SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 79851 / January 19, 2017

Admin. Proc. File No. 3-17544

In the Matter of the Application of

DESTINA MANTAR

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF FINRA ACTION

Registered securities association barred former registered representative of member firm for failures to provide requested information. *Held*, proceedings are *remanded* for further consideration.

APPEARANCES:

Gerry Kowalski of Marshall, Dennehey, Warner, Coleman & Goggin, P.C. for Destina Mantar.

Alan Lawhead, *Andrew Love*, and *Michael Garawski* for FINRA.

Appeal filed: September 14, 2016
Last brief received: September 28, 2016

Destina Mantar appeals from a FINRA sanction barring her from associating with any FINRA member firm in any capacity for failing to respond to requests for information. FINRA requests that we dismiss Mantar's appeal for failure to exhaust administrative remedies. For the reasons stated herein, we remand this case to FINRA.

I. Background

From August 25, 2015 to October 15, 2015, Mantar was registered with FINRA as a Goldman Sachs general securities representative. On November 5, 2015, Goldman Sachs filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") notifying FINRA that it had terminated Mantar for "failing to follow directions in taking [an] internal skills assessment."[1] After receiving the Form U5, FINRA began an inquiry.

A. FINRA requested information from Mantar.

On November 11, 2015, FINRA sent Mantar a request for information and documents under FINRA Rule 8210.[2] FINRA requested, among other things, a signed description of the events that led to Mantar's resignation and any related documents or memoranda and asked whether she cheated on any firm or FINRA-administered test or assessment. The request explained that a failure to respond fully, promptly, and without qualification as required under Rule 8210 could result in sanctions, including a permanent bar.

FINRA sent the request by certified and first-class mail to the address listed as Mantar's residential address in FINRA's Central Registration Depository (the "CRD address") after checking a public records database that listed Mantar's CRD address as her current address. The request directed Mantar to respond by November 25, 2015. Mantar did not respond.

FINRA sent a second request on December 2, 2015. This request, which FINRA sent to Mantar's CRD address by certified and first-class mail, also warned that a failure to comply could result in disciplinary action. FINRA directed Mantar to respond by December 16, 2015, but again Mantar did not respond.

B. After Mantar failed to respond to the Rule 8210 requests, FINRA instituted expedited proceedings under Rule 9552 and sanctioned Mantar.

On May 12, 2016, FINRA's Department of Enforcement ("Enforcement") notified Mantar that she would be suspended from association with any FINRA member in any capacity on June 6, 2016, if she did not provide the requested information and documents (the

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[1] Attached to FINRA's motion to dismiss were (i) the Uniform Application for Securities Industry Registration or Transfer ("Form U4") through which Mantar became registered with FINRA and consented to notice of FINRA investigations and proceedings at her residential address; and (ii) the Form U5 reporting Mantar's termination, which included a reminder to Mantar of her ongoing obligation to provide information to FINRA for at least two years following her termination and to forward residential address changes to FINRA's Central Registration Depository ("CRD"). We consider these documents under Rule of Practice 452, 17 C.F.R. § 201.452 (authorizing the Commission to admit new evidence).

[2] *See* FINRA Rule 8210(a) (requiring persons subject to FINRA's jurisdiction to provide requested testimony, information, or documents in connection with FINRA investigations).

"Presuspension Notice").[3] The Presuspension Notice explained that the suspension would not go into effect if Mantar requested a hearing before the effective date.[4] FINRA also informed Mantar that, if suspended, she could request termination of the suspension on the ground of full compliance with the requests, but would be barred automatically on August 15, 2016, if the suspension took effect and Mantar failed to request termination of the suspension by that date.[5]

After Mantar did not respond, Enforcement informed her on June 6, 2016, that she had been suspended from association with any FINRA member in any capacity (the "Suspension Notice"). FINRA reiterated that she would be barred automatically if she did not request termination of the suspension on the ground of full compliance by August 15, 2016. Mantar did not respond, and on August 15, 2016, FINRA sent Mantar a notice that she had been barred from association with any FINRA member in any capacity (the "Bar Notice").

FINRA sent the Presuspension Notice, Suspension Notice and Bar Notice to Mantar's CRD address by certified and first-class mail. Before doing so, FINRA checked a public records database, which listed Mantar's CRD address as her then-current address. Each of the certified mailings was returned to FINRA as "not deliverable as addressed" and "unable to forward."

C. After the bar went into effect, Mantar sent FINRA a response for its review.

On August 30, 2016, two weeks after the bar automatically became effective, Mantar sent a written response to FINRA (the "August 30 response"). Mantar's response included a signed statement addressing FINRA's investigative requests. Mantar also stated that she first learned of FINRA's investigation and sanctions on the bar's effective date, but "recognize[d] the importance associated with getting her response to the initial [Rule] 8210 Request on record with FINRA"; that she wished to respond before "proceed[ing] with the process of attempting to lift the bar"; and that she became aware of FINRA's inquiries while applying for employment with another FINRA member and was "prepared to explain . . . the circumstances which led to her not receiving the 8210 correspondence and suspension notices."

On September 14, 2016, FINRA received a letter from Mantar asking that it "look through" her August 30 response. Mantar asserted that she had contacted FINRA "multiple times" and "offered [her] full compliance" but "was told that it was too late to lift the bar, and that [she] had an option to appeal through [the] SEC." She again argued that she did not receive

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[3] *See* FINRA Rule 9552(a) (stating that a failure to provide requested information or take corrective action within 21 days after service of a notice of such a failure will result in suspension of membership or association with a member).

[4] *See* FINRA Rule 9552(e) (requiring that a request for a hearing be made within 21 days after service of the notice); FINRA Rule 9559(n) (allowing a hearing to "approve, modify or withdraw" sanctions "imposed by the notice" and to "impose any other fitting sanction").

[5] *See* FINRA Rule 9552(h) (stating that a person failing to request termination of suspension under the rule "within three months of issuance of the original notice of suspension will automatically be expelled or barred").

the FINRA inquiries or notices, claiming that she was not aware of, and did not "purposefully ignore[]," the Rule 8210 requests. Mantar stated that she was "not in possession of any of the physical communication[s]" and "never signed on any certified mail and [did] not know what happened to them." Other than Mantar's September 14 letter, the record does not include any evidence of FINRA's review of the August 30 response or its replies to Mantar's inquiries.[6]

On September 15, 2016, Mantar filed a timely application with the Commission for review of the bar. In her application, Mantar argues that she responded to the inquiries when she learned of FINRA's investigation and had not received the original requests and notices because she traveled away from her residence for long periods after her termination, "conducted all her personal affairs on-line," and "rarely if ever" used her mailbox. FINRA filed a motion requesting that we dismiss Mantar's appeal on September 28, 2016. According to FINRA, Mantar failed to exhaust her administrative remedies and is precluded from appealing the bar. FINRA does not dispute the completeness of Mantar's August 30 response, but argues that its timing rendered it tantamount to a complete failure to respond and insufficient to exhaust her administrative remedies.

II. Analysis

FINRA argues that Mantar's application should be dismissed because its service of the notices was proper and Mantar's August 30 response should not excuse her failure to exhaust her administrative remedies. But there is no basis in the record for concluding that FINRA reviewed Mantar's August 30 response and determined that a bar was nonetheless appropriate despite her professed unawareness of its requests and her prompt response thereafter. Accordingly, we find that the record does not contain sufficient evidence for us to evaluate FINRA's argument that Mantar failed to exhaust her administrative remedies before filing her timely appeal with the Commission, and we remand for further proceedings.

FINRA emphasizes that "the record demonstrates that [it] properly served Mantar" and that the Commission "has repeatedly held that an applicant's failure to update the CRD address does not excuse a failure to timely respond to notices sent to [that] address." To be sure, we have stated that a "Rule 8210 notice is deemed received when mailed to the formerly registered individual's last known residential address reflected in the CRD."[7] We have also stressed that it is the registered individual's obligation to keep the CRD address current.[8] But we have not held in the context of expedited proceedings that mailing documents to an individual's CRD address is always sufficient to support a dismissal for failing to exhaust administrative remedies. Indeed,

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[6] FINRA's certified record included Mantar's August 30 response and September 14 letter, but no response from FINRA. *See* Rule of Practice 420(e), 17 C.F.R. § 201.420(e) (requiring the SRO to file a certified copy "of the record upon which the action complained of was taken").

[7] *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at *7 (July 27, 2015) (citing FINRA Rule 8210(d)).

[8] *Id.*; *see also id.* at *5 (stating that this obligation continues for "two years after the effective date of termination of registration" (citing FINRA Bylaw Article V, Section 4(a)(i))).

several of the cases that FINRA cites to support its motion to dismiss involved FINRA disciplinary actions rather than expedited proceedings.[9] Disciplinary actions begin with the filing of a complaint authorized by FINRA's Office of Disciplinary Affairs, are assigned to a Hearing Officer and Hearing Panel as soon as practicable, and, among other things, authorize a respondent found to be in default to move the Hearing Officer to set aside the default for good cause.[10]

Accordingly, expedited proceedings and disciplinary proceedings are "two [separate] avenues" for addressing Rule 8210 violations.[11] And in many of the cases that FINRA cites involving expedited proceedings where we dismissed the application for review there was evidence that the applicants had actual notice of the requests for information.[12] In cases challenging a bar imposed in expedited proceedings where there is reason to believe the applicant did not have actual notice of FINRA's information requests or notices, we have regularly remanded the matter back to FINRA.[13]

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[9] *Id.* at *3-4, 14-15; *PAZ Secs., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *2, 9 (Apr. 11, 2008); *Warren B. Minton*, Exchange Act Release No. 46709, 2002 WL 32140276, at *2, 4 (Oct. 23, 2002); *Ashton Noshir Gowadia*, Exchange Act Release No. 40410, 1998 WL 564575, at *2, 4 (Sept. 8, 1998); *Nazmi C. Hassanieh*, Exchange Act Release No. 35029, 1994 WL 681723, at *1, 3 (Nov. 30, 1994).

[10] *See* FINRA Rules 9211, 9213, and 9269(c); *see also Minton*, 2002 WL 32140276, at *3 (dismissing application for review of bar imposed in a disciplinary proceeding for violating Rule 8210 after hearing officer denied motion to set aside default finding no good cause); *Gowadia*, 1998 WL 564575, at *2 (sustaining suspension imposed in a disciplinary proceeding for violating Rule 8210 after default decision was remanded and suspension was imposed after a hearing).

[11] *Christopher A. Parris*, Exchange Act Release No. 78669, 2016 WL 4446331, at *2 (Aug. 24, 2016).

[12] *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 WL 265812, at *3 (Jan. 24, 2014); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013); *Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 WL 3590274, at *2, 5 (Dec. 11, 2006); *see also Pearson*, 2006 WL 3590274, at *3-7 (sustaining action on the merits rather than dismissing for failing to exhaust administrative remedies).

[13] *Kevin M. Murphy*, Exchange Act Release No. 79016, 2016 WL 5571633, at *4 (Sept. 30, 2016); *Robert J. Langley*, Exchange Act Release No. 50917, 2004 WL 2973866, at *3 (Dec. 22, 2004); *Ryan R. Henry*, Exchange Act Release No. 53957, 2006 WL 1565128, at *3 (June 8, 2006); *James L. Bari*, Exchange Act Release No. 48292, 2003 WL 21804686, at *2 (Aug. 6, 2003); *see also Parris*, 2016 WL 4446331, at *5 (setting aside a bar imposed for Rule 8210 violations in an expedited proceeding but stating that "FINRA may still take any action against [the applicant] permitted under its rules" for a Rule 8210 violation); *id.* at *7 n.25 (citing *Evansen*, 2015 WL 4518588, at *2-4 (sustaining bar imposed in disciplinary proceeding for Rule 8210 violation after FINRA had vacated a bar imposed under Rule 9552)).

We believe a remand is similarly appropriate here. The record suggests that Mantar may not have had actual notice of FINRA's requests or notices until the day her bar became effective and that she provided FINRA with the information it requested two weeks later—before filing her application for review with the Commission. Although we have previously found that applicants fail to exhaust their administrative remedies by providing a response to Rule 8210 requests as part of their application for review, we have done so because applicants must "provide the requested documents to FINRA in the first instance."[14] Following this course, "instead of attaching documents to [an] application for review by the Commission," allows FINRA to "evaluate[] the sufficiency of [the] response and provide[] a record for us to review."[15] It also allows FINRA to "correct[] any errors in its determination."[16] Indeed, FINRA has lifted bars under similar circumstances in previous cases.[17] The record in this case contains no explanation from FINRA as to why, under these circumstances, a bar was appropriate notwithstanding the August 30 response that Mantar sent to FINRA before a timely appeal. We remand to give FINRA an opportunity to provide this explanation. Absent this explanation, we are unable to determine whether Mantar failed to exhaust her administrative remedies or otherwise opine on the merits of Mantar's appeal.

In its motion, FINRA asserts that a delayed response impedes FINRA's ability to conduct its investigations "fully and expeditiously," and thus "Mantar's conduct was essentially a complete failure to respond." But FINRA's assertion in its motion to dismiss is no substitute for FINRA providing an explanation in the record as to why—either because it was untimely or for another reason—Mantar's belated response impeded its investigation and should be treated as a complete failure to respond that does not justify revisiting the bar.[18]

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[14] *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 WL 3440196, at *3 n.17 (alterations omitted) (citing *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at *5 (Mar. 1, 2013)); *cf. David I. Cassuto*, Exchange Act Release No. 48087, 2003 WL 21474389, at *2 (June 25, 2003) (dismissing for failing to exhaust administrative remedies where applicant claimed that he had not received the requests for information but only offered to cooperate in his application for review to the Commission and only if the NASD withdrew his suspension).

[15] *Guevera*, 2016 WL 3440196, at *3 n.17 (citing *Ceballos*, 2013 WL 772515, at *5).

[16] *Id.* (citing *MFS Secs. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004)).

[17] *Evansen*, 2015 WL 4518588, at *3 (stating that two days after he was automatically barred applicant sent a response to the requests for information and FINRA vacated the bar); *Keath Allen Ward*, Exchange Act Release No. 66173, 2012 WL 135298, at *1 (Jan. 18, 2012) (dismissing application for review as moot after FINRA terminated a suspension and bar "to afford [the applicant] the opportunity to provide the requested information to FINRA"); *Denise Lynn Gizankis*, Exchange Act Release No. 64391, 2011 WL 1681682, at *1 (May 4, 2011) (dismissing application for review as moot after FINRA agreed to reduce the sanction to "less than a bar" following applicant's "willingness to respond to FINRA's requests for information").

[18] *See Parris*, 2016 WL 4446331, at *5, 6 n.20 (declining to consider FINRA's "explanation because FINRA provided it for the first time in its brief on appeal"); *Richard T. Sullivan*, Exchange Act Release No. 40671, 1998 WL 786943, at *6 (Nov. 12, 1998) ("It is

(*continued*…)

In any case, the cases that FINRA cites do not support its position that Mantar's application must be dismissed for failing to exhaust administrative remedies. FINRA states correctly that in *Elliot M. Hershberg* we sustained a bar FINRA imposed after Hershberg "expressed his willingness to testify only after his automatic bar became imminent."[19] But *Hershberg* did not involve a dismissal for failure to exhaust administrative remedies; rather, we sustained the bar on the merits after Hershberg submitted a Motion for Reinstatement to NASD, NASD held a hearing, and the Hearing Panel imposed a bar "due to 'Hershberg's refusal to testify until this proceeding was instituted, and the lack of mitigating facts.'"[20] Similarly, in *PAZ Securities* we sustained a bar on the merits on the ground that applicants' "failure to respond until after NASD barred [them] is not merely a 'slow' response" but rather "tantamount to a complete failure to respond" because they had actual knowledge of the information requests and responded "eight-and-a-half- months after the original request."[21] Moreover, NASD imposed the bar in a disciplinary proceeding rather than in expedited proceedings.[22] *Hershberg* and *PAZ* provide authority for FINRA to impose a bar for conduct that impedes its ability to conduct its investigations but does not establish that Mantar failed to exhaust her administrative remedies.

FINRA also cites our dismissal for failing to exhaust administrative remedies in *Norman Chen*.[23] But in *Chen* we found that the applicant knew about the proceedings for months, exhibited a "pattern of unresponsiveness and delay in [his] interactions with FINRA throughout the proceedings," and "did not include the information requested by FINRA" in the response he sent it after being suspended.[24]

Accordingly, we remand this proceeding to FINRA for further consideration of the basis for its action and the appropriateness of barring Mantar in an expedited proceeding. We emphasize that we base our decision to remand on the totality of the circumstances: that Mantar may have lacked actual notice of FINRA's requests for information until the date the bar became effective; that she responded to FINRA's requests two weeks later—before filing a timely appeal

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(…*continued*)
important that a [SRO] clearly explain the basis for its conclusions. If it fails to do so, an applicant is impaired in his or her ability to urge a contrary position to us, and we cannot discharge our review function.").

19 *Elliot M. Hershberg*, Exchange Act Release No. 53145, 2006 WL 140646, at *3 (Jan. 19, 2006).

20 *Id.* at *2-4; *see also id*. at *4 (discussing "Hershberg's refusal to testify for a fourteen-month period and his attempt to avoid a bar by reversing his position at the last minute" and his knowledge that "he was violating NASD rules by deciding not to appear for his testimony").

21 2008 WL 1697153, at *5; *see also id*. at *8 (finding that applicants exhibited a "cavalier disregard of the need to . . . respond to requests for information").

22 *Id.* at *2.

23 Exchange Act Release No. 65345, 2011 WL 4336720 (Sept. 16, 2011).

24 *Id.* at *2, 3.

with the Commission; and that FINRA did not provide an explanation in the record as to why barring her pursuant to an expediting proceeding was appropriate notwithstanding the response she sent to FINRA. In remanding, we do not intend to suggest any view as to a particular outcome.

An appropriate order will issue.[25]

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

[25] We have considered the arguments advanced in Mantar's application for review and in FINRA's motion to dismiss. Given the state of the record, we find that full briefing on Mantar's appeal would not significantly aid the decisional process. It would serve the interests of justice and cause no prejudice to the parties under the circumstances to dispense with further briefing. *See* Rule of Practice 100(c), 17 C.F.R. § 201.100(c) ("The Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.").

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79851 / January 19, 2017

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In the Matter of the Application of

DESTINA MANTAR

For Review of Action Taken by

FINRA

ORDER REMANDING PROCEEDING TO FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the proceedings with respect to Destina Mantar be, and they hereby are, remanded to FINRA for further consideration.

By the Commission.

Brent J. Fields
Secretary