

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

In the Matter of the Application of
Michael Scott Barrows and Eric John Ludovico

For Review of Action Taken by
Financial Industry Regulatory Authority

File No. 3-22347

**FINRA'S MOTION TO DISMISS THE APPLICATION FOR REVIEW
AND TO STAY ISSUANCE OF A BRIEFING SCHEDULE**

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January 29, 2025

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I. INTRODUCTION

Michael Scott Barrows and Eric John Ludovico (individually “Applicant” and together, “Applicants”) filed an application for review requesting that the Commission review FINRA’s action in expedited proceedings that resulted in their suspension from association with a FINRA member. Applicants’ suspensions, however, are no longer in effect, and FINRA has begun expedited proceedings anew. Longstanding precedent holds an appeal is moot when even a favorable decision by the Commission would not entitle an applicant to relief. Here, because there is no suspension or other disciplinary sanction currently in place and Applicants have the opportunity to avoid or stay any suspension either by taking corrective action or requesting a hearing in the superseding expedited proceedings, there is no relief available to Applicants. Accordingly, the appeal is moot, and the Commission should dismiss it.¹

¹ Pursuant to Commission Rule of Practice 161, FINRA also requests that the Commission stay the issuance of a briefing schedule. *See* 17 C.F.R. § 201.161. The Commission should

[Footnote cont’d on next page]

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Applicants Are Found Jointly and Severally Liable to Customer in Arbitration Award Confirmed by a Court

On October 30, 2023, a FINRA arbitration panel issued an award finding Applicants were jointly and severally liable to their former customer for an unsuitable investment and ordered them to pay compensatory damages to the customer in excess of one million dollars (the “Arbitration Award”). RP 1-10.² On September 6, 2024, the California Superior Court for the County of Los Angeles (“LASC”) denied Applicants’ petition to vacate the Arbitration Award and granted the customer’s cross-petition to confirm the Arbitration Award. *See* LASC Order Denying Petition to Vacate dated September 6, 2024, attached as Exhibit A.³ On October 1, 2024, the court entered a final judgment in the amount of the Arbitration Award (plus interest) and ordered Applicants to pay the judgment. *See* LASC Judgement dated October 1, 2024, attached as Exhibit B. On October 29, 2024, Applicants appealed the judgment to the California Court of Appeal. *See* Notice of Appeal to the California Court of Appeal dated October 29, 2024, attached as Exhibit C. That appeal is still pending.

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evaluate first FINRA’s dispositive argument that Applicants’ application for review should be dismissed on mootness grounds before it reviews the entirety of the record.

² “RP ___” refers to the page numbers in the certified record filed by FINRA on January 14, 2025.

³ The Commission may take official notice of California state court’s pleadings and orders. *See* 17 C.F.R. § 201.323 (“Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States.”); *see also Cynthia Mary Couyoumjian*, Exchange Act Release No. 97179, 2023 SEC LEXIS 751, at *4 n.11 (Mar. 21, 2023) (taking official notice of state court pleadings and order attached to FINRA’s brief).

B. FINRA Brings Expedited Proceedings Pursuant to FINRA Rule 9554 for Applicants' Failure to Comply With the Arbitration Award

On October 21, 2024, because Applicants still had not complied with the Arbitration Award after the court denied their petition to vacate, FINRA issued notice to each Applicant that it intended to suspend Applicants through action taken under FINRA Rule 9554.⁴ RP 13-15, 19-21. Consistent with FINRA Rule 9554, the notices advised that, unless Applicants took corrective action, Applicants would be suspended from association with any FINRA member firm in any capacity on November 11, 2024.⁵ RP 13, 19. The notices further provided that Applicants could file a written request for a hearing before the FINRA Office of Hearing Officers before November 11, 2024, which action would stay the suspensions. RP 13-14, 19-20.

⁴ Pursuant to FINRA Rule 12904, Applicants were obligated to comply with the Arbitration Award within 30 days unless they filed a motion to vacate. *See* FINRA Rule 12904(j). Consistent with FINRA Bylaws and FINRA Rule 12904, Applicants' obligation to comply with the Arbitration Award was stayed when Applicants filed the petition to vacate the Arbitration Award in California Superior Court for the County of Los Angeles. *See* FINRA Bylaws, Art. 6, § 3; FINRA Rule 12904. As a result of the court's denial of Applicants' petition to vacate and resulting judgment, however, Applicants' obligation to comply with the Arbitration Award ceased to be stayed notwithstanding Applicants' subsequent appeal to the California Court of Appeal, and FINRA was thus authorized to commence FINRA Rule 9554 expedited proceedings. *See* FINRA Bylaws, Art. 6, § 3(b) (authorizing FINRA to "suspend from association with any member any person[] for failure to comply with an award of arbitrators ... where a timely motion to vacate or modify such award has not been made pursuant to applicable law *or where such a motion has been denied...*") (emphasis added); *see also Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *11 (Mar. 17, 2016) (finding FINRA not required to delay the effective date of a suspension or commencing an expedited proceeding under FINRA Rule 9554 until after the resolution of an appeal from a court's denial of a motion to vacate an arbitration award).

⁵ Each notice provided that Applicant's suspension would be effective on November 11, 2024, unless he paid the Arbitration Award in full; entered into a settlement agreement with the customer, and his obligation thereunder was current; timely filed an action to vacate or modify the Arbitration Award and such motion had not been denied; or filed a petition in bankruptcy and the bankruptcy proceeding was pending, or the bankruptcy court had discharged the Arbitration Award or payment owed under any settlement agreement. RP 13, 19.

Both Applicants timely filed requests for hearing, asserting that “the appeal” of the Applicants’ “underlying arbitration is ongoing” and an inability to pay. RP 17, 23, 26, 28. FINRA Office of Hearing Officers denied the Applicants’ requests for hearing on November 8, 2024. RP 27-28. Applicants jointly filed an application for review on December 11, 2024, seeking Commission review of “[t]he denial of a hearing by FINRA, which results in the suspension of [Applicants’] association with FINRA[]member firms.”⁶ RP 29.

C. A Temporary Restraining Order Enjoining FINRA From Suspending Applicants Has Expired and the Court Proceeding Has Been Dismissed With Prejudice

On November 15, 2024, the California Superior Court for the County of Orange (“OCSC”) granted an ex parte application brought by Applicants for a temporary restraining order (“TRO”) enjoining FINRA from suspending Applicants and lifting the suspensions of Applicants that were currently in place at that time. *See* OCSC Temporary Restraining Order dated November 15, 2024, attached as Exhibit D. FINRA removed the matter to federal court, and FINRA and Applicants jointly stipulated to an extension of the TRO to January 6, 2025. *See* Case No. 8:24-cv-02624-JVS-KES Docket (C.D. Cal.) Docket, attached as Exhibit E; Order Granting Joint Stipulation to Extend TRO dated December 9, 2024, attached as Exhibit F.⁷ Later, the federal court further extended the TRO to January 17, 2025.⁸ *See* Order Granting

⁶ Applicants’ application for review is dated November 9, 2024, but the Commission acknowledged receiving it on December 11, 2024. RP 29, 55. FINRA received notice of the application for review on December 18, 2024.

⁷ The Commission may take official notice of the federal court proceeding and orders. *See* 17 C.F.R. § 201.323.

⁸ On January 6, 2025, after the TRO expired but before the district court issued a subsequent order extending the TRO to January 17, 2025, FINRA issued new notices to each Applicant that FINRA intended to suspend Applicants through action taken under FINRA Rule

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Emergency Application to Extend TRO and Setting Hearing on Preliminary Injunction dated January 10, 2025, attached as Exhibit G.

On January 17, 2025, the United States District Court for the Central District of California denied Applicants' request for a preliminary injunction and issued an order that the TRO expire on January 24, 2025, at 5:00 p.m. *See* Minutes of Preliminary Injunction Hearing dated January 17, 2025, attached as Exhibit H. On January 24, 2025, the United States District Court for the Central District of California dismissed the federal court action with prejudice. *See* Order Granting Joint Stipulation to Dismiss Entire Action With Prejudice dated January 24, 2025, attached as Exhibit I.

Thus, as of January 24, 2025, at 5:00 p.m., the TRO enjoining FINRA from suspending Applicants expired, and there is no longer a pending court action in federal or state court with respect to the suspensions, or any restriction on FINRA from seeking to suspend Applicants for their failures to pay the Arbitration Award.

D. FINRA Issues New Notices of Suspension

On January 24, 2025, after the TRO expired, FINRA issued new notices to each Applicant that FINRA intended to suspend the Applicants through action taken under FINRA Rule 9554. *See* Barrows Notice of Suspension dated January 24, 2025, attached as Exhibit J; Ludovico Notice of Suspension dated January 24, 2025, attached as Exhibit K. The new notices advise that, unless Applicants take corrective action by 11:59 p.m. (Pacific Time) on February

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9554. RP 127-29, 131-33. In response to the district court's January 10, 2025, order extending the TRO to January 17, 2025, FINRA withdrew its January 6, 2025, notices of suspension on January 13, 2025. RP 135, 137.

14, 2025, Applicants will be suspended from association with any FINRA member firm in any capacity on February 18, 2025. *See* Exhibits J, K. The new notices further provide that Applicants may file a written request for a hearing before the FINRA Office of Hearing Officers by 11:59 p.m. (Pacific Time) on February 14, 2025, which action would stay the suspensions. *See* Exhibits J, K. Thus, there is no suspension or other disciplinary sanction of Applicants currently in place.

III. ARGUMENT

Applicants' appeal is moot because Applicants are no longer aggrieved by a FINRA action. There is no suspension or other disciplinary sanction currently in place, and the expedited proceedings that FINRA began anew on January 24, 2025, supersede FINRA's action on review. Accordingly, the Commission should dismiss the application for review.

The Securities and Exchange Act Section 19(d) authorizes "'aggrieved' persons to seek review of specified [FINRA] actions," but the Commission will "dismiss[] as moot challenges filed under Section 19(d) where the [FINRA] requirement or action at issue has been superseded or vacated." *Alpine Sec. Corp.*, Exchange Act Release No. 98868, 2023 SEC LEXIS 3223, at *21 (Nov. 6, 2023). It is well settled that an application for review is moot when "even a favorable decision by the Commission would entitle [the applicant] to no relief." *Marshall Fin., Inc.*, Exchange Act Release No. 48917, 2003 SEC LEXIS 2956, at *1-3 (Dec. 12, 2003).

The Commission has dismissed as moot applications for review of FINRA actions in expedited proceedings under circumstances comparable to the facts of this case where an applicant's disciplinary sanction was terminated during the pendency of the appeal. *See Keath Allen Ward*, Exchange Act Release No. 66173, 2012 SEC LEXIS 160, at *1-2 (Jan. 18, 2012) (dismissing as moot an application for review of a suspension and bar imposed in an expedited

proceeding under FINRA Rule 9552 because FINRA terminated the suspension and vacated the bar during the pendency of the appeal); *Michael A. Sparks*, Exchange Act Release No. 81787, 2017 SEC LEXIS 3106, at *2 (Sept. 29, 2017) (dismissing as moot an application for review of a bar imposed in an expedited proceeding under FINRA Rule 9552 because FINRA vacated the bar during the pendency of the appeal).

Indeed, the Commission has repeatedly and consistently dismissed applications for review as moot when even a favorable decision would not entitle the applicant to relief. *See, e.g., Blair Edwards Olsen*, Exchange Act Release No. 93216, 2021 SEC LEXIS 2978, at *10 (Sept. 30, 2021) (dismissing as moot an appeal where FINRA vacated the challenged bar during the pendency of the appeal); *Denise Lynn Gizankis*, Exchange Act Release No. 64391, 2011 SEC LEXIS 1576, at *2 (May 4, 2011) (dismissing as moot an appeal where the applicant settled her dispute with FINRA and the bar imposed by FINRA was terminated); *Burst.Com, Inc.*, Exchange Act Release No. 43198, 2000 SEC LEXIS 1735 (Aug. 23, 2000) (dismissing as moot applicant's appeal of NASD's decision to remove quotations of the applicant's securities from the OTC Bulletin Board where, after reissuing the decision, NASD found that applicant met the requirements for being listed); *Blinder, Robinson & Co.*, Exchange Act Release No. 29496, 1991 SEC LEXIS 1479, at *4 (July 29, 1991) (dismissing as moot applicant's appeal of NASD's denial of an exemption from a rule prohibiting certain sales and purchases of securities where applicant would obtain no relief from a favorable decision because the firm had entered liquidation proceedings and applicant "no longer has a direct cognizable interest in the outcome of the case"); *Tara Sec. Corp.*, 49 S.E.C. 1067, 1068 (1989) (dismissing as moot applicant's appeal to continue its NASD membership while employing a statutorily disqualified person

where NASD revoked the applicant's registration on other grounds while the appeal was pending.)

Based on well established precedent, the Commission should dismiss this appeal. Applicants are no longer aggrieved by FINRA's action on review. Applicants' suspensions are no longer in effect, and, in the superseding expedited proceedings under FINRA Rule 9554, Applicants may avoid suspension by taking corrective action or requesting a hearing before the FINRA Office of Hearing Officers. Thus, even if the Commission were to rule in Applicants' favor, there is no relief that it can provide to Applicants because there is no disciplinary sanction currently in place, the expedited proceedings that are the subject of this application for review have been superseded, and Applicants currently have the opportunity to avoid or stay any suspension either by taking corrective action or requesting a hearing in the superseding expedited proceedings by February 14, 2025. Therefore, Applicants' appeal is moot.

IV. CONCLUSION

The Commission should dismiss this appeal as moot because Applicants are no longer aggrieved by a FINRA action and even a favorable decision by the Commission would not entitle Applicants to any relief.

Respectfully submitted,

/s/ Megan Rauch

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January 29, 2025

CERTIFICATE OF COMPLIANCE

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

/s/ Megan Rauch

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CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 29th day of January 2025, I caused a copy of the foregoing Motion to Dismiss and to Stay Issuance of a Briefing Schedule in the matter of Application for Review of Michael Scott Barrows and Eric John Ludovico, Administrative Proceeding File No. 3-22347, to be filed through the SEC's eFAP system on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

and served by electronic mail on:

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**FINRA'S INDEX TO EXHIBITS TO MOTION TO DISMISS THE APPLICATION FOR
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<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	California Superior Court for the County of Los Angeles Order Denying Petition to Vacate dated September 6, 2024
B	California Superior Court for the County of Los Angeles Judgment dated October 1, 2024
C	Notice of Appeal to the California Court of Appeal dated October 29, 2024
D	California Superior Court for the County of Orange Temporary Restraining Order dated November 15, 2024
E	Case No. 8:24-cv-02624-JVS-KES Docket (C.D. Cal.) Docket
F	Order Granting Joint Stipulation to Extend TRO dated December 9, 2024
G	Order Granting Emergency Application to Extend TRO and Setting Hearing on Preliminary Injunction dated January 10, 2025
H	Minutes of Preliminary Injunction Hearing dated January 17, 2025
I	Order Granting Joint Stipulation to Dismiss Entire Action With Prejudice dated January 24, 2025
J	Barrows Notice of Suspension dated January 24, 2025
K	Ludovico Notice of Suspension dated January 24, 2025