

**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 REPLY IN SUPPORT OF ITS MOTION TO DISMISS THE APPLICATION
FOR REVIEW**

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December 5, 2024

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On October 11, 2024, FINRA filed with the Commission its motion to dismiss Bournehill’s application for review and to stay briefing. FINRA argued that the application should be dismissed because Bournehill failed to exhaust its administrative remedies, and also requested that the Commission stay the issuance of a briefing schedule until it ruled on FINRA’s dispositive motion. On October 23, 2024, noting that Bournehill had not yet responded to FINRA’s motion, the Commission ordered that briefing in the matter would be postponed until such time as the Commission rules on FINRA’s motion to dismiss.¹ Bournehill did not file its opposition to FINRA’s motion until December 2, 2024. Notwithstanding that Bournehill’s opposition is untimely, it also fails to present any convincing arguments as to why the Commission should not dismiss its application for review on the well-settled grounds that the firm failed to avail itself of FINRA’s procedures.

¹ The Commission’s October 23 order references Rule of Practice 154(b), 17 C.F.R. § 201.154(b) which states that an opposition to a motion shall be filed within five days after service of the motion.

BACKGROUND

Bournehill's 2023 annual audited report was due to FINRA on April 1, 2024. RP 1.² 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 (the "Notice") to Bournehill pursuant to FINRA Rule 9552 explaining 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 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 2023.³ RP 19-21. The Notice also cautioned 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. Bournehill did not file its annual audited report, did not request a hearing, and did not file a written request to terminate its suspension on the ground that it complied fully with the requirement that it file its audited annual report. Consequently, as provided in the Notice, the firm was expelled from FINRA membership on August 26, 2024, under FINRA Rule 9552(h).

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

³ As discussed in FINRA's motion to dismiss, there is no question that Bournehill received the Notice. Bournehill acknowledged in its application for review that it received actual notice on or about May 25, 2024. RP 37. For the firm to suggest that despite being in possession of the Notice they were unaware of the process available to them as outlined in the Notice is simply unfounded.

On September 26, 2024, Bournehill filed an application for review. On October 11, FINRA filed its motion to dismiss, arguing the firm failed to exhaust its administrative remedies.

ARGUMENT

Bournehill's opposition does not present any relevant or persuasive arguments as to why the Commission should not dismiss the firm's application for review. Nowhere in its brief does Bournehill challenge or counter any of the operative facts on which FINRA's motion to dismiss is premised. Bournehill undoubtedly failed to avail itself of the process to challenge FINRA's action under FINRA rules—it did not take corrective action pursuant to FINRA's Notice, which clearly stated that the firm would be suspended from FINRA membership if it failed to do so; it did not request a hearing, which would have stayed the effectiveness of any suspension; and, once suspended, 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. Bournehill failed to exhaust the administrative remedies that were available to the firm to avoid its expulsion from FINRA membership, but instead resorted to an appeal to the Commission of FINRA's final action. The Commission should therefore dismiss the application.⁴

Rather than confront the facts on which FINRA's motion to dismiss is premised, Bournehill makes several arguments admonishing FINRA and its programs, none of which are relevant or convincing. First, Bournehill complains that FINRA is denying the firm the due process afforded it under the securities laws. Bournehill's Opposition ("Opp") at 3. However, it was Bournehill's own conduct and lack of action, not that of FINRA, that resulted in the firm's

⁴ See *Lam Sec. Invs.*, Exchange Act Release No. 98671, 2023 SEC LEXIS 2833, at *3 (Oct. 2, 2023), in which 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."

expulsion from FINRA membership and the preclusion of the Commission's review. *See 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.").

Second, Bournehill questions FINRA's decision not to exempt the firm from FINRA's Taping Rule requirement, which it blames for damaging the firm's reputation and contributing to the firm's inability to timely file its audited annual report. *Opp.* at 1-2. Bournehill notes that it availed itself of FINRA's procedures with respect to requesting an exemption from the Taping Rule requirement. However, its decision to engage with FINRA in that separate proceeding has no bearing on this appeal.

Finally, Bournehill maintains that it was in constant communication with FINRA staff to "rectify the situation" related to its audited report. *Opp.* at 3. Nevertheless, that does not cure or excuse Bournehill's failure to avail itself of the procedures that FINRA outlined to the firm in the Notice. The fact remains —and the certified record reflects— that FINRA provided written notice to Bournehill as required by FINRA Rule 9552(a) and at no time did Bournehill take any action that would have stayed the effects of a suspension or otherwise prevented its expulsion from FINRA membership. In sum, Bournehill chose not to avail itself of any of the opportunities clearly outlined in the Notice and is therefore precluded from challenging its expulsion.

For all of these reasons and the reasons stated in FINRA's motion to dismiss, FINRA urges the Commission to dismiss Bournehill's application for review.

Respectfully submitted,

/s/Colleen Durbin

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December 5, 2024

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 5th day of December 2024, I caused a copy of FINRA's Reply in Support of its Motion to Dismiss the Application for Review, 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
The Office of the Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

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:

Gregory Bodkin, Chief Compliance Officer
Bournehill Investment Services, Inc.
55 Willis Ave., 2nd Floor
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and to the CRD contact:


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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that I have complied with the Commission's Rules of Practice by filing FINRA's Reply in Support of its Motion to Dismiss the Application for Review, which omits or redacts any sensitive personal information described in Rule of Practice 151(e).


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