UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71391 / January 24, 2014

Admin. Proc. File No. 3-15466

In the Matter of the Application of

Mark Steven Steckler
Zephyrhills, FL 33541

for Review of Disciplinary Action Taken by FINRA

ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

I.

Mark Steven Steckler, formerly a registered representative associated with Royal Alliance Associates, Inc., a FINRA member firm, seeks review of a FINRA disciplinary action. FINRA barred him from associating with any FINRA member in any capacity, effective June 10, 2013, because he failed to respond to two requests for information issued pursuant to FINRA Rule 8210.[1] On September 23, 2013, FINRA filed a motion to dismiss Steckler's application for review, arguing that Steckler failed to exhaust his administrative remedies. For the reasons set forth below, we have determined to grant FINRA's motion and dismiss the appeal.

II.

A. Steckler failed to respond to two Rule 8210 requests for information issued by FINRA.

Steckler was associated with Royal Alliance from November 18, 2005, until October 10, 2012. Royal Alliance filed a Uniform Termination Notice for Securities Industry Registration on

[1] FINRA Rule 8210(a)(1) states, in relevant part, that the staff has the right to "require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation . . ." FINRA Rule 8210(a)(1).

Form U5,[2] disclosing that it permitted Steckler to resign from the firm effective October 10, 2012, because he had allegedly borrowed $800 from a customer in violation of firm policy.

On November 20, 2012, FINRA sent Steckler a letter by both first class and certified mail, pursuant to Rule 8210, to his address of record contained in the Central Registration Depository ("CRD"), which Steckler is required to keep current.[3] Among other things, that letter requested that he provide a signed statement in response to the allegations that he borrowed $800 from a firm customer, copies of all correspondence and memoranda referring or relating to the matter, and information about other complaints, if any, during the preceding three years of his association with Royal Alliance.[4] The deadline for his response was December 4. Steckler failed to respond.

On December 6, FINRA sent Steckler a second Rule 8210 request to his CRD address by first-class and certified mail, asking for the same information as in its earlier letter, a copy of which was attached. The certified mail receipt for this request was returned, signed by "Mark Steckler." The second request set a deadline of December 22 and warned Steckler that he could be subject to disciplinary action if he failed to respond. Steckler did not respond.

B. FINRA sanctioned Steckler.

On May 17, 2013, FINRA notified Steckler in writing, pursuant to FINRA Rule 9552(a), that it intended to suspend him from associating with any member firm in any capacity on June 10, 2013, unless he took corrective action before that date by complying with the Rule 8210 requests. [5] FINRA served the May 17, 2013, written notice on Steckler by overnight courier

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[2] Broker-dealers, investment advisers, and issuers of securities must file a Form U5 with FINRA to terminate the registration of an individual associated with such broker-dealer, investment adviser, or issuer.

[3] As part of the registration process, associated persons are required to sign and file with FINRA a Form U4, which obligates them to keep a current address on file with FINRA at all times. *Perpetual Sec., Inc*. Exchange Act Release No. 56613, 2007 SEC LEXIS 2353, at *35 (Oct. 4, 2007); *Nazmi C. Hassanieh*, Exchange Act Release No. 35029, 52 SEC 87, 1994 SEC LEXIS 3862, at *8 (Nov. 30, 1994). A notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual's last known CRD address. FINRA Rule 8210(d); *see also* NASD Notice to Members 97-31, 1997 NASD LEXIS 35, at *1-2 (May 1997) (reminding registered persons to keep a current mailing address with NASD "[f]or at least two years *after* an individual registration has been terminated by the filing of . . . [a] Form U5") (emphasis in original).

[4] The November 20, 2012 letter also requested that Steckler explain the reasons for two late CRD disclosures. There is no further explanation of those requests in the record.

[5] FINRA Rule 9552(a) states that if an associated person fails to provide the staff with requested information pursuant to FINRA rules, the association may provide written notice

(continued…)

service and first-class mail to the same CRD address it used in sending the earlier Rule 8210 requests. [6] That notice also advised Steckler that he could request a hearing under Rule 9552(e), which, if made timely, would stay the effective date of the suspension.[7] The notice further warned Steckler that, if the suspension was imposed, FINRA would automatically bar him from associating with any member firm in any capacity on August 20, 2013, unless he requested termination of the suspension based on full compliance.[8] Steckler failed to take any action to comply with the outstanding requests or request a hearing.

On June 10, 2013, FINRA sent Steckler a letter informing him that, as of that date, he was suspended from associating with any FINRA member in any capacity pursuant to FINRA Rule 9552. That letter reminded Steckler that an automatic bar would be imposed on August 20, 2013, if he did not fully comply with the notice of suspension, which required him to respond to FINRA's two earlier Rule 8210 requests and file a request to terminate his suspension. FINRA served Steckler at the address that was on file with the CRD when FINRA served the Rule 8210 requests, as well as a new address that was on file as of June 10.

Steckler took no action to end his suspension by supplying the information requested by FINRA, and the automatic bar from associating with any member firm in any capacity took effect on August 20, 2013. On that date, FINRA sent Steckler a letter notifying him that he was barred and could appeal the decision by filing an application for review with the Commission.[9]

(…continued)

"specifying the nature of the failure and stating that a failure to take corrective action within 21 days after service of the notice will result in [a] suspension."

6 FINRA Rule 9552(b) provides for service of a notice of suspension in accordance with FINRA Rule 9134, which permits service by both mail and courier service at an individual's residential CRD address. FINRA Rule 9134(a) – (b)(1).

7 FINRA Rule 9559(c) provides that, "[u]nless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9551 through 9556."

8 FINRA Rule 9552(f) permits a suspended individual to file a written request for termination of the suspension on the ground of full compliance with the notice of suspension. FINRA Rule 9552(h) provides that a suspended person who fails to request termination of the suspension within three months of issuance of the original notice of suspension will be barred automatically.

9 FINRA sent that letter to Steckler by overnight courier service and by first-class mail to the two addresses it used for the June 10 letter. There is no evidence that the letters sent by first-class mail were returned. The tracking information for the overnight courier service does not indicate whether the letters were received.

III.

We have emphasized that "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review."[10] On this basis, we repeatedly have held that "we will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."[11] As the Second Circuit has reasoned:

> Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. Moreover, like other administrative exhaustion requirements, the SEC's promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review. It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus 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.[12]

The November 20 and December 6, 2012, Rule 8210 requests, which sought specific information related to Steckler's resignation, among other things, warned Steckler, respectively, that "[a]ny failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry" and that "[f]ailure to comply with this request may subject you to disciplinary action." The May 17, 2013, notice of suspension stated that FINRA intended to suspend Steckler on June 10, 2013, unless he took corrective action by complying with the Rule 8210 requests. The notice also stated that, alternatively, he could request a hearing under FINRA Rule 9552(e), which would have stayed the effectiveness of the

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[10] *MFS Secs. Corp.*, Exchange Act Release No. 47626, 2003 WL 23354445, at *5 & n.29 (Apr. 3, 2003) (citing *Royal Secs. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 SEC LEXIS 94, at *5 (May 20, 1955)), *aff'd*, 380 F.3d 611 (2d Cir. 2004).

[11] *See, e.g.*, *Norman S. Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at *6, 11 (Sept. 16, 2011) (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 information requests); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5, 8 (May 6, 2010) (same); *Jeffrey A. King*, Exchange Act Release No. 52571, 2005 SEC LEXIS 2516, at *8-10 (Oct. 7, 2005) (same); *see also MFS Secs. Corp*, 2003 WL 23354445, at *5-6 (refusing to consider applicant's denial of access to services claim because applicant failed to exhaust New York Stock Exchange's procedures).

[12] *MFS Secs. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

suspension under Rule 9559(c). But Steckler did not take corrective action or request a hearing. The May 17 and June 10 notices informed Steckler that, after the suspension took effect, he could request its termination based on full compliance. As noted, Steckler never replied to the Rule 8210 requests.

In response to FINRA's motion to dismiss, Steckler stated that he did not receive the FINRA correspondence in a timely manner because his was unable to receive mail per the policy of the residence at which he was residing temporarily.[13] But the Rule 8210 requests were deemed to have been received by Steckler when FINRA properly served him at his address on file with CRD.[14]

Further, Steckler did not substantiate his claim that he could not view the correspondence from FINRA because of the policies of his temporary residence. For example, Steckler did not provide the dates during which he was prevented from receiving mail. Steckler also did not dispute FINRA's contention that on December 12, 2013, he signed the certified receipt for the December Rule 8210 request. After receiving the December Rule 8210 request, Steckler could have responded or sought a hearing prior to the effective date of the suspension.

Finally, Steckler claimed in his response that he did not view the FINRA correspondence until June. Even if this were the case, viewing the correspondence at any point in June still provided him with sufficient time to respond to the Rule 8210 requests and seek to have the suspension terminated prior to the imposition of the bar on August 20. Steckler also stated in his response that after reviewing the correspondence in June, he phoned FINRA and was "told to request a review," which he claims he did "promptly."[15] Despite this claim, there is no evidence in the record that he requested a FINRA hearing. Under these circumstances, and given the well-established precedent discussed above, we see no basis for denying FINRA's motion to dismiss.

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[13] Steckler offers no additional explanation for his failure to comply with the Rule 8210 requests, request a hearing, or request that FINRA terminate the suspension prior to the August 20 deadline. Although Steckler made a substantive argument in his response concerning the alleged violations described in the Rule 8210 requests, we do not reach that argument because he failed to exhaust his administrative remedies.

[14] *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *4 n. 6 (April 18, 2013) (stating that a "notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual's last known CRD address").

[15] Although FINRA attached a declaration to its reply brief concerning the June phone call with Steckler, we did not rely on the declaration in making our determination to grant the motion.

Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Mark Steven Steckler is GRANTED.

By the Commission.

Elizabeth M. Murphy
Secretary