

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

In the Matter of the Application of

Bournehill Investment Services, Inc.

For Review of Action Taken by

FINRA

File No. 3-22221

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

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I. INTRODUCTION

Bournehill Investment Services, Inc. (“Bournehill”) requests that the Securities and Exchange Commission (“Commission”) review a final FINRA action expelling the firm. FINRA moves to dismiss Bournehill’s application on the grounds that the firm failed to avail itself of FINRA’s procedures.¹

Bournehill did not timely file its 2023 audited annual report, as required by Section 17(e) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 17a-5. As a result, on May 23, 2024, FINRA initiated an expedited proceeding against the firm to compel its compliance with the reporting requirements. In a written notice, FINRA informed Bournehill

¹ FINRA also requests, under Rule 161 of the Commission’s Rules of Practice, that the Commission stay the issuance of a briefing schedule while it considers FINRA’s motion to dismiss Bournehill’s application for review. *See* 17 C.F.R. § 201.161. The Commission should evaluate first FINRA’s dispositive argument that this appeal should be dismissed on procedural grounds before it considers the merits of the firm’s appeal.

that FINRA would suspend the firm’s membership effective June 17, 2024, unless the firm filed the annual audit report or requested a hearing in writing. The notice further warned Bournehill that, in the event the suspension went into effect, and absent its full compliance with the notice, the firm would be expelled automatically from FINRA membership in three months.

Bournehill did not file its audited annual report, did not request a hearing, and did not request that FINRA terminate its suspension. Once the suspension took effect, the firm did not thereafter comply fully by filing its annual audit report. Accordingly, on August 26, 2024, FINRA expelled Bournehill from FINRA membership in accordance with FINRA rules.

Bournehill has filed the instant application for review requesting that the Commission reverse the firm’s expulsion from FINRA membership. Bournehill, however, failed to avail itself of the process to challenge such action under FINRA rules—it did not take corrective action in response to FINRA’s notice; it did not request a hearing; and it did not request that FINRA terminate the suspension on the ground that the firm complied fully with its obligation to file its 2023 audited annual report. Because Bournehill failed to exhaust its administrative remedies before resorting to this appeal, the firm’s application for review should be dismissed.

II. FACTUAL BACKGROUND

Bournehill was a FINRA member firm until its expulsion on August 26, 2024. RP 54.² Pursuant to Exchange Act Section 17(e)(1)(A) and Exchange Act Rule 17a-5(d), Bournehill was required to file timely annual reports that contained financial statements audited by a PCAOB-

² “RP ___” refers to the page numbers in the certified record that FINRA filed with the Commission on October 9, 2024.

registered accounting firm. *See* 15 U.S.C. § 78q(e)(1)(A); 17 C.F.R. § 240.17a-5(d).³

Bournehill's 2023 annual audited report was due to FINRA on April 1, 2024. RP 1. Because the firm was unable to timely file this report, it requested a 30-day extension. RP 9. On April 2, 2024, FINRA granted Bournehill's request, extending the filing deadline to May 1, 2024. RP 15. However, the firm was unable to comply with its requested extension and did not file its annual audited report by the extension deadline.

Consequently, on May 23, 2024, FINRA provided written notice to Bournehill under FINRA Rule 9552.⁴ RP 19-21. Bournehill acknowledges that it received actual notice on or about May 25, 2024.⁵ RP 37. FINRA's letter warned the firm that its failure to file the delinquent audited report by June 17, 2024, would result in Bournehill's suspension as a FINRA

³ A violation of these federal securities laws also violates FINRA Rule 2010, which requires that FINRA members "observe high standards of commercial honor and just and equitable principles of trade." *See* FINRA Rule 2010; *TMR Bayhead Sec., LLC*, Exchange Act Release 88006, 2020 SEC LEXIS 2833, at *12 & n.13 (Jan. 17, 2020) (recognizing that a violation of Exchange Act Section 17(e) and Exchange Act Rule 17a-5(d) also constitutes a violation of FINRA Rule 2010).

⁴ FINRA Rule 9552(a) states:

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, or fails to keep its membership application or supporting documents current, FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

⁵ FINRA served the May 23, 2024 notice on Bournehill by sending it via FedEx to the firm's president at Bournehill's main office as listed on the firm's the Central Registration Depository (CRD®) report, in accordance with FINRA Rules 9134 and 9552(b). RP 25-28; 54. The FedEx receipt confirms delivery on May 28, 2024. RP 25.

member.⁶ RP 20. The notice further advised the firm that it could file a written request for a hearing under FINRA Rule 9559 with FINRA’s Office of Hearing Officers.⁷ RP 20.

Additionally, FINRA’s notice advised Bournehill that, in the event the suspension became effective, the firm could file a written request that FINRA terminate the suspension on the ground that the firm complied fully with its obligation to file its 2023 audited annual report.⁸ Id. Finally, FINRA warned Bournehill that its failure to comply fully with the May 23, 2024 notice within three months would result in the firm’s automatic expulsion from FINRA membership.⁹ Id.

Bournehill did not file its 2023 audited annual report, or request a hearing by June 17, 2024, resulting in the firm’s suspension. Moreover, Bournehill did not file a request to terminate the suspension on the ground it complied with the notice by filing a 2023 audited annual report. Accordingly, on August 26, 2024, as it warned it would do in the May 23 notice, FINRA

⁶ FINRA Rule 9552(d) states, “[t]he suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.”

⁷ Under FINRA Rule 9552(e), a member or person who receives a notice under FINRA Rule 9552 may, before the effective date of the suspension, file a written request for a hearing under FINRA Rule 9559.

⁸ FINRA Rule 9552(f) states, “[a] member or person subject to suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision.”

⁹ FINRA Rule 9552(h) states, “[a] member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.”

expelled the firm from FINRA membership, effective immediately.¹⁰ RP 29-30. This appeal followed.

III. ARGUMENT

The record demonstrates that Bournehill received proper notice of these proceedings in accordance with FINRA's rules, but that it took no action until after it was expelled from FINRA membership. Bournehill thus failed to exhaust its administrative remedies before appealing to the Commission. For these reasons, the Commission should dismiss the firm's application for review.

A. Bournehill Failed to Exhaust its Administrative Remedies

"Exhaustion of administrative remedies is a general prerequisite to judicial review of any administrative action." *Hedley v. United States*, 594 F.2d 1043, 1044 (5th Cir. 1979). The Commission has noted that the exhaustion requirement "promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations." *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 SEC LEXIS 1403, at *11 (May 9, 2017) (quoting *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004)).

FINRA's May 23, 2024 notice informed Bournehill that, pursuant to FINRA Rule 9552, FINRA intended to suspend the firm's membership and advised the firm of the process by which it could challenge that action under FINRA rules. RP 19-21. The notice explained that Bournehill could: (1) take corrective action by filing the firm's 2023 audited annual report by June 17, 2024, to avoid suspension; (2) request a hearing under FINRA Rule 9559 before the

¹⁰ FINRA sent Bournehill notice of its expulsion by FedEx on August 26, 2024, which the firm received on August 27, 2024. RP 31-34.

suspension took effect; or (3) file a written request under FINRA Rule 9552(f) that FINRA terminate the suspension based on the ground that it complied fully with the requirement that it file an audited annual report for 2023. RP 19-21. Bournehill did none of these things, thus defaulting, and as such was expelled from FINRA membership on August 26, 2024, pursuant to FINRA Rule 9552(h). RP 29-30.

Because Bournehill failed to exhaust its administrative remedies, the firm forfeited its ability to appeal to the Commission FINRA's action expelling the firm. The precedent in this area is well-settled. For example, in *Lam Sec. Invs.*, Exchange Act Release No. 98671, 2023 SEC LEXIS 2833, at *3 (Oct. 2, 2023), a FINRA member firm appealed its expulsion for failing to file its annual audit report. FINRA filed a motion to dismiss the firm's application for review on the basis the firm failed to exhaust its administrative remedies. The Commission granted FINRA's motion, stating "Lam could have availed itself of FINRA's administrative process for challenging its actions, but it did not do so." *See also Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at *13 (July 25, 2018) (dismissing applicant's appeal of a FINRA expedited proceeding under FINRA Rule 9552 for failure to exhaust, observing that "[w]e have held repeatedly that applicants who fail to exhaust administrative remedies before FINRA thereby forfeit any future challenge to FINRA's actions before the Commission."); *Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585, at *7 (Sept. 21, 2016) (dismissing applicant's appeal of a FINRA expedited proceeding barring her under FINRA Rule 9552 and finding that "[b]ecause Hsu did none of these things, she failed to exhaust her administrative remedies"); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at*5-6 (May 6, 2010) (granting FINRA's motion to dismiss respondent's

application for review where respondent received suspension and bar notices pursuant to FINRA Rule 9552, and failed to avail himself of FINRA procedures).

The Commission should consequently dismiss Bournehill's application for review.

B. FINRA Properly Notified Bournehill Pursuant to FINRA Rule 9952

In its application for review, Bournehill contends that FINRA deprived the firm of due process because "it appears FINRA staff failed to provide such notice to Bournehill prior to the institution of the suspension notice on May 23, 2024. Therefore, the Firm was not provided the notice that they had twenty-one (21) days to take corrective action before a suspension would be instituted on the Firm," as provided for under FINRA Rule 9552(a), and that "no prior notice was received by the Firm or any person or entity authorized to accept such mailing for process of service." RP 37. The record of FINRA's action proves that this factual contention is incorrect.

As discussed above, FINRA's May 23, 2024 notice to Bournehill clearly stated that, if the firm failed to take corrective action by filing its audited report or did not request a hearing, **"June 17, 2024, [] will be the Effective Date of your firm's suspension, and this notice will serve as your firm's notice of suspension."** RP 20 (emphasis added). FINRA sent this May 23, 2024 letter via FedEx to Bournehill's president at the firm's main office.¹¹ Not only does the record confirm the firm's receipt of this letter, but the firm even acknowledges in its application

¹¹ FINRA's service complied with the requirements of FINRA Rule 9552(b), which states that "FINRA staff shall serve the member or person with such notice . . . in accordance with Rule 9134" FINRA Rule 9134(a)(3) in turn, permits service by FedEx: "Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery." FINRA also complied with FINRA Rule 9134(b)(2), which requires, in relevant part, that "[p]apers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service." Finally, FINRA served the notice "at the entity's business address as reflected in the Central Registration Depository."

for review that it received this notice. RP 25; 37. Therefore, as outlined in Rule 9552(a), FINRA “provide[d] written notice to [Bournehill] specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership.” In addition, as outlined in Rule 9552(h), the same letter also warned Bournehill that failing to comply fully with the May 23, 2024 notice within three months would result in automatic expulsion. The letter also clearly laid out the firm’s options to avoid the suspension and expulsion. Bournehill chose not to avail itself the opportunities clearly outlined in the May 23 notice and is therefore precluded from challenging its expulsion.

IV. CONCLUSION

FINRA commenced an expedited proceeding against Bournehill under FINRA Rule 9552 because the firm did not timely file its 2023 audited annual report. The firm did not exhaust, let alone engage in, FINRA’s process for challenging the expedited proceeding against it. Thus, Bournehill failed to exhaust its administrative remedies and the Commission should dismiss Bournehill’s application for review.

Respectfully submitted,

/s/ Colleen Durbin

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October 11, 2024

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 11th day of October 2024, I caused a copy of FINRA's Motion to Dismiss the Application for Review and Stay the Briefing Schedule, In the Matter of the Application of Bournehill Investment Services, Inc. Administrative Proceeding File No. 3-22221, to be served through the SEC's eFAP system on:

Vanessa A. Countryman
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I further certify that, on this date, I caused copy of FINRA's motion in the foregoing matter to be served by electronic service on:

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Respectfully submitted,

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