

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78134 / June 22, 2016

Admin. Proc. File No. 3-17211

In the Matter of

ROGELIO GUEVARA

ORDER DISMISSING
APPLICATION FOR REVIEW

Appeal filed: April 14, 2016
Last brief received: May 9, 2016

FINRA requests that we dismiss an application for review filed by Rogelio Guevara (“Guevara”).¹ Guevara seeks review of a FINRA order barring him for failing to respond to its requests that he provide information in connection with an inquiry regarding his conduct. In seeking Commission review, Guevara failed to comply with the filing deadline established by Section 19(d) of the Securities Exchange Act of 1934 and our Rule of Practice 420(b) by filing his application more than 30 days after he received FINRA’s decision.² In addition, Guevara failed to exhaust his administrative remedies with FINRA. For these independent reasons, we dismiss Guevara’s application.

Background

On July 17, 2015, Guevara was permitted to resign from his position as a registered representative at Northwestern Mutual Investment Services (“Northwestern Mutual”). At the time, Guevara was under internal review for using his personal bank account to make premium payments for clients on several non-variable life insurance policies.

On September 15, 2015, FINRA notified Guevara that it was conducting an inquiry with respect to a Form U5 filing from Northwestern Mutual alleging that he had made the premium payments. FINRA informed Guevara that the “purpose of the inquiry is to determine whether violations of the federal securities laws or FINRA, NASD, NYSE, or MSRB rules have occurred.” Pursuant to its Rule 8210, FINRA directed Guevara to provide it with certain

¹ Guevara did not file a brief in opposition to FINRA’s motion, and the time to do so has expired.

² See 15 U.S.C. § 78s(d); 17 C.F.R. § 201.420(b).

documents by September 29, 2015.³ FINRA sent the letter by certified and first class mail to Guevara's address as listed in the Central Registration Depository ("CRD") system.⁴

On October 5, 2015, FINRA sent Guevara an additional letter at his CRD address, also by certified and first class mail. It stated that Guevara had not responded to the September 15, 2015 letter and directed him to provide the documents requested to FINRA by October 19, 2015. Guevara did not do so.

On November 20, 2015, FINRA notified Guevara by certified and first class mail that, unless he provided the requested documents, he would be suspended, pursuant to FINRA Rule 9552, from associating with any FINRA member on December 14, 2015.⁵ That letter also informed Guevara that he could request a hearing before the suspension date, which would stay the effective date of the suspension, and that, if he were suspended, he could file a written request for termination of the suspension on the ground of full compliance with the notice. But if Guevara failed to do so by February 23, 2016, the letter stated, he would automatically be barred from associating with any FINRA member in any capacity.⁶ FINRA again sent its notice to Guevara by certified and first class mail to the address listed in the CRD system.

On December 15, 2015, FINRA notified Guevara that he had been suspended because he had not provided the requested documents. FINRA also reminded Guevara that he could file a request to terminate the suspension on the ground of full compliance. On February 23, 2016, having received no documents or such request from Guevara, FINRA informed him that he had been barred from association with any FINRA member. FINRA advised Guevara that, if he wished to appeal the bar, he would need to file an application for review with the Commission within 30 days of his receipt of its letter. As with its other notices to Guevara, FINRA sent these letters to Guevara's CRD address by certified and first class mail.

³ See FINRA Rule 8210(a) ("For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, . . . FINRA staff shall have the right to" require a "person associated with a member" to provide specified testimony or documents.).

⁴ "The Central Registration Depository (CRD) is a computerized database that contains information about most brokers, their representatives, and the firms they work for." Investor Publication, Protect Your Money: Check Out Brokers and Investment Advisers, <https://www.sec.gov/investor/brokers.htm>.

⁵ See FINRA Rule 9552(a) ("If a . . . person associated with a member . . . fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, . . . FINRA staff may provide written notice to such . . . 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 suspension of membership or of association of the person with any member.").

⁶ See FINRA Rule 9552(h) ("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.").

On April 14, 2016, Guevara filed an application for review of FINRA’s action with the Commission. Guevara asserted that he had moved from his CRD address in April 2015 and, only on April 8, 2016, had he collected and reviewed FINRA’s letters. In his application, Guevara admitted to making the payments at issue from his personal bank account, admitted that he “made a mistake,” and attached several statements and documents purporting to explain the circumstances under which the payments were made.

Analysis

We dismiss Guevara’s application for review for two independent reasons. First, Guevara filed it after the deadline to do so. Under Exchange Act Section 19(d), a person who wishes to appeal a FINRA decision imposing a “final disciplinary sanction” must file an application for review with the Commission “within thirty days after the date” notice of the decision “was filed with [the Commission] and received by such aggrieved person.”⁷ FINRA served notice of its decision on Guevara at his CRD address on February 23, 2016, by certified and first class mail, which “started the running of the appeal period.”⁸ Because FINRA served Guevara by mail, we add an additional three days to the 30-day appeal period.⁹ Therefore, Guevara had until March 28, 2016, to file his application for review. Guevara filed his application for review on April 14, 2016—17 days after the appeal period expired. It is thus untimely.

Our Rule of Practice 420(b), which is “the exclusive remedy for seeking an extension of the 30-day [filing] period,” provides that we will not grant an extension “absent a showing of extraordinary circumstances.”¹⁰ Guevara asserts that he took possession of FINRA’s correspondence on April 8, 2016, when he collected mail from his CRD address, at which he states that he has not resided since April 2015. But because Guevara failed to keep his CRD

⁷ Exchange Act Section 19(d), 15 U.S.C. § 78s(d); *accord* Rule of Practice 420(b), 17 C.F.R. § 201.420(b) (“[A]n applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review.”).

⁸ *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at *4 (Feb. 8, 2016); *accord Pennmont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720, at *3 (Apr. 23, 2010) (finding that applicants had “thirty days from when [self-regulatory organization] filed with the Commission and served on [them]” notice of the challenged action to file their application for review), *petition denied*, 414 F. App’x 465 (3d Cir. 2011).

⁹ Rule of Practice 160(b), 17 C.F.R. § 201.160(b) (generally providing that “[i]f service is made by mail, three days shall be added to the prescribed period for response”); *Manzella*, 2016 WL 489353, at *2 n.10, *4 n.21 (applying Rule of Practice 160(b) to calculation of due date for application for review under Rule 420(b)); *see also BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72753, 2014 WL 3827605, at *1 n.2 (Aug. 4, 2014) (clarifying application of Rule of Practice 160).

¹⁰ 17 C.F.R. § 201.420(b).

address current as FINRA's by-laws require,¹¹ his belated collection of FINRA's bar notice does not excuse his failure to timely file his application.¹² Guevara also asserts that he has now provided the documents FINRA requested as attachments to his application for review. This does not provide exceptional circumstances either because to treat it as such "would undermine the important investor protections Rule 8210 is meant to safeguard."¹³

Second, we also dismiss Guevara's application for the independent reason that he failed to exhaust his administrative remedies before FINRA. "[W]e will not consider an application for review if that applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."¹⁴ Guevara "was given the opportunity to avail h[im]self 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."¹⁵ Although FINRA advised Guevara of each of these options, Guevara failed to pursue any of them.

By going directly to the Commission, Guevara seeks to bypass FINRA's process. But allowing applicants to do so "would severely hinder the self-regulatory capabilities of the SROs

¹¹ See FINRA By-laws, Article V, Section 2(c) (requiring every application for registration filed with FINRA to be kept current at all times); see also *Manzella*, 2016 WL 489353, at *3 & n.15 (stating that "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" and citing supporting authority); *id.* at *1 & n.4; NASD Reminds Registered Persons of Continuing Obligation to Update NASD Records, NASD Notice to Members 97-31, 1997 WL 1909798, at *1-2 (May 1, 1997).

¹² See *Manzella*, 2016 WL 489353, at *1 ("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.").

¹³ *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at *4 (Mar. 1, 2013) ("[W]e cannot reasonably construe Ceballos's belated attempt to comply with FINRA's Rule 8210 requests as the kind of circumstances required to justify an extension of the deadline for filing an appeal."); see also *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *4 (Apr. 11, 2008) (finding that delay and neglect by an associated person in responding to a Rule 8210 request "undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest"), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹⁴ *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); cf. *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *5 & n.29 (Apr. 3, 2003) (emphasizing that it 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" (quoting *Royal Sec. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 WL 43159, at *2 (May 20, 1955))).

¹⁵ *Lenahan*, 2014 WL 4656403, at *2.

and prevent the efficient resolution of disputes” with associated persons.¹⁶ Requiring applicants, like Guevara, to exhaust all available SRO remedies and appeals before we will consider a challenge to FINRA action “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.”¹⁷ Because Guevara failed to take advantage of the opportunities for compliance and review that FINRA provided him, he failed to exhaust his administrative remedies before FINRA.¹⁸

Accordingly, and for the reasons set forth above, IT IS ORDERED that Rogelio Guevara’s application for review is DISMISSED.

By the Commission.

Brent J. Fields
Secretary

¹⁶ *Manzella*, 2016 WL 489353, at *2 (quoting *Lenahan*, 2014 WL 4656403, at *2); see also *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004) (“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.”).

¹⁷ *Id.* FINRA rules required Guevara “to provide the [requested] documents to FINRA in the first instance.” *Ceballos*, 2013 WL 772515, at *5. Had Guevara done so, instead of attaching documents to his application for review by the Commission, FINRA could have “evaluate[d] the sufficiency of [Guevara’s] response and provided a record for us to review.” *Id.* FINRA also could have corrected any errors in its determination. *MFS Sec. Corp. v. SEC*, 380 F.3d at 621 (holding that the administrative exhaustion requirement “provides SROs with the opportunity to correct their own errors prior to review by the Commission”).

¹⁸ *Lenahan*, 2014 WL 4656403, at *2 (dismissing application for review for failure to exhaust administrative remedies where, as here, applicant “failed to exercise her rights at any stage of the process before FINRA”).