

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75774 / August 27, 2015

Admin. Proc. File No. 3-16555

In the Matter of the Application of

Curtis Steven Culver
25625 Palma Alta Drive
Valencia, CA 91355

for Review of Disciplinary Action Taken by

FINRA

ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

Curtis Steven Culver, formerly a registered representative associated with JP Morgan Securities LLC ("JP Morgan"), a FINRA member firm, seeks review of a FINRA disciplinary action. FINRA barred Culver from associating with any FINRA member in any capacity, effective May 5, 2015, because of his failure to comply with a request for information made pursuant to FINRA Rule 8210.¹ On June 2, 2015, FINRA filed a motion to dismiss Culver's application for review, arguing that Culver failed to exhaust his administrative remedies. Culver did not file an opposition to FINRA's motion to dismiss. We grant FINRA's motion and dismiss the appeal.

I. Background

Culver was associated with JP Morgan until December 19, 2014, when JP Morgan terminated his employment and filed a Termination Notice for Securities Industry Registration ("Form U5") with FINRA. The Form U5 reported that Culver had been terminated for issuing a debit card on a customer's account and using it to withdraw funds from an ATM for personal

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

use. Prompted by JP Morgan's Form U5 filing, FINRA initiated an investigation into the alleged wrongdoing.

On December 31, 2014, FINRA sent Culver a request pursuant to Rule 8210 seeking documents and information concerning whether Culver issued a debit card linked to a customer's account and used it to withdraw funds for personal use without the customer's authorization. The request was sent by certified and first class mail to Culver's address of record contained in the Central Registration Depository ("CRD address"), which Culver is required to keep current.² Culver received the letter and signed a certified mail return receipt for it on January 8, 2015. FINRA sent a second Rule 8210 request, also by certified and first class mail to Culver's CRD address, on January 14, 2015. The letter reminded Culver of his obligation to comply with the request for information and set a deadline of January 28 for Culver to respond. The letter warned Culver that failure to respond could "subject [him] to disciplinary action." Culver received the letter on January 21, 2015. Culver did not respond to either Rule 8210 request.

On February 2, 2015, FINRA's Enforcement Department notified Culver that, pursuant to Rule 9552, he would be suspended on February 26, 2015, for his failure to comply with the Rule 8210 requests (the "Pre-Suspension Notice").³ FINRA sent the Pre-Suspension Notice to Culver's CRD address by certified and first class mail, and Culver received and signed for it on February 4, 2015.⁴ The Pre-Suspension Notice informed Culver that he could avoid suspension by complying with the Rule 8210 requests before the effective date of the suspension. It noted that Culver could request a hearing, which, if timely made, would stay the effective date of the suspension. Further, it informed Culver that if the suspension did take effect, he could seek termination of the suspension on the ground of full compliance.⁵ Finally, it warned that if he

² As part of the FINRA 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. *Nazmi C. Hassanieh*, Securities Exchange Act Release No. 35029, 1994 WL 681723, at *3 (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* Financial Industry Regulatory Authority, NASD Notice to Members 97-31 (1997), *available at* <https://www.finra.org/sites/default/files/NoticeDocument/p004782.pdf> (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").

³ FINRA Rule 9552(a) states that if a person subject to FINRA's jurisdiction fails to provide FINRA staff with requested information or testimony, FINRA staff may provide written notice to that 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 [a] suspension."

⁴ FINRA Rule 9552(b) directs that service of a Pre-Suspension Notice be effected in accordance with FINRA Rule 9134, which permits service by mail, a traceable courier service, or personal service at an individual's home address as reflected in FINRA's records.

⁵ 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."

failed to request reinstatement within three months of the date of the Pre-Suspension Notice he would automatically be barred from the securities industry effective May 5, 2015.⁶

Culver took no action in response to the Pre-Suspension Notice. Accordingly, on February 26, 2015, FINRA sent Culver a letter, again by certified and first-class mail, notifying him that, effective immediately, he was suspended from association with any FINRA member ("Notice of Suspension"). The Notice of Suspension reiterated that Culver could request termination of the suspension on the ground of full compliance. Like the Pre-Suspension Notice, the Notice of Suspension stated that failure to seek termination of the suspension by May 5, 2015, would result in Culver being barred "from associating with any FINRA member in any capacity."

In the three months following the Pre-Suspension Notice, Culver did not provide FINRA with the information and documents specified in the Rule 8210 requests, challenge his suspension, or otherwise seek relief from FINRA. Accordingly, on May 5, 2015, FINRA notified Culver that, effective immediately, he was "barred from associating with any FINRA member in any capacity" (the "Bar Notice"). FINRA sent the Bar Notice to Culver by certified and first-class mail and Culver signed for it on May 7, 2015. The Bar Notice explained that Culver could file an appeal with the Securities and Exchange Commission within thirty days if he believed the bar was imposed erroneously.

II. Discussion

We emphasize 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."⁷ 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."⁸ As the Second Circuit has reasoned:

⁶ 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 automatically be expelled or barred."

⁷ *MFS Secs. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *5 & n.29 (Apr. 3, 2003) (citing *Royal Secs. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 WL 43159, at *2 (May 20, 1955)), *aff'd*, 380 F.3d 611 (2d Cir. 2004).

⁸ *E.g.*, *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 WL 265812, at *2 (Jan. 24, 2014) (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); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013) (same); *Norman S. Chen*, Exchange Act Release No. 65345, 2011 WL 4336720, at *2 (Sept. 16, 2011) (same); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 WL 1840609, at *2 (May 6, 2010) (same); *see also MFS Secs. Corp.*, 2003 WL 1751581, at *6 (refusing to consider applicant's denial of access to services claim because applicant failed to exhaust New York Stock Exchange's procedures).

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.⁹

The same reasoning applies here. FINRA suspended, and eventually barred, Culver for failing to respond to its December 2014 and January 2015 Rule 8210 requests. Given Culver's failure to contest this sanction before FINRA, we dismiss Culver's application for review to avoid undermining the important self-regulatory functions of FINRA.

The December 2014 and January 2015 Rule 8210 requests sought specific information related to Culver's termination from JP Morgan. Among other things, the requests warned Culver that "[a]ny failure on [his] part to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry." The February 2015 Pre-Suspension Notice stated that FINRA intended to suspend Culver on February 26, 2015, unless he complied with the Rule 8210 requests or requested a hearing to contest the suspension. Culver did neither, allowing the suspension to take effect. On February 26, 2015, FINRA sent Culver notification that he been suspended and informing him once more that he would automatically be barred on May 5, 2015, unless he requested termination of the suspension on the ground of full compliance with the underlying request. Culver did not make any effort to terminate his suspension and was barred on May 5, 2015. As detailed above, Culver took no corrective action in response to any of the requests or notices he received; as a result, he failed to exhaust the administrative remedies available to him under FINRA. In addition, Culver did not respond to FINRA's motion to dismiss his application for review. Accordingly, we see no basis for denying FINRA's motion to dismiss.¹⁰

Culver seeks to excuse his failure to exhaust the available administrative remedies, claiming that "severe depression" and "crippling bouts of anxiety and panic attacks," brought about by his termination from JP Morgan, rendered him unable to respond to FINRA's requests. But Culver did not present any evidence to substantiate this claim. The Commission has previously found that "unsubstantiated personal problems do not excuse an applicant's failure to

⁹ *MFS Secs. Corp. v. SEC*, 380 F.3d 611, 621–22 (2d Cir. 2004).

¹⁰ While Culver's application for review may respond in part to the Rule 8210 requests, his untimely response is irrelevant given his failure to exhaust the administrative remedies available under FINRA.

respond.”¹¹ Without medical records or other proof that medical or personal problems prevented Culver from responding to the Rule 8210 requests, there is no basis for excusing his failure to exhaust available administrative remedies¹² and no reason to deny FINRA’s motion to dismiss.¹³

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

By the Commission.

Brent J. Fields
Secretary

¹¹ *Jeffrey A. King*, Exchange Act Release No. 52571, 2005 WL 2481485, at *3 (Oct. 7, 2005).

¹² *See Lee Gura*, Exchange Act Release No. 50570, 2004 WL 2363871, at *2 (Oct. 20, 2004) (holding that unsubstantiated claims of severe depression do not excuse an applicant’s failure to respond to FINRA requests for information).

¹³ In light of our determination to grant FINRA’s motion to dismiss for failure to exhaust administrative remedies, we deny as moot FINRA’s motion to dismiss Culver’s appeal as abandoned.