

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 81785 / September 29, 2017

Admin. Proc. File No. 3-17939

In the Matter of the Application of  
  
MCBARRON CAPITAL LLC  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF FINRA ACTION

Member of registered securities association filed an application for review of association's action expelling it from membership for failing to respond to requests for information. *Held*, application for review is dismissed as untimely.

APPEARANCES:

James Crafa, pro se, for McBarron Capital LLC

Alan Lawhead and Celia Passaro for FINRA.

Appeal filed: April 20, 2017

Last brief received: May 31, 2017

McBarron Capital LLC, a broker-dealer and member of the Financial Industry Regulatory Authority, Inc. (“FINRA”), filed an application for review of FINRA’s action expelling it from membership for failing to respond to FINRA’s requests for information. FINRA asks us to dismiss the application because McBarron filed it more than thirty days after receiving FINRA’s decision. We grant FINRA’s motion and dismiss McBarron’s application.

## I. Background

McBarron registered as a FINRA member firm in December 2004. In September and October 2016, FINRA sent McBarron a series of letters (the “8210 Requests”) in connection with a cycle examination requesting that the firm provide specified documents and information to FINRA pursuant to FINRA Rule 8210.<sup>1</sup> The 8210 Requests explained that failure to respond “could expose [the firm] to sanctions, including a permanent bar from the securities industry.” The record reflects that McBarron received the 8210 Requests.

Over this period, McBarron sent FINRA a small number of documents that responded in part to FINRA’s 8210 Requests, but otherwise failed to respond fully to FINRA’s repeated requests for information and documents. On October 13, 2016, James Crafa, McBarron’s Chief Executive Officer, sent FINRA a letter describing a telephone call with FINRA staff in which he described McBarron’s “future plans” and took the position that “another FINRA cycle examination was unnecessary given FINRA’s still open and [ongoing] regulatory examinations of the firm and McBarron’s proposed changes to its current BD status.”<sup>2</sup> FINRA responded that it was obligated to conduct a cycle examination, that McBarron had shown “no good cause [to] cancel[]” the examination, and that if McBarron continued not to respond to the 8210 Requests it could face “expulsion” from membership.

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<sup>1</sup> See FINRA Rule 8210(a) (requiring FINRA members to provide testimony, information, or documents in connection with FINRA investigations); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at \*6 (Nov. 8, 2007) (stating that because FINRA lacks subpoena power Rule 8210 is “vitally important”).

<sup>2</sup> We take official notice that while these proceedings were ongoing, on December 8, 2016, FINRA canceled McBarron’s membership for its failure to pay certain outstanding fees owed to FINRA. See Rule of Practice 323, 17 C.F.R. § 201.323 (authorizing us to take official notice of “any matter in the public official records of the Commission”). McBarron filed a separate application for review of FINRA’s cancellation of its membership, and that action is not at issue here. We dismissed that application because McBarron failed to file an opening brief. See *McBarron Capital LLC*, Exchange Act Release No. 80499, 2017 WL 1406911, at \*1 (Apr. 20, 2017). After our Office of the Secretary received a filing from McBarron, however, we issued an order to show cause why the proceeding should be reopened. See *McBarron Capital LLC*, Exchange Act Release No. 80662, 2017 WL 1953455, at \*2 (May 11, 2017). Subsequently, our Office of the General Counsel issued an order requesting additional briefing. See *McBarron Capital LLC*, Exchange Act Release No. 81190, 2017 WL 3129144, at \*2 (July 24, 2017).

FINRA then initiated proceedings under FINRA Rule 9552 to suspend McBarron's membership.<sup>3</sup> On November 15, 2016, FINRA sent McBarron a letter warning the firm that its continued failure to respond to the 8210 Requests would subject it to a suspension on December 9, 2016. On December 9, 2016, FINRA sent McBarron another letter explaining that the firm was suspended, effective immediately, from FINRA membership. Both letters advised McBarron that it could avoid or terminate the suspension by complying fully with the 8210 Requests. McBarron did not respond to either letter. As a result, FINRA notified McBarron in a letter dated February 21, 2017 that it was expelled from FINRA membership effective immediately. The notice explained that if McBarron wished "to appeal this regulatory action to the U.S. Securities and Exchange Commission," it must do so "within thirty days of the Firm's receipt of this letter." The Commission received McBarron's application for review on April 20, 2017.

## II. Analysis

We dismiss McBarron's application for review as untimely. Under Section 19(d)(2) of the Securities Exchange Act of 1934, a person aggrieved by a FINRA decision appealable to the Commission must file an application for review with the Commission "within thirty days after the date" that notice of the decision "was filed with [the Commission] and received by such aggrieved person, or within such longer period as [the Commission] may determine."<sup>4</sup> Rule of Practice 420(b) provides that we "will not extend this 30-day period, absent a showing of extraordinary circumstances."<sup>5</sup> We have said that "extraordinary circumstances" exist where the "applicant's failure timely to file was beyond the control of the applicant."<sup>6</sup>

McBarron did not file its application for review by the deadline for doing so. FINRA served McBarron with the notice of its expulsion by certified mail, first class mail, and email on February 21, 2017.<sup>7</sup> The notice cautioned McBarron that if it wished to seek review of FINRA's decision, it must file its application for review with the Commission within 30 days of receiving it. Instead, McBarron did not file its application for review until nearly a month after the deadline for doing so expired. McBarron never sought an extension of the filing deadline. And

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<sup>3</sup> See FINRA Rule 9552(a) (providing that "[i]f 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 member . . . 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 [the] membership").

<sup>4</sup> 15 U.S.C. § 78s(d)(2).

<sup>5</sup> 17 C.F.R. § 201.420(b).

<sup>6</sup> *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 WL 2468111, at \*6 (June 17, 2010).

<sup>7</sup> Although the certified mailing was returned undeliverable, the first-class mailing and email apparently were not; McBarron does not claim it failed to receive the notice.

because it did not respond to FINRA's motion to dismiss its application as untimely, it provided no justification for its untimely filing, much less a showing of "extraordinary circumstances."

We routinely reject applications for review in which the applicant did not act promptly to pursue its appeal.<sup>8</sup> As we have repeatedly 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."<sup>9</sup> Under the circumstances, we grant FINRA's motion and dismiss McBarron's application for review.

An appropriate order will issue.<sup>10</sup>

By the Commission (Chairman CLAYTON and Commissioners STEIN and PIWOWAR).

Brent J. Fields  
Secretary

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<sup>8</sup> See, e.g., *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 WL 3440196, at \*2 (June 22, 2016) (dismissing application for review filed seventeen days after deadline lapsed); *John Vincent Ballard*, Exchange Act Release No. 77452, 2016 WL 1169072, at \*2 (Mar. 25, 2016) (dismissing application for review filed twenty-one days after deadline lapsed); cf. *Brian J. Ourand*, Advisers Act Release No. 4482, 2016 WL 4258138, at \*2 (Aug. 12, 2016) (dismissing petition for review of an initial decision filed twenty-four days after the filing deadline).

<sup>9</sup> *Aliza Manzella*, Exchange Act Release No. 2016 WL 489353, at \*4 (Feb. 8, 2016) (quoting *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at \*2 (May 8, 2014) (citation omitted)).

<sup>10</sup> We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

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

ORDERED that the appeal filed by McBarron Capital LLC be, and it hereby is,  
dismissed.

By the Commission.

Brent J. Fields  
Secretary