

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77994 / June 3, 2016

Admin. Proc. File No. 3-17254

In the Matter of the Application of

MEYERS ASSOCIATES, L.P.,
and
BRUCE MEYERS

For Review of Action Taken by

FINRA

ORDER DENYING STAY

Motion filed: May 20, 2016

Last brief received: May 27, 2016

Meyers Associates, L.P. (the “Firm”) and Bruce Meyers (“Meyers” and, with the Firm, “Applicants”) move to stay a FINRA decision denying Applicants’ request to permit Meyers to continue associating with the Firm despite his being subject to a “statutory disqualification.”¹ As discussed below, Applicants have not met their burden of showing that a stay is warranted and, therefore, their motion is denied.²

¹ FINRA’s By-Laws prohibit a person from associating with a member if that person becomes subject to “statutory disqualification” as defined in the Securities Exchange Act of 1934. *See infra* notes 4–5. FINRA may grant relief from that ineligibility to associate if it determines that approval is consistent with the public interest and the protection of investors. *See* FINRA By-Laws, Art. III, § 3(d).

² Applicants have not yet filed an appeal, but have indicated their intent to do so. FINRA argues that, without having filed an appeal, Applicants’ request for a stay is procedurally defective. *See* 17 C.F.R. § 201.401(d)(1) (stating that a motion for a stay of a self-regulatory action “may be made by any person aggrieved thereby at the time an application for review is filed in accordance with Rule 420 or thereafter”). We do not address this issue in light of our decision to deny the stay on other grounds.

I. Background

A. FINRA notified Applicants that Meyers is statutorily disqualified.

On March 24 2015, Applicants settled charges brought by Connecticut’s Department of Banking (the “Department”) that Meyers failed reasonably to supervise various aspects of the Firm, and that he materially assisted, and willfully aided and abetted, the Firm’s failure to provide documents requested by the Department in a complete and timely manner. As part of the settlement, Meyers was ordered to “withdraw his registration as a broker-dealer agent of [the Firm] under the [Connecticut Uniform Securities] Act and [to] not reapply for registration as an agent of a broker-dealer under the Act for three years” (the “Connecticut Order”).³ The Connecticut Order also directed the Firm to ensure that, as long as Meyers remained affiliated with the Firm in an unregistered capacity in Connecticut, he would refrain from directly supervising or training any broker-dealer agents with respect to securities business transacted in or from Connecticut and receiving any compensation in connection with the offer, sale, or purchase of securities effected in or from Connecticut.

On April 23, 2015, FINRA’s Department of Member Regulation (“Member Regulation”) notified the Firm that as a result of the Connecticut Order Meyers was statutorily disqualified under Exchange Act Section 3(a)(39),⁴ and was subject to disqualification from association with a member firm under FINRA’s By-Laws.⁵ After receiving this notice, Applicants twice sought from FINRA a determination that the Connecticut Order did not constitute a statutory disqualification under the Exchange Act because the order did not “bar” Meyers. The Department denied both requests.

Applicants subsequently filed a complaint in Connecticut state court seeking an order requiring the Department to amend the Connecticut Order to state that it should not be construed as a “statutory bar.” The Department filed a motion to dismiss the complaint, which was granted.

³ *In the Matter of Meyers Assocs., L.P.*, No. CFNR-14-8132-S (Mar. 24, 2015), available at <http://www.ct.gov/dob/cwp/view.asp?a=2246&q=563012>.

⁴ 15 U.S.C. § 78c(a)(39) (incorporating Exchange Act Section 15(b)(4)(H), 15 U.S.C. § 78o(b)(4)(H), into the definition of “statutory disqualification” to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that “bars such person from association with an entity regulated by such commission . . . or from engaging in the business of securities”).

⁵ FINRA By-Laws, Art. III, § 4 (stating that a person is subject to “disqualification” from association with a member firm if such person is subject to “statutory disqualification” as defined in Exchange Act Section 3(a)(39)).

B. FINRA denied Applicants' membership continuation application.

On June 4, 2015, Applicants submitted a MC-400 Membership Continuation Application to FINRA, for permission for Meyers to continue to associate with the Firm as a general securities representative, a general securities principal, and the Firm's chief executive officer. Meyers continued to work for the Firm while the application was pending.

After a hearing was scheduled to consider their application, Meyers and the Firm filed a brief with the subcommittee of FINRA's Statutory Disqualification Committee (the "Hearing Panel"), arguing that Meyers was not required to go through an eligibility proceeding because the Connecticut Order did not subject Meyers to statutory disqualification. The Hearing Panel postponed the hearing, but subsequently determined that the hearing should go forward because Meyers "appeared to be" statutorily disqualified because of the Connecticut Order.

Applicants informed the Hearing Panel that they intended to argue at the hearing that the Hearing Panel's determination was flawed and that they intended to present telephonic testimony from Nathan Pereira (Applicants' counsel in the proceeding related to the Connecticut Order) about the Connecticut proceeding. The Hearing Panel responded that it (i) would not permit Applicants to reargue whether the Connecticut Order subjected Meyers to statutory disqualification; (ii) would hear testimony from Pereira if it was not immaterial, irrelevant, or cumulative of other testimony presented at the hearing; and (iii) expected the parties to focus at the hearing on the underlying merits of the application and why it should be approved or denied.

The Hearing Panel conducted a hearing on March 22, 2016. Meyers, his proposed supervisor, and a compliance consultant hired by the Firm testified. The Hearing Panel declined to hear testimony from Pereira, however, after Applicants submitted a proffer that Pereira would testify about the parties' conversations during the Connecticut proceeding, about Pereira's understanding of the Connecticut Order, about the collateral consequences of that order, and about Pereira's understanding that the Department never indicated to him its intent to bar Meyers.

After the hearing, the Hearing Panel submitted its written recommendation on Applicants' application to FINRA's Statutory Disqualification Committee, which in turn presented a written recommendation to FINRA's National Adjudicatory Council (the "NAC"). On May 9, 2016, the NAC issued a thirty-four page decision denying Applicants' application.⁶ The NAC concluded that the Connecticut Order subjected Meyers to statutory disqualification under the Exchange Act because the Order prohibited him from engaging in any securities business in Connecticut. The NAC also found that the Hearing Panel properly excluded Pereira's testimony because Applicants should have submitted any evidence about why the Connecticut Order did not subject Meyers to statutory disqualification (such as an affidavit from Pereira) in their pre-hearing briefing, but had chosen not to do so. The NAC further found that the Hearing Panel properly excluded Pereira's testimony because Meyers was also directly

⁶ Unlike a disciplinary hearing, the process for considering a membership continuance application does not involve a hearing panel decision that is then appealable to the NAC. The NAC issued the sole written decision on Applicants' application following the hearing.

involved in the negotiations with the Department and had testified during the hearing about those negotiations and the parties' intent with respect to the Connecticut Order.

Turning to the merits of the application, the NAC determined that the Firm had not demonstrated that Meyers's continued association with the Firm was in the public interest and concluded that such association presented an unreasonable risk of harm to the markets and investors. The NAC based its denial on Applicants' regulatory and disciplinary histories, "the serious nature of the misconduct underlying the recent Connecticut Order," and concerns about the Firm's proposed supervision for Meyers.

II. Analysis

The Commission considers the following factors in determining whether to grant a stay: (i) whether there is a strong likelihood that the moving party will succeed on the merits of its appeal; (ii) whether the moving party will suffer irreparable harm without a stay; (iii) whether any person will suffer substantial harm as a result of a stay; and (iv) whether a stay is likely to serve the public interest.⁷ The moving party has the burden of establishing that a stay is warranted.⁸ We conclude that Applicants failed to establish that a stay is warranted.

A. Applicants have not demonstrated a strong likelihood of success on the merits of an appeal.

Exchange Act Section 19(f) directs the Commission to dismiss an appeal from FINRA action if it finds (i) that the specific grounds on which FINRA based its action exist in fact; (ii) that the action was in accordance with FINRA's rules; and (iii) that the relevant rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.⁹ Applicants argue that they are likely to succeed under this standard because the grounds for their alleged statutory disqualification do not exist in fact and that, by preventing Pereira's testimony, FINRA neither followed its rules nor applied them in a manner consistent with the Exchange Act. Any analysis of the likelihood of Applicants' succeeding on appeal is necessarily preliminary.¹⁰ At this stage

⁷ *Harry W. Hunt*, Exchange Act Release No. 68755, 2013 WL 325333, at *3 (Jan. 29, 2013) (citing *Intelispan, Inc.*, Exchange Act Release No. 42738, 2000 WL 511471, at *2 (May 1, 2000)); see also *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,772 (June 23, 1995) (prior comment to Rule of Practice 401).

⁸ *Hunt*, 2013 WL 325333, at *3 (citing *Millenia Hope, Inc.*, Exchange Act Release No. 42739, 2000 WL 511439, at *1 (May 1, 2000)).

⁹ 15 U.S.C. § 78s(f).

¹⁰ See *Hunt*, 2013 WL 325333, at *4 (noting that "[f]inal resolution must await the Commission's determination of the merits of [movant's] appeal").

of the proceeding, however, Applicants have not demonstrated a strong likelihood of succeeding on the merits.¹¹

Applicants have not shown that FINRA erred in determining that Meyers was statutorily disqualified. Applicants assert that the relevant provision governing statutory disqualification—Exchange Act Section 15(b)(4)(H)(i)—expressly requires that one be subject to a “bar” by a state securities commission and that Meyers’s voluntary withdrawal from registration and his agreement not to reapply for association for three years is not a bar. A bar, according to Applicants, “is a very serious sanction and in the absence of specific language referring to a bar, Meyers’[s] sanction should not be read more broadly than to what he agreed.”

However, two Commission adopting releases state that “the statutory language [found in Section 15(b)(4)(H)(i)] is clear: bars are orders issued by one of the specified regulators that have the effect of barring a person from association with certain regulated entities [or] from engaging in the business of securities” and that any order “that has one of those effects is a bar, regardless of whether it uses the term ‘bar.’”¹² Applicants argue that these Commission statements concern an issue (when a state order disqualifies someone from being able to rely on certain registration exemptions) other than the issue here (when a state order statutorily disqualifies someone for purposes of FINRA eligibility). The distinction is one without a difference. The definition of a bar does not depend on the result of the disqualification, *i.e.* whether the bar results in registration disqualification or FINRA ineligibility. We have repeatedly found that the statutory disqualification provisions across the securities laws may be interpreted by reference to the meaning of Exchange Act 15(b)(4)(H).¹³ The Connecticut Order

¹¹ In their motion, Applicants do not contest the NAC’s finding that Meyers’s continued association with the Firm was inconsistent with the public interest and the protection of investors.

¹² *Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 WL 3817311, at *21 (July 10, 2013) (adopting rules amendments to Securities Act Rules 501 and 506 of Regulation D, 17 C.F.R. §§ 230.501, .506); *see also* *Crowdfunding*, Exchange Act Release No. 70741, 2013 WL 5770346, at *133 (Oct. 23, 2013) (stating, in the context of proposed crowdfunding rules, that, “[i]n our view, bars are orders issued by one of the specified regulators that have the effect of barring a person from . . . engaging in the business of securities” and that “[w]e believe that any such order that has one of those effects would be a bar, regardless of whether it uses the term ‘bar’”).

¹³ *See Crowdfunding*, 2013 WL 5770346, at *132 (observing that the disqualification rule at issue, Section 302(d)(2)(B) of the Jumpstart Our Business Startups Act, was “substantively identical to Exchange Act Section 15(b)(4)(H)”; *Disqualification of Felons and Other Bad Actors*, 2013 WL 3817311, at *19 (observing that the disqualification rule at issue, Section 926(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, was “essentially identical to Section 15(b)(4)(H) of the Exchange Act”); *cf. Nicholas Rowe*, Exchange Act Release No. 75982, 2015 WL 5608532, at *2 (Sept. 24, 2013) (finding that a state order’s

(continued . . .)

is a bar because it prohibits Meyers from engaging in any securities business in Connecticut that requires registration, and, therefore, triggers a statutory disqualification.

Separately, Applicants have not shown a strong likelihood of prevailing on their claim that the NAC erred in preventing Applicants from introducing Pereira's testimony at the hearing. Applicants argue that Pereira would have supported their claim that Meyers was not statutorily disqualified by testifying that neither Applicants nor the Department of Banking intended for (or were on notice that) the sanctions imposed on Meyers would constitute a bar, or the functional equivalent of a bar, for purposes of being subject to a statutory disqualification. In response, FINRA argues that this evidence was properly excluded as irrelevant. Applicants cite to no precedent that supports their position that a party's intent when entering into an order determines whether that order subjects the party to a statutory disqualification under the Exchange Act.¹⁴ Therefore, even if Pereira would have testified about what Applicants claim, Applicants have not established that this would lead to a different result in evaluating whether the Connecticut Order is a bar and triggers disqualification.¹⁵

B. Applicants have not sufficiently demonstrated that they or others will suffer irreparable harm without a stay.

Applicants have also failed to make a sufficient showing that they or others will suffer irreparable harm without a stay. Applicants claim that, if Meyers is not allowed to associate with the Firm during their appeal, "the Firm would necessarily close, leaving thousands of customers without access to their accounts and putting many people out of work and causing them to lose

(. . . continued)

securities licensure bar satisfied the requirements of Advisers Act Section 203(e)(9), which, like Section 15(b)(4)(H), refers to a bar from "engaging in the business of securities . . . activities").

¹⁴ Applicants rely on a NAC decision that analyzed a different disqualifying provision under the Exchange Act. *See Continued Ass'n of X as Gen. Sec. Representative*, NAC Decision No. SD04014, 2004 WL 5319879 (N.A.S.D.R. 2004). The NAC's finding in *Continued Ass'n of X* arguably supports FINRA's assertion that Pereira's testimony was not relevant. In that case, the NAC did not base its conclusions on the parties' intent at the time they entered into the settlement (as Applicants argue should have been done here). Rather, the NAC found that the CFTC's order was not a statutorily disqualifying event because of the order's express terms (including that "the CFTC expressly permitted X to be registered as an [associated person]") and the parties' subsequent conduct (including that the CFTC never subjected X to disqualification proceedings and allowed X to remain continually registered with the CFTC). *Id.* at *4.

¹⁵ Applicants suggest that the NAC violated its rules because it cited to a FINRA rule governing disciplinary hearings when it excluded Pereira's testimony as irrelevant during the eligibility proceedings, but an improper citation does not negate the fact that FINRA's bylaws and rules expressly contemplate the introduction of only relevant evidence at eligibility hearings.

their health insurance.” And granting a stay, Applicants argue, would “afford the Firm and all affected persons an opportunity to attempt a smooth transition to a new management, should that be required.”

The Commission and courts have consistently held, however, that “[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough” to constitute irreparable harm.¹⁶ The Commission has generally refused to grant stays based on applicants’ claims that FINRA’s decision will negatively affect, or even close, a business.¹⁷

The alleged harm to Applicants’ customers and employees is outweighed by the risk of allowing Meyers’s continued participation in the securities industry. FINRA found that Meyers has been party to six final regulatory actions (three of which also named the Firm) and at least 16 customer complaints. Among other things, Meyers was suspended from acting in any principal or supervisory capacity for four months in a settled proceeding in which he was found to have failed to supervise Firm personnel to ensure that they completely and timely responded to requests for information; he was censured and fined in a settled proceeding in which he was found to have failed to enforce the Firm’s written supervisory procedures; and he was censured and fined in another settled proceeding in which he was found to have failed to reasonably

¹⁶ *William Timpinaro*, Exchange Act Release No. 29927, 1991 WL 288326, at *3 (Nov. 12, 1991) (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *see also Michael A. Rooms*, Admin. Proc. File No. 3-11621, 2004 SEC LEXIS 3158, at *5 (Nov. 14, 2004) (holding that applicant’s claim that “the bar imposed on him ha[d] resulted in severe financial loss and damages to his reputation . . . d[id] not rise to the level of irreparable injury”); *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004) (holding that “the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay”).

¹⁷ *See, e.g., William Scholander*, Exchange Act Release No. 74437, 2015 WL 904234, at *7 (Mar. 4, 2015) (finding that applicants had not shown a likelihood that they would suffer irreparable harm where they claimed that it was “highly likely” that a branch office would have to close if a stay were not granted); *Al Rizek*, Exchange Act Release No. 41972, 1999 WL 955890, at *2 (Oct. 1, 1999) (finding that, despite applicant’s claim that he would be forced to close his securities firm without a stay, “[a]ny harm that he may suffer from the denial of his stay request is outweighed by the danger he poses to customers and potential customers”), *denying stay request*, *Rizek v. SEC*, No. 99-2114 (1st Cir. Oct. 29, 1999); *Stratton Oakmont, Inc.*, Exchange Act Release No. 38026, 1996 WL 707982, at *2–3 (Dec. 6, 1996) (finding that, “[a]lthough the sanctions here will have a substantial impact on Applicants, . . . any harm that Applicants may incur from the denial of the their stay requests is outweighed by the danger to the investing public if the effect of the bar and expulsion is delayed”); *Rooney, Pace Inc.*, Exchange Act Release No. 23763, 1986 WL 626057, at *5 (Oct. 31, 1986) (finding suspension to be in the public interest despite mitigation claim that suspension would “depriv[e] registrant of the services of its key executive officer”).

supervise a statutorily disqualified individual. An extended hearing panel also recently barred Meyers in all principal and supervisory capacities and fined him \$75,000 after finding, among other things, that he sent misleading and unbalanced advertising materials to prospective investors and was responsible for supervisory failures.¹⁸ As the NAC detailed in its decision, the Firm also has been the subject of 17 final regulatory and disciplinary actions since 2000 and one customer complaint.¹⁹ This “extensive regulatory and disciplinary history,” FINRA reasonably concluded, “strongly suggests that any future in the securities industry will result in further non-compliance.”

Applicants nevertheless assert that the investing public will not suffer substantial harm as a result of a stay because Meyers’s activities at the Firm “have already been greatly curtailed.” As examples of this, Applicants claim that Meyers’s retail customer accounts “are largely inactive,” that he has been placed on heightened supervision, that his daily activities “are focused on the business aspects of the Firm as opposed to engaging in securities transactions,” and that he is not performing any supervisory responsibilities. These unsupported assertions, even if true, do not outweigh the significant concerns about Applicants’ extensive disciplinary history. To the contrary, the record at this stage of the proceeding suggests that the Firm’s customers may be better served if Meyers does not participate in the securities industry while Applicants appeal the NAC’s decision.²⁰

C. Applicants have not demonstrated that a stay is likely to serve the public interest.

Applicants argue that the repercussions of FINRA’s finding that the Connecticut Order amounts to a statutory disqualification under the Exchange Act are “so severe that it is imperative that the SEC directly address this issue.” This supposed need for the Commission to opine on FINRA’s decision, however, is separate from the considerations relevant to whether to grant a stay. Here, as explained above, Applicants have not demonstrated a strong likelihood of overturning FINRA’s decision on appeal; they have not demonstrated that they will suffer

¹⁸ Meyers has appealed that decision, and the sanctions are not currently in effect pending review. See BrokerCheck Report, *Bruce Meyers*, CRD No. 1045447, at 29–33 (generated June 1, 2016), <http://brokercheck.finra.org/Report/Download/45376853>.

¹⁹ As the NAC’s decision details, the Firm has paid approximately \$390,000 in monetary sanctions and has been fined an additional \$700,000 in connection with these matters. Eight of these regulatory matters involved supervisory failures, and three involved the Firm’s failures to produce documents to regulators or claimants in FINRA arbitrations. Other violations included failing to comply with FINRA’s reporting obligations, employing unregistered personnel, and failing to make disclosures to customers. The Hearing Panel found that recent Commission and FINRA examinations also found a pattern of deficiencies and weaknesses at the Firm.

²⁰ *The Dratel Group, Inc.*, Exchange Act Release No. 72293, 2014 WL 2448896, at *5 (June 2, 2014) (denying stay request where “the record before us suggests that applicants’ customers may be better served if applicants are not participating in the securities industry pending their appeal”), *denying stay request, Dratel v. SEC*, No. 14-1888 (2d Cir. July 10, 2014).

irreparable harm without a stay; and Applicants' claimed harm to their customers and employees is outweighed by concerns about Applicants' ability to comply with the securities laws and the threat Meyers's continued participation in the securities industry poses to investors. For these reasons, Applicants have not carried their burden of showing that a stay is in the public interest.

Accordingly, IT IS ORDERED that Applicants' motion to stay the effect of FINRA's denial of their membership continuation application is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary