UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77084 / February 8, 2016

Admin. Proc. File No. 3-16814

In the Matter of the Application of ALIZA A. MANZELLA for Review of Disciplinary Action Taken by FINRA	ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

Appeal filed: September 11, 2015
Last filing submitted: October 7, 2015

Aliza A. Manzella, formerly associated with Fifth Third Securities, Inc., a FINRA member firm, seeks review of FINRA disciplinary action against her, and FINRA has moved to dismiss the application. As we discuss below, we grant FINRA's motion.

FINRA barred Manzella on October 28, 2014 after she failed to respond to two requests for information made pursuant to FINRA Rule 8210.[1] She subsequently ignored warnings from FINRA that she would be suspended and eventually barred unless she provided the requested information. Manzella does not dispute that she failed to respond to the requests, but claims that she did not fully appreciate the implications for her career of a FINRA bar. This is not a valid defense. Because she never requested a hearing before FINRA or sought reinstatement through full compliance with the information requests, she failed to exhaust her administrative remedies, as she was required to do to obtain Commission review. Moreover, her application for review is time barred. Manzella filed her application more than nine months after the 30-day deadline to appeal passed, and she did not seek any extension of the deadline.

[1] Rule 8210 authorizes FINRA staff to require a person associated with a FINRA member to provide information with respect to any matter involved in an investigation, complaint, examination, or procedure.

I. Background

A. Manzella failure to respond to FINRA's requests for information

FINRA sent Manzella written requests for information on April 24 and May 14, 2014, in connection with an investigation to determine whether Manzella had violated FINRA rules.[2] FINRA sent the information requests by first class and certified mail to Manzella's address of record contained in the Central Registration Depository ("Web CRD"),[3] which Manzella is required to keep current.[4] Both letters informed Manzella that she was obligated to respond "fully, promptly, and without qualification" to FINRA's requests, and that failure to do so could subject her to sanctions, "including a permanent bar from the securities industry."[5] The certified letters were returned as "unclaimed." The record does not show what happened to the first-class letters, but Manzella does not contend that the letters were sent to the wrong address. Manzella did not respond to either of the requests for information.

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[2] FINRA began the investigation upon learning that Manzella's employer had filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Manzella had been terminated from employment for allegedly altering bank customer documents without the customer's written consent and notarizing the signature of an individual who was not present. Based on information found on BrokerCheck, a database maintained by FINRA and available through FINRA's website, we take official notice that the Form U5 was filed on March 27, 2014. *See* Rule of Practice 323, 17 C.F.R. § 201.323 (regarding taking of official notice); *see, e.g., Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *1 n.1 (Apr. 17, 2014) (taking official notice of information on BrokerCheck).

[3] Web CRD is a database operated by FINRA and available to authorized users through FINRA's website. We take official notice of Manzella's address as shown on the CRD. *See* Rule of Practice 323, note 2 *supra*; *see, e.g., James Lee Goldberg*, Exchange Act Release No. 66549, 2012 WL 759397, at *1 n.2 (Mar. 9, 2012) (taking official notice of information in CRD).

[4] *See, e.g., Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *1 & n.6 (Apr. 18, 2013) ("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."); *see also* NASD Notice to Members 97-31, 1997 WL 1909798, 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's registration has been terminated" by the filing of a Form U5).

[5] FINRA included a copy of the April 24 request, which contains the quoted language, when it sent Manzella the May 14 request.

B. FINRA suspension and bar of Manzella for failure to respond

On July 25, 2014, Sandra J. Harris of FINRA's Department of Enforcement sent Manzella a letter, via certified and first class mail, informing her that (1) she would be suspended on August 18, 2014 unless she provided the requested information; (2) she could stay the effective date of any suspension by requesting a hearing before August 18; and (3) if she were suspended, she could request termination of the suspension (provided she had fully complied with the information requests), but if she failed to do so within three months of the date of the letter, she would be automatically barred on October 28, 2014.[6] The letter included Harris's telephone number and an offer to respond to any questions.

On August 4, 2014, two weeks before the suspension was to take effect, Manzella spoke with Harris by telephone. Manzella told Harris that she did not intend to respond to the information requests, and Harris informed Manzella of the consequences of not responding.[7]

Manzella did not provide the requested information or request a hearing by August 18, 2014. Harris sent her a second letter on August 18, 2014 informing her that she was suspended from associating with any FINRA member in any capacity. The letter reminded Manzella that she could request termination of the suspension, but she never did. On October 28, 2014, Harris sent Manzella a third letter informing her that she was barred from associating with any FINRA member in any capacity. This letter informed Manzella that she could appeal FINRA's action by filing an application with the Commission within 30 days.[8]

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[6] The letter tracked the provisions of FINRA Rule 9552. *See* Rule 9552(a) (providing for notice of suspension based on failure to provide requested information), 9552(d)-(e) (providing for stay of suspension based on request for hearing), 9552(f) (permitting request for termination of suspension on ground of full compliance), 9552(h) (providing that failure to request termination of suspension within three months will result in automatic bar). Harris included copies of the information requests with her letter.

[7] On August 28, 2015, after Manzella had inquired about having the bar removed from her record, Harris sent Manzella an e-mail in which she recounted these details about the August 4, 2014 phone conversation.

We have not considered, and do not rely on, a declaration from Harris, dated September 22, 2015, which includes additional details about her conversation with Manzella. Although FINRA submitted this declaration as part of the certified record, it was executed after the challenged FINRA action, and, as a result, it is not part of the record. *See* Rule of Practice 420, 17 C.F.R. § 201.420 (requiring self-regulatory organizations to certify and file with the Commission "one copy of the record upon which the action complained of was taken"). We also do not consider the declaration because FINRA never moved to adduce it. *See* Rule of Practice 452, 17 C.F.R. § 201.452 (discussing submission of new evidence before the Commission).

[8] *See* Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2) (establishing 30-day deadline for filing appeals); Rule of Practice 420(b), 17 C.F.R. § 201.420(b) (same).

Like the requests for information, the three letters that Harris sent Manzella were sent by both first class and certified mail to Manzella's CRD address of record.[9] The certified letters were unclaimed or refused. There is no information in to the record as to the receipt of the first-class letters.

C. Manzella untimely application for review

Manzella filed her application for review with the Commission on September 11, 2015, more than nine months after the appeal deadline of December 1, 2014.[10] In her application, she states that she "never took physical receipt" of the three letters Harris sent by certified mail. Manzella also states in her application, without further explanation, that she "was grieving during the time [she] was called by FINRA." Manzella claims that she provided no explanation for her failure to respond to the information requests because Harris did not fully describe to her the consequences of not opposing the disciplinary action. Finally, she expresses concern about the impact of the bar on her future career prospects.[11]

II. Analysis

A. Manzella failed to exhaust her administrative remedies before FINRA.

We have repeatedly held that we will not consider an application for review from FINRA disciplinary action "'if [the] applicant failed to exhaust FINRA's procedures for contesting the sanction at issue.'"[12] Allowing applicants to skip over this step "would severely hinder the self-regulatory capabilities of the SROs and prevent the efficient resolution of disputes between SROs and their members."[13] As the Second Circuit has noted,

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[9] Shortly before sending each of these letters, FINRA used a public records database to confirm that Manzella's address had not changed. And when Manzella asked FINRA for copies of the letters in August 2015, she referred to them as "the letters that were sent to my home address regarding the FINRA bar."

[10] Because the October 28, 2014 letter notifying Manzella of the bar was served by mail, we add three days to the 30-day appeal period. *See* Rule of Practice 160(b), 17 C.F.R. § 201.160(b). We add one more day to the appeal period to account for the fact that the deadline fell on a Sunday. *See* Rule of Practice 160(a), 17 C.F.R. § 201.160(a).

[11] Manzella states in her application for review that she was recently terminated from a position in the financial services industry as a result of the bar.

[12] *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *2 (Sept. 19, 2014) (quoting *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 WL 1390384, at *3 (Apr. 10, 2014) and citing other authority).

[13] *Id.*

> 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.[14]

Manzella failed to challenge the sanctions at issue here through the procedures FINRA offered. And her failure to act occurred despite Manzella's awareness of the information requests and the consequences of not responding to them.

We find that Manzella had notice of FINRA's requests for information, the consequences of failing to respond to those requests, the suspension that was entered, the means of challenging the suspension, and the consequences of not challenging the suspension. The July 2014 letter told Manzella she could stay the suspension by requesting a hearing, and that she could move to terminate the suspension by complying with the information requests. She did not request a hearing; nor did she move to terminate the suspension before FINRA. She has thus failed to exhaust the remedies provided by FINRA, and therefore cannot obtain relief from the Commission.

Manzella's assertion that she did not "physically take receipt" of the July 2014 letter or the prior requests for information does not excuse her failure to exhaust. She cannot escape the consequences of her failure to comply or exhaust by refusing to accept mail. During the period at issue, Manzella, as a former employee of a FINRA member, was required to keep her Web CRD address of record current, and to receive mail there.[15] FINRA was permitted to mail the notice of suspension to the residential address shown in the CRD, which it did. The service

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

[15] *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at *5, 7 (July 27, 2015) (discussing and applying requirements that former registered persons must cooperate with FINRA investigations for at least two years after their registration is terminated by the filing of a Form U5 and must update their CRD mailing address during that period); *cf. Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 WL 3590274, at *6 n.34 (Dec. 11, 2006) ("[A]ssociated persons have 'a continuing duty to notify [NASD] . . . of [their] current address, and to receive and read mail sent to [them] at that address.'") (quoting *Warren B. Minton, Jr.*, Exchange Act Release No. 46709, 2002 WL 32140276, at *4 (Oct. 23, 2002).

requirement was satisfied upon mailing, and as a result, Manzella had notice of information contained in the letters, including the means to challenge her suspension.[16]

And the assertion that she did not "physically" receive the letters lacks credibility. Harris reminded Manzella in an August 28, 2015 e-mail that Harris and Manzella had discussed the information requests and the consequences of not responding in an August 4, 2014 phone call, which suggests that Manzella received some, if not all, of the letters sent by first-class mail, even if she refused or failed to claim the ones sent via certified mail.

Manzella also argues that Harris misled her by telling her that failure to respond would result only in her being "prevent[ed] . . . from selling securities," not being "barred from the entire financial services industry as a whole." According to Manzella's application for review, she "was grieving during the time [she] was called by FINRA" and "had no interest in getting back into sales at that time," implying that both her misunderstanding of the potential consequences of not responding and her difficult personal circumstances contributed to her failure to respond. She also asserts that she has and is pursuing degrees in finance that "will be useless if [she is] unable to work in this field."

Manzella's explanation and assertions do not excuse her failure to exhaust the FINRA remedies to challenge her suspension. If she indeed had difficult personal circumstances, she had the burden of seeking an extension of time to respond to the information requests or to seek a stay of the suspension.[17] She did neither. And regardless of what she now alleges Harris told her, as we discussed above, Manzella had notice of the information requests, the ramifications of not answering them, and the means and time in which to challenge the discipline. As a FINRA associated person, she bore the responsibility of both understanding the FINRA rules and the consequences of non-compliance.[18]

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[16] *See* FINRA Rules 9552(b) (providing that notice of suspension under Rule 9552 may be served in accordance with Rule 9134); 9134(a)(2) (providing for service by mail by U.S. Postal Service), 9134(b)(1) (providing for service on a natural person at the residential address reflected in the CRD), 9134(c) ("Service by mail is complete upon mailing.").

[17] *See Lenahan,* 2014 WL 4656403, at *3 & n.8 (even if associated person was "inundated with personal, emotional, and business pressures" when she received FINRA's requests for information, she was required to respond, "even if only to explain her circumstances or to seek an extension of time to respond").

[18] *See, e.g., Thomas C. Kocherhans*, Exchange Act Release No. 36556, 1995 WL 723989, at *3 n.14 (Dec. 6, 1995) (associated persons "'are assumed as a matter of law to have read and have knowledge of [SRO] rules'") (quoting *Carter v. SEC*, 726 F.2d 472, 473-74 (9th Cir. 1983)). *Accord, e.g., Lenahan*, 2014 WL 4656403, at *3 (lack of awareness of "devastating ramifications" of suspension and bar does not excuse failure to respond to Rule 8210 requests because associated person "was responsible for familiarizing herself with the consequences of a bar").

Given her decision to ignore FINRA's requests and notices and her failure to take advantage of the avenues FINRA provided for avoiding the imposition of a bar, we find that Manzella forfeited her right to challenge the bar before us.

B. Manzella's application for review is untimely.

Manzella's filing of her application more than nine months after the 30-day deadline contained in Securities Exchange Act Section 19(d)(2) provides an independent basis for dismissal of her appeal. Exchange Act Section 19(d)(2) states that appeals from actions by self-regulatory organizations must be filed by the aggrieved person within 30 days "after the date such notice [of action] was filed with such appropriate regulatory agency and received by such aggrieved person."[19] FINRA's service by mail to Manzella's CRD address provided her with constructive notice of the action, which started the running of the appeal period.[20] The appeal period ran from the date service was completed by FINRA (October 28, 2014) to the deadline for appeal (December 1, 2014).[21] In any event, Manzella acknowledged in an August 2015 e-mail to Harris that she had discussed her bar with Harris "6-7 months" previously, which indicates that, at a minimum, she received actual notice of FINRA's action at least six months before she filed her application for review.

Manzella never sought an extension of the filing deadline. As we have observed, "'strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.' Unmet deadlines may cut off substantive rights to review, but this is their function."[22] We see no basis for deviating from that policy here.

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19 15 U.S.C. § 78s(d)(2).

20 *See supra* note 16 (citing the FINRA Rules governing service of process); *cf. Rao v. Baker*, 898 F.2d 191, 197 (D.C. Cir. 1990) (in the context of a similar statutory deadline for appeals of decisions to the Equal Employment Opportunity Commission, finding constructive notice when decision was mailed to the address designated by the applicant, and stating that "[i]f a claimant could simply fail to acknowledge receipt of a registered letter at the address provided to the agency . . . that claimant could . . . handily defeat the strict time limits set by the statute and the regulations and create an unworkable administrative scheme") (internal quotations omitted); *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1168 n.5 (5th Cir. 1980) (in the context of the Federal Rules of Civil Procedure, stating that service is complete upon mailing under FRCP 5(b) and that "refusal to accept mail does not vitiate service").

21 *See supra* note 10 (calculating the appeal deadline by adding three days to account for service by mail and one day to account for the deadline falling on a Sunday).

22 *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 (May 8, 2014) (quoting *Pennmont Sec.*, 2010 WL 1638720, at *4).

Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Aliza A. Manzella is GRANTED.

By the Commission.

Brent J. Fields
Secretary