

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 73146 / September 19, 2014

Admin. Proc. File No. 3-15833

In the Matter of the Application of

CARYL TREWYN LENAHAN  
Sarasota, FL 34232

For Review of Disciplinary Action Taken by  
FINRA

**ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW**

Caryl Trewyn Lenahan, formerly a registered representative of Investors Capital Corp., seeks review of a Financial Industry Regulatory Authority disciplinary action. FINRA barred Lenahan from associating with any FINRA member in any capacity as a result of her failure to comply with requests for information made pursuant to FINRA Rule 8210 regarding a customer complaint.<sup>1</sup> On May 1, 2014, FINRA filed a motion to dismiss Lenahan's application for review, to which Lenahan filed a response on August 15, 2014. Lenahan failed to respond to any of FINRA's notices concerning her pending suspension and bar, and filed her appeal a year and a half after the statutory deadline. Although Lenahan argues that she did not understand the collateral consequences of the bar and did not file a timely appeal based on statements made by a FINRA examiner, we grant FINRA's motion to dismiss, finding that Lenahan failed to exhaust her administrative remedies and that her application for review was untimely.

**I. Background**

**A. Lenahan failed to respond to FINRA's requests for information.**

FINRA opened an investigation and requested information from Lenahan pursuant to FINRA Rule 8210 after one of her former customers lodged a complaint. The complaint was filed in September of 2011, and dated from Lenahan's association from 1997 to 2009 with Investors Capital, a FINRA member firm.

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<sup>1</sup> FINRA Rule 8210(a)(1) provides in relevant part that "FINRA staff shall have the right to: require a . . . person associated with a member . . . to provide information . . . in writing . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding."

FINRA's first request for information was sent to Lenahan in a December 2011 letter (the "First Letter"). The letter contained a copy of the customer's complaint and a list of questions. FINRA asked Lenahan to provide a written response by December 16, 2011. Although Lenahan received the letter and signed a certified mail return receipt on December 5, 2011, she did not respond to FINRA's Rule 8210 request.

FINRA sent a second letter (the "Second Letter") requesting information in December 2011, which set a December 30 response deadline. Although Lenahan received the Second Letter and signed a certified mail return receipt on December 19, 2011, she did not respond.

**B. FINRA suspended and then barred Lenahan for her failure to respond.**

After Lenahan failed to respond, FINRA's Department of Enforcement, in a June 19, 2012 letter, notified her that she would be suspended effective July 13, 2012. The notice informed Lenahan that she could take corrective action to prevent the suspension, request a hearing in response to the notice, or, if suspended, request termination of the suspension on the ground of full compliance. The notice warned Lenahan that if she failed to respond within three months, she would be barred from associating with any FINRA member beginning on September 24, 2012. Lenahan never responded to the notice, nor did she answer the outstanding requests for information.

On July 16, 2012, Lenahan received notice that she was suspended from association with any FINRA member in any capacity as of July 13, 2012. The written notice again warned Lenahan that she would be barred on September 24, 2012, if she did not request termination of the suspension within three months. Lenahan did not respond.

Pursuant to FINRA Rule 9552(h), Lenahan was barred from association with any FINRA member in any capacity on September 24, 2012.<sup>2</sup> On September 25, 2012, Lenahan received notice of the bar, which informed her that any appeal to the Commission must be filed within thirty days of receipt of the notice.

**C. Lenahan appealed the bar a year and a half after the deadline.**

Lenahan filed her application for review with the Commission on April 10, 2014, a year and a half after the deadline to appeal to the Commission. In her application, she admits that she had received the First Letter, the notice of the upcoming suspension dated June 19, 2012, the notification of suspension dated July 13, 2012, and the notification of bar dated September 24, 2012. Lenahan also recognizes in her application that her appeal was "nineteen months late."<sup>3</sup> In the application, Lenahan alleges that, after telling a FINRA examiner she did not plan to keep

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<sup>2</sup> FINRA Rule 9552(h) states that "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."

<sup>3</sup> Although Lenahan's application for review was filed almost nineteen months after her bar, she had thirty days after imposition of the bar to appeal to the Commission. Therefore, her application for review is almost eighteen months late, rather than nineteen months.

her securities license active, he told her, "[t]hen just don't answer the letter and your time will run out and you won't be licensed." She claims in her application that this "advice" led her to not respond to the FINRA Rule 8210 requests for information and that the consequences of being barred "were not evident to [her] until August of 2013."

## II. Analysis

### A. Lenahan failed to exhaust her administrative remedies before FINRA.

We must dismiss Lenahan's application for review because she failed to exhaust her administrative remedies. Lenahan was given the opportunity to avail herself of FINRA's administrative process through taking corrective action, requesting a hearing in response to the notice of suspension, or filing for termination of the suspension. Lenahan failed to exercise her rights at any stage of the process before FINRA and, thus, failed to exhaust her administrative remedies.<sup>4</sup>

The Commission has consistently held that "we will not consider an application for review if that applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."<sup>5</sup> Holding otherwise would severely hinder the self-regulatory capabilities of the SROs and prevent the efficient resolution of disputes between SROs and their members.<sup>6</sup> 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

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<sup>4</sup> See *Royal Sec. Corp.*, Exchange Act Release No. 5171, 36 S.E.C. 275, 1955 WL 43159, at \*2 n.3 (May 20, 1955) (stating the established doctrine that failing to avail oneself of an administrative remedy does not constitute exhaustion of that remedy) (citing *Olinger v. Partridge*, 196 F.2d 986 (9th Cir. 1952))).

<sup>5</sup> *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at \*3 (Apr. 10, 2014) (dismissing review where applicant failed to exhaust administrative remedies and FINRA barred him in response to a failure to answer a Rule 8210 request); see also *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 WL 265812, at \*2 (Jan. 24, 2014) (same); *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at \*4 (Mar. 1, 2013) (same); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 WL 1840609, at \*2 (May 6, 2010) (dismissing application for review where applicant "failed to exhaust FINRA's procedures for contesting the sanction at issue").

<sup>6</sup> *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.<sup>7</sup>

Lenahan argues that she did not respond to FINRA's requests for information because she did not have access to the customer's files, could not handle a contested complaint at that point in time,<sup>8</sup> and relied on the advice of a FINRA examiner. But none of these reasons justify her failure to respond to FINRA, even if only to explain her circumstances or seek an extension of time to respond. Lenahan's license was not active at the time of FINRA's request, and she alleges that the FINRA examiner advised her not to respond unless she was interested in re-activating her license. Even if we accept these allegations as true, that does not excuse Lenahan from following FINRA's rules, which require compliance with Rule 8210 requests.<sup>9</sup>

Additionally, Lenahan states in her application that she was unaware of the "devastating ramifications of the suspension and [bar]" until August 2013 when she realized that the bar was making it difficult for her to obtain "appointments" with insurance companies for the purpose of providing seminars to seniors about using "cash value life insurance" to make gifts to family members and others. But this also does not excuse her failure to respond because Lenahan was responsible for familiarizing herself with the consequences of a bar.<sup>10</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> In her response to FINRA's motion to dismiss, Lehanan explains in detail how she was "inundated with personal, emotional and business pressures" at the time of FINRA's requests for information.

<sup>9</sup> FINRA Rule 8210(c) ("No member or person shall fail to provide information . . . pursuant to this Rule."); *cf. Thomas C. Kocherhans*, Exchange Act Release No. 36556, 52 S.E.C. 528, 1995 WL 723989, at \*3 (Dec. 6, 1995) ("Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements."). The importance of FINRA Rule 8210 should not be understated. Without subpoena power, FINRA must rely on Rule 8210 "to police the activities of its members and associated persons." *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 53 S.E.C. 854, 1998 WL 611732, at \*3 (Sept. 14, 1998). "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at \*4 (Apr. 11, 2008).

<sup>10</sup> *Cf. Ralph W. LeBlanc*, Exchange Act Release No. 48254, 56 S.E.C. 800, 2003 WL 21755845, at \*5 (July 30, 2003) (holding that it is the applicant's responsibility to familiarize himself with the collateral consequences of the consent he signed).

**B. Lenahan's appeal was untimely.**

Even if Lenahan had exhausted her administrative remedies, we must dismiss her application for review because it was untimely. Under Section 19(d)(2) of the Securities Exchange Act of 1934, an applicant has thirty days to submit an application to the Commission for review of a disciplinary action imposed by a self-regulatory organization.<sup>11</sup> Lenahan's application was due October 25, 2012, but she waited until April 10, 2014, to file. Only in extraordinary circumstances does the Commission provide an exception for late filings,<sup>12</sup> and Lenahan has failed to show any extraordinary circumstances here.<sup>13</sup> Her professed ignorance of the bar's consequences and alleged reliance on advice from a FINRA examiner—the only reasons she offers for the untimeliness of her application—do not constitute extraordinary circumstances that would excuse her late filing.<sup>14</sup> Lenahan's application is thus properly dismissed on this ground as well.

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<sup>11</sup> 15 U.S.C. § 78s(d)(2).

<sup>12</sup> Commission Rule of Practice 420(b), 17 C.F.R. § 201.420(b). *See generally Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 WL 2117161, at \*2 n.9 (May 20, 2008) (providing background on the adoption of Rule 420(b) and the extraordinary circumstances exception).

<sup>13</sup> *See, e.g., Orbixa Techs.*, Exchange Act Release No. 70893, 2013 WL 6044106, at \*4 n.15 (Nov. 15, 2013) (stating that extraordinary circumstances may arise where "reason for the failure timely to file was beyond the control of the applicant") (quoting *Pennmont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720, at \*4 (Apr. 23, 2010)).

<sup>14</sup> *See Lance E. Van Alstyne*, Exchange Act Release No. 40738, 53 S.E.C. 1093, 1998 WL 830817, at \*4 (Dec. 2, 1998) (finding no extraordinary circumstances even where it was unclear whether petitioner received notice of NASD action); *Walter v. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at \*2 n.16 (May 8, 2014) (finding no extraordinary circumstances where petitioner claimed he was unaware of his ability to appeal); *cf. In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863, 868 (8th Cir. 2007) (noting in the context of a Federal Rule of Civil Procedure Rule 60(b) motion that "[e]xceptional circumstances are not present every time a party is subject to potentially unfavorable consequences as a result of an adverse judgment properly arrived at"). Even if Lenahan's ignorance were an extraordinary circumstance, she states that she became aware of the negative consequences of the bar in August 2013, yet she offers no justification for waiting an additional eight months to file her application for review.

### **III. Conclusion**

Lenahan's application for review must be dismissed because she failed to exhaust her administrative remedies and failed to timely file her application. Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Caryl Trewyn Lenahan is GRANTED.

By the Commission.

Jill M. Peterson  
Assistant Secretary