronic mail on:

Niels P. Murphy, Esq.
Lawton R. Graves, Esq.
Murphy & Anderson, P.A.
1501 San Marco Blvd.
Jacksonville, Florida 32207
904-598-9282 (phone)
nmurphy@murphyandersonlaw.com
lgraves@murphyandersonlaw.com

/s/ Andrew Love
Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281
andrew.love@finra.org
nac.casefilings@finra.org